

Comments

From: Daniel Kelley <danieljkelly@verizon.net>
Sent: Monday, September 9, 2019 8:07 AM
To: Comments
Subject: comment

you should regulate the excessive bait fish harvest that produces a product(fish oil) with no scientifically proven medical benefit and increase the penalties on commercial fisherman who violate quotas rather than regulating the recreational fisherman whose actual impact on the fisheries is minor and whose economic impact is major.

Tina Berger

Subject: FW: Subject: Request for Legal Action Against Omega Protein

From: Phil Zalesak [<mailto:flypax@md.metrocast.net>]

Sent: Friday, October 04, 2019 6:04 AM

To: 'FVHATTIEROSE@aol.com'; 'FVHATTIEROSE@aol.com'; 'Jay.McCreight@legislature.maine.gov'; 'cheri.patterson@wildlife.nh.gov'; 'r-dwhite@comcast.net'; 'swamper199@gmail.com'; 'dan.mckiernan@state.ma.us'; 'ray@capecodfishermen.org'; 'sarah.ferrara@mahouse.gov'; 'jason.mcnamee@dem.ri.gov'; 'lizzy.2@charter.net'; 'Ericreidri@gmail.com'; 'matthew.gates@ct.gov'; 'William.a.hyatt@snet.net'; 'melissa.ziobron@cga.ct.gov'; 'maureen.davidson@dec.ny.gov'; 'ech12@cornell.edu'; 'kaminsky@nysenate.gov'; 'Heather.corbett@dep.nj.gov'; 'allenra133@gmail.com'; 'captadam@karenannii.com'; 'ashiels@pa.gov'; 'senseofwonder@pa.net'; 'david.saveikis@state.de.us'; 'fishmaster70@comcast.net'; 'crabman31@aol.com'; 'john.clark@state.de.us'; 'bill.anderson@maryland.gov'; 'robert.t.brown@shopcove.net'; 'captphillangle@gmail.com'; 'steve.bowman@mrc.virginia.gov'; 'bplumlee@pbp-attorneys.com'; 'District01@senate.virginia.gov'; 'Chris.Batsavage@ncdenr.gov'; 'jmannen@yfmlaw.com'; 'Mblanton9394@gmail.com'; 'BELLM@DNR.SC.GOV'; 'rhodesmm@musc.edu'; 'RonnieCromer@scsenate.gov'; 'Doug.Haymans@dnr.ga.gov'; 'swoodward1957@gmail.com'; 'Trey.Rhodes@house.ga.gov'; 'jessica.mccawley@myfwc.com'; 'BillOrndorf@yahoo.com'; 'Thad.Altman@myfloridahouse.gov'; 'jim.estes@myfwc.com'

Cc: Bob Beal (rbeal@asmfc.org); Amy Widerman (amywiderman@gmail.com); Bill Bonner (bill_bonner@verizon.net); Bruno Vasta (captbruno@comcast.net); Chris (cjgoudreau@comcast.net); Cy Staniec; Dallen Hall (panasea125@gmail.com); Dave Allaire (davea494@gmail.com); Eric Packard; Jeff Lewis (jeffrey.lewis41@gmail.com); Jerry Gaff (jerrygaff@yahoo.com); Julian or Judi Tsai; Reed Brodnick (brodnikreed@gmail.com); Ron Smith (rsmithins@yahoo.com); 'Charles Lynch - NOAA Federal'; Tom Meiser (tmeiser@verizon.net); Tracy Norris (tracy.norris65@gmail.com); David Sikorski (davidsikorski@ccamd.org); foragematters@aol.com; 'chesapeake@cbf.org'; Martin Gary; 'Stephen Shechtel'

Subject: Request for Legal Action Against Omega Protein

Atlantic States Marine Fisheries Commissioners,

Ref: (a) 2016 Title 16 Conservation, Chapter 71 Atlantic Coastal Fisheries Cooperative Management
<https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter71&edition=prelim>

Encl: (1) Omega Protein Statement on the Chesapeake Bay Cap dated 9/12/19
(2) Decline in Atlantic Menhaden Predators in the Chesapeake Bay dated 9/30/19

In accordance with Section 5105 of reference (a) I am requesting that ASMFC Commissioners commence legal action against Omega Protein due to its announcement that it will exceed ASMFC's quota for Atlantic menhaden in the Chesapeake Bay.

