

REPORT OF THE VIRGINIA MARINE RESOURCES COMMISSION



LAW ENFORCEMENT SUBCOMMITTEE

REVIEW AND RECOMMENDATIONS CONCERNING PRE-PAYABLE FINES, THE STRIPED BASS WEIGHT QUOTA SYSTEM AND SANCTIONING PROCEDURES FOR VIOLATIONS OF NATURAL RESOURCES LAWS AND REGULATIONS

PREFACE

At the August, 2012 Virginia Marine Resources Commission (VMRC) meeting, Commissioner Jack G. Travelstead requested the establishment of a committee to review current issues related mainly to administration of the provisions of § 28.2-232 of the Code of Virginia. This provision establishes the Commission's authority to implement sanctions in the form of revoking fishing privileges and prohibiting the issuance, reissuance, or renewal of any licenses if, after a hearing, it finds a harvester has violated any subtitles of the provision. Commissioner Travelstead stated that current sanctions for court-adjudicated violations of regulations and laws governing natural resources were inadequate in promoting conservation and protection of natural resources. The Commissioner also proposed the committee review an expansion in the allowance of pre-payable fines for violations of natural resource laws and regulations. The striped bass weight quota system, and oyster poaching were also issues requested for review by this committee.

The Law Enforcement Subcommittee convened at three meetings: April 19, May 24, and June 21, 2013, to review data and information specific to these issues, as provided by the Fisheries Management Division. This process followed reviews and recommendations concerning similar data and information by one or more of the Commission's advisory committees, as described below.

The Code of Virginia (§ 28.2-201.1) grants authority to the Commission to make regulations and prepare fishery management plans, as well as enforce its regulations and administer penalties for violations. Within this role, the Commissioner is permitted to appoint fisheries advisory committees and their chairmen, consisting of representatives of the various fishery user groups, to assist in the preparation and implementation of those plans. When making his request for a law enforcement review, the Commissioner appointed Associate Commissioners to create this Law Enforcement Subcommittee, in keeping with this role. The Code grants this authority such that the Commission may promote general welfare of the seafood industry and conserve and promote the seafood and marine resources of the Commonwealth.

Law Enforcement Subcommittee Members

Honorable S. Lynn Haynie
Honorable Joseph C. Palmer, Jr.
Honorable Richard B. Robins

VMRC Advisory Committees

Crab Management Advisory Committee
Finfish Management Advisory Committee
Shellfish Management Advisory Committee

Marine Resources Commission Staff

Jack G. Travelstead, Commissioner
Fisheries Management Division
Law Enforcement Division

FINDINGS

The key findings of the Law Enforcement Subcommittee were: (i) to support all of the newly proposed and amended changes to the pre-payable summonses for natural resource violations, for transmittal to the Supreme Court of Virginia; (ii) that further investigation of the current striped bass weight-quota system's efficacy is needed; and (iii) that a revision of the current sanction system, that requires three court findings of guilty before any individual harvester is required to appear before the Commission for a license revocation hearing, is essential to the welfare of the natural resources and seafood industry.

The following report focuses mainly on the subcommittee's recommendations for improving the striped bass Individual Transferable Quota system and the Commission's schedule for providing sanctions, including license revocations, for individuals who violate natural resource regulation and laws. The supporting materials used to develop these recommendations are included.

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PRE-PAYABLE OFFENSES

Background

In the first meeting of the Law Enforcement Subcommittee, on April 19, 2013, the proposal for expanding the number of pre-payable fines for offense-related summonses was presented by Fisheries Management Staff. The proposed pre-pay fine schedule was provided, along with some background information on the benefits of having pre-payable fines, and the relevant rule of the Supreme Court of Virginia pertaining to the Uniform Fine Schedule (Rule 3C:2), which is described below.

The offenses on the list are all class 3 misdemeanors that, alone, would not threaten the welfare of the resource or seafood industry. The maximum fine under state law for each is \$500. Subsequent offenses within 12 months are elevated to class 1 misdemeanors that cannot be prepaid.

The benefit of this initiative is that it will allow citizens to plead guilty and prepay their fines and court costs for minor offenses, as is done with certain traffic violations. Such an initiative is constituent-friendly, as it saves court appearances, and also pleases judges by reducing their court docket case load. Additionally, allowing more offenses to be prepaid means Marine Police Officers (MPOs) will spend less time in court and more time on patrol or in other important activities.

Issues

Currently, ten Virginia natural resource violations have fine schedules that are pre-payable. In comparison, the Potomac River Fisheries Commission has 86 pre-payable fines for natural resource summonses, and the Department of Game and Inland Fisheries has 78. The proposed amendments and additions to VMRC's list of ten pre-payable fines would have to be submitted to the Supreme Court of Virginia, as they directly relate to Rule 3C:2.

Rule 3C:2 Uniform Fine Schedule.

Any person charged with any offense listed below may enter a written appearance, waiver of court hearing, plea of guilty and pay fines and costs. This schedule is applied uniformly throughout the Commonwealth, and a clerk or magistrate may not impose a fine and cost different from the amounts shown here. The schedule does not restrict the fine a judge may impose, for an offense listed here, in any case for which there is a court hearing. Where injury to the person is involved, prepayment may not be made, even though the offense or violation appears on the list below. See VA Code 16.1-69.40:2 (A). A violation of a provision of Title 28.2 may be prepaid only if the person has not violated a provision of Title 28.2 within the past 12 months. See VA Code 28.2-903.

In the second meeting of the Law Enforcement Subcommittee, on May 24, 2013, staff presented a summary of the pre-payable fines for natural resource summonses (Attachment 2), and noted how violations were grouped into a few categories, such as violations of minimum size limits or crab fishery or oyster fishery violations of regulations or laws.

Recommendations

The Law Enforcement Subcommittee agreed that an expansion of the pre-payable fines (see Attachment 3) be approved and submitted to the Supreme Court of Virginia. VMRC submitted the proposal in April 2013. The staff of the Supreme Court of Virginia reviewed the proposal package and submitted it to the Committee on District Courts, which handles pre-payable offense issues, for discussion and possible action over the next few months. At that committee's May 17, 2013 meeting, members had a number of law enforcement and fisheries questions that the Committee staff could not answer. The matter was tabled until the scheduled August 29 Committee on District Courts meeting, at which point Commissioner Travelstead and Colonel Lauderman will give a presentation to the Committee on District Courts and answer any questions.

The Law Enforcement Division has discussed the practicality of providing MPOs an updatable listing of violators who have previous convictions for certain violations, as a second violation of the same regulation and most laws is considered a first class misdemeanor, and is not pre-payable. This would enable the MPO to structure a summons accordingly; however, at this time the Law Enforcement Division has not determined whether to pursue this option.

COMMERCIAL STRIPED BASS INDIVIDUAL TRANSFERABLE WEIGHT QUOTA REVIEW

Background

At the February 26, 2013 Commission meeting, Associate Commissioner Rick Robins directed staff to examine the status of the striped bass fishery and prepare a presentation of its findings to the Finfish Management Advisory Committee (FMAC). Mr. Robins stated that there was a fundamental change in the way the commercial striped bass Individual Transferable Weight Quota (ITWQ) system was administered, as compared to the original ITQ system.

The initial ITQ system was implemented in 1998, and harvesters received tags for their share of overall harvest quota, based on a gear-specific average weight, from the previous year. For example, if there had been 300 gill net harvesters, the total gill net harvest of the previous year was divided by an average weight of striped bass sampled from that gear type, and all gill net harvesters were assigned the same number of tags for a single share of gill net quota, for the current year (some harvesters had multiple shares).

The current ITWQ system was implemented in 2007 mainly to address inequities with regional-specific distributions of striped bass. Those fishermen who harvested primarily in rivers, especially upriver reaches, complained repeatedly to the Commission that they were disadvantaged by the original 'one-tag, one-fish' ITQ system. As they harvested much smaller striped bass than mainstem Bay harvesters, they felt this system shortchanged their economic potential. Attachment 4a, illustrates the criteria staff had recommended in 2004, as compared to its recommendation in 2006, just prior to the adoption of the ITWQ system by the Commission. The 2004 recommendations included check-in stations for harvesters and daily buyer reports. The absence of these types of monitoring elements has resulted in an honor system, concerning how striped bass weights are reported by harvesters under the current ITWQ system.

The current ITWQ system provides a seasonal tag allocation based on the average fish weight that each harvester reported in the previous year. Mr. Robins requested that staff examine how transitioning to the current weight-based system has affected the fishery. He recommended assessing the average fish size, composition of landings by county or landings area, enforceability of the current system compared to the previous system, and concerns about how the current system is configured.

Staff conducted analyses and presented the findings to the Finfish Management Advisory Committee at their March 25, 2013 meeting. The presentation was an overview of striped bass management in Virginia from 1998 to the present, along with the justifications for the transition to the current ITWQ system. The Virginia commercial harvest of striped bass was managed by a single, statewide quota, from 1990 through 2002. However, there were substantial harvests from the Coastal Area from 1999-2002, with 932,969 pounds harvested from the Coastal Area in 2000, but had there been a separate Coastal Area quota established by ASMFC for those years it would have been close to 100,000 pounds. For these reasons, average weight data, based on

Chesapeake Area harvests could not be used for those years (1999-2002) because excessive harvest occurred outside the Chesapeake Area. By 2003, the Commission implemented the two-area quota system that is in effect today, as mandated by the Atlantic States Marine Fisheries Commission in 2002.

This information was provided in the presentation to the FMAC, along with results from staff's analyses, including landings of striped bass harvested in the Chesapeake Area (mainstem Chesapeake Bay, its tributaries, and the Potomac River tributaries to Virginia), by county, percentage of quota harvested by gear type from 1995 through 2012, average weight of landings by gear type and water body areas, tag use in the current system for 2011 and 2012, and an update on the biological status of the stock. This presentation was also provided to the Law Enforcement Subcommittee, at its first meeting, on April 19, 2013 (Attachment 4a). At the Law Enforcement Subcommittee meeting, Mr. Robins requested that Fisheries staff examine average weights, from harvests of striped bass, by individuals, county and year, from the Chesapeake Area and Coastal Area fisheries (as defined in 4 VAC 20-252-10 et seq.)

Staff presented these results to the Law Enforcement Subcommittee at its second meeting, on May 24, 2013. Average weight, by individual, county and year were presented for harvests from the Chesapeake and Coastal areas. No confidential data were presented and the anonymity of the individuals was fully preserved throughout this process. Average weights of striped bass harvested by select, individual permittees in three rivers systems (James, York and Rappahannock) were presented. None of these permittees had transfers of tags, from 2010-2012, to avoid confounding of individual fishing behavior by tag transfers. Several options to address concerns regarding the current individual weight-based quota system were detailed, along with associated advantages and disadvantages. A summary of transfers for 2010, 2011, and 2012 were shown, along with potential options for modifying the transfer process. Summary statistics regarding the amount of striped bass landed and where the fish were sold were provided to the Subcommittee to highlight the ineffectiveness of buyer auditing and the need for an improved system (Attachment 4b).

Issues

Concerns over potential abuses of the weight quota system were prompted Mr. Robins' concern about reported average weight versus actual average weight of striped bass being harvested. The Staff's presentation on May 24, 2013 included individuals' average fish weights in the Coastal fishery below 12 pounds and as low as 5 pounds. These reported weights reinforced the committee's concerns regarding the reporting accuracy and enforceability of the current system.

In an effort to address these concerns, Fisheries developed other approaches for establishing a threshold weight for the two harvest areas' gill net fisheries, since the largest proportion of striped bass landings are harvested by gill net. At the June 21st meeting, staff presented methods for determining threshold weights for striped bass harvested in the coastal and Chesapeake area

gill net fisheries. Data from the Biological Sampling Program (BSP) and the Mandatory Reporting Program (MRP) were used to determine a threshold weight. Staff pointed out that both data sets have uncertainty. The BSP data are collected by three full-time field technicians, who obtain biological data for 13 commercially important species. The BSP technicians sample fish directly in the field at buyer locations, obtaining length and weight data in a stratified random sampling design. Technicians attempt to collect samples from all gear types, randomly sampling harvest to reflect the distribution of sizes in the landings. The Program also attempts to represent all age classes in the landings, which requires the technicians to target both small and large fish. These fish are in the “tails” of the size distribution (e.g., Figure 1), and may be sampled in a higher proportion than what occurs in the landings. The BSP does collect a good sample of weights to reflect both the coastal and Chesapeake area gill net fisheries.

The MRP is fishery-dependent, self-reported harvest, and as such its main shortcoming is that harvesters can misreport weight-per-tag information. Staff showed the average and median weight (pounds) by year (2007 through 2012) for the MRP and BSP by fishery. The MRP had lower average weights by year compared with the BSP. Both programs had large standard deviations about the mean. The median was lower than the average weights of the MRP and BSP because the median is less sensitive to outliers compared with the mean.

Staff recommends the threshold weight be used only for individuals who harvest noticeably smaller striped bass than other fishermen. For example, coastal area gill net fishermen usually harvest striped bass that average 12 pounds or more. Table 1 shows the number and percentage of fish harvested under 12 pounds. These smaller striped bass represent nearly 30% the harvest (as documented by both the Mandatory Reporting Program and the Biological Sampling Program) from 2007 through 2012. This information is visually represented in the distribution of fish weights shown in Figure 1.

Table 1. Number and percentage of Coastal Area fish under 10, 11, 12, and 13 pounds harvested by gill net, 2007-2012.

Mandatory Harvest Reporting Program					Biological Sampling Program				
Weight (pounds)	Number	Percent	Mean	Median	Weight (pounds)	Number	Percent	Mean	Median
Under 10	199	11%	8.71	9.00	Under 10	309	14%	9.14	9.03
Under 11	320	17%	9.52	10.00	Under 11	480	21%	9.65	9.57
Under 12	487	26%	10.18	10.33	Under 12	608	27%	10.04	9.99
Under 13	628	33%	10.74	11.00	Under 13	731	32%	10.38	10.45

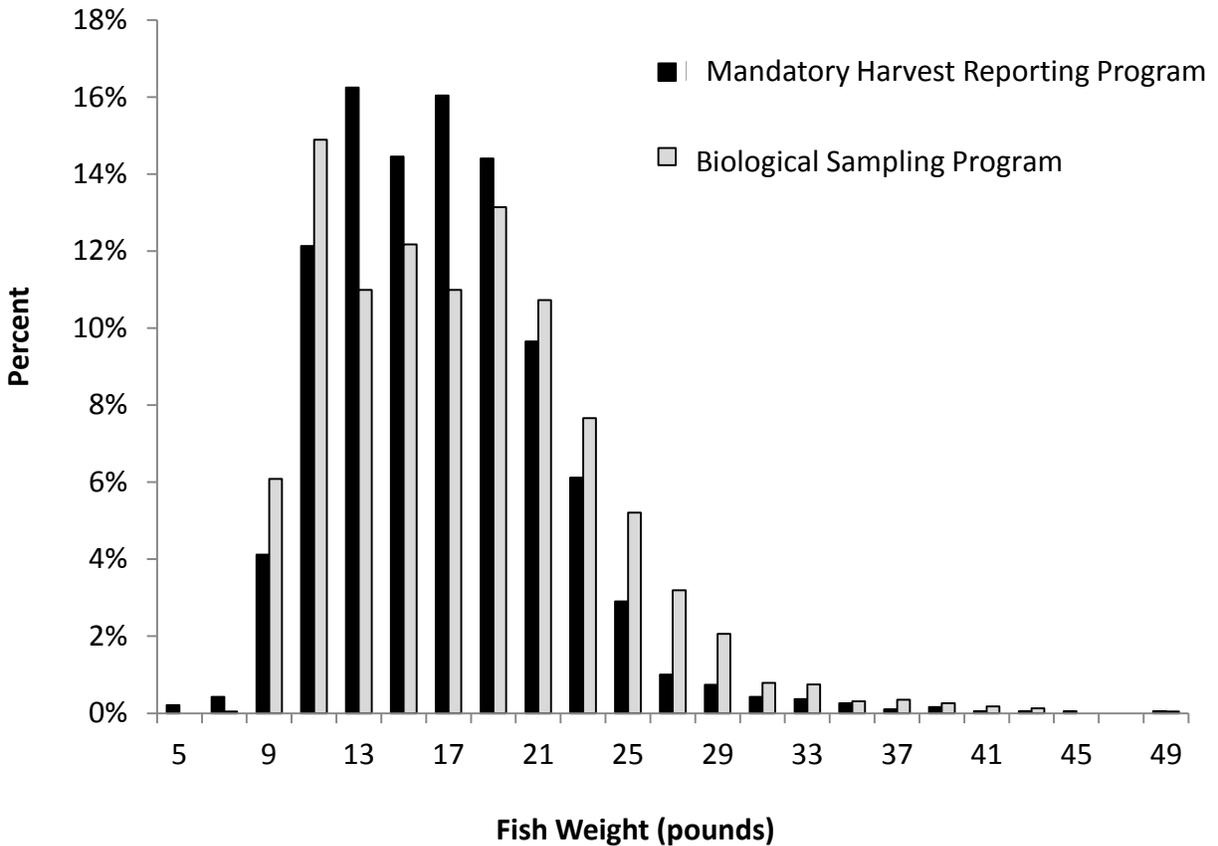


Figure 1. Percent of coastal striped bass harvested by weight bin by gill net (2007 – 2012).

How a threshold weight system would be implemented would be that those harvesters who report an average weight above 12 pounds would be provided tags, based on the average weight of their previous year’s harvest, as they have since 2007. Permittees whose reported average harvest of striped bass was less than 12 pounds would be provided their share of tags based on a 12-pound average weight, with an opportunity to request additional tags. An average weight of 12 pounds establishes the “threshold” average weight for the Coastal Area. The purpose of a threshold weight system is to curtail under-reporting of weight data.

The Subcommittee discussed such a threshold weight in detail at the June 21, 2013 meeting. They suggested that if a threshold is to be used to establish an initial allocation of tags for the Coastal Area fishery, it should be set at the mean or median reported weight or sampled weight, with additional distributions of tags accompanied by further monitoring.

The corresponding weight-bin information is shown in Table 2 for the Chesapeake Area. Unlike the Coastal Area, the distribution of fish weights has two peaks (Figure 2), since both small and large fish are frequently harvested in the Chesapeake Area.

Table 2. Number of fish and percentage of Chesapeake Area fish under 8 ,9, 10, 11, 12, and 13 pounds harvested by gill net, 2007-12.

Mandatory Harvest Reporting Program					Biological Sampling Program				
Weight (pounds)	Number	Percent	Mean	Median	Weight (pounds)	Number	Percent	Mean	Median
Under 8	7775	60%	5.36	5.38	Under 8	4240	52%	5.11	5.08
Under 9	8360	65%	5.61	5.59	Under 9	4526	56%	5.33	5.23
Under 10	8799	68%	5.80	5.70	Under 10	4732	58%	5.50	5.34
Under 11	9150	71%	6.01	5.83	Under 11	4905	60%	5.68	5.42
Under 12	9447	73%	6.17	5.93	Under 12	5029	62%	5.83	5.49
Under 13	9723	75%	6.35	6.00	Under 13	5165	63%	6.00	5.56

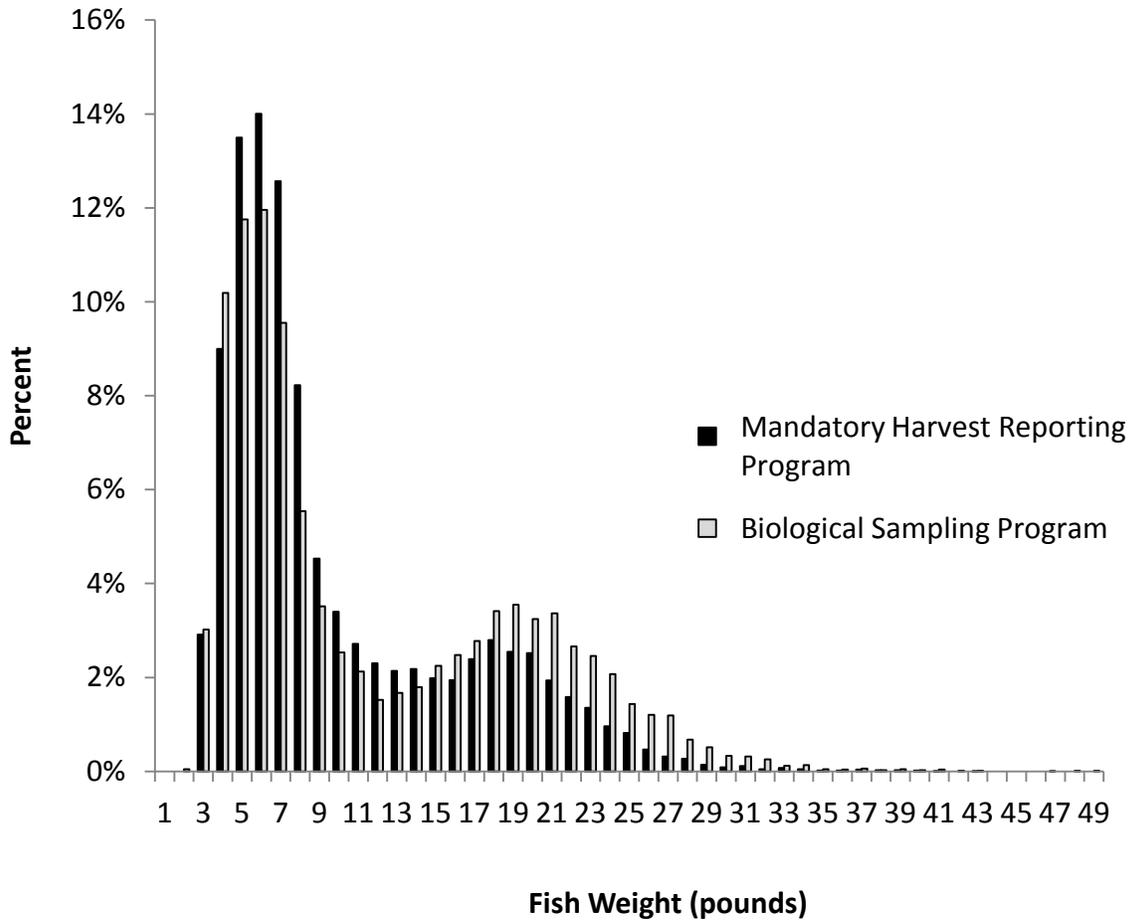


Figure 2. Percent of bay striped bass harvested by weight bin by gill net (2007-2012).

Table 3 provides the number and percentage of individuals harvesting fish under 8, 9, 10, 11, 12, and 13 pounds, in both the Chesapeake and Coastal Areas. One consideration, concerning establishment of a threshold weight, is that the Coastal Area seems the likely area, for this purpose. The data presented above do indicate it would be difficult to establish a threshold weight for the Chesapeake Area gill net fishery, as small, medium and large size striped bass are harvested.

Table 3. Number and percentage of individuals with an average weight (pounds) under 8, 9, 10, 11, 12, and 13 pounds for the Chesapeake Area and Coastal Area gill net fisheries.

Chesapeake Area			Coastal Area		
Weight (pounds)	Number	Percent	Weight (pounds)	Number	Percent
Under 8	120	49%			
Under 9	140	57%			
Under 10	153	62%	Under 10	3	5%
Under 11	168	68%	Under 11	5	9%
Under 12	180	73%	Under 12	6	11%
Under 13	193	78%	Under 13	10	18%
Total Number	247		Total Number	56	

Recommendations

The Law Enforcement Subcommittee recommends that the Commission strive to correct the susceptibilities for inaccuracy in the current ITWQ system to ensure the future health and productivity of this important fishery and suggests that staff give thought to implementing a threshold closer to the mean or median of reported weight in regards to tag distribution for the coastal striped bass gill net fishery. They note that determining a revised system for distributing tags for the Chesapeake area fishery would be more challenging, but staff will continue to assess this possibility. Staff has offered to develop a draft report suggesting 2 systems for the allocation of tags in the Chesapeake area fishery. One system would include all of the upriver fishermen and would be based on weight. The other system would include everyone else (the middle and lower Bay) and would be based on one-tag-per-fish. Of course, those who declare an up-river status would need to fish that area.

The Subcommittee notes the need for staff to identify problem areas in the current ITWQ program, and provide solutions to these problems. Recommended corrective actions could include a range of alternatives, such as: revised tag allocation, with attendant monitoring of additional provided tags, two systems in the Bay and tributaries, or elimination of the weight quota system.

The Subcommittee also notes that the biological sampling program was not developed to function as a weight or landings validation program. Some of the sample collections are coordinated in advance with the harvester or dealer; it does not function as a random sampling intercept and some individuals are not willing to make their catch available for sampling. The program would have to be redesigned and strengthened in order to serve as a monitoring or validation tool in the striped bass ITQW program, and this is not the mission of the BSP. Despite

these challenges, Law Enforcement Division has met with Fisheries Management Division and offered full support by continuing to enforce current striped bass regulations, particularly as they relate to accurate reporting of weight data. Better communication between MPOs and BSP is one path to correcting some of the under-reporting issues that may be taking place. In addition, the revision of sanctions for natural resource violations (addressed later in this document) is the first step in disincentivizing abuses to the ITWQ system.

OYSTER POACHING ISSUES

Background

Concern regarding poaching of oysters from private (leased) grounds, as well as from public grounds during closed seasons, has been raised by the Commission, in response to many complaints about poaching, by oyster industry members. At its February 2013 meeting the Law Enforcement Division presented the Commission with a review of Law Enforcement assets and the recent rise in summons for oyster poaching. The initial approach to this growing poaching problem is to revise the license revocation system, as discussed below. Another potential tool for curtailing poaching issue is the use of a vessel monitoring systems (VMS). Although there is not universal ‘buy-in’, for such an approach for all shellfish harvesters, most industry members seem to support a VMS, for those who have been found guilty of oyster resource violations.

Issues

Federal VMS programs have existed since the 1990s for various federal fisheries along the United States coasts and territories. State VMS programs include the lobster fishery in Maine and the oyster fishery in Louisiana. Five current VMS vendors provide a variety of pricing options to fit vessel’s usage, with units ranging in cost from approximately \$3,100 to \$3,800. Monthly usage fees range between \$45 and \$60 for hourly reporting only. Additional costs for e-mail usage and other features apply.

In looking to other regulatory bodies, the South Atlantic Fishery Management Council decided not to move forward with an amendment that would have required the use of VMS for vessels with a Federal Commercial Snapper Grouper Permit in 2013. The Council held a series of public hearings to discuss the issue, during which fishermen cited costs associated with VMS as a primary concern, including installation, maintenance, and monthly fees for service. There were also general concerns about being monitored while fishing, referring to the VMS units as “ankle bracelets” and whether VMS would really be necessary for data collection purposes.

Recommendations

To date, no recommendation by the Law Enforcement Subcommittee has been offered concerning the establishment of a VMS program for the oyster fishery in Virginia.

FISHERIES VIOLATIONS IN TERMS OF SANCTIONS

Background

At the August, 2012 Virginia Marine Resources Commission (VMRC) meeting, Commissioner Jack G. Travelstead requested the establishment of a committee to review current issues related mainly to administration of the provisions of § 28.2-232 of the Code of Virginia, and stated that current sanctions for court-adjudicated violations of regulations and laws governing natural resources were inadequate to promote conservation and protection of natural resources. The Commissioner indicated that certain violations were of such great risk to human and resource health that the violators should be brought before the Commission immediately, following a single conviction, for consideration of suspension or revocation of their fishing licenses.

The last review of sanctions was conducted by the Committee on Law Enforcement in 1996. That committee established the “three-peat” rule, whereby an individual’s conviction of three natural resource violations, within a 12-month period, would require that individual to appear before the Commission to face a possible license suspension or revocation. This rule at least provided a uniform standard by which the Law Enforcement Division could bring repeat offenders to a revocation hearing at the Commission. Conversely, the rule is problematic, as three court convictions within one year, for any individual, were needed to trigger that individual’s appearance for a revocation hearing. Because of postponements by the summonsed individuals, as well as variability in judicial interpretations of natural resource laws and regulations, the occurrence of three consecutive natural resource convictions, by any individual, within 12 months has not been frequent.

On February 1, 2013, the survey reviewing natural resource violations was to the Law Enforcement Division, as well as the three advisory committees (CMAC, FMAC, SMAC). Questions were designed to be specific to particular fisheries violations. The overall survey was broad in scope and encouraged respondents to use a “Comments” field to elaborate on any answers to survey questions. In particular, those violations ranked as most severe, by a Law Enforcement Officer or advisory committee member, were to be justified with corresponding comments. Additionally, any violations not included could be added to the “Other” field. The surveys contained questions about both recreational and commercial sectors and provided select questions concerning seafood buyers’ practices.