A fishery as defined in Section 5102 of reference (a) is "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, commercial, recreational, or economic characteristics".

The decline of the Atlantic menhaden predator fishery is well documented by the Virginia Marine Resources Commission, the Maryland Department of Natural Resources, and the Potomac River Fisheries Commission over the last 20 years (enclosure (2)). It includes species such as striped bass, summer flounder, bluefish, Spanish mackerel, and weakfish which are important to the commercial and recreational industries along the Chesapeake Bay and the entire Atlantic Coast.

Atlantic menhaden are forage fish for 22 species in the Chesapeake Bay. So, exceeding the ASMFC quota for Atlantic menhaden is damaging not only to species important to the commercial and recreational fishing industry but to the ecological environment of the Chesapeake Bay in general.

Therefore, the contention by Omega Protein that the Chesapeake Bay cap is “arbitrarily low and unscientific” is laughable if not outright dishonest. And their desire to do all of their fishing in the Chesapeake Bay would further devastate the ecological environment of the Chesapeake Bay.

Given that Omega Protein has announced that they will exceed the Atlantic menhaden quota for the Chesapeake Bay and that the State of Virginia is not compliant with the coastal fishery management plan, the ASMFC should notify the Secretary of Commerce immediately in accordance with Section 5105 of reference (a).

Further, the ASMFC should demand a fishing moratorium on the Atlantic menhaden within the waters of Virginia in accordance with Section 5106 of reference (a).

Forwarded for your review and consideration.

Very respectfully,

Phil Zalesak
President
Southern Maryland Recreational Fishing Organization
www.smrfo.com

To: Nichola Meserve, Chair, Atlantic Menhaden Management Board

Subj: Permanent Moratorium on Atlantic Menhaden Reduction Fishing in the Chesapeake Bay

Ref: (a) Omega Protein Statement on the Chesapeake Bay Cap, dated 9/12/19

(b) Evaluating Ecosystem-Based Reference Points for Atlantic Menhaden by

Andre Buchheister, Thomas J. Miller & Edward D. Houde, dated 10/11/17

(c) Draft Addendum VI to Amendment 6 to the IFMP for Atlantic Striped Bass, dated 9/2019

Summary

I strongly recommend a permanent moratorium on Atlantic menhaden reduction fishing in the Chesapeake Bay.

This recommendation is based on fishery data and studies provided by the Maryland Department of Natural Resources (MD DNR), the Virginia Maritime Resources Commission (VMRC), the Potomac River Fisheries Commission (PRFC), the Chesapeake Biological Laboratory (CBL), the Atlantic States Marine Fisheries Commission (ASMFC) and other scientific sources.

Ecological Impact

Currently, Omega Protein, a Canadian owned company, has an annual Atlantic menhaden harvest quota of 51,000 metric tons or 112,435,620 pounds or approximately 337,306,860 fish per year for the Chesapeake Bay . They are not only going to exceed this quota but want to harvest all of their catch out of the Virginia waters of the Chesapeake Bay (reference (a)). See figure 1 below. In 2006 their annual quota was 109,000 metric tons or 240,303,580 pounds or approximately 720,910,740 fish per year.

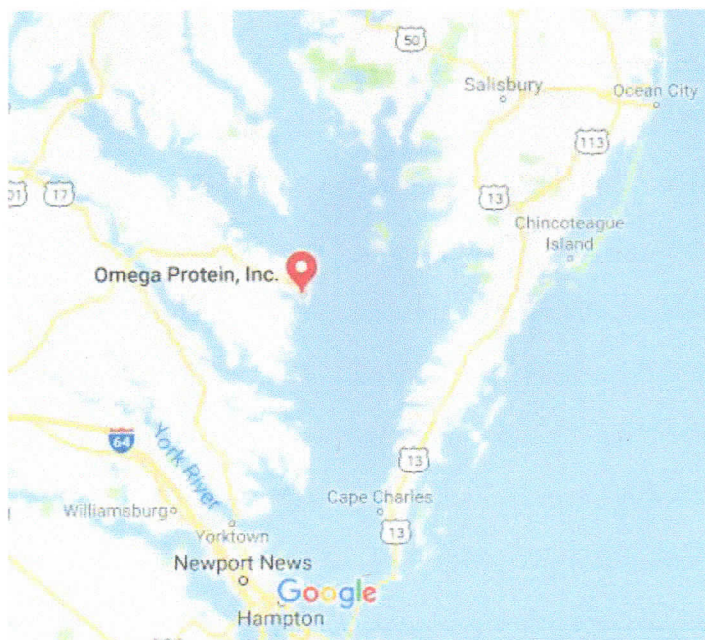


Figure 1. Virginia Chesapeake Bay

What has been the impact on Atlantic menhaden predators over the last 20 years?