At each of its meetings (April, 19, May 24, and June 21, 2013) the Law Enforcement Subcommittee reviewed the results of these surveys and assessed how to proceed in revamping the current sanctions system.

Issues

The issue with the three-peat rule lies in its inability to deal with violations of a severe nature, in terms of magnitude or severity. To determine how different violations could be classified according to degree of severity, the Fisheries Management Division asked the advisory committees, as well as the four area Law Enforcement Division captains, to rank the severity of various violations in the surveys. Each group ranked the violations, in terms of its severity, on a scale from 1 to 3 (1 being least severe, 3 being most severe).

The first analysis of these rankings was to compute the most frequent response (i.e., the mode) for each violation. The mode is the most common response from the group. These results show the distribution of responses, with some violations being ranked with near unanimous severity, and others showing more varied results (Attachment 5a). This approach was improved through the calculation of a rank score, by summing the rankings to obtain the total overall score each violation received. Since the responses are on an increasing severity scale from 1 to 3, summing the scores allowed for a direct comparison of the groups' rankings of the severity of offenses.

As the meetings of the Subcommittee progressed, the rank scores were labeled as Category 1, 2, or 3 (1 being the most severe) so as to match the labels of misdemeanor charges of 1, 2, and 3, where a Class 1 is the most severe.

To better characterize the scores for offenses, the total scores from the advisory committees and Law Enforcement Division were averaged to give equal weighting to those most familiar with fisheries-based activities. These results were provided at the June 21st meeting. The average scores were the most representative measure of relative severity among the many violations. Six violations received very high average scores, and are recommended to be Category 1 violations, and should require an appearance before the Commission, after one court-adjudicated conviction. Five of those six top-ranked violations involve shellfish, and may pose the greatest threat to human health, and the health of the resource (see Attachment 5b).

All remaining violations were evaluated individually by the LESC, Law Enforcement Division and Fisheries Management staff, determining the following: i) whether the violation had an impact or threat to human health, public safety, or the health of the resource; ii) the number of convictions needed to trigger a Commission appearance; iii) in what the time period those convictions would need to occur to trigger a Commission appearance; and iv) the recommended sanctions for a first and second appearance before the Commission.

Violations are listed, by resource category, in Tables 4 through 7, along with the number of convictions that would trigger an appearance before the Commission for a revocation hearing. Recommended sanctions are supplied for each violation.

Table 4. Number of convictions leading to an appearance before the Commission for shellfish violations.

Shellfish* Violations	Impact / Threat	Convictions	Time Period (months)	Recommended Sanction (1 st Commission Appearance)	Recommended Sanction (2 nd Commission Appearance)
Harvesting oysters or clams from private (leased) grounds	Resource & Public Health	1	12	1 year revocation	3 year revocation
Harvesting oysters or clams during a closed public season	Resource	1	12	1 year revocation	3 year revocation
Harvesting oysters or clams from a condemned area	Public Health	1	12	1 year revocation	4 year revocation
Harvesting oysters or clams from a sanctuary	Resource	1	12	1 year revocation	4 year revocation
Failure to follow warm water restrictions (incl. daily time limits)	Public Health	1	12	1 year revocation	4 year revocation
Catching > 50% over the limit of shellfish*	Resource	1	12	6 month or 1 year revocation	2 year revocation
Catching > 25% over the limit of shellfish*	Resource	2	12	2 yr probation or 1 yr revocation	1 year revocation
Possession of > 100% over the tolerance undersized shellfish*	Resource	1	12	1 year probation	6 month revocation
Possession of > 50% over the tolerance undersized shellfish*	Resource	1	12	1 year probation	6 month revocation
Harvesting oysters without an oyster resource user fee and gear license	Resource	1	12	1 year probation	2 year revocation

*Shellfish includes: Oysters, clams, channeled whelk, and conch

Table 5. Number of convictions leading to an appearance before the Commission for crab violations.

Crab Violations	Impact / Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Crabbing without a license (without eligibility)	Resource	2	24	1 year probation	1 year revocation
Possession of > 20 undersized crabs per bushel (70 per barrel)	Resource	2	24	2 year probation	1 year revocation
Possession of \geq 20 dark sponge crabs per bushel (70 per barrel)	Resource	2	24	2 year probation	1 year revocation
Exceeding bushel limit \geq 5 bushels	Resource	1	12	1 year probation	1 year revocation
Place/set/fish crab pots exceeding license limit by 50%	Resource	2	24	1 year probation	1 year revocation
Crabbing \geq 1 hour outside of lawful season or lawful daily limit	Resource	2	24	1 year probation	1 year revocation
Crabbing without a license (with eligibility)	Resource	1	12	1 year probation	1 year revocation
Unapproved person working as crab agent	Resource	2	24	2 year probation	1 or 2 year revocation

Table 6. Number of convictions leading to an appearance before the Commission for commercial finfish violations.

Commercial Finfish Violations	Impact / Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Exceeding possession Limit (100% or 1,000 pounds over limit, whichever is more restrictive)	Resource	2	12	1 year probation	1 year revocation
Possession of over- or undersized fish (50% or more of total landings)	Resource	2	12	2 yr probation or 1 yr revocation	1 year revocation
Possession of striped bass out of season	Resource	1	12	1 year probation	1 year revocation
Possession of spiny dogfish out of season	Resource	1	12	1 year probation	1 year revocation
Possession of sharks out of season	Resource	2	24	1 year probation	1 year revocation
Fishing pots without a fish pot license	Resource	2	24	1 year probation	1 year revocation
Fishing in a restricted area	Resource	2	24	1 year probation	1 year revocation
Fishing during a closed season	Resource	1	12	2 year probation	1 year revocation
Possession of untagged striped bass	Resource	2	24	2 year probation	1 year revocation
Failure to possess a commercial license (without eligibility)	Resource	2	24	2 year probation	1 year revocation
Failure to possess a commercial license (with eligibility)	Resource	2	12	1 year probation	1 year revocation
Failure to submit mandatory harvest reports	Resource	2	12	1 year probation	1 year revocation
Gear Convictions (mesh size, fixed fishing devices)	Resource /Public Safety	2	12	1 year probation	1 year revocation
Improper use of commercial harvester tags	Resource	2	12	1 year probation	1 year revocation

Table 7. Number of convictions leading to an appearance before the Commission for recreational finfish violations.

Recreational Finfish Violations	Impact / Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Excessively exceeding possession limit (100% or three fish over the limit (whichever is greater))	Resource	1	12	1 year probation	1 year revocation
Failure to possess Charter Boat License	Resource / Public safety	1	12	1 year probation	1 year revocation
Possession of sharks out of season (May 15- July 15)	Resource	2	24	1 year probation	1 year revocation
Fishing in a restricted area	Resource	2	12	1 year probation	1 year revocation
Alteration of finfish	Resource	2	24	1 year probation	1 year revocation
Possession of striped bass out of season	Resource	2	24	1 year probation	1 year revocation
Fishing during closed season (general)	Resource	2	24	1 year probation	1 year revocation
Possession of over- or undersized fish (100% or more of total catch)	Resource	2	24	2 year probation	1 year revocation
Possession of over- or undersized fish (50% or more of total catch)	Resource	3	24	2 year probation	1 year revocation
Exceeding possession limits	Resource	3	24	2 year probation	1 year revocation

Table 8. Number of convictions leading to an appearance before the Commission for other violations.

Buyer Violations	Impact/ Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Failure to purchase seafood buyers license (POB/truck/boat)	Resource	1	12	1 year probation	1 year revocation
Failure to obtain species specific buyers permit	Resource	2	24	1 year probation	1 year revocation
Failure to obtain and maintain a certified scale	Resource	2	24	1 year probation	1 year revocation
Purchase of seafood from an unlicensed commercial registration license holder	Resource	1	12	1 year probation	1 year revocation
Horseshoe Crab Violations	Impact/ Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Possession of horseshoe crabs out of season (with eligibility)	Resource	2	24	1 year probation	1 year revocation
Possession of horseshoe crabs out of season (without eligibility)	Resource	2	12	1 year probation	1 year revocation
Catching 25% over the limit of horseshoe crabs	Resource	1	12	1 year probation	1 year revocation
Other New Violations	Impact/ Threat	Convictions	Time Period (months)	Recommended Sanction (1st Commission Appearance)	Recommended Sanction (2nd Commission Appearance)
Take hard crabs from fish pot	Resource	1	12	2 year probation	1 year revocation
Baited peeler pots	Resource	1	12	2 year probation	1 year revocation
Failure to possess Charter Boat license	Resource	1	12	1 year probation	1 year revocation
Non-Virginia residents harvesting oysters	Resource	1	12	2 year revocation	4 year revocation
Failure to tag shellfish at point of harvest	Resource	2	12	1 year probation	1 year revocation
Obstructed cull rings	Resource	2	24	2 year probation	1 year revocation
Crabbing within the blue crab sanctuary	Resource	2	24	2 year probation	1 year revocation

One general concern among the advisory committees and Law Enforcement Division was how to factor in the intent of the violator. Many respondents indicated that the intent of a violator should be an important component, in the decision of if and when they should be summoned to appear before the Commission. The magnitude of violating a minimum size limit (e.g., having an entire cooler of undersized fish versus a single undersized fish) was considered a fair barometer for the violator's intent.

Recommendations

The Subcommittee noted that some violations of regulations or laws are more willful than others. For example, a harvester or buyer may possess a minor amount of seafood species that are less than the minimum size limit, and this violation may be a one-time event. However, there can be violations of size limit or other regulations that involve an abundance of illegal seafood species, and these violations may be recurring. To address the issue of intent and how it may affect the Commission's administrations of §28.2-232, the LESC recommended a percentage that would act as a threshold to determine the timing of when a violation of any category of any natural resource violation, whether a Category 1, 2 or 3, triggers a revocation hearing.

For example, a violation, in numbers of seafood species that exceed 100% of the lawful possession limit, (whether a tolerance amount exists or not) would require an appearance before the Commission after one conviction by the court. That means, if a commercial hook-and-line harvester is permitted to harvest and possess six spadefish (4VAC 20-970-10 et seq.) and is convicted of possessing 12 or more spadefish, such a violation could be considered excessive, and would require that harvester to appear before the Commission, unless the Law Enforcement Officer determined there were extenuating circumstance involved.

Staff also provided the Subcommittee several issues relating to violations committed by buyers, and notes that buyer violations should be treated with the same system as harvester violations. The LESC and Staff have not yet given the same attention to buyer violations as it has to harvester violations, but will in the near future. Included in the discussion of buyer issues will include the systematic taking of undersized product in the form of i) an uncultured catch (in which the entire catch is uncultured and has a high percentage of undersized product); ii) grading the undersized product into separate containers that are then segregated from the remainder of the catch, or iii) hidden among the catch

At the June 21st Subcommittee meeting, the discussion of sanction guidelines for buyers violations was deferred until a working group that includes buyers is convened to discuss compliance issues, sanction guidelines, and the reporting systems. The sanction guidelines should recognize the differences between legitimate business operators and buyers that create specific markets for illegally landed seafood. Table 8 shows the number of convictions triggering a summons to appear before the Commission and the recommended sanctions for buyer violations.

Staff presented the LESC a report on buyer accountability and mandatory harvest reporting. Buyer audits performed by Mandatory Reporting Program (MRP) staff are an integral part of this reporting program. All seafood buyers licensed in the state of Virginia must keep records of all their seafood purchases from any registered commercial fishermen for up to one year. Historically, the MRP has audited buyers on a bi-annual basis. Unfortunately, some buyers are evasive and difficult to audit.

In June, Staff also with members of the Law Enforcement Division to discuss these buyer issues. Law Enforcement Division has promised full cooperation and assistance where needed to MRP staff in completing audits of seafood buyers. Staff subsequently created a new administrative process for accomplishing buyer audits which will demand cooperation from buyers and provide more accountability from buyers as well.

In particular, since truck buyers do not have a permanent place of business then they will be issued a certified letter after the first time they are uncooperative. Law Enforcement Division has offered to provide space for truck buyers to meet with MRP staff at the area Law Enforcement Offices, to facilitate better cooperation. If the seafood truck buyers fail to provide records to MRP staff after receiving a certified letter, they will be issued a summons by an MPO to appear before the Commission.

The LESC suggested that if buyer permit/license eligibility for renewal could be lost if buyers did not submit to an audit of their records. They also suggested that buyers be required to send the agency a notice they had received a letter about being audited. The LESC fully supports the idea of forming a subcommittee of buyers from members of the advisory committees.

After the June 21st meeting, Subcommittee members and staff exchanged final comments and reached a consensus on the details of each recommendation. Staff will continue to work on solutions to the various buyer situations that had been discussed.

Remaining violations, which are not listed in Tables 4 through 8, will be treated as Category 3 violations, requiring a harvester to appear before the Commission after three court-adjudicated convictions. The Subcommittee feels that these guidelines generally, and this table specifically, should be adaptive, and can be modified in the future if the Commission identifies specific enforcement concerns or priorities.

Additional violations pertaining specifically to the harvest of horseshoe crabs were not addressed by the LE sub-committee review process. Horseshoe crab violations that were not addressed included harvesting without a license, harvesting during a closed season, exceeding the possession limit, and failure to report. All horseshoe crab violations will be addressed at the next sanction review committee meeting to ensure proper review of these violations.

Final Conclusions

The LESC requested that the Commission members receive an annual report on fisheries violations. Commissioner Travelstead and Colonel Rick Lauderman spoke about such a report and hoped to have one generated more than once per year. The Commission being aware of the Law Enforcement side of the agency is of paramount importance. The Law Enforcement Subcommittee is recommended to be maintained as a standing committee, so that the process of effectively dealing with violators can continue.

Attachment 1 – Report of the Committee on Law Enforcement (March, 1996)

VIRGINIA MARINE RESOURCES COMMISSION

REPORT OF THE COMMITTEE ON LAW ENFORCEMENT

March 13, 1996

1. INTRODUCTION

This Committee was re-constituted at the January 1996 meeting of the Commission and charged with again investigating and making recommendations as to the handling of habitual offenders. There was seen to be a need to re-examine the existing policy for such cases, determining what information should be made available to the Commission in considering such matters, and determining whether a staff recommendation in such cases as appropriate.

The Committee met with the Assistant Chief of the Law Enforcement Division on February 7, 1996, reviewed the applicable statutes and the current situation in the light of past recommendations, and has conferred as to its conclusions and recommendations, which will be set out in the balance of this report.

The Committee finds that there remains a wide disparity among judges with regard to enforcement of the marine resources laws and regulations of the Commonwealth, and that a great number of judges continue to treat such violations leniently. The Committee feels however that there is increasing concern among watermen over possible sanctions from the Commission for multiple violations. Accordingly given the state of the resource, it is appropriate for the Commission to re-examine and restructure where appropriate, its policies in this regard, since it appears that action by the Commission represents the most effective sanction for discouraging lawlessness.

2. DISCUSSION

a. The framework for this problem is set by the applicable statutes. Va. Code Sec. 28.2-232 gives the Commission the power to revoke a person's license for violation of any provision of Title 28.2. Additionally, the Commission may prohibit the "issuance, reissuance or renewal of any license" as a result of any such violation. The powers may be exercised over "any and all licenses". The duration of a "revocation" may be fixed by the commission up to a maximum of two years, taking into account:

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ii. evidence of abusive conduct and behavior towards Marine Patrol officers; and

iii. the severity of any damage that has occurred or might have occurred, to the natural resources, the public health or the seafood industry.

The section is unclear as to whether the prohibition on issuance, reissuance or renewal of a license may be for a period not to exceed two years, as well, or whether it could be for a greater period of time, or even permanent.

This section should be contrasted with 28.2-822 which speaks to "suspension" of licenses and allows the Commissioner to act in an emergency involving public health.

b. Our discussion showed that several of the issues raised by this Committee's report and recommendation in February of 1991 have been met and adequately addressed. These are as follows:

i. *When Marine Patrol officers discover a violation of Title 28 they should issue the appropriate citation to each person aboard the vessel involved in the harvesting.*

This recommendation has been successfully addressed. In the case of a possession violation, tickets are written for anyone the officer feels has a "custodial role" in the situation. There has been no difficulty maintaining this position in court. With culling violations both persons are ticketed. Crab violations are charged to the Captain. In all, this policy is being effectively implemented.

ii. *The Division's software program should be amended to permit adding a record of the court in which each summons is made returnable.*

This recommendation has been implemented.

iii. *The program might also profitably be amended so as to permit the entry of a signal of some kind (a letter or symbol) whereby it can be indicated if the citation involved abusive conduct and behavior toward the issuing MPO. These two simple changes should not involve great trouble or expense.*

This recommendation is being implemented.

iv. *In-house training should be utilized to bring at least one, and preferably two or more persons up to speed in complete and effective use of the existing program, so that reports can be produced in various ways.*

This recommendation has been implemented.

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v. Pre-1989 data should be input to the data base on a gradual schedule, as time and personnel permit, in order to make it a more powerful and useful tool. At the rate of summons issued at the present time, the system will go a long way before it approaches overload.

This recommendation has been implemented.

3. NEW RECOMMENDATIONS

The Committee recommends that the Commission implement a change in the handling of repeat offenders, as follows:

1. The Committee recommends that the Commission adopt the following statement of policy:

The continuing decline in the health and numbers of our living marine resources justifies a strong policy with regard to habitual violators of marine resource laws and regulations. It is therefore the stated policy of this Commission that the harvesting of the wild marine resources of this Commonwealth is a privilege, not a right, and that any person who habitually violates the laws of this Commonwealth or the regulations of this Commission with regard to such harvesting should have that privilege suspended, and, in extreme cases, terminated.

2. The present interpretation of existing policy has been that an individual is brought before the Commission when he or she has accumulated three convictions over twelve months in the same fishery. The Committee recommends that the following be adopted in its place:

Any person accumulating three or more convictions relating to resource conservation or impeding a Marine Patrol Officer in the performance of duty under Title 28.2, or related regulations, which violations are committed within a period of twelve consecutive months shall be brought before the Commission at the earliest feasible time. A plea of guilty, or payment of fine without contesting it shall be conclusively presumed to indicate that the offender is in fact guilty. The Commission shall consider all aspects of the case, any mitigating, extenuating, or aggravating circumstances, and shall take such action as it deems appropriate.

DISCUSSION: First, under the present policy, the triggering event is a third conviction within twelve months. This presents the offender with an opportunity to continue a case until the twelve month period has expired, and thus avoid the policy. The changed

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policy would make it clear that it is the date of the offense that triggers the action, not the date of the conviction.

Second, the present state of the resource justifies broadening the policy so that three convictions in any conservation area of the Code triggers an examination of the case.

Third, existing stated policy of issuing a warning only, absent aggravating circumstances, weakens the effectiveness of the process. Each case should be considered on its individual merits and judged accordingly, rather than having disposition being predetermined by a set policy.

3. The following existing policies should continue in force with changes as shown in *italics*:

i. Every such person should be commanded, when summonsed, to bring all of his or her licenses with them to the meeting.

ii. The *registration, licenses and permits* of any such person who does not appear *will* be forthwith revoked until the person does appear and an order *will* be issued prohibiting the issuance, reissuance or renewal of any licenses to such person until the Commission takes final action on the case.

iii. Whenever any such person is brought before the Commission, that person's entire record of violations of conservation, health and safety laws and regulations over the preceding 36 months *will* be furnished to the Commission. *The presenting officer shall present to the Commission the full court record of each of the triggering offenses.*

DISCUSSION: The change first makes clear that the individual involved is removed from the commercial fishery entirely during the period of revocation.

By furnishing a copy of the complete court record, the Commission will be informed as to whether the offended entered a guilty or not guilty plea, did or did not appear, and was or was not represented by counsel.

"Should" has been changed to "will" throughout.

iv. It will be made known to the Commission whether or not any violation involved abusive conduct and behavior towards an MPO, *or the severity of any damage that has occurred or might have occurred to the natural resources, the public health of the seafood industry.* If any such aggravating circumstances are found, and if the person brought before the Commission contests or disputes such aggravating

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circumstances, he may have his case continued, at his option, so that he may have the opportunity to confront and cross-examine the MPO involved. However, the Commission should take the action in ii. above until the case is finally disposed of.

v. With regard to disposition of cases, the policy of the Commission should be:

1. In appropriate cases, the first time a three-time offender appears, the Commission, as a minimum, will impose a twelve month probation period.
2. If the person is a second "three-time-loser", or a probation violator, revocation will be for a minimum of ninety days;
3. If the person is a third time "three-time-loser", revocation will be for a minimum of one hundred eighty days;
4. Whenever any one or more of the violations involves abusive conduct or behavior, or severe damage has occurred or might have occurred to the natural resources, the public health of the seafood industry, the Commission will consider imposing heavier sanctions;
5. Staff may be called upon to give an opinion as to whether the individual's record falls within any of the above categories, but should not be asked for a recommendation as to appropriate sanctions.

DISCUSSION: v.(1) is in keeping with our feeling that the Commission should not tie its own hands as to the disposition of cases, but should consider each case on its own individual facts and circumstances.

v.(2) adds a person who is a "come back" after a first appearance and probation as the same as a second time "three time loser".

v.(1),(2), and (3) make the recommended disposition a minimum, again emphasizing the Commission's discretion in disposition.

v.(4) sets out aggravating circumstances as a separate additional consideration in any case.

v.(5) takes the law enforcement officer out of the role of prosecutor making recommendations, and limits his or her input to the facts of the case, a position with which the enforcement arm is much more comfortable.

vi. Notwithstanding the above policies, and specifically in addition thereto, the Law Enforcement Division shall bring before the Commission any person who has been convicted of violations which are so frequent, abusive, or particularly destructive of the resources as to warrant consideration of revocation or prohibition of licenses.

vii. Whenever revocation is invoked, revocation will be of all commercial registration, and all gear licenses and permits, and in order to assure that revocation is a meaningful sanction, all revocations will be made effective during an appropriate fishing or harvesting period, selected on the basis of the violations. If the individuals' appearance before the Commission is prior to or after the appropriate season, or if the period of revocation cannot be completed within the remainder of the season, the entire revocation should be carried over to the next appropriate season. An order will be issued prohibiting the issuance, reissuance, or renewal of any licenses to such person for the period of revocation. At the end of the period of revocation, the person should be required to come to the Commission office to reclaim the registration, licenses and permits.

DISCUSSION: Again the intent is to make it clear that a suspension or revocation is intended to take the person out of the commercial fishery for the period involved, and assures that the revocation or suspension has "teeth" in that it will be imposed at a time when loss of privilege has real meaning. Law enforcement does not feel that administration of this change will present a problem.

viii. These recommended policies should be adopted and implemented effective as of July 1, 1996 so as to allow an adequate period of time which will enable all persons concerned and affected by them to have full knowledge and forewarning of their effect.

ix. Distribution of these policies should be made as widely as possible in the interim, to assure that the industry is fully advised of them before they go into effect.

x. The Committee suggests that law enforcement would be enhanced if uniform measurement or enforcement devices, such as culling sticks, color charts, and the like, could be developed by the Commission staff for use by all concerned. These could perhaps be distributed at the time license are issued so that harvesters and enforcement officers would be using the same device. The Committee

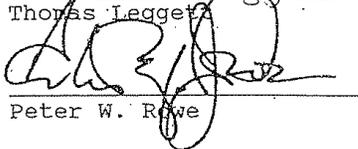
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such as culling sticks, color charts, and the like, could be developed by the Commission staff for use by all concerned. These could perhaps be distributed at the time license are issued so that harvesters and enforcement officers would be using the same device. The Committee recommends that staff investigate the feasibility and funding for such a program and report to the Commission at an early date.

The Committee recommends that the full Commission adopt these recommendations.

Respectfully submitted:



Thomas Leggett


Peter W. Rowe

March 13, 1996



Proposal to modify the current pre-payable fine schedule

- Rule 3C:2 Uniform Fine Schedule
 - Any person charged with such offenses may enter a written appearance, waiver of court hearing, plea of guilty and pay fines and costs
 - This schedule does not restrict the fine a judge may impose for an offense listed here in any case for which there is a court hearing



Status

- Currently, 10 Virginia saltwater fisheries violations under VMRC's jurisdiction are listed as pre-payable
 - The court currently lists 86 offenses under the jurisdiction of PRFC and 78 offenses under the jurisdiction of VDGIF
- The proposal before the Supreme Court includes an additional 41 violations



The current prepaid fine schedule:

□ 4 of the 10 address oyster violations:

- 1) Buying, selling or possessing undersized oyster or shells taken from natural rocks, beds and shoals (proposed fine incr. from \$60 to \$150)
- 2) Having oysters or shells on deck or in deckhouse when boat is oystering and not at anchor (proposed fine incr. from \$110 to \$150)
- 3) Having more than ½ gal of shucked oysters on board while harvesting on public rocks (proposed fine to remain at \$60)
- 4) Taking oysters or shells for purpose of converting same into lime without permission from Commission (proposed fine to remain at \$110)



The current prepaid fine schedule:

□ 4 of the 10 address blue crab violations:

- 1) Violation of regulations governing the use of crab traps and pounds (proposed fine incr. from \$110 to \$150)
- 2) Taking of crabs, for purpose of resale, from June 1 through Sept 15 from the sanctuary (proposed fine incr. from \$110 to \$150)
- 3) Placing or maintaining pots in navigable channel (proposed fine to remain at \$60)
- 4) Placing or leaving crab pots in tidal tributaries from Jan. 1 through Jan. 31 (proposed fine incr. from \$35 to \$100)



The current prepaid fine schedule:

The remaining two fines:

- 1) Unlawful setting of fish net (proposed fine incr. from \$110 to \$150)
- 2) Taking of fish or shellfish on or within 500 yards below Walker's Dam on the Chickahominy River, other than with rod and reel (proposed fine to remain at \$60)



Proposed new pre-payable listings:

Over half of the new pre-payable fines will be for maximum/ minimum size limit or possession limit violations

- Proposed: fine of \$50 per fish for any size limit violations and \$100 per fish for a violation above the possession limit (for applicable species)

Accounting for 23 of the 41 proposed fines



Proposed new pre-payable listings:

7 of the 41 address gear violations:

- 1) Unlawful to place a net within 300 yards of a fixed fishing device (proposed fine \$100)
- 2) Failure to mark any gill nets (proposed fine \$50)
- 3) Unlawful to set a gill net or non-fixed fishing device and let device remain un-fished (proposed fine \$150)
- 4) Unlawful to set any crab pot that does not contain proper cull rings, unobstructed (proposed fine \$150)
- 5) Unlawfully set or leave crab pots in tidal waters (proposed fine \$100)
- 6) Fail to completely remove traps, leads, poles and all other gear related to crab traps and pounds no later than Dec 31 of each year (proposed fine \$100)



Proposed new pre-payable listings:

4 of the 41 address recreational violations:

- 1) Fishing without a saltwater license (proposed fine \$75)
- 2) Unlawful possession of marine or anadromous fish, recreationally, without obtaining a FIP registration (proposed fine \$50)
- 3) Unlawful possession of fish from recreational gill net (proposed fine \$50)
- 4) Unlawful setting of recreational crab pots (proposed fine \$75)



Proposed new pre-payable listings:

- **The remaining proposed fines:**
 - 1) Unlawful to possess American shad or river herring [moratorium on all three species] (proposed fine \$100 per fish)
 - 2) Failure to use and maintain a certified scale to weigh organisms regulated by a harvest quota or landing limit (proposed fine \$50)
 - 3) Unlawful to alter finfish such as the species cannot be determined or the total length not be determined (proposed fine \$200)
 - 4) Failure to purchase striped bass buyer's permit (proposed fine \$100)
 - 5) Failure to cull crabs at harvest location or use of unlawful crab culling containers (proposed fine \$100)



Agency recommendation

- **VMRC recommends approval of all modifications to the current fines and all new pre-payable fines for adoption under the uniform fine schedule**

ATTACHMENT 3 – Tables of pre-payable fines for offenses

Table 8. Table of modifications to pre-payable fines for offenses

Description of Offense	Statute or Regulation	Proposed Fine	**Denotes Modification
Unlawful setting of fishnets	28.2-309	\$150.00	**Currently pre-payable at \$110
Taking fish or shellfish on or within 500 yards below Chickahominy Dam at Walker’s on the Chickahominy River other than with rod and reel and hand line	28.2-311	\$60.00	Currently pre-payable at \$60
Buying, selling or possessing oysters under the prescribed size and undersized shells taken from the natural rocks, beds and shoals	28.2-510	\$150.00	**Currently pre-payable at \$60
Having oysters or shells on culling board, deck, washboard or other receptacle above hold or in deckhouse when boat is oystering upon natural rocks, beds, or shoals and not at anchor; when off the public rocks; when approaching a buy boat; or when approaching a landing	28.2.-513	\$150.00	**Currently pre-payable at \$110
Having more than one-half gallon of shucked oysters on board a boat harvesting on the public rocks	28.2-514	\$60.00	Currently pre-payable at \$60
Taking or catching oysters or shells for purpose of converting same into lime without permission from Commission	28.2-529	\$110.00	Currently pre-payable at \$110
Unlawful violation of regulations governing use of crab traps and Pounds	28.2-701	\$150.00	** Currently pre-payable at \$110
Taking or catching crabs from statutorily prohibited area from June 1 to Sept. 15, for purpose of resale	28.2-709	\$150.00	** Currently pre-payable at \$110
Placing or maintaining any crab, eel, or fish pot in navigable channel, which has navigation aids installed or approved by any agency of U. S. government	28.2-710	\$60.00	Currently pre-payable at \$60
Placing, setting or leaving crab pots in tidal tributaries between Jan. 1 and Jan. 31 or other time period specified by the VMRC	28.2-711	\$100.00	** Currently pre-payable at \$35

ATTACHMENT 3 – Tables of pre-payable fines for offenses

Table 9. Proposed new pre-payable listings

Description of offense	Statute or Regulation	Proposed Fine
Fishing without a saltwater License	28.2-302.1	\$75.00
Possess Striped Bass less than 18 inches	4VAC20-252-30(C)	\$50.00 per fish
Possess Striped Bass larger than the maximum size	4VAC20-252-5(E)	\$50.00 per fish
Possess Striped Bass over creel limit	4VAC20-252-5(C)	\$100.00 per fish
Fail to purchase Striped Bass buyer's permit	4VAC20-252-130(D)	\$100.00
Unlawfully set, place, or leave crab pots In tidal waters	4VAC20-270-40(C)	\$100.00
Unlawful for any person to take, catch, or possess any Speckled Trout less than minimum size	4VAC20-280-30(A)	\$50.00 per fish
Unlawful for Hook and Line, Rod and Reel or Hand Line to possess oversize Speckled Trout	4VAC20-280-30(B)	\$50.00 per fish
Unlawful to possess any Red Drum less than 18 or greater than 26 inches	4VAC20-280-30(C)	\$50.00 per fish
Unlawful to Possess more than creel limit for Speckled Trout	4VAC20-280-40	\$100.00 per fish
Unlawful to take or catch more than 1 Black Drum	4VAC20-320-40	\$100.00 per fish
Unlawful to take, catch or possess Any Black Drum less than 16 inches	4VAC20-320-60	\$50.00 per fish
Failure to cull crabs at harvest location	4VAC20-370-20	\$100.00
Unlawful crab culling containers	4VAC20-370-20	\$100.00

ATTACHMENT 3 – Tables of pre-payable fines for offenses

Table 9. Proposed new pre-payable listings (continued)

Description of offense	Statute or Regulation	Proposed Fine
Unlawful to possess more than the minimum number of Gray Trout or under the minimum size	4VAC20-380-60	\$50.00 per fish
Drift and anchor gill nets not Marked	4VAC20-430-20	\$50.00
Staked gill net not marked	4VAC20-430-30	\$50.00
Unlawful for any person to possess more than 10 Bluefish	4VAC20-450-20	\$100.00 per fish
Failure to completely remove traps, leads, wire, poles and all other related gear of crab traps and pounds no later than December 31 of each year	4VAC20-460-30	\$100.00
Unlawful to possess more than 2 Amberjack or more than 1 Cobia at any time	4VAC20-510-20	\$100.00 per fish
Unlawful to Possess Amberjack less than 32 inches or Cobia less than 37 inches	4VAC20-510-30	\$50.00 per fish
Unlawful to catch and retain possession of American Shad	4VAC20-530-30	\$100.00 per fish
Unlawful for any Person to possess more than 15 Spanish Mackerel or more than 3 King Mackerel	4VAC20-540-30	\$100.00 per fish
Unlawful for any person to set any gill net or non-fixed finfishing device and let net or device remain unfished	4VAC20-550-20	\$150.00
Unlawful to alter finfish such as the species cannot be determined	4VAC20-580-20 (A)	\$200.00
Unlawful to alter any finfish regulated by size such that total length cannot be determined	4VAC20-580-20(B)	\$200.00
Unlawful to possess any summer flounder smaller than designed size limit	4VAC20-620-50(D)	\$50.00 per fish

ATTACHMENT 3 – Tables of pre-payable fines for offenses

Table 9. Proposed new pre-payable listings (continued)

Description of offense	Statute or Regulation	Proposed Fine
Unlawfully possession of fish from recreational gillnet	4VAC20-670-30(E)	\$50.00
Unlawfully setting of recreational crab pots	4VAC20-670-30(I)	\$75.00
Unlawful to place, set or fish any crab pot that does not contain at least two unobstructed cull rings of proper size and location	4VAC20-700-20	\$150.00
Unlawful to catch and retain possession of any Scup smaller than the minimum sizes	4VAC20-910-30	\$50.00 per fish
Unlawful to possess any Black Sea Bass smaller than minimum size limits	4VAC20-950-30(C)	\$50.00 per fish
Possession of any quantity of black sea bass that exceeds possession limit	4VAC20-950-45	\$100.00 per fish
Unlawful to possess tautog smaller than minimum size limit	4VAC20-960-30(C)	\$50.00 per fish
Unlawful to possess more than 4 tautog recreationally	4VAC20-960-45	\$100.00 per fish
Unlawful to possess recreationally more than 4 spadefish	4VAC20-970-30(A)	\$100.00 per fish
Unlawful to possess recreationally more than 6 spadefish by commercial hook & line	4VAC20-970-30(C)	\$100.00 per fish
Unlawful to recreationally harvest, land or possess more than 4 Sheepshead	4VAC20-1110-30	\$100.00 per fish
Failure to use and maintain a certified scale to weigh those fish, shellfish, and marine organisms regulated by a harvest quota weight limit or landing weight	4VAC20-1170-10	\$50.00
Unlawful to place a net within 300 yards of the side or end of a fixed fishing device	4VAC20-1220-30	\$100.00

ATTACHMENT 3 – Tables of pre-payable fines for offenses

Table 9. Proposed new pre-payable listings (continued)

Description of offense	Statute or Regulation	Proposed Fine
Unlawful to take or catch any marine or anadromous fish species recreationally without obtaining, annually, a Fisherman Identification Program (FIP) Registration	4VAC-1240-30	\$25.00
Unlawful to catch and retain possession of any river herring from Virginia tidal waters	4VAC20-1260-30	\$100.00 per fish

Review of commercial striped bass weight quota

Marine Resources Commission
Law Enforcement Committee
April 19, 2013

Striped bass management in Virginia

- 1998
 - Individual Transferable Quota (ITQ) system implemented
 - Tag based (1 fish = 1 tag)
- 2003
 - Two-quota system (Bay and Coastal) implemented
- 2006
 - Four tag system for size
 - Bay
 - 18-28 inches
 - 18 inches or greater
 - Ocean
 - 28-34 inches
 - 28 inches or greater
 - Maximum mesh size (7 inches)
 - Striped Bass Subcommittee formed to address issues with ITQ system
- 2007
 - Individual Transferable Quota (ITQ) system modified
 - Weight based (Individual shares)

ATTACHMENT 4a – Striped bass weight quota background materials (April 19, 2013)

Average weight for 2005 striped bass tag allocation for the commercial coastal area and Chesapeake area fisheries

Bay			
Pound net avg. weight (lbs.)	4.43619		
	4	poun net harvest	84,876pounds
Gill net avg weight (lbs.)	13.1015		1,440,3
	1	gill net harvest	71pounds
Average bay weight	<u>(PN avg. wt * harvest pounds for pound net + GN avg. wt * pounds harvested by GN)</u>		
	total harvest (pounds) from gill net and pound net		

12.619pounds per fish

recommend use 12.5 pounds (for history of underages of quotas, 12.5 should be conservative)
 And, the quota is a little softer than coastal quota

Coast

Coastal average
 = 16.8311

Coastal harvest 150,771 pounds (2% of the harvest is from haul seine and hook and line combined; the rest is gill net).

recommend use 16.8 pounds (for history of underages of quotas, 16.8 should be conservative)
 This is a hard quota, average fish size has increased since 2003, and use of tags should be more complete than Bay

1,554,302 in pounds= 2006 quota for commercial Chesapeake

- 1) the 2005 Chesapeake area harvest average weight was 14.54 pounds
 - 2) the number of tags in 2006 is therefore 106,898 tags
 - 3) the 2006 Chesapeake area fishery consists of 1/2 of tags for 18-28-inch fish, only and 1/2 of tags for 18 inches and greater fish
 - 4) For the 18 -28 inch fish, assume the average size harvested will be 27 inches or an average of 7.5 pounds
 - 5) Assume the average size of the 18+ inch tag is 37 inches or 19.5 pounds
 - 6) 53,449 tags would be used on 7.5 pound fish = 400,868 pounds or 53,449 fish
 - 53,449 tags would be used on 19.5-pound fish = 1,042,256 pounds or 53,449 fish
- total harvest = 1,443,123
- The average weight = $7.5 * .5 + 19.5 * .5$ or 13.5

If the 2006 average weight is 13.5 pounds, and the quota remains the same, 115,133 tags would be available.

Since 13.5 pounds is 7.15% less than 14.53 pounds (average weight), GN tags (and all gear tags) would increase by 1.0715 times

GN tags in 2007 : 167tags

If the average weight returns to 12.5 pounds then:

GN tags in 2007 : 178tags

If the average weight returns to 10.5 pounds then:

GN tags in 2007 : 199tags

Why we transitioned to current weight-based ITQ system

- To address high-grading
 - To create equity among harvesters from different geographical areas
 - Upriver fishermen cited a disadvantage
 - Quota management
-
- At the February 2013 Commission Meeting, Associate Member Robins asked staff to prepare a presentation examining the status of the striped bass management program
 - Focus: characteristics of commercial landings
 - Fish weight and location of landings
 - Rate of discards
 - How ITQ is now used in the commercial fishery

Establishment of a weight-based ITQ

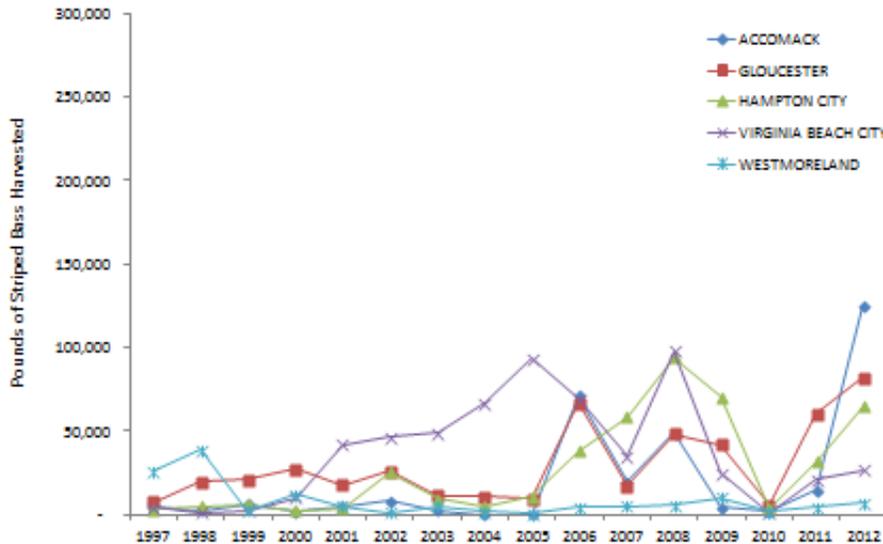
Staff recommendation (Sep. 2004)

1. Check-in stations
2. Daily buyer reports
3. Harvester log sheet
4. Current MHR supplemented by log sheet
5. Two week July closure for audits
6. Tagging of fish still required
 - Add'l tags not issued until first allotment verified through audit
 - Unused tags returned before following year's issued
7. Once used, labels cut from tags
8. Tag transfers
 - Only to follow audits
 - 200 pound minimum
9. Program implementation will require
 - Development of reporting software
 - Automation of buyers or hiring of add'l staff
 - Programming of VMRC databases
 - Purchase of additional tags
 - Development & printing of new reporting forms

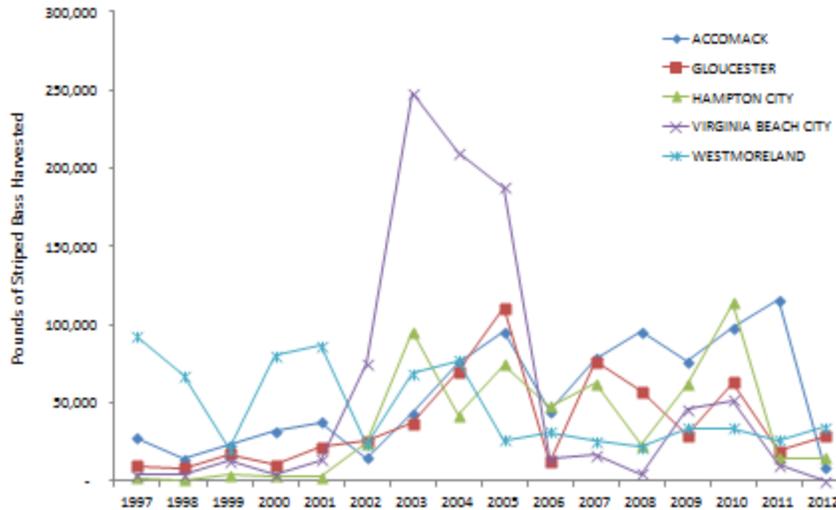
Staff recommendation (Oct. 2006)

1. Self-market receipts required
2. Tags not issued until all previously issued tags verified
3. All unused tags must be returned w/in 30 days of reaching individual quota
4. \$25.00 processing fee + cost of each tag for replacement
5. Tag transfers
 - Only to follow audits
 - 200 pound minimum
 - No transfers from December 1 to February 1.
6. Temporary transfers
 - Transferor responsible for harvest quota violations by the transferee
 - Valid only for the current year
7. Penalty schedule
 - Deductions of harvest in excess of the assigned quota
 - Suspension & revocation of permits for up to three years

Harvest (in pounds) of Bay striped bass by county landed during only February, 1997 through 2012



Harvest (in pounds) of Bay striped bass by county landed during only March, 1997 through 2012



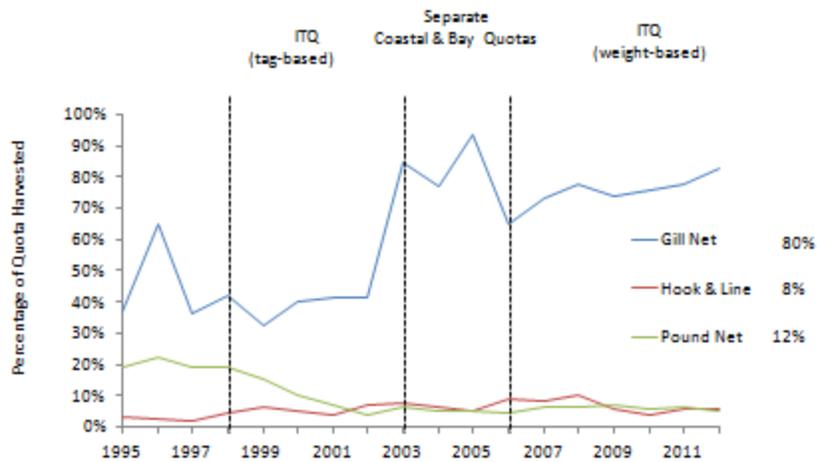
Percent of commercial quota (in pounds) harvested by gear category (1995 through 1997 and 2003 through 2012)

Year	Gill Net	Hook & Line	Pound Net	Pounds
1995	37.01%	3.10%	19%	517,792
1996	64.80%	2.67%	22%	1,245,220
1997	36.43%	1.94%	19%	982,994
2003	84.78%	7.88%	7%	1,690,394
2004	77.07%	6.47%	5%	1,506,989
2005	93.59%	4.88%	5%	1,561,021
2006	64.63%	9.02%	5%	1,218,962
2007	73.25%	8.47%	6%	1,369,212
2008	77.58%	10.37%	7%	1,551,316
2009	73.72%	5.60%	7%	1,413,333
2010	75.52%	3.88%	6%	1,313,013
2011	77.61%	5.59%	6%	1,277,912
2012	82.75%	5.67%	5%	1,339,654

*Statewide quota 1995-2002; Bay-specific quota 2003 forward

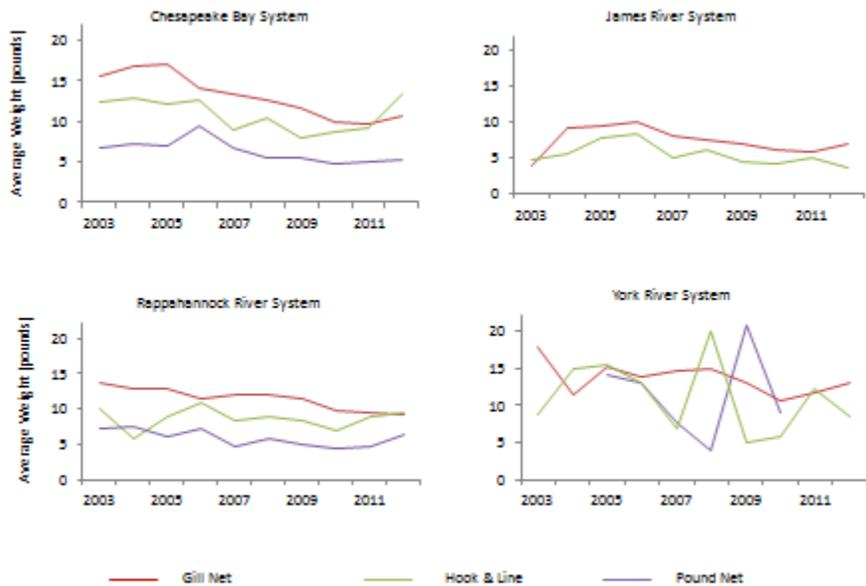
Pound Net Gear Category includes: Fyke Net, Haul Seine, Trot Line, Crab Pots + Traps, Fish Pots + Traps, Pound Net Crab, and Crab Dredge

Percentage of annual quota (pounds) harvested by gear category (Bay harvest only)

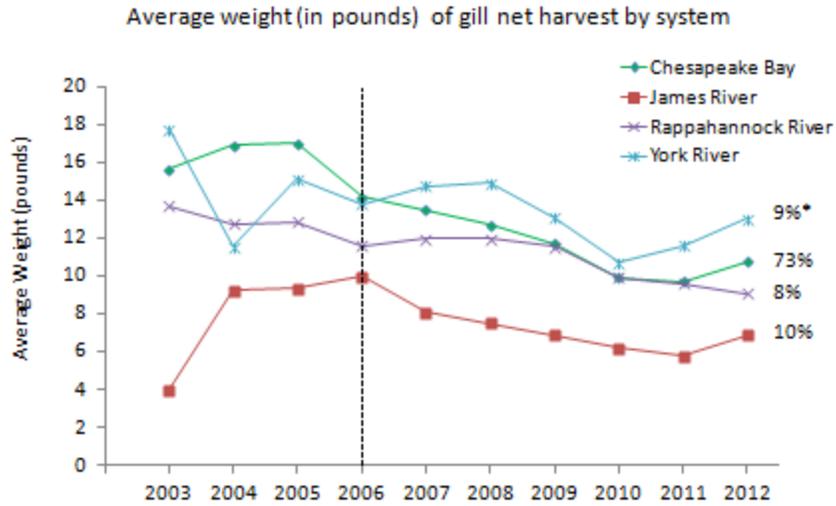


Found net gear category includes: Fyke Net, Haul Seine, Trot Line, Crab Pots + Traps, Fish Pots + Traps, Pound Net Crab, and Crab Dredge

Average weight (in pounds) by gear, by system



Found net gear category includes: Fyke Net, Haul Seine, Trot Line, Crab Pots + Traps, Fish Pots + Traps, Pound Net Crab, and Crab Dredge



• Percentages of harvest by system for all gill net harvest in the bay

Management changed from a tag based system to a weight based system in 2006

Striped bass tag use (2011 and 2012)

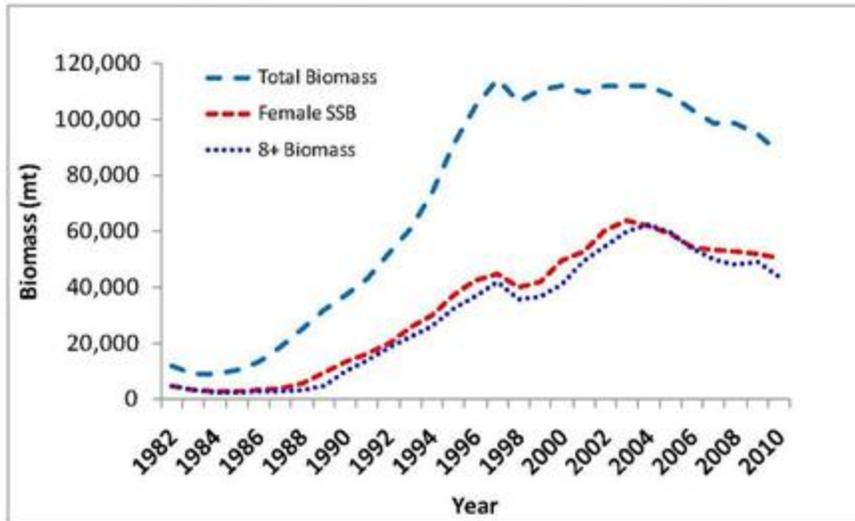
	2011	2012
Original Tag Allocation	214,720	218,420
Additional Tags Distributed	12,217	14,933
Number of Tags Used	153,392 (67%)	135,918 (58%)
Number of Tags Surrendered	73,902 (30%)	86,528 (37%)
Number of Tags Unaccounted	4,815 (2.1%)	2,604 (1.2%)
Number of Individuals with Quota	457	463
Number of Additional Tag Requests	55	54
Number of Individuals with Outstanding Tags & Additional Tag Requests	14	3

• Bay quota was 1,430,361 pounds in both years

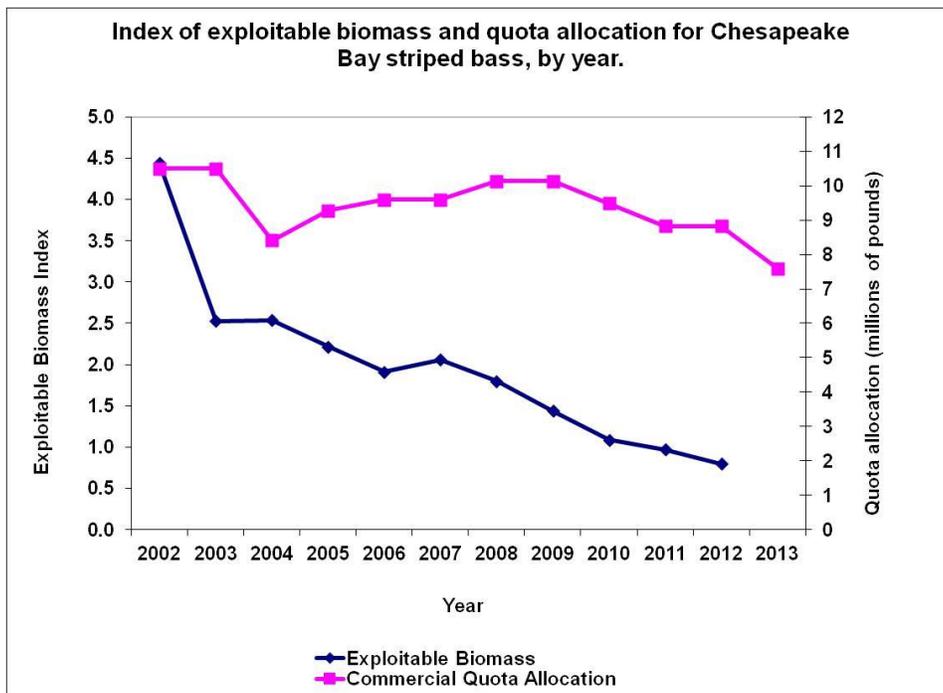
• In 2011, 419 out of 457 (92%) permitted individuals had less than 10 tags outstanding

• In 2012, 443 out of 463 (96%) permitted individuals had less than 10 tags outstanding

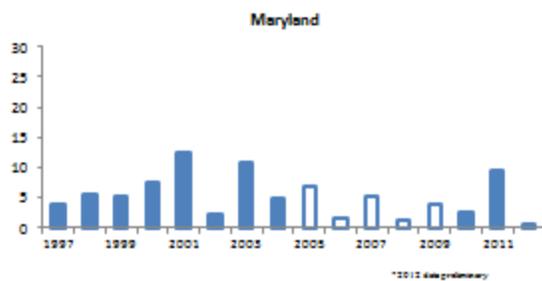
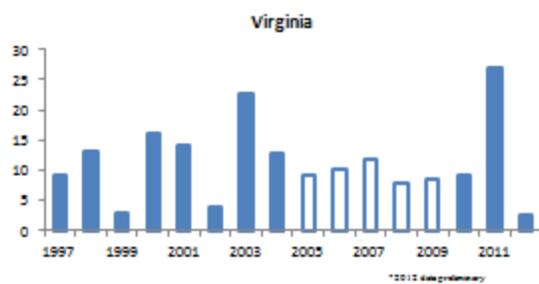
Profile of striped bass biomass trends



Index of exploitable biomass and quota allocation for Chesapeake Bay striped bass, by year.



Juvenile abundance index (JAI)



Striped Bass Overview for Law Enforcement
Subcommittee Meeting May 24, 2013



- Review of average weights
 - Average weights of striped bass harvested by individuals by county and year for the bay and ocean fisheries
 - Average weights of striped bass harvested by individuals in three river systems
 - Potential options
- Review of Transfers
 - Number of transfers by year and number of individuals
 - Potential options

Average weights of striped bass harvested by individuals from the coastal fishery, by year and county.

Index of Individuals	2010			2011		2012		
	County			County		County		
	ACCOMACK	NORTHAMPTON	VIRGINIA BEACH CITY	ACCOMACK	VIRGINIA BEACH CITY	ACCOMACK	VIRGINIA BEACH CITY	OTHER UNKNOWN
4	16	14		22		22		
10	13			13		18		
23			15		16		15	
32	14			18		20		
66	13			17		12		
69	10			11		13		
78	12			11		14		
113	16			14		23		
115	10			9				16
130	16			18		20		
168	5			12		18		
196	13			19		21		
217	16			13		19		
232			13	20	32	14		
302	10			7		9		

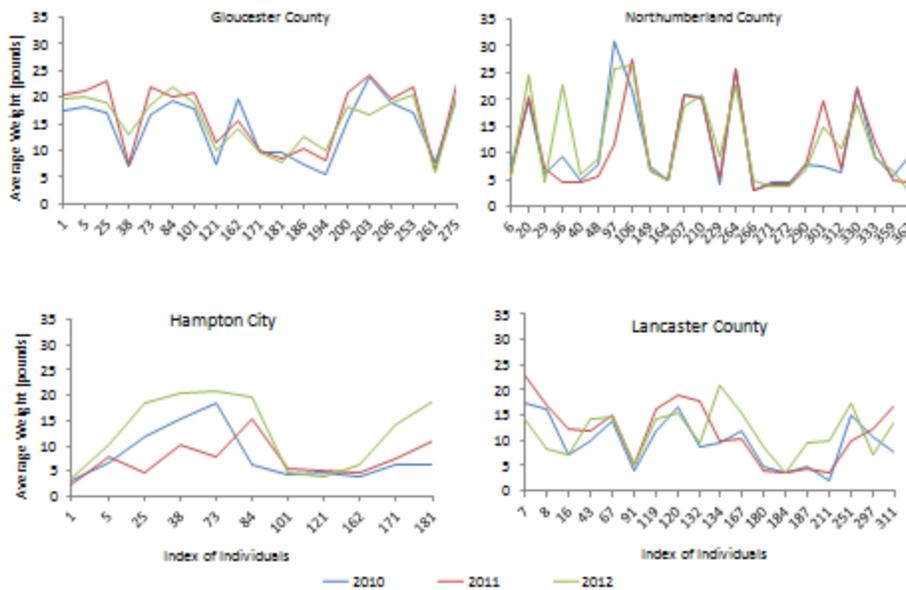
- 42 individuals landed at least one pound of striped bass from the coastal fishery, 2010 through 2012
- 15 individuals had landings in all three years
- Landings were almost exclusively in Accomack County
- Average weights for the majority of individuals were variable over the three year time period. Individuals in red had increasing average weights over time.
- There was a difference in the average weight for the one individual with harvest in more than one county within a year.