According to the CBL there are 22 Atlantic menhaden predators in the Chesapeake Bay. At least five of these are important to commercial and recreational fishermen. They include striped bass, weakfish, bluefish, summer flounder, and Spanish mackerel. The MD DNR, VMFC, and the PRFC have documented a steady decline in the commercial harvest of Atlantic menhaden predators in the Chesapeake Bay over the last 20 years. Here are the actual declines for each species:

- Striped Bass – 34% decline
- Weakfish – 99% decline
- Bluefish – 85% decline
- Summer flounder – 92%
- Spanish mackerel – 80%

Figures 2 through 6 below document the commercial harvest decline in the Maryland Chesapeake Bay, the Virginia Chesapeake Bay, and the Potomac River.

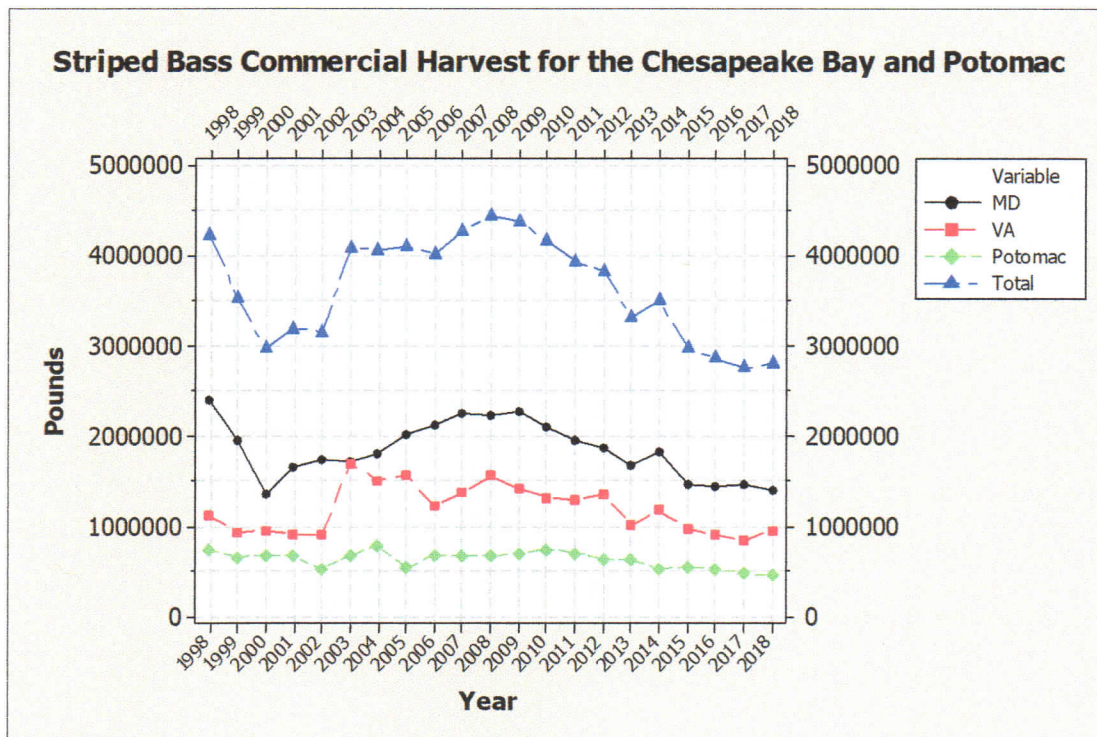


Figure 2: The decline of commercial harvest of Striped Bass in the Chesapeake Bay