ATTACHMENT 4b – Striped bass weight quota background materials (May 24, 2013)

Average weights of striped bass harvested by individuals from the bay fishery, by year and county.

- 373 individuals landed at least one pound of striped bass from the bay fishery from 2010 through 2012
- 224 individuals had landings in all three years
- Some individuals landed fish in more than one county:
 - 54 in 2010
 - 55 in 2011
 - 42 in 2012
- There was variability between individuals landing striped bass within the same county.
- There was also variability for individuals landing striped bass within a county across multiple years.
- Some individuals had increasing average weights over time, while other individuals had relatively constant average weights.

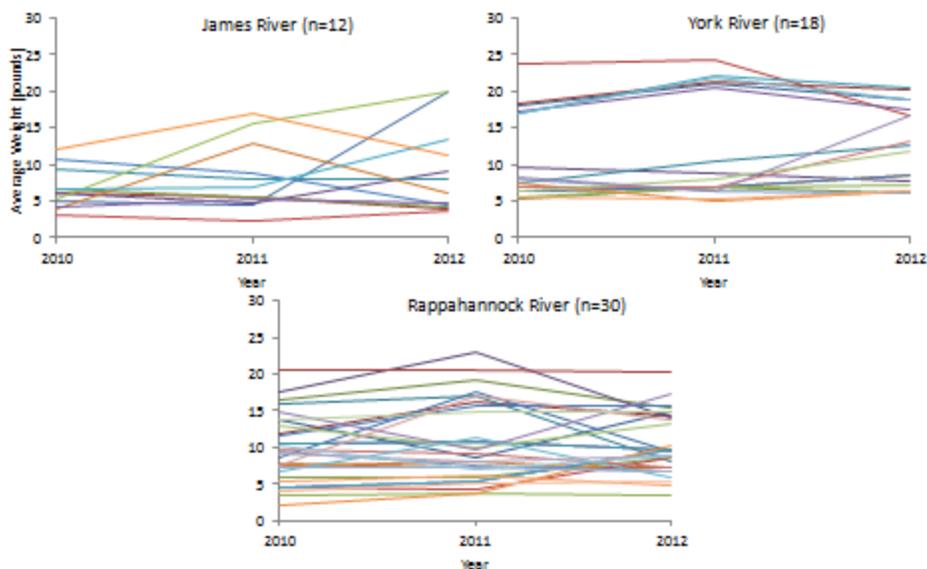
Graphs of average weights landed by individuals for Gloucester County, Northumberland County, Hampton City, and Lancaster County by year.



ATTACHMENT 4b – Striped bass weight quota background materials (May 24, 2013)

Average weight of striped bass harvested by individuals in three river systems that did not transfer quota in 2010, 2011 and 2012.

- 60 individuals landed at least one pound of striped bass in the James River, York River or Rappahannock River
- There was variability between the average weights harvested by individuals within the same river system. Many individuals had similar average weights across years.



Average Weight Issues

Under the current striped bass management program, tag distribution and additional tag requests are based on harvested average weight, so potential for abuse exists.

Option: Create a model to validate the average weight reported by an individual.

Avg Weight = coefficient + gear + water body fished + month + year + buyer + individual

Advantages

- Creating a method for validation of average weight reporting may assist in highlighting abuses of the system by individuals and buyers if collusion exists.
- If the average weight reported by an individual falls outside of the 95% confidence intervals of the predicted model average weight, the individual could be audited to detect any misreporting or collusion with a buyer.

Disadvantages

- The model would have to be developed, tested, and validated.
- Staff time would be intensive.
- The approach may not work because the model would be developed with reported harvest average weights.

Average Weight Issues

A method to deal with misreporting of tag use would be to address tag distribution.

Options

A fee for additional tags

Advantages

- Creating a fee for additional tags may decrease operational costs.
- Watermen may resist asking for an excessive amount of additional tags if the cost is upfront.

Disadvantage

- The cost for additional tags would need to be large enough to not be a cost associated with doing business.

Revisit how initial tag allocations are made

Advantage

- Additional requests for tags may decrease if initial tag allocation is modified.

Disadvantage

- Modifying initial tag allocation scheme may be difficult because it is based on average weight.

Create a scale system for determining how many additional tags to distribute

- Staff is still exploring this idea, but have determined it may be difficult because it is based on average weight.

Transfers

Table. Summary of quota transfers completed in 2010, 2011 and 2012 for the state.

	2010	2011	2012
Number of Permits	361	455	462
Number of Individuals Transferring	219	228	243
Number of Permanent Transfers	52	58	57
Number of Temporary Transfers	323	344	362
Number of Individuals with Multiple Permanent Transfers	1	9	6
Number of Individuals with Multiple Temporary Transfers	51	62	61

- More transfers are occurring than the number of individuals transferring.
- The number of permanent and temporary transfers has been relatively consistent.
- Approximately 25% of individuals are participating in temporary transfers multiple times within a year. The number of transfers for those individuals ranges from 2 – 17.

Transfers

Modifications to the transfer process may be an option as an administrative tool to improve enforceability of the current system.

Options

- Transfers could be limited by type (permanent vs. temporary or system)
- A fee could be charged for transfers
- Transfers could occur only as a hardship provision
- Limitations on transfers could be established (i.e., amount of weight or number of transfers)

Advantages

- Administrative tasks could decrease if limitations were established
- The number of times striped bass tags change hands would be limited
- May decrease operational costs by decreasing the amount of tags purchased annually
- If fees were applied, operational costs may also be decreased

Disadvantages

- Administrative tasks could increase for staff if fees were charged
- Additional cost of doing business for some quota holders
- Potential exists for some state quota to go unharvested

Increased Buyer Auditing

Increasing the frequency of buyer audits and buyer truck monitoring in the striped bass fishery as an tool to improve enforceability of the current system.

Options

Increase the frequency of buyer audits conducted

Advantage

- May decrease the incentive of collusion between buyers and harvesters

Disadvantage

- Administrative tasks could increase for staff

Increase penalty for late, incomplete, or delinquent buyer reporting

Advantage

- Increases accountability of tags and pounds harvested to the buyer and harvester

Disadvantage

- Inability to audit retail, personal use, or out of state sales

Require online dealer reporting

Advantage

- Allows for quicker auditing time and real time data

Disadvantage

- Inability to audit retail, personal use, or out of state sales

ATTACHMENT 4b – Striped bass weight quota background materials (May 24, 2013)

Amount of striped bass landed from the coastal fishery and sold to Virginia buyers, as out of state sales, retail sales or reported as personal use, 2000-2012.

Year	Virginia Buyers		Out of State Sales		Retail Sales		Personal Use		Total
	Pounds	%	Pounds	%	Pounds	%	Pounds	%	
2000	888,448	95.3	-	-	41,843	4.5	2,378	0.3	932,669
2001	780,047	97.1	-	-	22,332	2.9	-	-	782,379
2002	643,675	90.6	-	-	66,480	9.4	90	0.0	710,245
2003	152,990	91.9	4,799	2.9	8,648	5.2	-	-	166,437
2004	154,066	95.5	4,991	3.1	2,261	1.4	-	-	161,318
2005	171,197	92.4	11,849	6.4	2,159	1.2	21	0.0	185,226
2006	174,483	89.5	14,973	7.7	5,463	2.8	33	0.0	194,952
2007	142,120	87.5	11,398	7.0	8,806	5.4	18	0.0	162,342
2008	159,490	97.8	-	-	3,612	2.2	-	-	163,102
2009	133,644	95.2	-	-	6,558	4.7	218	0.2	140,420
2010	121,507	95.0	975	0.8	5,333	4.2	21	0.0	127,836
2011	158,420	99.8	-	-	331	0.2	60	0.0	158,811
2012	170,756	99.4	-	-	923	0.5	32	0.0	171,711
Total	3,830,843	94.4	48,985	1.2	174,749	4.3	2,871	0.1	4,057,448

Amount of striped bass landed from the bay fishery and sold to Virginia buyers, as out of state sales, retail sales or reported as personal use, 2000-2012.

Year	Virginia Buyers		Out of State Sales		Retail Sales		Personal Use		Total
	Pounds	%	Pounds	%	Pounds	%	Pounds	%	
2000	911,655	95.8	4,522	0.5	31,989	3.4	3,021	0.3	951,187
2001	850,241	95.2	2,415	0.3	38,556	4.3	1,898	0.2	893,090
2002	837,367	93.6	7,179	0.8	47,136	5.3	2,766	0.3	894,448
2003	1,549,741	91.7	39,896	2.4	97,304	5.8	3,458	0.2	1,690,394
2004	1,357,693	90.1	67,702	4.5	73,869	4.9	7,725	0.5	1,506,989
2005	1,397,604	89.5	110,914	7.1	50,076	3.2	2,427	0.2	1,561,021
2006	1,048,953	86.1	88,806	7.3	76,704	6.3	4,499	0.4	1,218,962
2007	1,257,750	91.9	51,931	3.8	54,273	4.0	5,258	0.4	1,369,212
2008	1,463,997	94.4	17,478	1.1	62,885	4.1	6,956	0.4	1,551,316
2009	1,322,174	93.6	10,977	0.8	74,805	5.3	5,377	0.4	1,413,333
2010	1,240,997	94.5	7,242	0.6	56,613	4.3	8,162	0.6	1,313,013
2011	1,220,377	95.5	5,907	0.5	45,002	3.5	6,626	0.5	1,277,912
2012	1,283,331	95.9	5,143	0.4	42,146	3.2	7,215	0.5	1,337,834
Total	15,741,879	92.7	420,112	2.5	751,338	4.4	65,382	0.4	16,978,711

ATTACHMENT 4b – Striped bass weight quota background materials (May 24, 2013)

Number of individuals harvesting striped bass and where they sold striped bass harvested from the bay fishery, 2000-2012.

Year	Virginia Buyers	Out of State		
		Sales	Personal Use	Retail Sales
2000	395	3	25	38
2001	373	0	12	25
2002	333	8	17	59
2003	334	12	21	66
2004	326	16	29	68
2005	328	28	24	46
2006	318	32	41	69
2007	317	10	34	61
2008	327	9	35	83
2009	303	5	40	71
2010	290	6	41	65
2011	295	5	43	60
2012	295	5	33	61

Striped Bass Overview for Law Enforcement
Subcommittee Meeting
June 21, 2013



1

Methods for determining the application of a threshold weight

- **Threshold weight** – a value used for tag distribution
- **Data Sources: Biological Sampling Program (BSP) and Mandatory Harvest Reporting Program (MHR)**
 - Examined for the Chesapeake Area gill net and coastal gill net fisheries
- Both data sources have uncertainty.
 - BSP – Not representative of entire fishery
 - MHR – Fishery-dependent data source

Potential Options

- Threshold weight for the Coastal Gill Net Fishery
- Discussion of the Chesapeake Area Gill Net Fishery

2

ATTACHMENT 4c – Striped bass weight quota background materials (June 21, 2013)

Coastal Gill Net Fishery

Average weight (pounds) with one standard deviation by year for the coastal gill net fishery from Mandatory Harvest Reporting Program.

Year	Pounds	Number of Fish	Average Weight	Standard Deviation	Median
2007	159,209	10,716	15.93	5.48	15.5
2008	159,818	10,621	15.54	4.78	15
2009	138,736	8,871	16.45	5.23	16.52
2010	122,203	8,998	14.86	4.62	14.46
2011	158,538	12,130	14.98	4.36	14.69
2012	195,178	12,447	16.33	4.39	16.08
Grand Total	933,682	63,783	15.74	4.91	15.33

Average weight (pounds) with one standard deviation by year for the coastal gill net fishery from the Biological Sampling Program.

Year	Pounds	Number of Fish	Average Weight	Standard Deviation	Median
2007	3,543	229	15.47	6.15	14.42
2008	7,462	474	15.74	6.17	14.75
2009	6,778	385	17.60	4.89	17.31
2010	5,879	440	13.36	4.19	12.47
2011	4,930	314	15.70	4.89	14.76
2012	9,214	441	20.89	5.74	19.96
Grand Total	37,806	2,283	16.56	5.90	16.01

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Chesapeake Area Gill Net Fishery

Average weight (pounds) with one standard deviation by year for the bay gill net fishery from Mandatory Harvest Reporting Program.

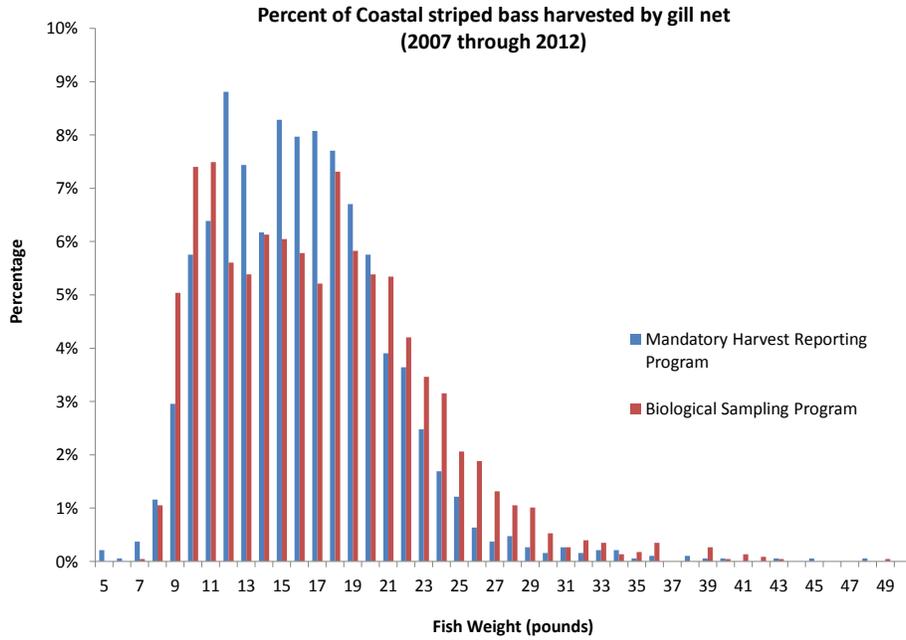
Year	Pounds	Tags	Average Weight	Standard Deviation	Median
2007	352,544	34,380	10.25	5.46	10.25
2008	389,826	37,398	10.42	4.72	10.42
2009	409,232	43,110	9.49	5.37	9.49
2010	460,199	57,642	7.98	4.58	7.98
2011	487,613	62,103	7.85	4.34	7.85
2012	474,656	49,858	9.52	4.38	9.52
Grand Total	2,574,069	284,491	9.05	6.19	7.00

Average weight (pounds) with one standard deviation by year for the bay gill net fishery from the Biological Sampling Program.

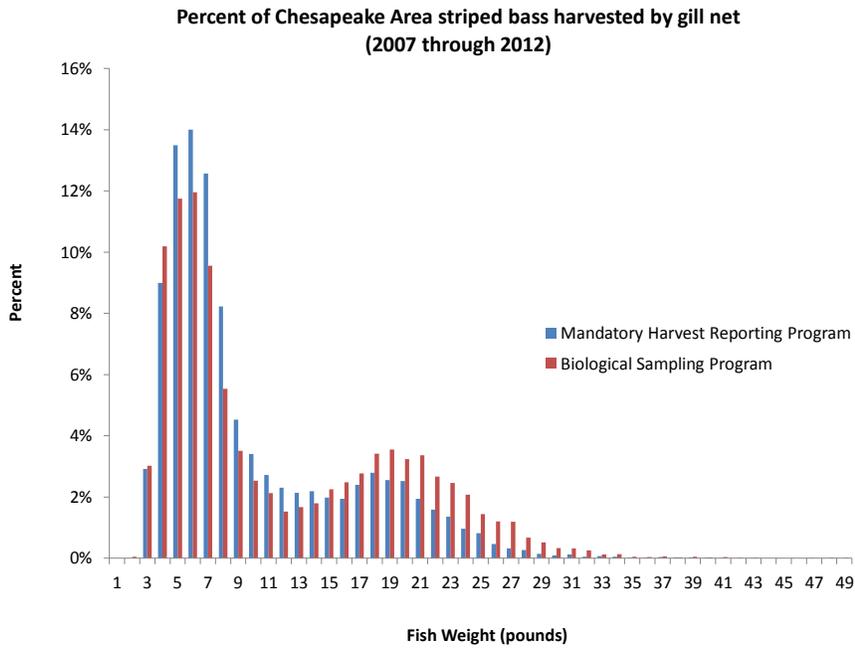
Year	Pounds	Number of Fish	Average Weight	Standard Deviation	Median
2007	5,680	514	11.05	6.48	8.395
2008	11,605	751	15.45	7.06	16.11
2009	14,469	1,280	11.30	7.35	8.43
2010	15,911	1,743	9.13	7.04	6.25
2011	26,448	2,565	10.31	7.50	6.45
2012	17,168	1,292	13.29	8.19	13.81
Grand Total	91,280	8,145	11.21	7.63	7.59

4

ATTACHMENT 4c – Striped bass weight quota background materials (June 21, 2013)

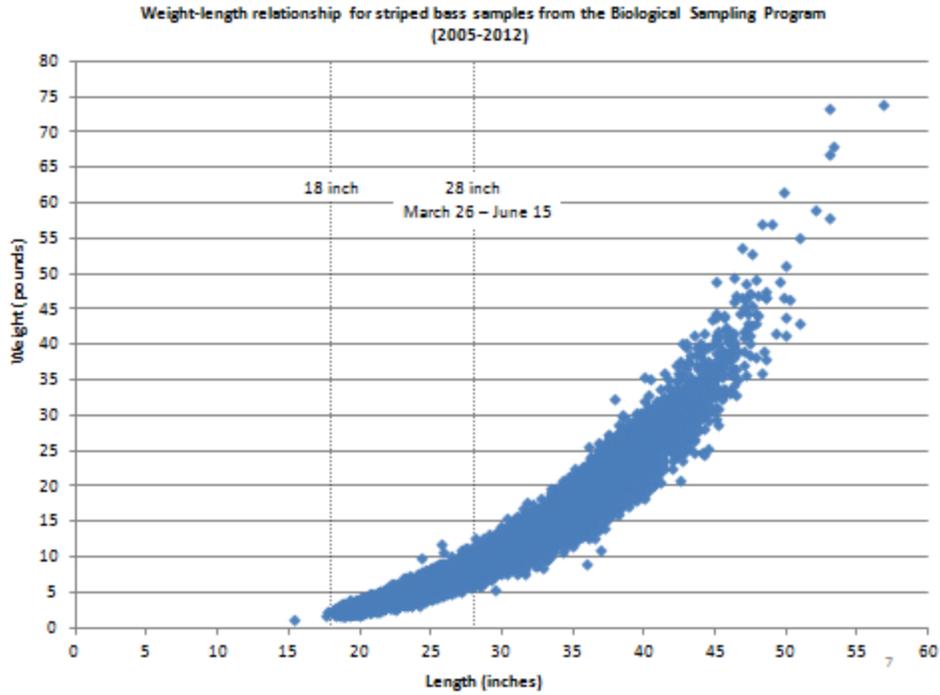


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6

ATTACHMENT 4c – Striped bass weight quota background materials (June 21, 2013)



**Average length – weight relationship table from the
Biological Sampling Program**

Length (inch)	Average Weight (pounds)	Length (inch)	Average Weight (pounds)
15	1	36	18
18	2	37	20
19	3	38	22
20	3	39	23
21	3	40	25
22	4	41	27
23	5	42	29
24	5	43	31
25	6	44	33
26	7	45	37
27	8	46	39
28	9	47	42
29	9	48	45
30	10	49	46
31	12	50	48
32	13	51	49
33	14	52	59
34	15	53	67
35	17	57	74

Coastal Gill Net Fishery

Number and percentage of fish under 10, 11, 12, and 13 pounds for the Mandatory Reporting Program, (2007 through 2012).

Weight (pounds)	Number	Percent	Mean	Median
Under 10	199	11%	8.71	9.00
Under 11	320	17%	9.52	10.00
Under 12	487	26%	10.18	10.33
Under 13	628	33%	10.74	11.00

Number and percentage of fish under 10, 11, 12, and 13 pounds for the Biological Sampling Program, (2007 through 2012).

Weight (pounds)	Number	Percent	Mean	Median
Under 10	309	14%	9.14	9.03
Under 11	480	21%	9.65	9.57
Under 12	608	27%	10.04	9.99
Under 13	731	32%	10.38	10.45

Chesapeake Area Gill Net Fishery

Number of fish and percentage of fish under 8, 9, 10, 11, 12, and 13 pounds for the Mandatory Harvest Reporting Program, (2007 through 2012).

Weight (pounds)	Number	Percent	Mean	Median
Under 8	7775	60%	5.36	5.38
Under 9	8360	65%	5.61	5.59
Under 10	8799	68%	5.80	5.70
Under 11	9150	71%	6.01	5.83
Under 12	9447	73%	6.17	5.93
Under 13	9723	75%	6.35	6.00

Number of fish and percentage of fish under 8, 9, 10, 11, 12, and 13 pounds for the Biological Sampling Program, (2007 through 2012).

Weight (pounds)	Number	Percent	Mean	Median
Under 8	4240	52%	5.11	5.08
Under 9	4526	56%	5.33	5.23
Under 10	4732	58%	5.50	5.34
Under 11	4905	60%	5.68	5.42
Under 12	5029	62%	5.83	5.49
Under 13	5165	63%	6.00	5.56

Percent of harvesters by system

Number and percentage of individuals with an average weight (pounds) under 8, 9, 10, 11, 12, and 13 pounds for the Chesapeake Area gill net fishery from Mandatory Reporting Program (2007 through 2012).

Weight (pounds)	Number	Percent
Under 8	120	49%
Under 9	140	57%
Under 10	153	62%
Under 11	168	68%
Under 12	180	73%
Under 13	193	78%
Total Number	247	

Number and percentage of individuals with an average weight (pounds) under 10, 11, 12, and 13 pounds for the Coastal gill net fishery from Mandatory Reporting Program, (2007 through 2012).

Weight (pounds)	Number	Percent
Under 10	3	5%
Under 11	5	9%
Under 12	6	11%
Under 13	10	18%
Total Number	56	11

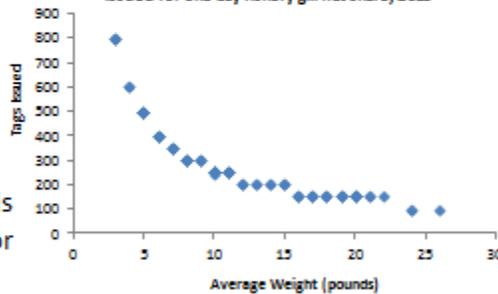
Current Tag Allocation System

Tag allocation based on individual average weight in the previous year calculated from harvest data with an additional 10% to deal with variability in average weight

Example:

- Chesapeake Area fishery standard share for 2013 = 1,805 pounds
- Average weight from an individual in 2012 = 10 pounds
- Tags issued are rounded up for distribution
- Tags Issued:
 $(1,805/10) + .10 * (1,805/10)$
 = 200 tags

Average weight (pounds) for 2012 plotted against tags issued for one bay fishery gill net share, 2013

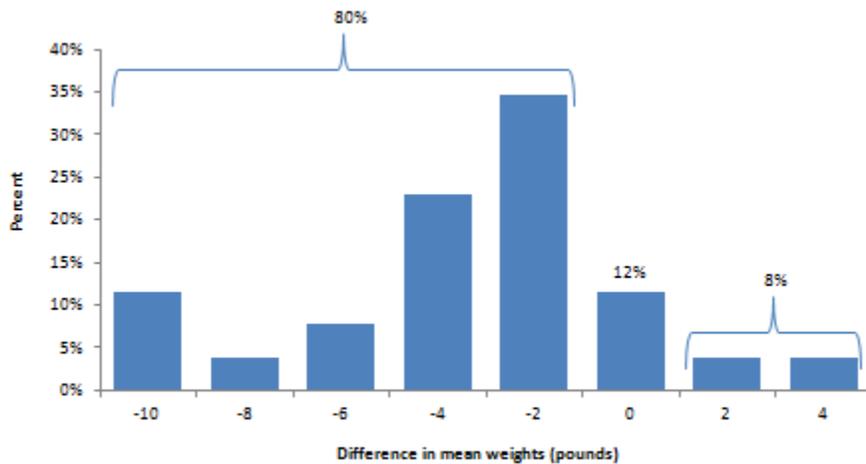


Coastal Gill Net Fishery Threshold Weight

- Threshold Weight = 12 pounds
 - 26% and 27% of average weights were below 12 pounds
 - 11% of harvesters had an average weight below 12 pounds
- Individuals with an average weight equal to or greater than 12 pounds would be issued tags based on current system
- Individuals with an average weight less than 12 pounds would be issued tags based on the threshold weight
- Tags Issued:
 $4,996 \text{ pounds} / 12 + .10 * (4,996 \text{ pounds} / 12) = 450 \text{ tags}$
- Only 2 individuals had an annual average weight below 12 pounds in 2012

13

Histogram of difference in mean weight for the Coastal gill net fishery
(threshold weight– 2012 individual year average)



- 12% had no difference from the threshold weight of 12 pounds
- 80% had a higher average individual weight
- 8% had a lower average weight

14

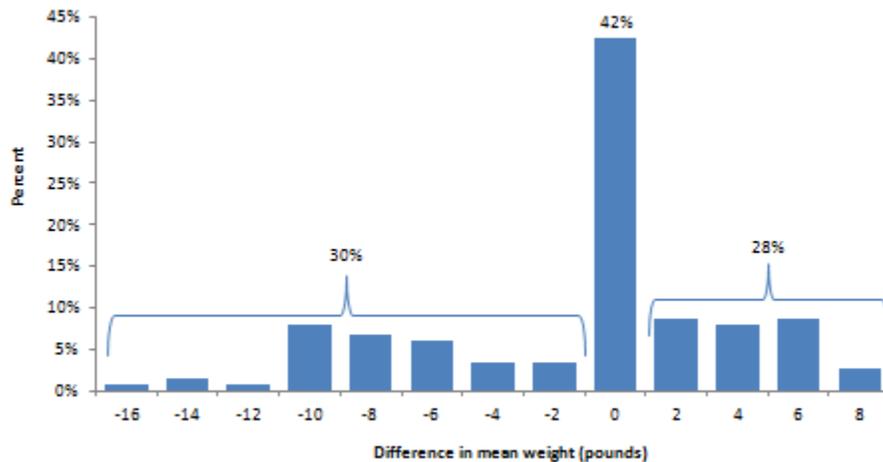
Chesapeake Area Gill Net Fishery Threshold Weight

- Threshold Weight = 10 pounds
 - 68% and 58% of average weights were below 10 pounds
 - 62% of harvesters had an average weight below 10 pounds
- Individuals with an average weight equal to or greater than 10 pounds would be issued tags based on current system
- Individuals with an average weight less than 10 pounds would be issued tags based on the threshold weight
- Tags Issued:
 - $1,805 \text{ pounds} / 10 + .10 * (1,805 \text{ pounds} / 10) = 200 \text{ tags}$
- Tag allocation difference from current system for individuals with an average weight of under 10 pounds:
 - Range from -490 to -50

15

Histogram of difference in mean weight for the Chesapeake Area gill net fishery

(threshold weight – 2012 individual year average)



- 42% had no difference from the threshold weight of 10 pounds
- 30% had a higher average individual weight
- 28% had a lower average weight

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ATTACHMENT 4c – Striped bass weight quota background materials (June 21, 2013)

Average weight (pounds) by month (2007 through 2012) with one standard deviation for the Chesapeake Area gill net fishery.

Month	Average Weight (pounds)	Standard Deviation
2	10.24	1.66
3	12.55	0.63
4	6.01	0.85
5	5.33	0.65
6	4.30	0.90
7	4.83	1.39
8	3.97	1.42
9	4.17	1.35
10	5.09	0.62
11	6.65	0.87
12	7.15	0.96

17

Conclusions

- One method may not be applicable to both systems.
- Methods have only been applied to the gill net fisheries, and would need to be examined for other gear types.
- Any method selected should be checked annually to ensure accuracy.
- Additional tag request data audits would need to be addressed.

18

Coastal Gill Net Fishery

- Selection of a threshold weight can be achieved by:
 - Using the percentage of individuals' average weights and percentage of harvesters below a certain weight bin.
- Pros:
 - There is agreement between the Mandatory Harvest Reporting Program and the Biological Sampling Program.
 - 80% of harvesters are accounted for with this method when comparing the threshold weight to the 2012 individual average weight.
- Con:
 - Threshold weight should be checked yearly as part of the tag allocation process.

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Chesapeake Area Gill Net Fishery

- A single value for a threshold weight may not exist for the entire fishery due to the distribution of data and variability.
- Additional tag requests will still occur.
- Pro:
 - Using a finer spatial scale approach may be difficult due to watermen behavior and sample sizes.
- Cons:
 - A yearly value maybe not applicable due to variability in system.
 - Monthly average weights are probably affecting the distribution for the Chesapeake Area system.
 - Auditing of additional tag requests would need to be addressed.

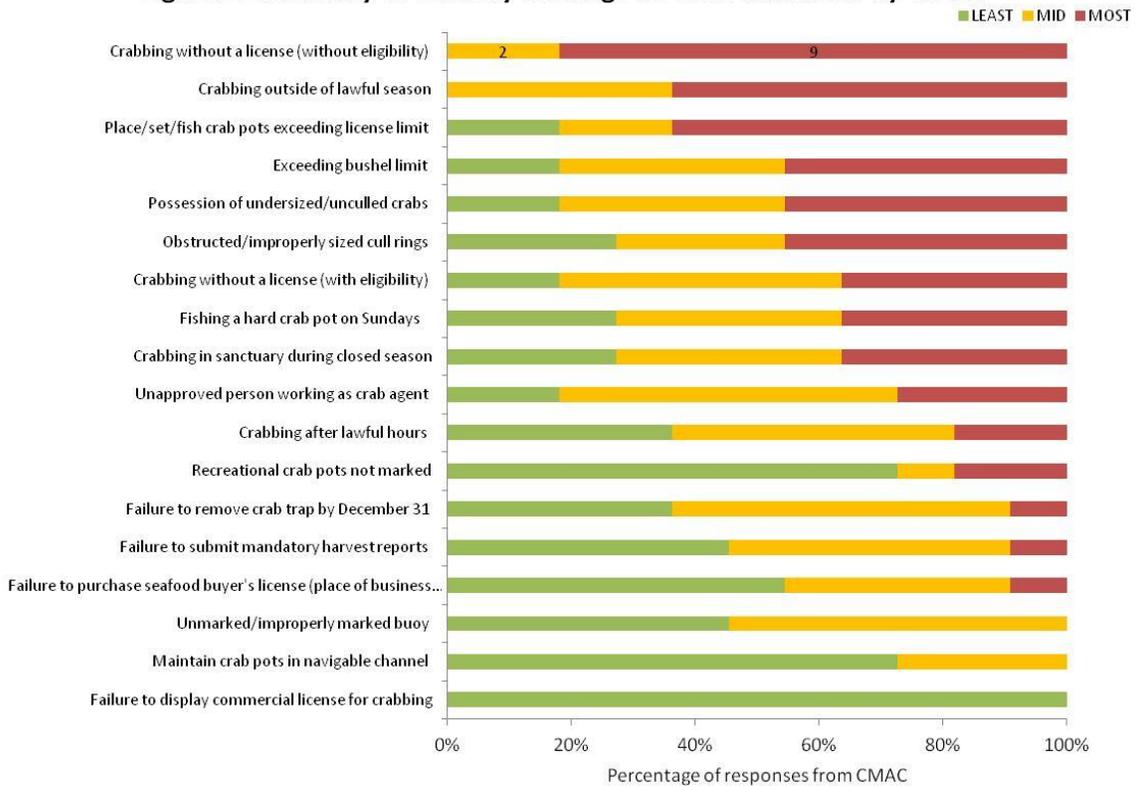
20

ATTACHMENT 5a – Review of sanctions background materials (April 19, 2013)

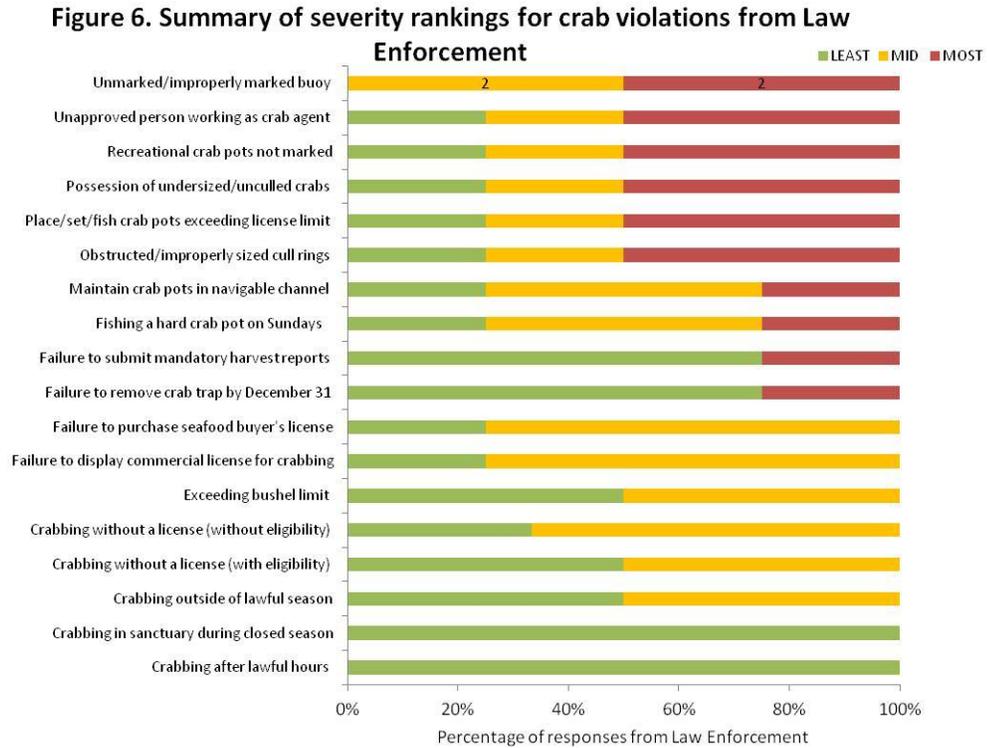
Crab fishery violation rankings by frequency from CMAC and Law Enforcement	CMAC n=11	LE n=4
Crabbing in sanctuary during closed season	MOST	MOST
Crabbing without a license (without eligibility)	MOST	MOST
Exceeding bushel limit	MOST	MOST
Place/set/fish crab pots exceeding license limit	MOST	MOST
Possession of undersized/unculled crabs	MOST	MOST
Crabbing outside of lawful season	MOST	MID
Obstructed/improperly sized cull rings	MOST	LEAST
Unapproved person working as crab agent	MID	MOST
Crabbing after lawful hours	MID	MID
Crabbing without a license (with eligibility)	MID	MID
Unmarked/improperly marked buoy	MID	MID
Failure to remove crab trap by December 31	MID	LEAST
Fishing a hard crab pot on Sundays	MID	LEAST
Failure to display commercial license for crabbing	LEAST	MID
Failure to submit mandatory harvest reports	LEAST	MID
Maintain crab pots in navigable channel	LEAST	MID
Failure to purchase seafood buyer's license (place of business or boat/vehicle)	LEAST	LEAST
Recreational crab pots not marked	LEAST	LEAST

BY FREQUENCY

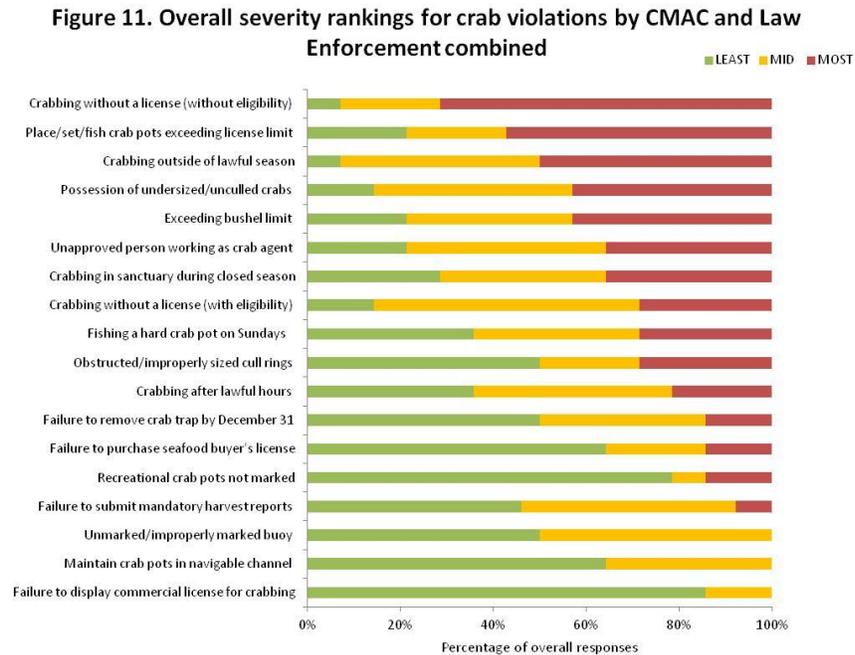
Figure 1. Summary of severity rankings for crab violations by CMAC



BY PERCENT RESPONSE



BY PERCENT RESPONSE

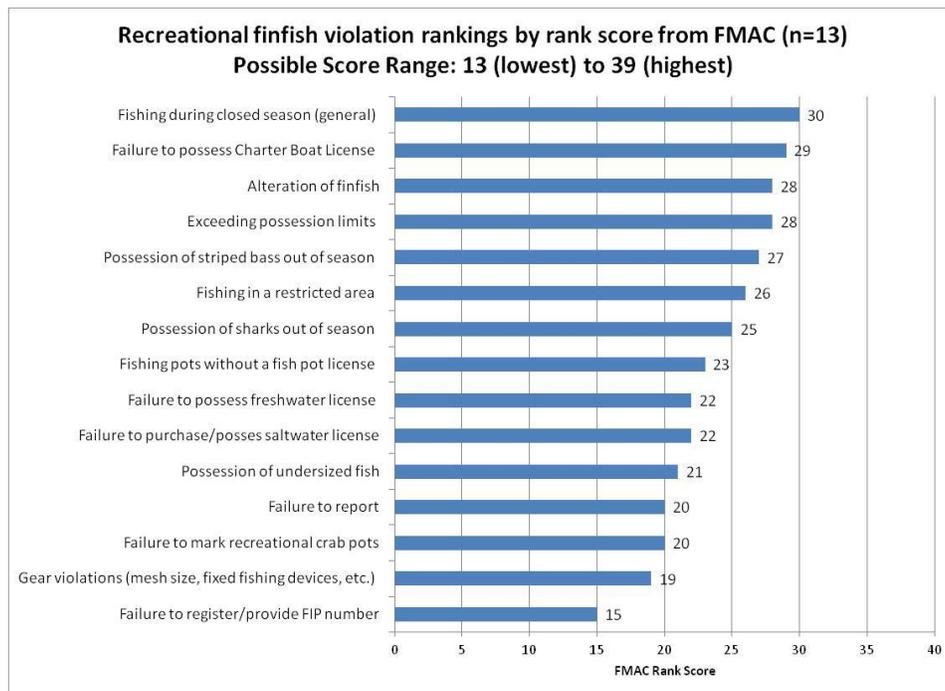


BY PERCENT RESPONSE

ATTACHMENT 5a – Review of sanctions background materials (April 19, 2013)

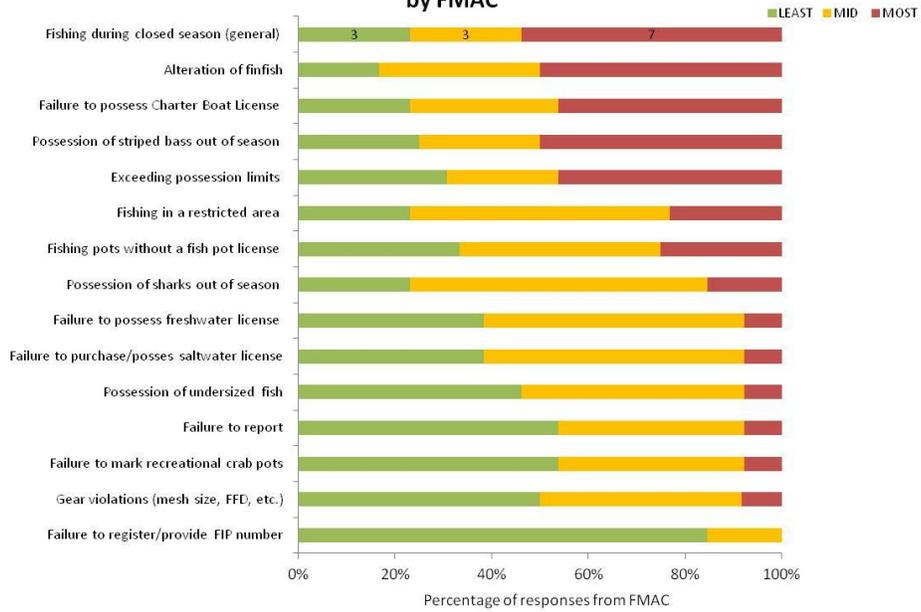
Recreational finfish violation rankings by frequency from FMAC and Law Enforcement	FMAC n=13	LE n=4
Alteration of finfish	MOST	MOST
Exceeding possession limits	MOST	MID
Failure to possess Charter Boat License	MOST	MID
Fishing during closed season (general)	MOST	MID
Possession of striped bass out of season	MOST	MID
Possession of sharks out of season	MID	MOST
Possession of undersized fish	MID	MID
Failure to possess freshwater license	MID	LEAST
Failure to purchase/posses saltwater license	MID	LEAST
Fishing in a restricted area	MID	LEAST
Fishing pots without a fish pot license	MID	LEAST
Gear violations (mesh size, fixed fishing devices, etc.)	LEAST	MOST
Failure to mark recreational crab pots	LEAST	LEAST
Failure to register/provide FIP number	LEAST	LEAST
Failure to report	LEAST	LEAST

BY FREQUENCY



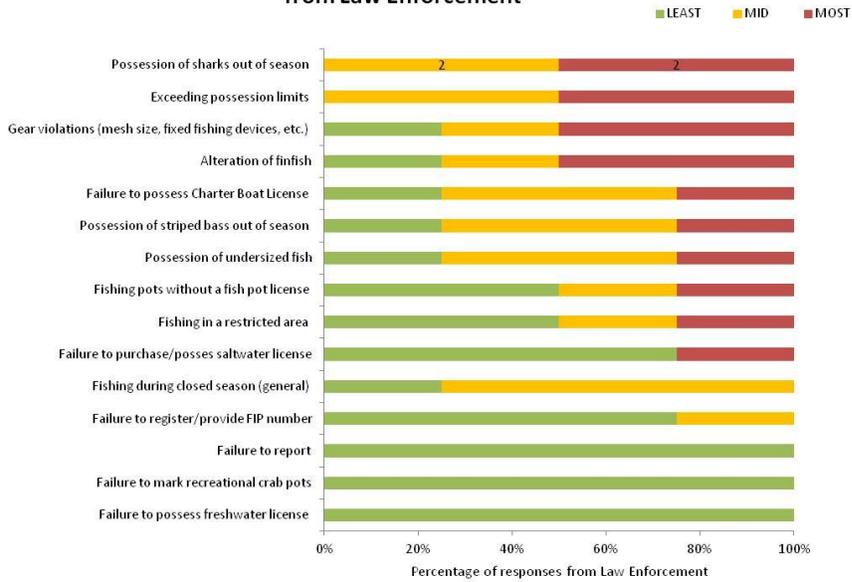
BY RANK SCORE

Figure 2. Summary of severity ranking for recreational finfish violations by FMAC



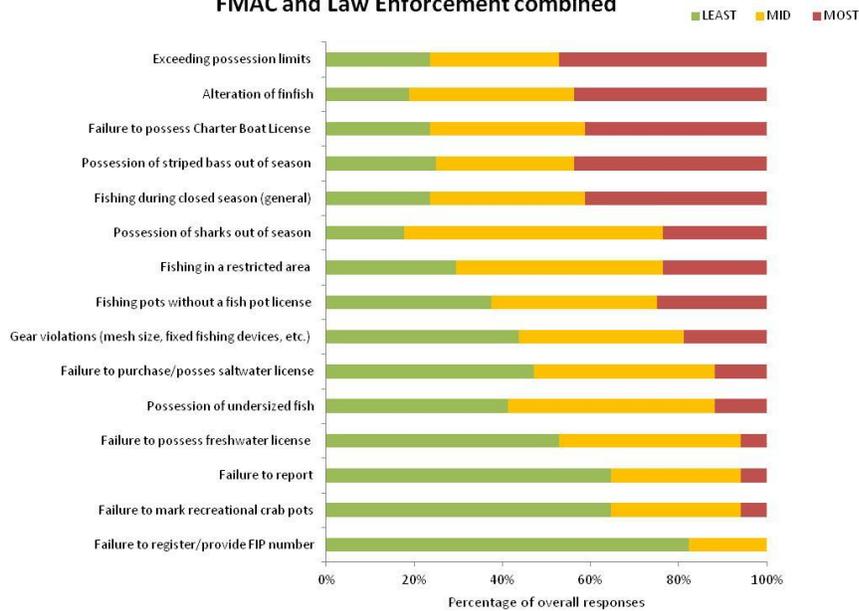
BY PERCENT RESPONSE

Figure 7. Summary of severity rankings of recreational finfish violations from Law Enforcement



BY PERCENT RESPONSE

Figure 12. Overall severity rankings for recreational finfish violations by FMAC and Law Enforcement combined

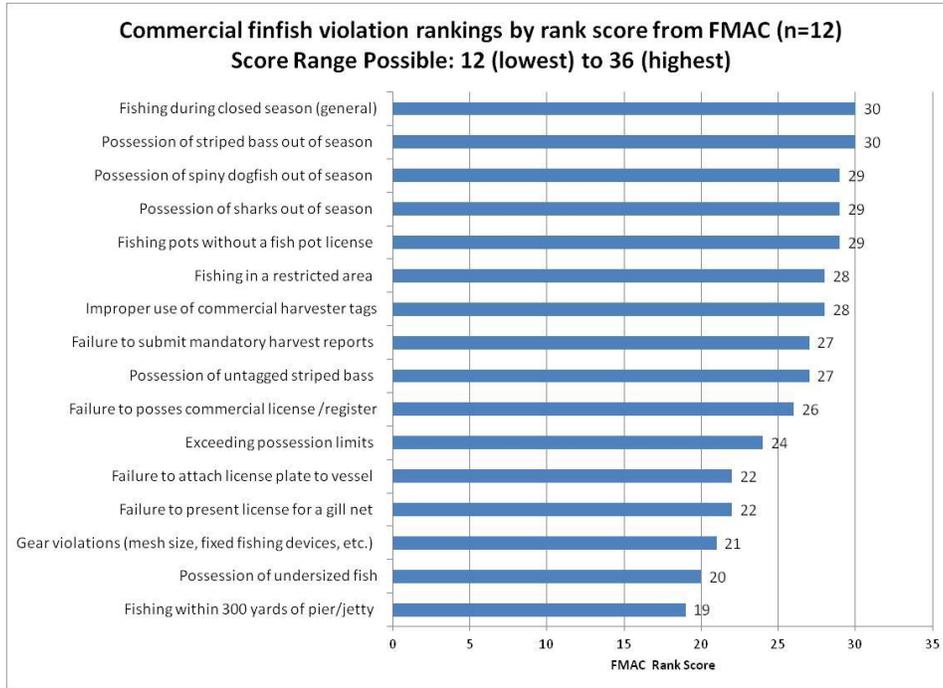


BY PERCENT RESPONSE

Commercial finfish violation rankings by frequency from FMAC and Law Enforcement	FMAC n=12	LE n=4
Fishing during closed season (general)	MOST	MOST
Possession of untagged striped bass	MOST	MOST
Exceeding possession limits	MOST	MOST
Failure to posses commercial license /register	MOST	MOST
Improper use of commercial harvester tags	MOST	MOST
Possession of striped bass out of season	MOST	MOST
Failure to submit mandatory harvest reports	MOST	MID
Fishing pots without a fish pot license	MOST	LEAST
Possession of sharks out of season	MOST	LEAST
Fishing in a restricted area	MID	MID
Gear violations (mesh size, fixed fishing devices, etc.)	MID	MID
Possession of spiny dogfish out of season	MID	MID
Failure to attach license plate to vessel	MID	LEAST
Failure to present license for a gill net	MID	LEAST
Fishing within 300 yards of pier/jetty	MID	LEAST
Possession of undersized fish	LEAST	MID

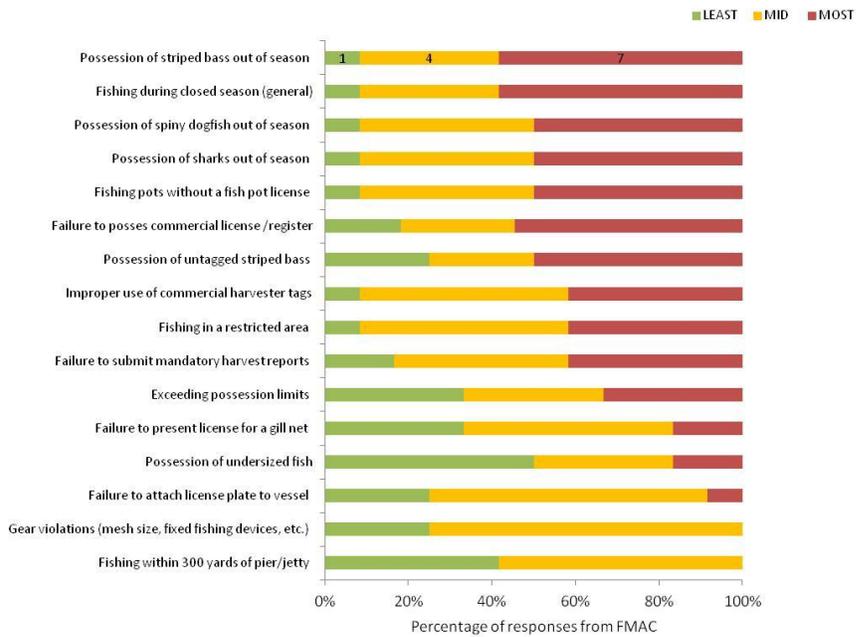
BY FREQUENCY

ATTACHMENT 5a – Review of sanctions background materials (April 19, 2013)



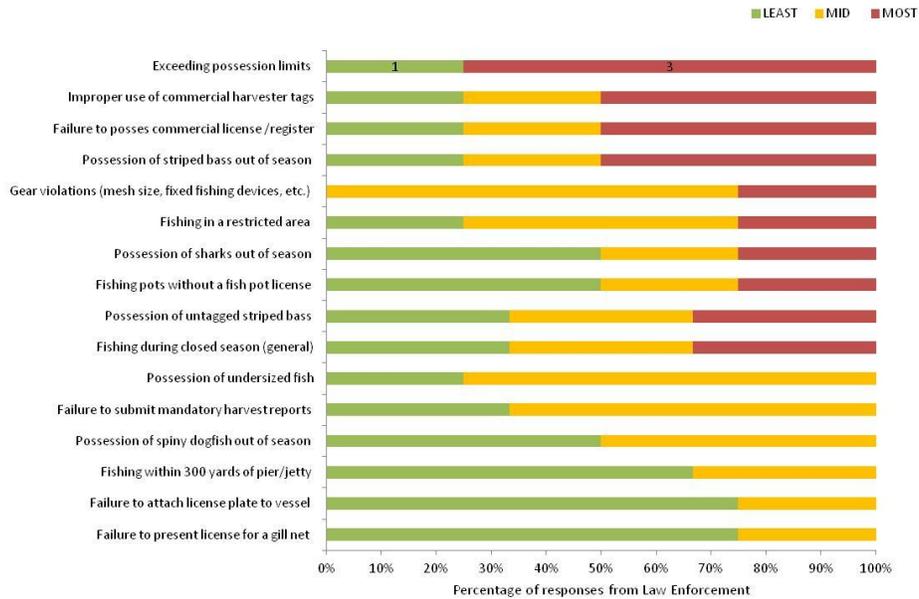
BY RANK SCORE

Figure 3. Summary of severity rankings for commercial finfish violations by FMAC



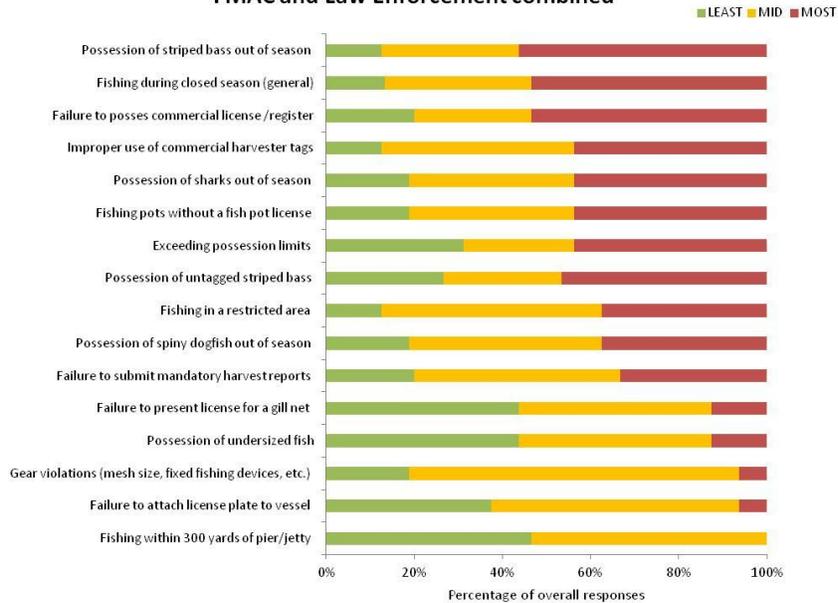
BY PERCENT RESPONSE

Figure 8. Summary of severity rankings for commercial finfish violations from Law Enforcement



BY PERCENT RESPONSE

Figure 13. Overall severity rankings for commercial finfish violations by FMAC and Law Enforcement combined

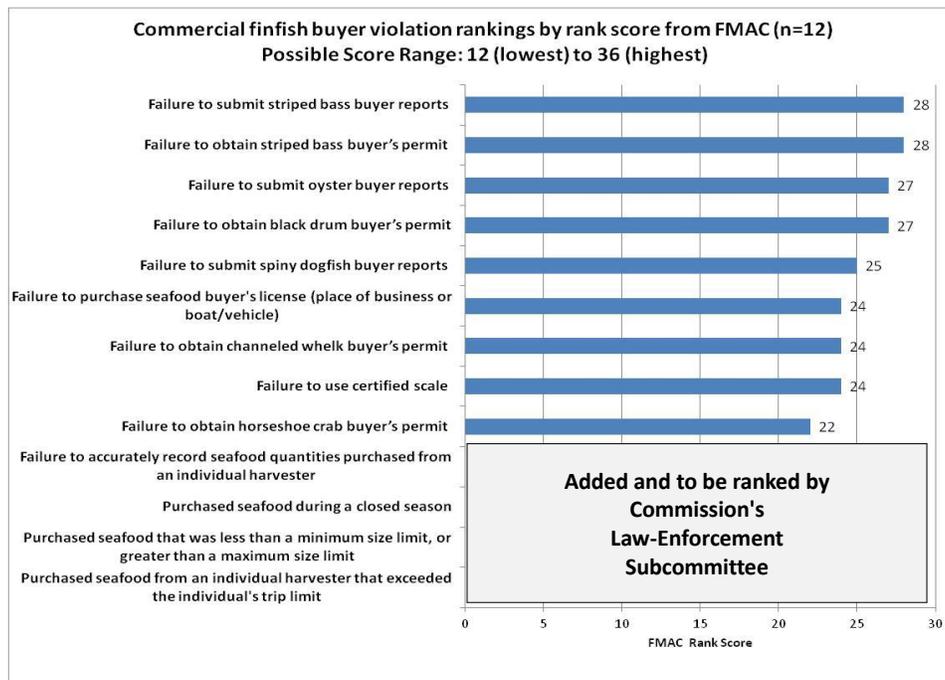


BY PERCENT RESPONSE

ATTACHMENT 5a – Review of sanctions background materials (April 19, 2013)