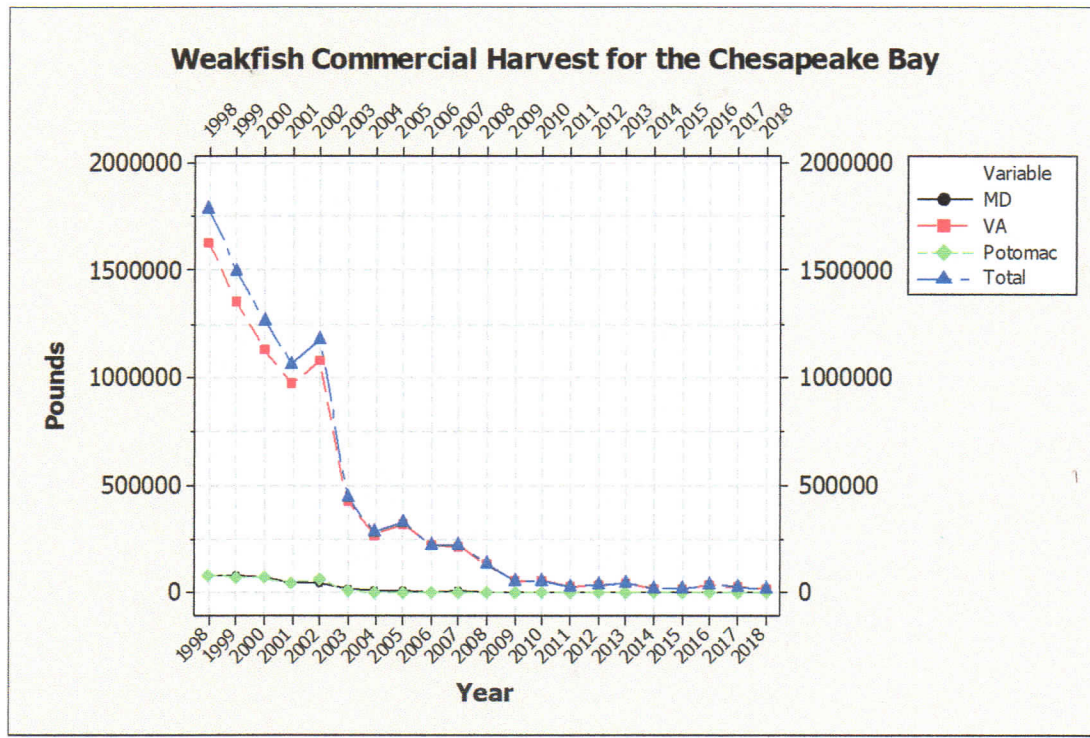


Figure 3. The decline of commercial harvest of Weakfish in the Chesapeake Bay

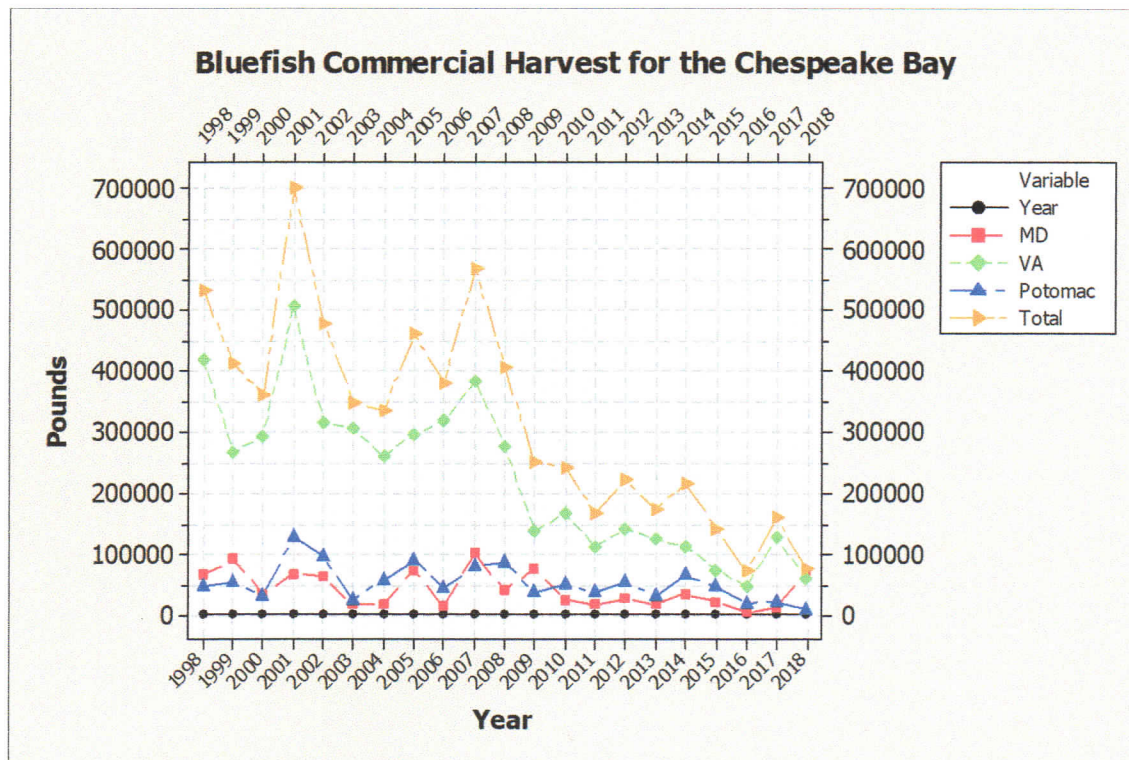