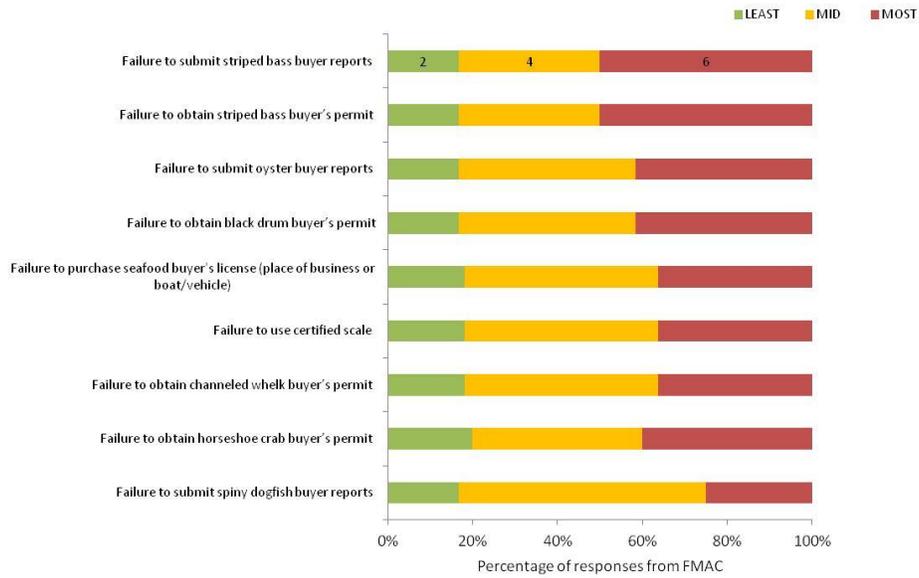
Commercial finfish buyer violation rankings by frequency from FMAC and Law Enforcement	FMAC n=12	LE n=4
Failure to obtain striped bass buyer's permit	MOST	MOST
Failure to submit oyster buyer reports	MOST	MOST
Failure to submit striped bass buyer reports	MOST	MOST
Failure to obtain black drum buyer's permit	MID	MOST
Failure to obtain horseshoe crab buyer's permit	MID	MOST
Failure to obtain channeled whelk buyer's permit	MID	MID
Failure to submit spiny dogfish buyer reports	MID	MID
Failure to use certified scale	MID	MID
Failure to purchase seafood buyer's license (place of business or boat/vehicle)	MID	LEAST
Purchased seafood from an individual harvester that exceeded the individual's trip limit	Added and to be ranked by Commission's Law-Enforcement Subcommittee	
Purchased seafood that was less than a minimum size limit, or greater than a maximum size limit		
Purchased seafood during a closed season		
Failure to accurately record seafood quantities purchased from an individual harvester		

BY FREQUENCY



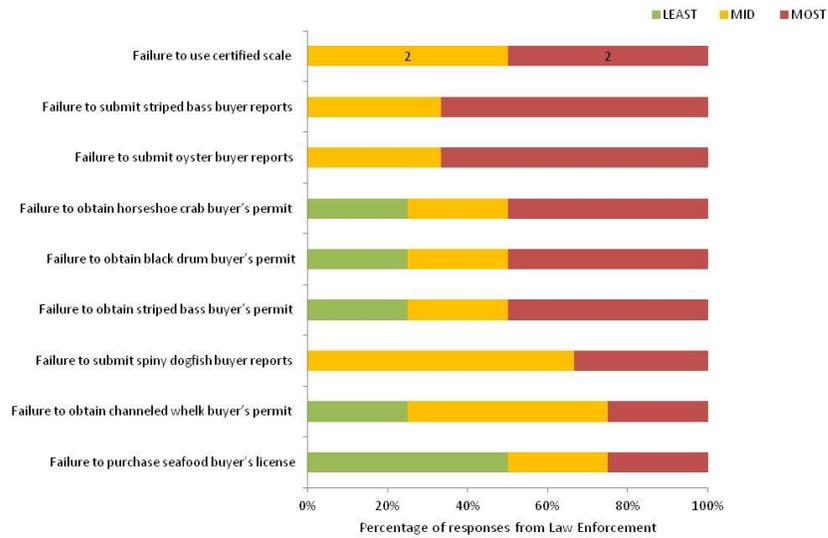
BY RANK SCORE

Figure 4. Summary of severity rankings for buyers by FMAC



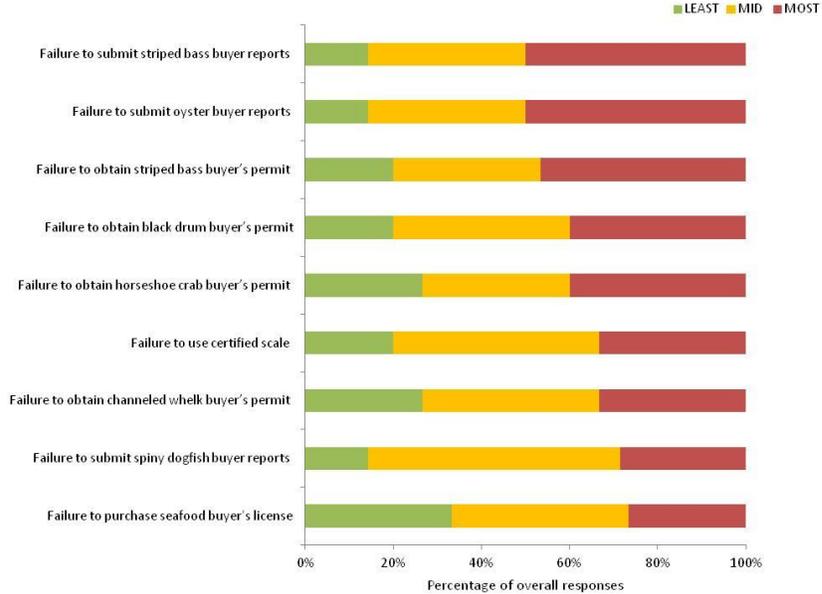
BY PERCENT RESPONSE

Figure 9. Summary of severity rankings for buyer violations from Law Enforcement



BY PERCENT RESPONSE

Figure 14. Overall severity rankings for buyer violations by FMAC and Law Enforcement combined



BY PERCENT RESPONSE

Commercial shellfish violation rankings by frequency from SMAC and Law Enforcement	SMAC n=15	LE n=4
Failure to follow warm water restrictions (public health)	MOST	MOST
Poaching oysters from sanctuary	MOST	MOST
Taking oysters from a closed public area	MOST	MOST
Taking oysters from a condemned area	MOST	MOST
Taking oysters during closed public season	MOST	MID
Catching oysters over the prescribed limit	MID	MOST
Failure to purchase seafood buyer's license	MID	LEAST
Harvesting outside of time limits	MID	LEAST
Harvesting oysters without oyster gear license	MID	LEAST
Failure to pay oyster replenishment tax	LEAST	MID
Failure to submit mandatory harvest reports	LEAST	MID
Possession of undersized/unculled oysters (<10% of total catch)	LEAST	MID
Possession of undersized/unculled oysters (>10% of total catch)	LEAST	MID
Failure to pay oyster inspection tax	LEAST	LEAST

BY FREQUENCY

ATTACHMENT 5a – Review of sanctions background materials (April 19, 2013)

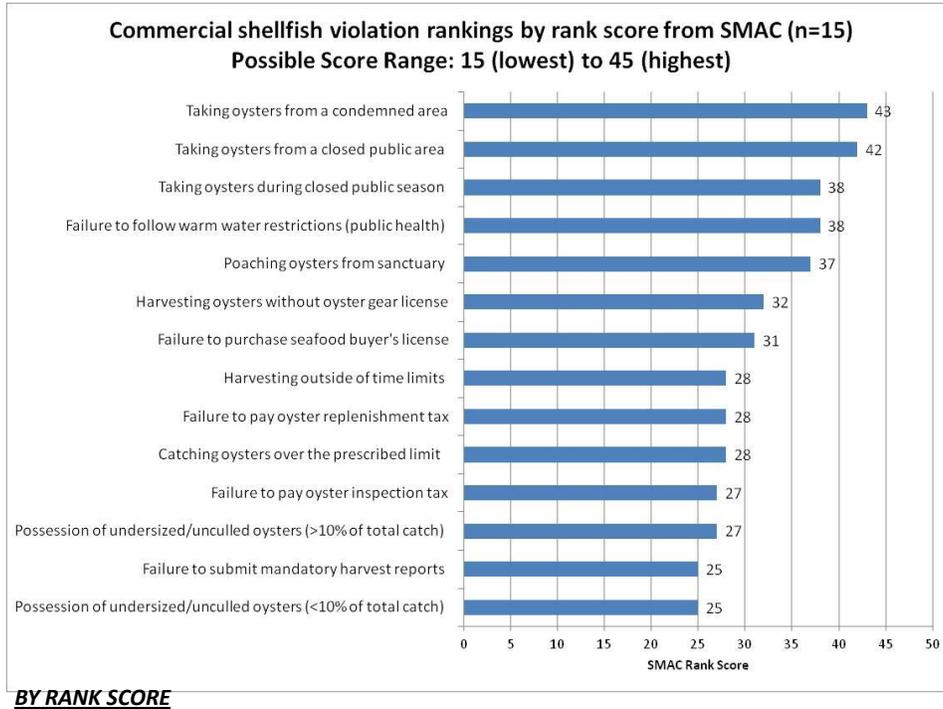


Figure 5. Summary of severity rankings for shellfish violations by SMAC

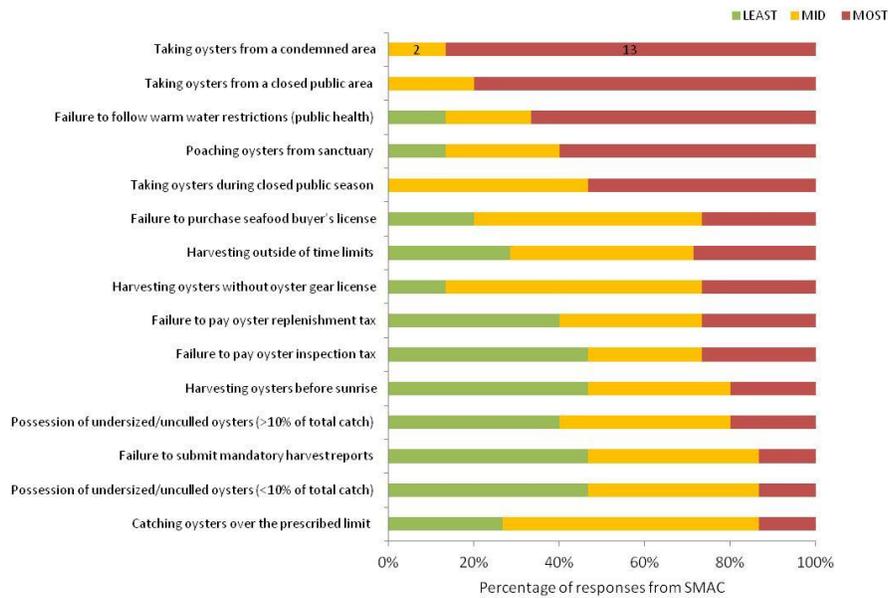
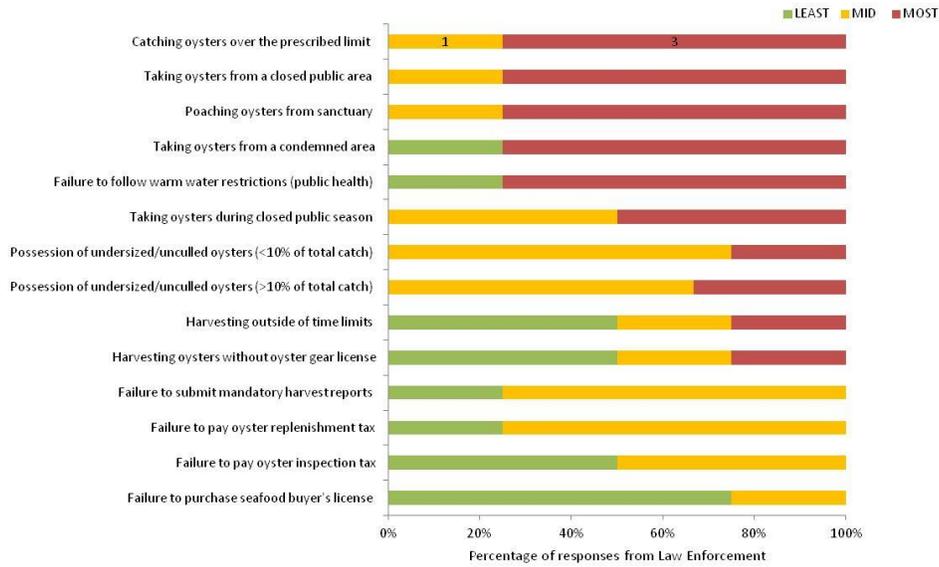
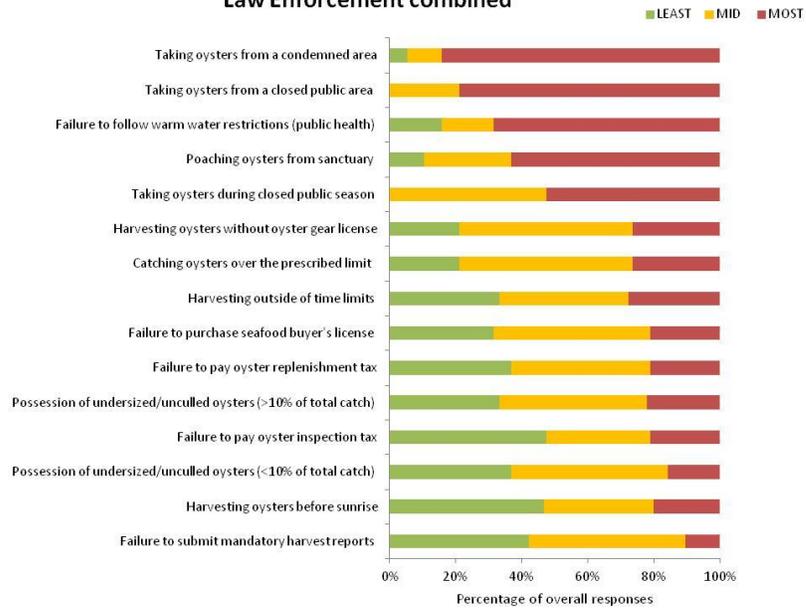


Figure 10. Summary of severity rankings for shellfish violations from Law Enforcement



BY PERCENT RESPONSE

Figure 15. Overall severity rankings for shellfish violations by SMAC and Law Enforcement combined



BY PERCENT RESPONSE



Review of fisheries violations

Law enforcement subcommittee meeting
05/24/2013



Violations review process

- **Commissioner requested review (August, 2012)**
 - Last review: Committee on Law Enforcement (1996)
- **Surveys distributed (February, 2013)**
 - FMAC, CMAC, SMAC
 - Law Enforcement Captains
- **Ranking of violations in terms of severity**
 - What violations require an appearance before the Commission after one, two, or three convictions?
- **Law Enforcement Subcommittee Meeting (April, 2013)**



How we used the survey results

- **Members were asked to rank the severity of each violation**
 - 1 = Least
 - 2 = Mid
 - 3 = Most
- **The sum of the total ranks for each violation indicates the relative severity of each violation**
 - i.e., violations with high total scores received more Level 3 ranks (Most severe) from respondents



Overall scores

Example calculation

- 11 CMAC responders
- 3 possible levels of severity
- **Lowest possible total score**
 - 11 members x Level 1 = 11
- **Highest possible total score**
 - 11 members x Level 3 = 33
- **Overall total score = Rank score/Total possible score**
 - Actual rank score = 11
 - Total possible score = 33
 - Overall score: $11/33 = 0.33 = 33\%$



Example Result

	Captain 1	Captain 2	Captain 3	Captain 4	Total Rank	Overall Score
Harvesting oysters without oyster gear license	1	2	3	1	7	7/12 = 58%

Actual rank score
 $1 + 2 + 3 + 1 = 7$

Total possible score
 $3 + 3 + 3 + 3 = 12$

Overall score (%) = $7/12 = 58\%$



Combined scores

- Average scores between Advisory Committees and Law Enforcement
 - If:
 - LE score = 75%
 - Advisory Committee score = 33%
 - Then:
 - $(LE + Advisory)/2 = (75+33)/2 = 54\%$
- Order violations based on average scores
- Determine what average score triggers appearance before the Commission

Table 1. Suggested resource violations requiring an appearance before the Commission after one (1) conviction.

Resource	Violation	Average Score (%) (LE + Advisory)
Shellfish	Taking oysters from a closed public area	93%
Shellfish	Taking oysters from a condemned area	89%
Shellfish	Poaching oysters from sanctuary	87%
Crab	Crebbing without a license (without eligibility)	84%
Shellfish	Failure to follow warm water restrictions (public health)	84%
Shellfish	Taking oysters during closed public season	84%
Crab	Possession of undersized/unculled crabs	80%
Com Finfish	Possession of striped bass out of season	79%
Crab	Place/set/fish crab pots exceeding license limit	78%
Rec Finfish	Exceeding possession limits	78%
Crab	Crebbing outside of lawful season	77%
Shellfish	Catching oysters over the prescribed limit	77%
Com Finfish	Improper use of commercial harvester tags	76%
Buyer	Failure to obtain striped bass buyer's permit	76%
Crab	Exceeding bushel limit	75%
Com Finfish	Exceeding possession limits	75%
Com Finfish	Fishing during closed season (general)	75%
Buyer	Failure to obtain black drum buyer's permit	75%
Buyer	Failure to use certified scale	75%

*Average percentage of actual rank score out of total possible score.

Table 2. Suggested resource violations requiring an appearance before the Commission after two (2) convictions.

Resource	Violation	Average Score (%) (LE + Advisory)
Rec Finfish	Possession of sharks out of season	74%
Com Finfish	Failure to possess commercial license /register	74%
Crab	Crebbing in sanctuary during closed season	72%
Crab	Unapproved person working as crab agent	72%
Com Finfish	Fishing in a restricted area	72%
Buyer	Failure to submit striped bass buyer reports	72%
Com Finfish	Possession of untagged striped bass	71%
Buyer	Failure to submit oyster buyer reports	71%
Rec Finfish	Failure to possess Charter Boat License	71%
Com Finfish	Gear violations (mesh size, fixed fishing devices, etc.)	70%
Com Finfish	Fishing pots without a fish pot license	69%
Com Finfish	Possession of sharks out of season	69%
Rec Finfish	Alteration of finfish	69%
Shellfish	Possession of undersized/unculled oysters (>10% of total catch)	69%
Buyer	Failure to obtain horseshoe crab buyer's permit	68%
Rec Finfish	Possession of striped bass out of season	68%
Rec Finfish	Fishing during closed season (general)	68%
Rec Finfish	Alteration of finfish	67%
Buyer	Failure to obtain channeled whelk buyer's permit	67%
Crab	Crebbing without a license (with eligibility)	66%
Com Finfish	Possession of spiny dogfish out of season	65%
Com Finfish	Failure to submit mandatory harvest reports	65%
Shellfish	Possession of undersized/unculled oysters (<10% of total catch)	65%
Shellfish	Harvesting oysters without oyster gear license	65%

Table 3. Suggested resource violations requiring an appearance before the Commission after three (3) convictions.

Resource	Violation	Average Score (%)* (LE + Advisory)
Buyer	Failure to submit spiny dogfish buyer reports	64%
Buyer	Failure to purchase seafood buyer's license (piece of business or boat/vehicle)	64%
Crab	Crabbing after lawful hours	64%
Rec Finfish	Fishing in a restricted area	63%
Rec Finfish	Gear violations (mesh size, fixed fishing devices, etc.)	62%
Shellfish	Failure to pay oyster replenishment tax	60%
Shellfish	Harvesting outside of time limits	60%
Rec Finfish	Possession of undersized fish	60%
Crab	Fishing a hard crab pot on Sundays	60%
Rec Finfish	Fishing pots without a fish pot license	59%
Shellfish	Harvesting oysters before sunrise	58%
Com Finfish	Possession of undersized fish	57%
Shellfish	Failure to submit mandatory harvest reports	57%
Shellfish	Failure to purchase seafood buyer's license	55%
Crab	Failure to submit mandatory harvest reports	55%
Shellfish	Failure to pay oyster inspection tax	55%
Crab	Failure to remove crab trap by December 31	54%
Rec Finfish	Failure to purchase/possess saltwater license	53%
Crab	Obstructed/improperly sized cull rings	53%
Com Finfish	Failure to present license for a cull net	51%
Com Finfish	Failure to attach license plate to vessel	51%
Crab	Failure to purchase seafood buyer's license (piece of business or boat/vehicle)	51%
Crab	Unmarked/improperly marked buoy	51%
Crab	Maintain crab pots in navigable channel	50%
Com Finfish	Fishing within 300 yards of pier/jetty	49%
Rec Finfish	Failure to possess freshwater license	45%
Rec Finfish	Failure to mark recreational crab pots	42%
Rec Finfish	Failure to report	42%
Crab	Failure to display commercial license for crabbing	42%
Crab	Recreational crab pots not marked	41%
Rec Finfish	Failure to register/provide RP number	40%

Considerations

- Appearance before the Commission after
 - One conviction: ≥75%
 - Two convictions: 65 – 74%
 - Three convictions: <65%

- Are these thresholds appropriate?

- How should we incorporate the Advisory Committees' and Law Enforcement Captains' comments? (e.g., severity depends on intent)

Natural Resources Violations Review

Law Enforcement Subcommittee
06/21/13

Process of ranking violations from survey results

Survey: rank the severity of each offense on a level from 1 to 3 (1 = least severe, 3 = most severe)

- Calculation of mode
 - Most frequent response for each violation
- Summing of scores for overall ranks
 - Gives relative severity for each violation based on all scores
- Averaging of overall ranks for average total score
 - Gives equal weighting to advisory committee and LE Captains

Table 1. Suggested resource violations requiring an appearance before the Commission after one conviction (Category 3 violations).

Resource	Violation	Average Score (%)* (LE + Advisory)	Category
Shellfish	Taking oysters from a closed public area	93%	3
Shellfish	Taking oysters from a condemned area	89%	3
Shellfish	Poaching oysters from a sanctuary	87%	3
Crab	Crabbing without a license (without eligibility)	84%	3
Shellfish	Failure to follow warm water restrictions (public health)	84%	3
Shellfish	Taking oysters during closed public season /poaching from private grounds	84%	3

*Average score (%) is the mean total score between law enforcement and the advisory committee's rankings, out of the total possible score for that violation.

To address intent/magnitude of offenses

Fisheries Management Division suggestion:

- For those violations involving possession/bushel limits, size limits, or culling requirements:
 - Violations exceeding **50%** of the prescribed limit require an appearance before the Commission after one conviction

EXAMPLE:

- 127-POT bushel limit = 32 bushels
 - 50% of 32 bushels = 16 bushels
 - Harvest ≥ 16 bushel over (i.e., $32+16 = 48$ bushels total)
 - **Category 3** (one conviction = Commission appearance)
 - 25% of 32 bushels = 8 bushels
 - Harvest 40-47 bushels
 - **Category 2** (two convictions = Commission appearance)
- This approach could handle the question of how to handle egregious violations in an equitable manner

Table 2. Number of convictions leading to an appearance before the Commission for violations involving possession and size limits.

Resource	Violation	Appearance before the Commission		
		50% over tolerance/limit*	25% over tolerance/limit	Over tolerance/limit
Crab	Possession of unculled crabs	1 Conviction	2 Convictions	3 Convictions
Shellfish	Catching oysters over the prescribed limit	1 Conviction	2 Convictions	3 Convictions
Shellfish	Possession of unculled oysters	1 Conviction	2 Convictions	3 Convictions
Crab	Exceeding bushel limit	1 Conviction	2 Convictions	3 Convictions
Com Finfish	Exceeding possession limits (harvester or buyer)	1 Conviction	2 Convictions	3 Convictions
Crab	Place/set/fish crab pots exceeding license limit	1 Conviction	2 Convictions	3 Convictions
Rec Finfish	Exceeding possession limits	1 Conviction	2 Convictions	3 Convictions
Rec Finfish	Possession of undersized fish*	1 Conviction	2 Convictions	3 Convictions
Com Finfish	Possession of undersized fish (harvester or buyer)*	1 Conviction	2 Convictions	3 Convictions

*In cases of size limits, the percentage threshold applies to the trip's catch: if 50% or more of the harvester's catch (or the buyer's purchase) is under- or oversized, the violation is a Category 3, etc.

Table 3. Suggested resource violations requiring an appearance before the Commission after two convictions (Category 2 violations).

Resource	Violation	Average Score (%)*	Category
Com Finfish	Possession of striped bass out of season	79%	2
Crab	Crabbing outside of lawful season	77%	2
Com Finfish	Improper use of commercial harvester tags	76%	2
Buyer	Failure to obtain striped bass buyer's permit	76%	2
Com Finfish	Exceeding possession limits	75%	2
Com Finfish	Fishing during closed season (general)	75%	2
Buyer	Failure to obtain black drum buyer's permit	75%	2
Buyer	Failure to use certified scale	75%	2
Rec Finfish	Possession of sharks out of season (May 15-July15)	74%	2
Com Finfish	Failure to possess commercial license /register	74%	2
Crab	Crabbing in sanctuary during closed season	72%	2
Crab	Unapproved person working as crab agent	72%	2
Com Finfish	Fishing in a restricted area (striped bass in the EEZ)	72%	2
Buyer	Failure to submit striped bass buyer reports	72%	2
Com Finfish	Possession of untagged striped bass	71%	2
Buyer	Failure to submit oyster buyer reports	71%	2
Rec Finfish	Failure to possess Charter Boat License	71%	2

*Average score (%) is the mean total score between law enforcement and the advisory committee's rankings, out of the total possible score for that violation.

Table 3 (cont). Suggested resource violations requiring an appearance before the Commission after two convictions.

Resource	Violation	Average Score (%)*	Category
Com Finfish	Gear violations (mesh size, fixed fishing devices, etc.)	70%	2
Com Finfish	Fishing pots without a fish pot license	69%	2
Com Finfish	Possession of sharks out of season (May 15 – July 15)	69%	2
Rec Finfish	Alteration of finfish	69%	2
Shellfish	Possession of undersized/unculled oysters (>10% of total catch)	69%	2
Buyer	Failure to obtain horseshoe crab buyer's permit	68%	2
Rec Finfish	Possession of striped bass out of season	68%	2
Rec Finfish	Fishing during closed season (general)	68%	2
Rec Finfish	Alteration of finfish	67%	2
Buyer	Failure to obtain channeled whelk buyer's permit	67%	2
Crab	Crabbing without a license (with eligibility)	66%	2
Com Finfish	Possession of spiny dogfish out of season	65%	2
Com Finfish	Failure to submit mandatory harvest reports	65%	2
Shellfish	Possession of undersized/unculled oysters (<10% of total catch)	65%	2
Shellfish	Harvesting oysters without oyster gear license	65%	2

*Average score (%) is the mean total score between law enforcement and the advisory committee's rankings, out of the total possible score for that violation.

Table 4. Suggested resource violations requiring an appearance before the Commission after three convictions (Category 1 violations).

Resource	Violation	Average Score (%)*	Category
Buyer	Failure to submit spiny dogfish buyer reports	64%	1
Buyer	Failure to purchase seafood buyer's license (place of business or boat/vehicle)	64%	1
Crab	Crabbing after lawful hours	64%	1
Rec Finfish	Fishing in a restricted area	63%	1
Rec Finfish	Gear violations (mesh size, fixed fishing devices, etc.)	62%	1
Shellfish	Failure to pay oyster resource user fee	60%	1
Shellfish	Harvesting outside of time limits	60%	1
Rec Finfish	Possession of undersized fish	60%	1
Crab	Fishing a hard crab pot on Sundays	60%	1
Rec Finfish	Fishing pots without a fish pot license	59%	1
Shellfish	Harvesting oysters before sunrise	58%	1
Com Finfish	Possession of undersized fish	57%	1
Shellfish	Failure to submit mandatory harvest reports	57%	1
Shellfish	Failure to purchase seafood buyer's license	55%	1
Crab	Failure to submit mandatory harvest reports	55%	1

*Average score (%) is the mean total score between law enforcement and the advisory committee's rankings, out of the total possible score for that violation.

Table 4 (cont). Suggested resource violations requiring an appearance before the Commission after three convictions (Category 1 violations).

Resource	Violation	Average Score (%)*	Category
Crab	Failure to remove crab trap by December 31	54%	1
Rec Finfish	Failure to purchase/posses saltwater license	53%	1
Crab	Obstructed/improperly sized cull rings	53%	1
Com Finfish	Failure to present license for a gill net	51%	1
Com Finfish	Failure to attach license plate to vessel	51%	1
Crab	Failure to purchase seafood buyer's license (place of business or boat/vehicle)	51%	1
Crab	Unmarked/improperly marked buoy	51%	1
Crab	Maintain crab pots in navigable channel	50%	1
Com Finfish	Fishing within 300 yards of pier/jetty	49%	1
Rec Finfish	Failure to possess freshwater license	45%	1
Rec Finfish	Failure to mark recreational crab pots	42%	1
Rec Finfish	Failure to report	42%	1
Crab	Failure to display commercial license for crabbing	42%	1
Crab	Recreational crab pots not marked	41%	1
Rec Finfish	Failure to register/provide FIP number	40%	1

*Average score (%) is the mean total score between law enforcement and the advisory committee's rankings, out of the total possible score for that violation.

Buyer violations for quota-managed species

- For quota-managed species (e.g., striped bass, horseshoe crab, spiny dogfish, black drum) the following violations:
 - Failure to obtain a buyer's license/permit
 - Failure to report
 - Failure to accurately record seafood quantities from an individual harvester
- Suggested Category 2 violations (two convictions to trigger an appearance before the Commission)

Additional buyer violations

Suggested Category 2 violations

- Purchased seafood from an individual harvester that exceeded the individual's trip limit
- Purchased seafood that was less than a minimum size limit, or greater than a maximum size limit
- Purchased seafood during a closed season
- Failure to accurately record seafood quantities purchased from an individual harvester

Pre-payable fines

- Violations which are proposed to become pre-payable fines
 - Threshold percentage still applies
 - Payment = admission of guilt
 - Number of payments = Number convictions
 - EXAMPLE
 - Possession of striped bass over the maximum size
 - \$50 fee / fish
 - 3 separate payments triggers appearance before Commission

Oyster Poaching Issues

- Concern over poaching of oysters from private grounds/closed public grounds
- Initial approach
 - Revision of license revocation system
- Another potential tool
 - Vessel Monitoring Systems (VMS)
- Not universal 'buy-in', for such an approach for all shellfish harvesters
 - Most industry members seem to support a VMS, for those who have been found guilty of oyster resource violations

First Law Enforcement Subcommittee meeting April 19, 2013

Members

Mr. Rick Robins

Mr. Joe Palmer

Ms. Lynn Haynie

Meeting began at 10:03am

Opening Comments

Commissioner Travelstead welcomed the Subcommittee and stated he is not part of the Subcommittee because the Commission wanted to have a set of independent views. He also stated that the purpose of the Subcommittee is to involve the Commission more in the Law Enforcement side of management. Commissioner Travelstead also noted that many members of staff were available from Fisheries and Law Enforcement Divisions. The Agency Attorney, Paul Kugelman, was also present. The Commissioner informed this Subcommittee that the previous Law Enforcement Subcommittee (1996) developed the current license revocation policy, but the policy needs to be updated. Commissioner Travelstead said he was not expecting the Subcommittee to make any final decisions that day but to gain information and consider what needs to be done at future meetings.

Subcommittee member Mr. Rick Robins asked Commissioner Travelstead whether he envisioned the Subcommittee as a standing committee that would continue to interact with the Commission on Law Enforcement issues. Commissioner Travelstead replied that he did see the Subcommittee in that role, and that there are many ongoing issues that need to be addressed that create the need for the Subcommittee to meet periodically.

Introduction of the Agenda

Mr. Rob O'Reilly presented the agenda to the Subcommittee. The first item was consideration of pre-payable fines for natural resources offenses. The list of pre-payable fines was reviewed by the Regulatory Review Committee, which is comprised of members from the different divisions of the agency. Historically, there were only 10 pre-payable offenses recognized by the Supreme Court of Virginia from the Virginia Marine Resources Commission (VMRC). The Regulatory Review Committee found the need for the addition of more pre-payable offenses.

Mr. O'Reilly noted the second item on the agenda would be a presentation on the striped bass individual transferable weight quota (ITWQ). Mr. Robins had requested a report of this system from staff presented to the Finfish Management Advisory Committee on March 25, 2013, and staff would like to present the Subcommittee with the same information.

The third item on the agenda would be a presentation of the opinions from all the advisory committees (FMAC, CMAC, SMAC), as well as Law Enforcement, regarding the relative severity ranking of natural resource violations.

The last item on the agenda was the agency's potential future use of Vessel Monitoring Systems (VMS). Staff from both the Fisheries and the Law Enforcement Divisions foresee that VMS could prevent and help detect oyster poaching and other similar violations.

Presentations

I. Pre-payable Offenses Presentation by Mr. John Bull.

Mr. John Bull defined pre-payable offenses as those which the Virginia Supreme Court deems as not requiring a court appearance. For about the last twenty years, the agency has had only 10 pre-payable offenses. The Law Enforcement Division initiated a listing of additional offenses that could be considered pre-payable, and that listing was thoroughly discussed by the Regulatory Review Committee. Mr. Bull noted that the Virginia Department of Game and Inland Fisheries (DGIF) has 78 violations listed as pre-payable and the Potomac River Fisheries Commission (PRFC) has 86 violations listed as pre-payable. Mr. Bull informed the Subcommittee that the other agencies (DGIF and PRFC) periodically create lists of offenses they felt should be pre-payable and submit the lists to the Virginia Supreme Court for approval. The Supreme Court decides whether to accept or deny a pre-payable status. Mr. Bull noted there are several direct benefits to expanding the VMRC's list of pre-payable offenses. It is constituent friendly and would allow, for example, offenders with Fisherman Identification Program (FIP) violations who live out of state to pay a fine without having to drive potentially many hours away for a court hearing. Another benefit of expanding the list of pre-payable offenses is that it would help clear the court dockets, thereby freeing time for the judges to spend on bigger and more complicated cases. Expanding the list of pre-payable offenses would also benefit Law Enforcement by decreasing court time for Marine Police Officers (MPOs).

Mr. Bull informed the Subcommittee that fines for fishing violations of season and size limits are determined by the number of fish. Mr. Bull stated that it was important for the Subcommittee to note that the first offense of these violations are all considered class 3 misdemeanors, however a second offense could be elevated to a class 1 misdemeanor, which is no longer pre-payable and would require the offender to appear in court to justify his or her actions. Mr. Bull asked the Subcommittee to please note that only minor offenses are on the proposed pre-payable offenses list. Those violations which are more egregious are not suggested to be pre-payable because of their severity and the necessity to allow judges to review them.

Mr. Robins asked Mr. Bull if there was a limit to the recreational fishing violations, whereby if an offender had a certain number of illegal fish, the offense would cease to be a class 3 misdemeanor and would become more serious. Mr. Bull answered that the maximum fine that a judge can set for a class 3 misdemeanor is \$500. Mr. Bull noted that if an individual had more than \$500 worth in fines, the original summons would not have been written as a class 3 misdemeanor. In such a case the MPO would check on the summons form that the offense was not pre-payable.

Mr. Palmer requested a copy of an agency summons from Col. Lauderman. Col. Lauderman presented the Subcommittee with an example of the summons used by Law Enforcement and examples of situations where the gear had been confiscated and then adjudicated by court.

Mr. Robins expressed concern that violations that are similar in terms of the regulation they violate can often differ greatly in terms of their severity. Mr. Bull informed the Subcommittee that MPOs ultimately have discretion in writing a summons. Mr. Robins asked if MPOs have the ability to seize non-compliant gear. Mr. Bull said that they did. Captain Jamie Green (Middle Area) commented that MPOs have the ability to confiscate non-compliant gear, temporarily, but they do not have the authority to keep it permanently. They can only store it. He noted that there must be a court order for Marine Police to be able to seize gear permanently. Captain Green also noted that judges often give the gear back to the fisherman after a hearing.

Mr. Robins asked Mr. Palmer if he had any thoughts on the subject of pre-payable offenses. Mr. Palmer responded that, most importantly, the MPOs are the first line of defense. It is ultimately up to the Law Enforcement Officer's discretion. Mr. Palmer commented that the pre-payable offense would help the commercial fisherman because they would be able to pay a fine and not lose a day of work by being at court.

Ms. Haynie suggested that if judges did not have to see so many cases for minor fisheries offenses, maybe they would take those that are not pre-payable more seriously.

Mr. Robins asked Commissioner Travelstead if he thought they should forward the list to the Commission. The Commissioner stated that he thought it should be sent straight to the Supreme Court of Virginia for review to be adopted or denied. Mr. Robins then made a motion to send the list of pre-payable offenses to the Virginia Supreme Court. The motion passed unanimously.

II. Review of the Severity of Fisheries Violations

Mr. O'Reilly noted that staff has yet to get the opinions from the advisory committees and Law Enforcement Division regarding visits to the Commission for license revocation hearings based on Section 28.2-232 of the Code of Virginia. Mr. O'Reilly told the Subcommittee that this would be the next task in gathering information and opinions on violations and sanctions. The current information about the ranking of violations is not taking into consideration if the offender should appear before the Commission after the first, second, or third offense. The current information is solely the ranking of the violations by most, middle, and least severe. The next task would be for the advisory committees and Law Enforcement to review the same violations to decide which ones require an immediate appearance before the Commission and how many other violations trigger a scheduled appearance before the Commission is required. Mr. O'Reilly noted that the graphs handed out are structured along the mode (most frequent) of response. The graphs show continuity between the advisory committees and the Law Enforcement Division. The graphs also show where they had different views on the severity of some violations.

Members of Law Enforcement that participated in ranking violations by severity are the captains of the four law enforcement areas. After detailing the most frequent response, staff decided to score responses. For example, if a committee provided 11 responses, a violator could be scored a maximum of 33 points. Mr. Robins asked Mr. O'Reilly for a perspective on the violation "crabbing after sunset and before sunrise." He had noticed that it did not get ranked as very severe. Mr. O'Reilly suggested that this response is probably reflecting the discontent amongst the crabbing industry about only being able to crab lawfully for 8 hours a day. Mr. O'Reilly

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noted that several members of CMAC have already lobbied staff about removing the 8 hour restriction. Mr. O'Reilly showed that even though in the mode style of ranking, that violation got labeled as "middle," if one looks at the ranking for the same violation regarding the graph based on scoring, then one can see the score is a 20 out of a possible 33 points. So, it is still a higher ranked violation for severity.

Ms. Haynie wanted clarification on the shellfish violations ranking comment section of "falsifying documents." Captain Green gave background to the comment. He informed the Subcommittee that there had been a few cases in the Rappahannock River where search warrants were called for to obtain documents from buyers. However, it was found that these documents had been falsified to appear as though the harvesters were within the vessel bushel limits, when, in fact, they had been over the limit.

Mr. Robins confirmed with Mr. O'Reilly that the next task of the Subcommittee was to look at the violations and discuss which would be cause for a Commission hearing. He stated that the Subcommittee would do that and in particular they would look at the violations that were ranked "middle" or "2" and discuss those further to determine which are more severe and less severe. Mr. Robins said the Subcommittee would reflect on the subject of the violations and be prepared for further discussion thereof at the next meeting.

Mr. Robins suggested there be some policy for a filter or an amount of tolerance before someone is required to appear before the Commission. Commissioner Travelstead agreed.

Mr. Palmer suggested that the Law Enforcement officer who issued the summons in question should be present at the hearing to answer any questions the Commission might have. Commissioner Travelstead said that should be possible. Mr. Robins agreed that having the involved officers present would be helpful to the Commission members.

III. Presentation of the Striped Bass Individual Transferable Weight Quota

Mr. O'Reilly gave a history and presentation on the evolution of the striped bass quota management. There was a moratorium on striped bass harvest from June 1989 to November 1990. When the fishery opened in November 1990, it was very quick and only lasted several days. By 1992, the recreational fishery was essentially a derby fishery from Thursday through Sunday (four days at a time with a maximum of 32 days). The state-wide commercial quota was very small at 211,000 pounds. In time, the stock conditions improved. A moratorium was also instated in Maryland from 1985 to 1990. A large year class occurred in 1989 that enabled the coast-wide fishery to again be open. In 1993 there was an even stronger year class, and 1996 produced an even larger year class. The 2001-2003 year classes were fair. These year classes are what has fed the coastal and bay striped bass fisheries. In the last five years, however, production of striped bass has been off, except for 2011. Production of new fish has been poor or average in both Maryland and Virginia.

Mr. O'Reilly noted that there will be a benchmark assessment this year for striped bass by ASMFC. Mr. O'Reilly stated that it was important to note the management implications of one good year class (2011) out of 6.

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The Commission is part of a bay-wide management system along with PRFC and Maryland. One of the reasons Virginia enjoyed such a good quota in 1998 was that Virginia had joined with PRFC and Maryland to create one bay-wide quota. In 1998, the Individual Transferable Quota (ITQ) was developed and based on free-market enterprise. By 2003, a two-quota system had developed to ensure only certain sizes of fish were harvested. This system had two types of tags: one for fish 18-28 inches in total length and another for fish 28 inches and greater. There were the two size tags in the Bay and on the coast (four different tags total). This system proved confusing and complicated. In 2007, the staff brought a plan to the Commission to end the one-tag, one-fish system and move to the Individual Transferable Weight Quota (ITWQ). This system has been in place now for six years.

The amount of quota transfers is quite high. Many in the industry have made a business out of transferring quota.

Mr. O'Reilly presented graphs showing the distribution of striped bass harvest by city and county. He showed the distribution of striped bass harvested by gear type and water system. It is important to note that not all gears are used in each area.

Mr. Robins shared concerns that the average market fish size is larger than what is actually being reported on harvest reports. He suggested that if the same management and regulatory measures are kept, then there needs to be some sort of method for validation that is not currently in place. He cited the former staff recommendation for check stations. He would like issues such as high grading to be addressed. Mr. O'Reilly agreed that management should be tightened administratively, such as adding a fee on additional and replacement tags. Staff spends a huge portion of time throughout the year on striped bass, particularly on temporary transfers. Mr. O'Reilly does not think that a check station is feasible at the moment. It would involve hiring a third party or using staff that is already taxed. He told the Subcommittee that the situation could probably be remedied somewhat administratively. He also told the Subcommittee that he is hesitant to make large changes fast. He said that the concerns would be addressed, but that changes might be incremental.

Mr. Robins stated that he did not think that a full check station was feasible given the availability of funds, however, he would still like something in place in the field for validation whereby boats could be checked as they unload. Maybe on a spot-checking basis, where the pack out weight is recorded then, if the harvest reports did not match, staff would be alerted to a problem.

Mr. Robins requested that staff work up data showing the weight distribution of striped bass harvested by individual and by county landed for the Chesapeake Bay and coastal areas. Mr. O'Reilly said that staff could work on that. He also stated there are often discrepancies between the mandatory harvest reports and what may have actually been caught. Even if Law Enforcement spot checks a harvester, that does not mean he will have the correct weight on the harvest report. Mr. O'Reilly reminded the Subcommittee that there are a lot of harvesters and limited number of staff and Law Enforcement Officers.

Commissioner Travelstead noted that there is most definitely a black market for striped bass and it seems to revolve around excess tags. The Commissioner stated that he felt the solution to this problem would be a way to control the number of tags that are available. He noted that there could be a fee put on extra tags, but that could easily become the “cost of business”. Staff could also limit the number of transfers.

IV. Presentation on Vessel Monitory Systems (VMS)

Dr. Jim Wesson presented information on vessel monitoring systems (VMS) to the Subcommittee. He noted that the real problem and reason for looking at a VMS is to counteract oyster poaching. Dr. Wesson reminded the Subcommittee that poaching is not a new problem and in fact was very prevalent at one time and was one of the main reasons the agency was founded. Because the oyster standing stock decreased, poaching decreased because there was nothing to poach. However, there has been a continued increase in aquaculture oysters and concurrently, poaching has again increased. With new technology it is harder for Law Enforcement to catch harvesters in the act of poaching. A VMS would help level the playing field and give Law Enforcement a chance to catch offenders. A large interest in larval oysters and spat-on-shell aquaculture practices has developed in Virginia. Many harvesters are investing in this type of aquaculture. The problem is that other people are stealing from private oyster growers.

Another problem is harvesters leasing new oyster leases adjacent to public grounds and then working in public areas and not on the actual leased ground. Dr. Wesson noted that 1 out of 100 new leases are actually good ground for growing oysters.

Mr. Grist presented some of the available options for a VMS. He noted that VMS are not unique to fisheries, but are new to Virginia. The federal government has used VMS for decades in the lobster fishery. Louisiana has recently started using a VMS for their oyster fishery. It is important to note that VMS data is confidential. It is federally confidential and would also come under our state confidentiality rules. VMS data would only be accessible by the Fisheries Management and the Law Enforcement Divisions.

VMS units have the ability to contact vessels as well as recording a location. They are capable of recording location at a polling frequency of one minute. Dr. Wesson noted that a 5 minute polling interval is best. Law Enforcement would be able to tell if the vessel was “faking” using the system because a signal would not be put out by the boat. VMS data is in real time and is historical.

Mr. Robins noted that there may be a problem prosecuting cases, because in order to write tickets, Law Enforcement officers would still have to catch harvesters in the act.

There is a possibility of finding a grant for a VMS through NOAA that would allow for reimbursement, but that is subject to change due to the sequestration taking place. There have been federal cases already involving VMS data which have held up in court.

The meeting ended at 1:07 pm

ATTACHMENT 7 –May 24th Meeting Minutes

Second LE Subcommittee meeting May 24, 2013

Members

Mr. Rick Robins
Mr. Joe Palmer
Ms. Lynn Haynie

Staff informed the Law Enforcement Subcommittee that they met after the April 19th meeting to discuss reforming the striped bass tag allocation system. Staff came to an agreement to add administrative requirements to the process of obtaining replacement or additional striped bass tags. Staff would be looking for advice on this subject from the Subcommittee, and believes that there are ways to improve the tag distribution process without freely handing out extra tags at every request.

Since the last subcommittee meeting, Staff has taken the qualitative statistics regarding violation severity (most, middle, least) and created a quantitative rank score statistics. Staff has also taken the advisory committees' responses (FMAC, CMAC, SMAC) as well as the Law Enforcement Division's opinions, combined them and provided a scaling so that scores from these two important components of the can be combined. Staff will need the Subcommittee's advice on the average score percentages developed from these statics to determine a threshold to trigger when a violation merits an appearance before the Commission for a revocation hearing according to Code of Virginia Section 28.2-232 after one or two court-adjudicated convictions.

Presentations

I. Pre-Payable offenses

Mr. Joe Cimino presented the Subcommittee with an update regarding the expansion of the Agency's pre-payable offense list and its submission to the Supreme Court of Virginia. Mr. Cimino also prepared a summary regarding the proposed additions to the pre-payable offense list. Currently, under VMRC's jurisdiction, there are 10 pre-payable offenses. VMRC is looking to add an additional 41 offenses to the current list.

Additionally, the original 10 pre-payable offenses have some proposed modifications, mostly in the increase of their fines. For the buying, selling, or possessing of undersized oysters, the agency hopes to increase the fee from \$60 to \$150. Another 4 of the 10 pre-payable offenses are blue crab violations. The remaining 2 offenses of the 10 are unlawful setting of a fishing net, which the agency proposes to increase the fine from \$110 to \$150, and taking fish or shellfish other than by rod and reel from the Walker's Dam area of the Chickahominy River which the agency proposes to keep its fine at \$60.

Twenty-three of the original 41 proposed additional offenses would be adding pre-payable fines for minimum size limit violations, maximum size limit violations, and possession limit violations. For finfish with size or possession limit regulations the proposal would be to have a \$50 for each fish possessed that is in violation of a size limit regulation and \$100 for each fish

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possessed that is in violation of a possession limit regulation. Attachment 3 of the report provides a listing of all pre-payable fines recommended to the Virginia Supreme Court.

VMRC is recommending approval of all the modifications of the current 10 fines and the addition of the 41 proposed fines.

Mr. Robins was concerned with how the addition of the pre-payable offenses would affect the number of offenses accrued and when someone would be required to appear for a revocation hearing before the Commission. He was concerned as to how this would affect the Commission's ability for follow-up action regarding repeat offenders. The response was that pre-paying for an offense is an admission of guilt, and is therefore equal to a court-adjudicated conviction of the offense. Mr. Robins asked if offenders would automatically have the pre-payable option for these violations regardless of the degree of the violation. He also questioned whether an offender was automatically eligible for pre-payment or is that at the discretion of the Law Enforcement officer. Lt. Col. Warner Rhodes replied that it is always at the discretion of the officer; there is a box the officer can check on the summons which once checked would automatically enable that offense to be pre-payable, if it is on the Virginia Supreme Court list of approved pre-payable offenses. Lt. Col. Rhodes noted that the Law Enforcement Division had met with a judge in York County the previous year who had requested that we add more pre-payable offenses because it would help clear his docket.

Mr. Robins asked if there was any action that staff expected from the Subcommittee. Mr. O'Reilly stated that there was no further action expected.

II. Review of Striped Bass Individual Transferable Weight Quota system

Mr. Joe Grist gave a presentation on the information requested by the Subcommittee at the previous meeting regarding striped bass average weights and quota transfer issues. In the coastal fishery there were 42 individuals that had landed at least one pound of striped bass in the last three consecutive years (2010-2012). Fifteen of those 42 individuals had landings in all three years. The landings in the table presented occurred mostly in Accomack County.

The average weight over the three years, for the majority of the individuals, was variable over the three years, and staff did not discern a pattern when considering that data. Three harvesters did have an increase in the average weight of striped bass.

In the bay fishery, 373 individuals landed at least one pound of striped bass over the consecutive years of 2010-2012, and 224 of the 373 had landings in all three years. Some individuals landed fish in more than one county. Staff noticed variability in fish weight among individuals landing in the same county. Staff also compared Gloucester County average weights with those of Northumberland and found larger ranges among average weights per individual. Some individuals were harvesting consistently larger striped bass and others were harvesting much smaller fish.

Figures in Attachment 4b provide a summary of these observations.

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Under the current management system additional striped bass tags can be requested based on the individual's average weight harvested. There is suspected abuse of the system such as misreporting the weight of fish per tag.

Another administrative option staff considered for controlling the number of additional tags being distributed was to establish a fee for additional tags. Mr. Grist asked everyone present to note that the Agency spends over \$30,000 annually on striped bass tags alone, to cover the initial allocation of tags and any additional tag requests if fish are smaller. A fee for additional tags would be beneficial because it would deflate some of the Agency's operational costs. Harvesters may not make as many additional requests for tags if there is a fee involved. However, if the fee is too low then it may just be viewed by the industry as just another cost of business. Once again, the disadvantage would be that the system is still based on average weight, so unless there was something else to help provide better reporting data, harvesters would still be able to request more tags.

Staff completes a high volume of striped bass quota transfers. The number of permits issued has increased from 361 in 2010 to 462 in 2012. The number of permanent transfers has remained steady. The number of individuals transferring quota has been slightly increasing from 219 in 2010 to 243 in 2012. The number of temporary transfers, the number of individuals with multiple permit transfers, and the number of multiple temporary transfers have also increased slightly over the last three years.

About 25% of the individuals participating in a transfer are involved in multiple transfers that range from only 2 up to 17 in one year. This involves a great deal of staff time. Staff looked at different options for modifying the transfer process: transfers could be limited by type, there could be a set number or cap on permanent or temporary transfers per individual or per year, there could be a fee for transfers and temporary transfers could be limited to cases that can prove hardship (not unprecedented as this type of administrative action is found in other fisheries already), or to limit transfers overall based on the amount of weight. If a fee were established, the Administration and Finance staff would need to be involved as well as Fisheries Management staff. Another advantage would be that the number of times the tags change hands would be limited.

Buyer auditing is another issue with striped bass. Staff could increase the amount of audits made to striped bass buyers. Another option is to increase the penalty for late buyer reports, which is something that has not been pursued by the Agency. However, another disadvantage to audits is the inability to audit harvest classified as retail, personal use and out of state. Yet another option is to require dealers to report online. This would make auditing time faster but would be hard to enforce.

Mr. Grist provided the subcommittee with some tables of what buyers have reported over the last couple of years. FMAC had complaints that Maryland harvesters were harvesting Virginia striped bass and taking it back to Maryland. However, the reported data actually shows that since 2007, there have been more Virginia buyers involved in striped bass than in previous years. Almost 90% of the coastal striped bass fishery harvest was reported as being sold to Virginia Buyers. Out of state and retail sales both decreased over the last two years. For the striped bass

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Bay fishery, most fish are sold to Virginia buyers. Retail sales (self-marketing by the harvester) and personal use for the Bay fishery remained somewhat consistent over the last few years. The Bay fishery data overall showed similar trends to the coastal fishery but not as dramatic.

Mr. Robins thinks in order to continue with the current system and maintain its integrity without having to limit the amount of tags, there must be the development of some validation tools. Mr. Robins liked the additional accountability that buyer audits create; however, he cites the need for some sort of validation in the field, even if it is limited to a spot-check basis. He suggested that VMRC perform some sort of monitoring or check of deliveries. Mr. Robins stated that without other validation tools, the current system is vulnerable to manipulation by the harvesters and buyers. Mr. Grist noted that there could be consistencies of average weights depending on time of year and staff knows that it would be normal to see such patterns, as opposed to a different pattern showing up in the data. The average size data depend on whether the stock is made up of smaller, resident fish or larger, coastal fish.

Mr. Robins suggested that, if there was a validation system that reviewed the average weights per landing at different times of the year, that data would become a baseline for staff to use in comparison when looking for unique or strange trends in the reported data. Mr. Grist replied that staff can use information from the Biological Sampling Program for that purpose; however, it would not be very complete due to the large size of the fishery and the small size of the Program.

Mr. O'Reilly suggested that staff look at the percentage of tags used by harvesters and watch for when someone exceeds a certain percentage of use. He felt that would be a better indicator of something not being quite right. He cautioned that if it became common knowledge in the fishery that the Agency was checking up on harvesters by using the biological sampling program data then the harvesters or buyers would probably become unavailable for sampling. He also noted that LE could become more involved with collecting data by observation but that as a division they are already spread thin across the state. Mr. O'Reilly felt that the harvesters need to be addressed directly and informed that their activities are monitored.

Mr. O'Reilly told the subcommittee the next step would be to send some of the ideas that have been presented on to the Commission. He stated that one idea (which would most likely be very unpopular) would be to take a hybrid approach would be to have a third set of tags solely for upriver fishermen separate from the Bay and coastal tags. That would "tighten" things up a little but is complicated to consider at the moment.

The Subcommittee and staff made plans to discuss the subject further at the June 21st meeting to be ready to provide the information to the Commission for discussion at the July Commission meeting.

Mr. Robins additionally requested that staff explore the possibility of developing a system that intercepts landings, to establish some data points to provide a point of reference. Mr. O'Reilly replied that Fisheries Management staff could talk to Law Enforcement Division to find out what they had available, but that was the direction he was headed when he suggested that once staff identifies who is abusing their allocation of tags in the last few years over a certain percentage,

they would become subject to some sort of inspection. There is nothing in current regulations that would prevent Law Enforcement Division from inspecting any landings of striped bass.

III. Review of Fisheries Violations and Sanctions

Dr. René Hoover presented to the Subcommittee a review of violations and sanctions requested by the Commissioner. The last review was performed by the Committee on Law Enforcement in 1996, in which the “3-peat” rule was initiated. In the current review, surveys were distributed to Advisory Committee members and the four area Law Enforcement Division Captains asking them to rank violations in terms of how severe the offense was with regards to public health and resource health.

Staff suggested that violations with a score of 75% severity or higher (out of a possible 100%) should require an appearance before the Commission for a revocation hearing after one conviction. Staff also recommended that violations with a severity of 65% or higher should require an appearance before the Commission after the second conviction. The remaining third set of violations (those with severity ranked below 65%), would then continue with the “3-peat” rule, where the third conviction would require an appearance before the Commission.

Staff would like the Subcommittee to consider if these thresholds set by staff are suitable and address the intent and magnitude of the violations.

Mr. Robins asked staff if it was possible to quantify intent or magnitude of a violation, perhaps by some sort of percentage, such as percentage of catch over a limit. Dr. Hoover replied that the disadvantage addressing the magnitude of an offense administratively that way would be that each offense would have to be reviewed individually. She stated that the question for staff is how to address the severity of the threat in comparison with the magnitude of the offense.

Mr. Robins agreed that there should be triggers at certain thresholds that should cause an immediate appearance before the Commission for some violations. Mr. O’Reilly added that certain violations are really noticeable such as poaching and harvesting from condemned areas. Mr. Robins noted that he felt the idea of a threshold made a lot of sense and the next step would be to develop a list of violations that once a threshold is reached then the offender would have an automatic appearance before the Commission. He felt that the Advisory Committees and Law Enforcement Division should still have some input after thresholds are established to place violations above or below the threshold. He volunteered the Law Enforcement Subcommittee to share opinions on what should be moved below or above the threshold. Mr. Robins felt the main issue would be to look at the violations staff had listed below the threshold and make sure there were not any that should be moved.