Figure 4. The decline of commercial harvest of Bluefish in the Chesapeake Bay

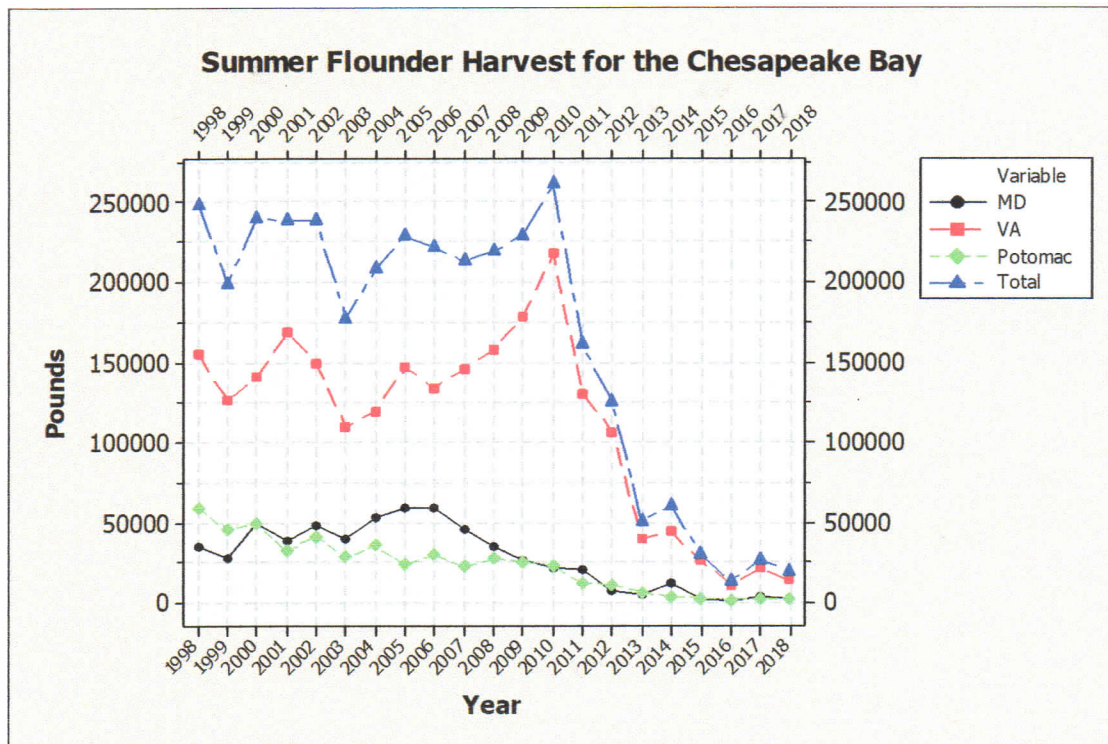


Figure 5. The decline of commercial harvest of Summer Founder in the Chesapeake Bay