IV. Review of Buyer violations

Mr. O’Reilly informed the Subcommittee that staff is arriving at a place where the right information is being obtained to bring cases involving buyers before the Commission (regarding mandatory reporting violations). Fisheries Management staff met and discussed problems they have with gaining cooperation from all seafood buyers. The mandatory reporting staff audits

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some buyers, only to have those buyers tell staff they do not buy from harvesters. At the same time, reports from harvesters list those same buyers as the purchaser of the harvest. Staff asked that the Subcommittee look at the buyers violations such as: purchasing seafood from an individual harvester that has exceeded that individual's trip limit, purchasing seafood that was less than the minimum size limit or greater than the maximum size limit, purchasing seafood during a closed season, and failure to accurately record seafood quantities purchased from individual harvesters. Staff would like the Subcommittee's opinions on these buyer violations. There were some buyer violations listed in the surveys sent out to the Advisory Committees and Law Enforcement Division captains, but they mainly fell into the least severe tier (which would still be under the 3-peat rule) and were violations such as "failure to purchase a buyer's license" and "failure to submit reports". Buyers must keep records of purchases for one year.

Mr. Robins agreed that buyer violations should be further discussed.

Mr. Joe Palmer asked if buyers had to mail their records to the Commission on a regular basis. Dr. Hoover replied that they did not but that they had to keep records and present those records to staff after being contacted by staff for an audit. Staff's concern is that if buyers have not been maintaining those records, there has not been any repercussion from the Commission. Mr. Cimino added that another problem is that buyers only keep records for the primary species they purchase and records from other species are not maintained.

Mr. Robins also suggested that clarification of regulations be considered. Mr. O'Reilly stated that he felt the next task for staff would be to identify possible problems with buyers. He also felt staff should work with Law Enforcement Division and get their input about buyers. He cited a study conducted for the Commission by the Pennsylvania State University in 1987. The study was to determine how accurate voluntary buyer reporting records were. The reporting system was a voluntary dealer-based system until 1993. They found that the blue crab industry had the highest percent of accuracy at 65%. Penn State cited the truck buyers as a loophole in reporting. Mr. O'Reilly felt that the Subcommittee should continue discussing the topic of buyers and should review the situation of truck buyers more closely at the next subcommittee meeting.

Mr. Robins stated that it would be helpful for staff and committee members to understand what the implications are under the existing regulations and law for harvesters and dealers who are in collusion. He requested that this issue be further discussed at the next meeting. Agency Attorney Paul Kugelman replied that under Section 28.2-232 of the Code of Virginia, VMRC has the authority to revoke any license issued for tidal fisheries for a maximum of 2 years. He suggested that the regulations could be written such that after the first offense they could be brought before the Commission on license revocation. Mr. Robins replied that the current regulation was not written that way, but it should continue to be reviewed.

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6/21/13 **LE Subcommittee meeting** (Members- Mr. Rick Robins, Mr. Joe Palmer (not present), Ms. Lynn Haynie) 9:30 am

Others present: Col. Rick Lauderman, Lt. Col. Warner Rhodes, Mr. John Bull, Commissioner Jack Travelstead, Mr. Rob O'Reilly, Mr. Joe Grist, Mr. Joe Cimino, Dr. Jim Wesson, Ms. Stephanie Iverson, Dr. Reneé Hoover, Ms. Kathy Leonard, Ms. Sally Roman, Ms. Laurie Williams

Overview of new items and meeting topics

Mr. O'Reilly presented a summary of the items staff has completed since the May 24th meeting and an overview of what would be presented at the current meeting. Mr. O'Reilly noted that there is no update on the status of expanding the pre-payable fines list. The suggested additions to the list have been submitted to the Virginia Supreme Court and are currently awaiting review and final approval. There is no update on the status of obtaining a Vessel Monitoring System. Staff still feels such a system would significantly decrease the occurrence of shellfish poaching.

Staff will make presentations on problems related to striped bass tags and striped bass management, on problems with buyer accountability, and on the review of natural resource violations. Staff has been working to evaluate natural resource violations and their associated sanctions; the last review of this nature was conducted in 1996. Staff seeks to create better guidelines with which to bring violators before the Commission for revocation hearings and thereby send a clear message to industry that such violations will not be tolerated.

In particular, buyers have not been held subject to the Commission's authority to the same extent as harvesters. At the May 24th LESC meeting, Capt. Jamie Green (Middle Area Office) mentioned the issue of collusion between harvesters and buyers in mandatory harvest reporting.

Mr. O'Reilly noted that Chairman Robins had mentioned the problem of buyers encouraging illegal harvest by consistently purchasing seafood that exceeded possession limits, or was over- or undersized. Law Enforcement is willing to help Fisheries staff as needed to get cooperation from both buyers and harvesters. This will be important as Mandatory Harvest Reporting staff hopes to be in the field conducting buyer audits in the coming weeks. Mr. O'Reilly cautioned the Subcommittee that staff must be careful to protect the biological sampling program and at the same time hold buyers and harvesters more accountable for reporting their catch accurately. He also noted that the truck buyers in particular have been elusive when it came time for staff to conduct audits. However, this year Law Enforcement has promised assistance if needed.

Mr. O'Reilly stated that regarding violations and sanctions, staff needs to hear from the Commissioner for guidance on how to proceed. Staff has determined some thresholds for deciding when a violator should be called before the Commission.

On the subject of striped bass, Mr. O'Reilly informed the Subcommittee that it was important to note VMRC is not alone in managing the stock. The Atlantic Marine Fisheries Commission (ASMFC) is the effective manager of striped bass for all Atlantic states. VMRC sets the quota but ASMFC approves the agency's methods of setting the quota. Mr. O'Reilly also said that it was important to note that the Chesapeake Bay has the highest quota along the Atlantic coast. An advantage to the current weight-based quota management system is that Virginia no longer has a problem with exceeding the quota. However, Mr. O'Reilly asked the Subcommittee and staff to consider if the system was good for the stock. Mr. O'Reilly stated that overfishing is not occurring; however, there are new biological reference points, and the striped bass stock biomass is getting closer to the threshold.

Presentations

I. Presentation of Methods for Determining Threshold Weight for Striped bass

Ms. Sally Roman presented methods for determining threshold weights for striped bass harvested in the coastal and Chesapeake area gill net fisheries. She stated that data from the Biological Sampling Program (BSP) and the Mandatory Reporting Program (MRP) were both examined for the threshold weight analysis. Ms. Roman pointed out that both data sets have uncertainty associated with them. The BSP attempts to represent all facets of the striped bass fishery, stratifying by season and gear-type, but the Program's sampling efforts are biased by targets set for age and growth analysis. The MRP is fishery-dependent self-reported harvest, and as such has its own shortcomings. Ms. Roman showed the average and median weight (pounds) by year (2007 through 2012) for the MRP and BSP by fishery. The MRP had lower average weights by year compared with the BSP. Both programs had large standard deviations about the mean. The median was lower than the average weights of the MRP and BSP because the median is less sensitive to outliers compared with the mean.

Ms. Roman next presented a series of graphs showing the distribution of weights from both the BSP and MRP. The weight distributions of both the BSP and MRP followed the same general pattern. The coastal gill net fishery distribution had one peak, while the Chesapeake area gill net fishery has a bimodal distribution with two peaks.

Ms. Roman next presented a graph showing the length-weight relationship for striped bass sampled by the BSP. She noted that there were no extreme outliers, but there was a fair amount of variability in the data. For example, the weight for an 18 inch fish could range from two to four pounds, and this variability increased with length.

Ms. Roman then presented the Subcommittee several tables listing percentages of average weights and number of harvesters in certain weight bins for both fisheries by program. For the coastal gill net fishery, the weight bins ranged from under ten pounds to under 13 pounds, at one pound intervals. The greatest percent of average weights was in the under 13 pound group for both programs. In the Chesapeake area gill net fishery, the weight bins ranged from under 8

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pounds to under 13 pounds. The highest percentage of average weights was in the under 13 category, but there was only a small difference in the percentage between the under 12 and under 13 categories. Ms. Roman also noted that while approximately 75% of average weights were in the under 13 category for the MRP, the median weight varied around six pounds. The percentage of harvesters with an average weight in the weight bins differed between the two fisheries. In the Chesapeake area a large percentage of individuals had an average weight under 13 pounds, while only 18 percent of individuals had an average weight under 13 pounds in the coastal gill net fishery.

Ms. Roman then explained two examples of how striped bass tag allocation could be modified by basing tag distribution on a threshold weight. Individuals with a previous year average weight below the threshold weight would be issued tags based on the threshold weight, while individuals with an average weight greater than the threshold weight would be issued tags based on the current system (their previous year's average weight). She also showed the Subcommittee histograms displaying the distribution of the difference between an individual's average weight in 2012 for a specific share of the quota compared with the threshold weight for each fishery.

Ms. Roman then presented the staff's conclusions to the Subcommittee: i) one method may not be applicable to both systems, ii) methods have only been applied to the gill net fishery and staff would need examine the other gear types, iii) any method selected should be reviewed annually to insure accuracy, and iv) additional tag request audits would need to be addressed as far as what size of fish the harvester is catching on average and what type of data the harvester would need to show in order to apply for more tags. She also stated that a single threshold weight for the Chesapeake area gill net fishery may not exist because of the distribution of the data.

Mr. Robins asked staff how substantial the BSP is and how well the program represented the fishery as a whole. Mr. O'Reilly answered that due to the combined effects of federal gill net restrictions which have impacted harvesting activity by fishermen and consequently also impacted the BSP. Additionally, for the spring Coastal area striped bass fishery, the primary mode of collecting samples involves the harvester contacting staff when he/she has fish. The problem with harvesters holding fish for staff to collect is that those fish could be hand-selected instead of selected at random. Again, staff really only encounters this problem when collecting Coastal area striped bass during the first half of the year (January-June) and primarily during the month of February when the federal gill net restrictions are in place. Mr. O'Reilly noted that the process for determining the striped bass catch-at-age for ASMFC requires samples from all possible ages within each length bin. Mr. O'Reilly and Mr. Joe Grist both felt the ASMFC Technical Committee should help combine coastal fisheries data to aid in this process. They noted that two years ago VMRC combined data with Maryland and North Carolina.

Mr. Robins asked if the BSP technician positions were full time. Mr. O'Reilly replied that there are three full-time technicians in the BSP. He noted that the BSP is directly affected by the way

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the fishery operates within a year. Mr. O'Reilly stated that in recent years, harvesters have been waiting as late as May to harvest larger striped bass.

Mr. Robins asked if the fish sampled are kept or returned after measuring and collecting scales. Mr. O'Reilly answered that fish are both kept (for aging by otolith) and also sampled and returned to the harvester in the program. Mr. O'Reilly admitted the spring Coastal fishery is the weak point for the BSP data collection. He also noted that the ASMFC is slow to pool sampling data though the possibility for pooling data does exist. It is easier, Mr. O'Reilly noted, to collect data from the Bay fishery because there are more fish, and VIMS can share data they collect from the Bay fishery, but that does not remedy the lack of data from the Coastal fishery. Mr. O'Reilly reminded the Subcommittee that the Coastal and Bay striped bass fisheries are two separate fisheries with separate quotas.

Ms. Lynn Haynie suggested that when a Marine Police Officer (MPO) goes into a buyer to check striped bass, then he/she could record the lengths and weights of the fish checked. Mr. O'Reilly replied that MPOs could do that but they would have to work with the buyers' schedules. They would have to schedule checks properly to prevent the inhibition of normal business flow. Mr. O'Reilly noted that even if data was collected through Law Enforcement checks, staff would still miss the ability to measure some fish that have been harvested. Mr. O'Reilly also reminded the Subcommittee that the agency has a standing contract with Old Dominion University (ODU) to age the sampled fish. The ageing program is driven by the fishery itself: what the fishermen catch and when they catch it. Mr. O'Reilly noted that there are 16 times as many fish in the Bay area fishery than in the Coastal fishery. He also noted that there are fewer buyers in the Coastal area fishery. Mr. O'Reilly stated that staff will continue to research and work on solving the problem of fewer samples from the spring Coastal fishery, but that it will continue to be a challenge due to the federal gill net regulations.

Mr. Robins commented that another challenge is that there is no check point or validation program in place in the management of the striped bass fisheries. He also reminded the Subcommittee and staff that the BSP may not represent the fishery accurately. Mr. Robins stressed the need to intercept landed striped bass harvests randomly. He noted that this would probably require the integration of Law Enforcement staff and that there would also be a need for a strong connection with Licensing. Mr. Robins also stressed the need to for the ability to enforce whatever check or validation is made. Mr. O'Reilly responded that there would be some resistance to such management tools. He suggested raising the price the agency pays for sampled fish to increase the number of participants willing to allow sample of their harvest.

Mr. Robins expressed strong concerns about the vulnerability of the current system. He noted that the Coastal fishery operates in a single modality and that the fishermen in that fishery tend to use large mesh sized gill nets. He found it troubling that according to the mandatory harvest reporting data fishermen reported a wide range of fish sizes in the same mesh sized gear. Mr. Robins noted that this trend was due in part to incidental harvests of striped bass while targeting

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dogfish. However, he felt there were also a large number of fishermen whose fishing efforts are directed towards harvesting large striped bass. Mr. Robins acknowledged that it would be more difficult to determine a threshold for striped bass tag allocation for the Chesapeake area fishery.

Ms. Haynie added that pound nets will have smaller sized striped bass. Mr. O'Reilly agreed that striped bass harvested by pound net are often 5 to 6 pounds in range. One harvester had reported striped bass as large as 15 pounds in his pound net. Mr. O'Reilly noted that fish that large in a pound net is unusual. Mr. O'Reilly told the Subcommittee that, in time, staff hopes to have in place methods of validating harvest. However, it is difficult to require the fishermen to record mesh size on their harvest reports in addition to everything else they must record. He informed the Subcommittee that Law Enforcement had met with Fisheries staff and that they were committed to helping Fisheries staff however they are able.

Mr. Robins noted that the old system (one-tag-per-fish) was more easily enforceable. He stated that if staff is able to identify the vulnerabilities in the current system, then the vulnerabilities will still need to be remedied somehow. Mr. Robins admitted that the most extreme remedy would be to return to the one-tag-per-fish system. Mr. Robins also acknowledged the impossibility of a validation tool or check point due to lack of funds, but still felt that such a tool would be vital to managing the fishery. Mr. O'Reilly responded that staff has already started an analysis to determine discrepancies. He noted that check stations, unless staffed by VMRC, would also be vulnerable to bias. Mr. O'Reilly informed the Subcommittee that there are twelve other species sampled in the BSP and that there are only three technicians to do the sampling for the entire state.

Mr. Robins suggested that staff give thought to implementing a threshold closer to the mean or median of reported weight in regards to tag distribution for the coastal striped bass gill net fishery. He noted that determining a revised system for distributing tags for the Chesapeake area fishery would be more challenging. Mr. O'Reilly stated that staff can develop a draft report suggesting two systems for the allocation of tags in the Chesapeake area fishery. One system would include all of the upriver fishermen and would be based on weight. The other system would include everyone else (the middle and lower Bay) and would be based on one-tag-per-fish. Mr. Robins again stated the need for staff to identify vulnerabilities in the program, to create a range of options, determine the possibility of check points/validation tool, and to even consider the option of going to a limited number of tags.

Ms. Haynie requested staff consider creating some sort of exception or tolerance for fishermen harvesting by pound net. Mr. O'Reilly assured her that staff would investigate a two-tier system in the bay which would be reviewed by the Commission as well as Law Enforcement.

Mr. Robins concluded by reminding staff and the Subcommittee that even with the old system (one-tag-per-fish) there was a weight issue. The old system focused on mortality of large fish. He

cautioned staff to also consider ways in which to prevent the occurrence of high-grading by harvesters, which had also been a problem under the one-tag-per-fish system.

II. Review of Natural Resource Violations and Sanctions

Dr. René Hoover gave a presentation and update on the ongoing review of natural resource violations and sanctions. She first summarized the progress of the review up to the current meeting. She informed the Subcommittee that staff had first calculated the mode from the most frequent response of advisory committee members and the four Law Enforcement captains on the surveys given them by staff. She then noted that staff had also assigned points to each degree of severity on the surveys (3-most, 2-middle, 1-least), and then staff summed the results of the overall scores from the surveys for each violation. This created a relative severity for each violation based on all scores.

Staff then used the relative severity scores to categories violations as Category 1 (summoned to appear before the Commission after one conviction), Category 2 (summoned to appear before the Commission after 2 convictions of the same offense), and Category 3 (summoned to appear before the Commission after 3 convictions). Dr. Hoover noted that even with this three tiered ranking of violations by their severity, the issues of intent and magnitude still needed to be addressed. Dr. Hoover informed the Subcommittee that staff attempted to deal with these issues by suggesting that for violations exceeding 50% of the prescribed possession, size, and bushel limits or culling requirements would require the offender to appear before the Commission after one conviction. She noted that for the Category 2 offenses, two convictions of exceeding the limit by more than 25% would cause the offender to be summoned to appear before the Commission. Dr. Hoover also noted that it would take three convictions of under 25% over the limit, for violations in Category 2, before an offender would be summoned to appear before the Commission.

Mr. Robins shared concerns that if an individual is slightly over the limit then he may deserve the benefit of the doubt, however, to be over the limit by 25% was probably blatant and he felt should require an appearance before the Commission after one conviction. Mr. Robins suggested that staff lower the percentage of the suggested thresholds for the violations requiring an appearance before the Commission after one conviction. Mr. Robins gave the example of the possession limit of dark colored sponge crabs. Dr. Hoover stated that the system suggested by staff could still be applied in the example of dark sponge crabs. She then asked the Subcommittee members to share any recommendations they might have for staff.

Mr. Robins stated that it is an egregious violation to retain and separate product that is undersized. He felt that if Law Enforcement found a container consisting of predominately undersized harvest, then the offender should have an immediate invitation to appear before the Commission. He stated that such a situation was tantamount to poaching.

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Ms. Haynie reminded staff that oysters are not measured until they reach the dock and she asked how violations of bushel limit would be handled when applying the thresholds prescribed by staff. Dr. Hoover replied that for oysters, Dr. Jim Wesson of Conservation and Replenishment Department had suggested a 10% tolerance threshold. Ms. Haynie stated that oysters should be culled before they reach the dock and asked what would happen if someone offloaded 10 bushels instead of 8 bushels. Mr. O'Reilly replied that in such a situation, he was under the impression the offenders received a ticket immediately if they were checked by Law Enforcement. He noted that the percentage is for what is allowed for culling.

Mr. Robins shared that he liked the concept and direction in which staff was headed with categorizing the violations. He suggested, however, that some be tightened up some more. He also suggested that could be done via email between staff and the Subcommittee members. He asked if staff would consider developing a set of guidelines for the Commission with which to take action regarding these violations. He stated he would like staff to give the Commission more detailed recommendations than the standard response of a two-year probation.

Mr. Robins asked staff if the recommendations for violation thresholds were over a set period of time. Dr. Hoover replied that the suggestions kept in line with the original set of rules in which the offenses were committed within the time frame of one year from the original violation. Mr. O'Reilly added that the time frame changed due to severity of violation. He stated that staff recommendations to the Commission become more important in situations where as long as 2 years has passed since an individual's first offense and he/she comes back before the Commission for another offense.

Mr. Robins asked staff to consider changing the time frame between violations and sanctions and to consider the example of consistently exceeding the pot limit. He noted that with the 3-peat rule, it is not easy to have even the worst offenders appear before the Commission.

Dr. Hoover next presented the violations staff suggested be considered in Category 2 and Category 3. She reminded the Subcommittee that violations in this category would still be under the 3-peat rule. She asked the Subcommittee to note that all of the violations put into Category 3 were the violations ranked lowest in severity by both the advisory committees and the four Law Enforcement captains. Mr. Robins suggested that staff move cull ring violations up to Category 2 because he felt those to be more blatantly violated.

Dr. Hoover next shared about buyer violations. She noted that most of the buyer violations were placed by staff into Category 2. Mr. Robins asked how staff would address disparities between possession versus landing and cited blue crabs as an example. Lt. Col. Warner Rhodes replied that the Code of Virginia says it is illegal to possess. Mr. Robins asked if buyers were subject to culling by Law Enforcement. Lt. Col. Rhodes replied that they were. Lt. Col. Rhodes noted that the regulations have changed over time. He also noted that it is very difficult for Law

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Enforcement to check seafood harvest at a processor due to the large amount of culling that would be involved.

Mr. Robins shared his thoughts as a seafood processor. He reminded staff that the processor is directly dependent on the market. He gave the example that at one time his company was buying two sizes of conchs; but, when the market strengthened, the company had to start buying only one size. He shared that he told harvesters at that time that the product had to be legal but that as a processor he was also directly dependent on what was harvested. He shared that it was more difficult certain seasons for harvesters to obtain a certain quality product. He also shared that he notified harvesters by letter to inform and encourage them about the legality of their catch. Mr. Robins strongly suggested that staff work at determining a way of preventing harvesters and buyers from purposefully setting aside illegal product and keeping it. Mr. Robins asked staff to consider that there are other levels of responsibility involved, especially if illegal product is shipped over state lines then the buyer responsible is subject to the Lacey Act.

Mr. Robins asked staff what could be done to prevent buyer and harvester collusion. He suggested that regulations be reviewed and possibly amended. Mr. O'Reilly responded that was probably not initially necessary, because, the buyer violations most fall into the category of mandatory harvest reporting violations, collusion being an extreme case of a mandatory reporting violation.

Dr. Hoover continued the presentation by moving on to staff suggestions regarding pre-payable fines. She noted that payment for a pre-payable fine is legally an admission of guilt and was therefore a conviction. Dr. Hoover stated the staff suggested thresholds could be easily applied to pre-payable offense convictions. Dr. Hoover concluded by suggesting that with increased sanctions and a Vessel Monitoring System (VMS) in place, along with greater accountability for violations the amount of oyster poaching and other violations should significantly decrease.

Ms. Haynie asked staff what happens to the extra bushel or two over the 8 bushel limit if the violators are caught and issued a summons. Mr. Robins additionally asked how great of a presence Law Enforcement is dockside. Lt. Col. Rhodes replied to Mr. Robins that Law Enforcement presence dockside varies daily. In answer to Ms. Haynie's question, Lt. Col. Rhodes stated that MPOs try to do most inspections in the water and the amount of oysters over the limit are confiscated and returned to the water immediately. He stated that the same protocol is followed dockside as in the water; the oysters are confiscated and returned by the MPO(s) to whence they were initially removed.

Mr. Robins concluded by stating the need for further discussion on the topic of natural resource violations.

III. Buyer Accountability

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Ms. Stephanie Iverson gave a presentation on buyer accountability and harvest reporting. She reminded the Subcommittee that as of July 1, 2013, oyster taxes and the form with which to report harvest for oyster taxes (M53) will become obsolete. This shift in agency policy will increase the importance of buyer audits performed by Mandatory Reporting Program (MRP) staff. Ms. Iverson informed the Subcommittee that in accordance with Section 60 of Chapter VAC20-610-10 et seq., all seafood buyers licensed in the state of Virginia must keep records of all their seafood purchases from any registered commercial fishermen for up to one year. She noted that historically MRP has audited buyers on a bi-annual basis. She also explained the three levels of audits the members of the Subcommittee. Phase 1 audits involve collection of harvester's MRC ID number and date he/she sold to the buyer. Phase 2 audits are audits in which a certain specie or species are targeted by staff therefore, staff collects from the buyer the harvester's MRC ID number, date harvest was sold, and the amount that was sold each day. For a phase 3 audit, staff collects from the buyer the harvester's MRC ID number, dates sold to the buyer, and amounts sold to the buyer for each day for any and all harvest purchased from the harvester.

Ms. Iverson informed the Subcommittee that staff had met with members of the Law Enforcement Division and that they have promised full cooperation and assistance where needed to MRP staff in completing audits of seafood buyers. Ms. Iverson explained that staff has met together and created a new administrative process for accomplishing buyer audits which will demand cooperation from buyers and provide more accountability from buyers as well.

Ms. Iverson explained that all buyers receive a letter at the end of spring or beginning of summer detailing the audit process. This year staff plans to send an additional letter to individuals possessing a truck buyer's license informing them that they must schedule to meet staff at the Law Enforcement Field office in their area and bring their records for staff to audit since they do not have a permanent place of business. After the letters have been mailed, buyers will first be contacted by staff via telephone. If the buyer is uncooperative after two or three phone calls then staff will send a certified letter reminding the buyer of his/her responsibility to submit harvest reports when requested by Commission staff. If the buyer remains uncooperative then MRP staff will visit the buyer's actual place of business accompanied by an MPO. If the buyer remains uncooperative then they will be visited again by an MPO with a summons to appear before the Commission to explain their actions. Since truck buyers do not have a permanent place of business then they will be issued a certified letter after the first time they are uncooperative. If they fail to provide records to MRP staff after receiving a certified letter then they will be issued a summons by an MPO to appear before the Commission.

Ms. Iverson also shared other ways staff suggested to create more accountability for buyers such as implementing monthly or yearly buyer reporting or requiring buyers to report electronically. Ms. Iverson noted that electronic reporting would be in real time and would be through an online system. She informed the members of the Subcommittee that the Atlantic Coastal Cooperative Statistics Program (ACCSP) already has an online based web application which all federally

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permitted seafood dealers use to report since 2004. She noted that a small percentage of buyers in Virginia already use this program because they are federally permitted dealers. There are not many federally permitted dealers, but they also happen to be some of the largest dealers in the state. They are mostly located on the Eastern Shore and in the Hampton Roads area. Another idea staff had was to set the same limits on personal use harvest by Commercial Fisherman Registration License holders to be the same possession limits as recreational harvest. Staff also suggests requiring receipts or reports for sales reported as “retail” by harvesters. Additionally, staff suggests the creation of a buyer advisory committee formed as a subcommittee by members from the standing advisory committees who are current seafood buyers.

Mr. Robins suggested that if buyer permit and license eligibility for renewal could be lost if buyers did not submit to an audit of their records. He also suggested that buyers be required to send the agency a notice they had received a letter about being audited. Mr. Robins also stated that he would like some more time to reflect on some of the suggestions for buyer accountability. He stated that he fully supported the idea of forming a subcommittee of buyers from members of the advisory committees. He also cautioned staff that whatever measures are added to consider how burdensome the measure may be to buyers. Overall, Mr. Robins thought staff had good ideas. Mr. O’Reilly stated that he also was in favor of creating a subcommittee of buyers. He also felt that staff was behind but knows that only so much can be done at a time. He stated that staff should have access to more real time data.

Mr. O’Reilly then distributed copies of the draft minutes from the previous two LE Subcommittee meetings. Mr. Robins requested that staff follow up with the Subcommittee via email regarding any changes that may need to be made to the draft minutes of the previous meetings.

Mr. Robins agreed with Mr. O’Reilly and stated that staff would be more able to optimize management of fisheries like the blue crab fishery if there was not a lag in data. He agreed that requiring buyers to report on a regular basis or get buyers engaged in SAFIS would help remove the lag in data availability. Mr. Cimino commented that the Blue Crab Industry Panel is also in favor of online reporting. The panel has even sought out financial support from Virginia Sea Grant to encourage individual harvesters to report online. The panel is also looking to encourage the larger buyers to report online as well. Kevin Wade, a seafood buyer and panel member, is very amenable to buyer reporting and is willing to help the agency encourage other buyers to report online also.

Mr. O’Reilly also mentioned the problem staff has with delinquent data. He suggested going through the Commission process to add delinquency to the regulations regarding reporting. He noted that each case brought for failure to report costs the Commission 100’s of dollars.

Mr. O’Reilly asked Commissioner Travelstead what course of action staff should take now that the six most serious violations have been determined. Commissioner Travelstead stated that as

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staff finalizes their recommendations and suggested changes that the next step would be to take the recommendations to the full Commission. He noted that once the Subcommittee is comfortable with a recommendation then it would be added to the Commission's agenda.

Mr. Robins said that he hoped by the end of next week that the Subcommittee and staff will have exchanged final comments via email and reached a consensus on the details of each recommendation. He asked that staff continued to work on solutions to the various buyer situations that had been discussed. Commissioner Travelstead stated that the agency's policy on license revocation was a priority item for the Commission's upcoming agendas. He stated that once that is reviewed and put into practice, then the Commission could look more closely at revising the current striped bass management system.

Mr. Robins requested that the Commission members receive an annual report on fisheries violations. Commissioner Travelstead replied that he had talked with Col. Rick Lauderman about such a report and hoped to have it generated more frequently than annually. He stated the paramount importance of the Commission being aware of the Law Enforcement side of the agency. Mr. Robins agreed that such a report would be very helpful. He also felt that making the Law Enforcement Subcommittee a standing committee, even if it met once every several months, would be a good idea.

The meeting adjourned at 12:15 pm.