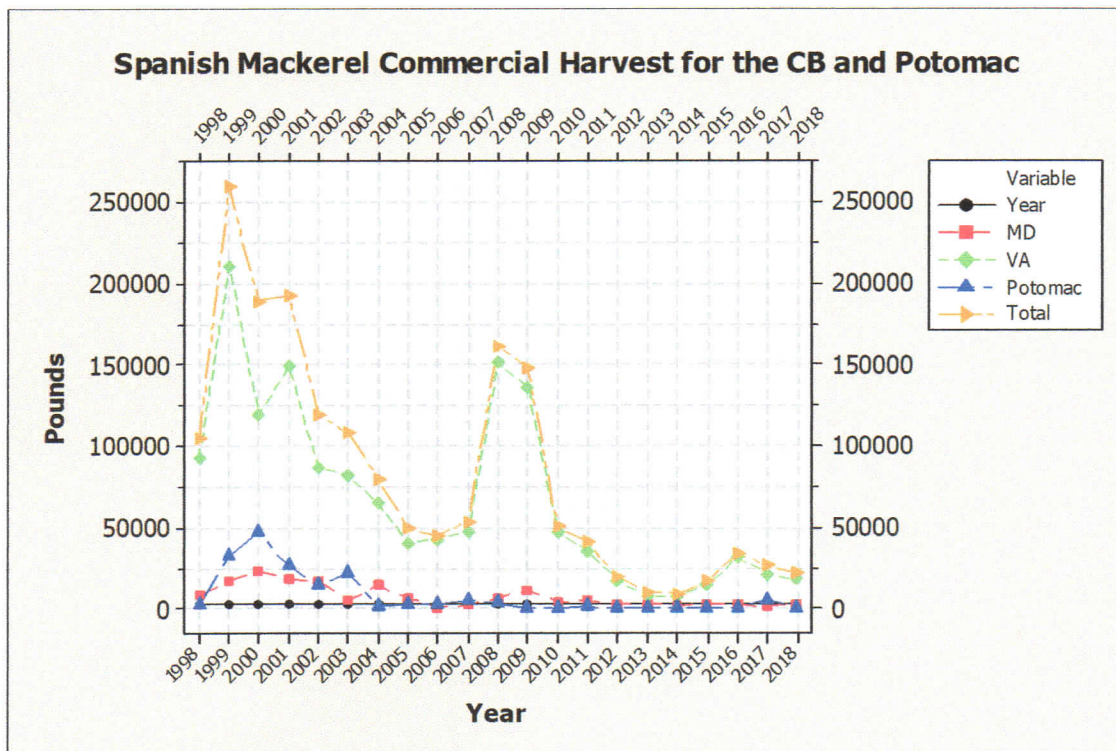


Figure 6. The decline of commercial harvest of Spanish Mackerel in the Chesapeake Bay

Impact on Striped Bass

Other scientific justification for establishing a permanent moratorium on Atlantic menhaden reduction fishing in the Chesapeake Bay can be found in reference (b) where scientists determined that:

“Striped Bass (*Morone saxatilis*) were most sensitive to increases in Atlantic Menhaden fishing, largely due to their strong dietary reliance on this prey species, but other higher-trophic-level groups (birds, highly migratory species, sharks, and marine mammals) were also negatively impacted.”

This scientific finding is further supported by reference (c) which documents the decline in both commercial and recreational striped bass harvest along the entire Atlantic Coast. See figures 7 and 8 below:

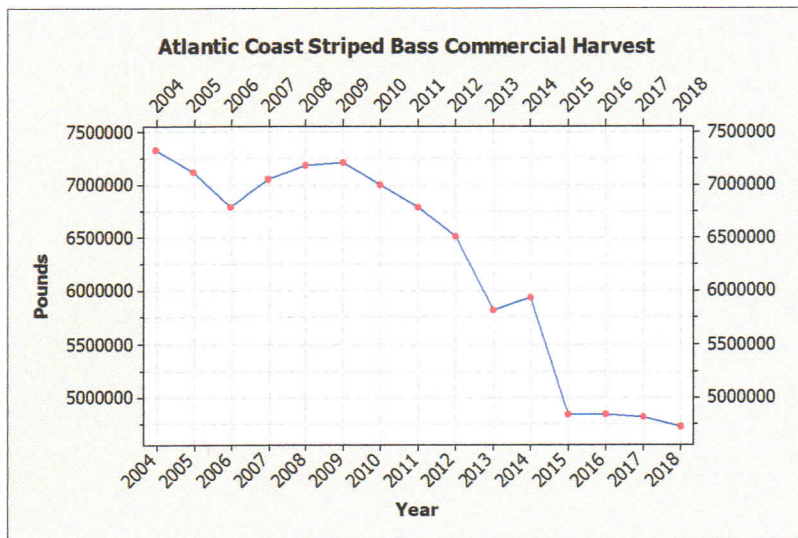


Figure 7. Decline in Atlantic Coast Striped Bass Commercial Harvest

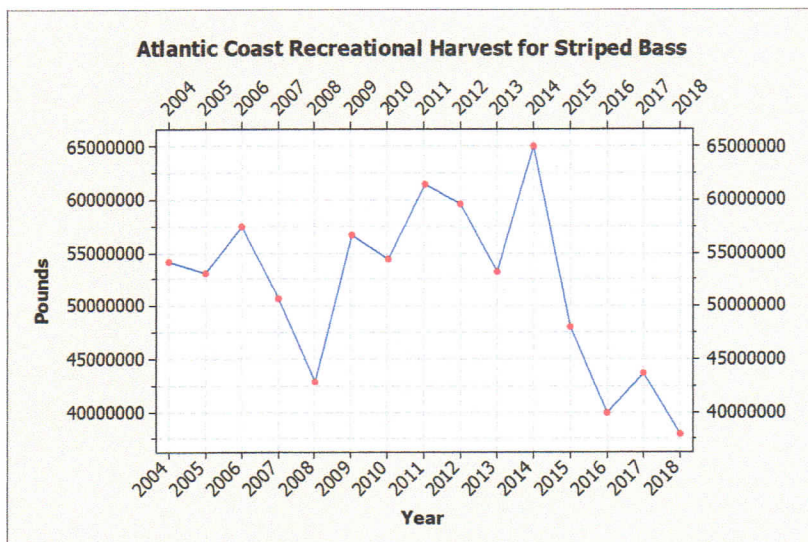


Figure 8. Decline in Atlantic Coast Striped Bass Recreational Harvest

Economic Impact

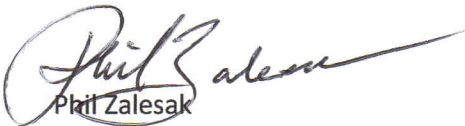
Striped bass is just one species of many impacted by the reduction fishery removal of Atlantic menhaden from the Atlantic Coast. This is what the ASMFC reported about the economic impact of striped bass on the regional economy (page 6, reference (c)):

“The contribution of the commercial sector to the region’s gross domestic product (GDP) when attempting to account for all industries involved in harvesting, processing, distributing, and retailing striped bass to consumers, was \$103.2 million and supported 2,664 regional jobs. In comparison, the contribution of the recreational sector to the region’s GDP was \$7.7 billion and supported 104,867 jobs.”

If Omega Protein, a Canadian owned company, is required to harvest their Atlantic menhaden catch in the Atlantic Ocean and not harvesting Atlantic menhaden in the Chesapeake Bay, they will still be in business. Their approximately 546 employees will generate approximately \$342 million for Cooke, Inc., their parent company, which is located in New Brunswick, Canada.

The continued existence of Omega Protein as a reduction fishery for Atlantic menhaden in the Chesapeake Bay will be at the expense of American jobs and American taxpayers.

Very respectfully,



Phil Zalesak

President

Southern Maryland Recreational Fishing Organization

www.smrfo.com

Max Appelman

From: Beth Cardwell <shrink@shentel.net>
Sent: Saturday, September 21, 2019 12:14 PM
To: Max Appelman
Subject: menhaden

I am writing asking the commission to find the Commonwealth of Virginia out of compliance with the provisions of Amendment 3 to the Fishery Management Plan for Atlantic Menhaden, specifically the Commonwealth's failure to implement the Chesapeake Bay reduction fishery cap of 51,000 mt.

Omega Protein exceeded your cap this year.

I don't actually know what happen to Virginia if this occurs, but there are many citizens of the Commonwealth who value the Bay despite how their legislators vote.

Thanks for any information you can provide.

Sincerely,
Beth Cardwell

Max Appelman

From: STEPHEN ATKINSON <steveatkinson52@verizon.net>
Sent: Friday, October 4, 2019 12:37 PM
To: Monty Mason; Bryan Plumlee; Robert Beal
Cc: Max Appelman
Subject: Va violation of menhaden bay cap

Gentlemen, as you are aware omega protein has exceeded the bay cap As contained in the fishery management plan and continues there netting in the bay . Thousands of anglers find this to be totally unacceptable, especially in light of their stated excuse that It has been too rough to fish in the ocean this summer. This comes at a difficult time given the condition of our striped bass fishery which is facing new restrictions. It has been demonstrated that striped bass are heavily dependent on menhaden for forage.

I urge you to find Virginia out of compliance with ASMFC directives. This flagrant abuse of the Chesapeake Bay by the menhaden reduction industry cannot be tolerated. All parties including the Virginia General assembly must be held accountable.

Thank you.

Steve Atkinson
Richmond ,Va

Sent from my iPhone

Max Appelman

From: Corinne Green <75cgreen@gmail.com>
Sent: Friday, October 4, 2019 7:39 PM
To: Comments
Subject: Omega Violating Chesapeake Bay Cap: Time for Accountability

Omega Protein recently announced that they will exceed the Chesapeake Bay Reduction Fishing Cap of 51,000 MT, undermining conservation in the Chesapeake Bay and directly impacting recreational fishing. The ASMFC should now allow this to stand.

Omega Protein is a foreign-owned industrial harvester that sucks up more than 70 percent of coast-wide menhaden catch, and this announcement of the Bay Cap violation is yet another example of what a bad actor this company is. Omega Protein has violated the Clean Water Act on numerous occasions and earlier this month was fined by the SEC for misrepresenting their violations of federal law in connection with Federal loans provided to the company. Omega vessels frequently run recreational anglers off their fishing grounds, setting nets around boats to suck up vast quantities of menhaden. The company has also had dozens of OSHA violations and conducts a dirty fishery with numerous on-the-Bay accounts of wasteful by-catch, including cobia, red drum, and bluefish.

Recreational anglers and the recreational fishing economy pay the price for all of this bad behavior. Research suggests that the reduction fishery could be responsible for as much as a 30 percent decline in striped bass. At a time when anglers are being asked to reduce their take of striped bass, this violation of the Chesapeake Bay Cap adds insult to injury.

The striped bass fishery generated \$7.8 billion toward our nation's gross domestic product and recreational anglers accounted for 98 percent of the total economic contribution. The economics of recreational fishing dwarf whatever economic benefit that comes from the foreign owned reduction industry.

Menhaden are critical to the Chesapeake Bay ecosystem and Omega Protein's claim that there is no scientific basis for Bay Cap is false. Omega has been unable to prove that their industrial fishery does not adversely impact the Bay. Every other state on the East Coast has banned the practice of reduction fishing and now is time for the ASMFC to hold this company accountable to the fishery management plan.

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John & Corinne Green

Sent from my iPhone



JERSEY COAST ANGLERS ASSOCIATION

Working For Saltwater Resource & Marine Anglers

1594 Lakewood Rd (Rt. 9), Unit 13, Toms River, NJ 08755

Phone: 732-506-6565

FAX: 732-506-6975

Web Site <http://www.JCAA.org>

Email: jcaa@jcaa.org

RECEIVED

OCT 07 2013

Max Appelman, FMP Coordinator
Atlantic States Marine Fisheries Commission
1050 North Highland St. Suite 200A-N
Arlington, VA. 22001

ASMFC

Max and ASMFC Menhaden Management Board,

Omega Violating Chesapeake Bay Cap: Time for Accountability

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Sincerely,

Capt. Paul Eidman
Forage & Habitat Committee Chairman

Max Appelman

From: Riverkeeper <info@Riverkeeper.org>
Sent: Sunday, October 20, 2019 2:05 PM
To: Comments
Subject: Protect Atlantic menhaden, hold Omega Protein accountable

Oct 20, 2019

Comments ASMFC

Dear: ASMFC,

I care deeply about the Hudson River and its life and I am writing to urge your action to compel Omega Protein to comply with harvest restrictions for Atlantic menhaden as determined by the Atlantic States Marine Fisheries Commission. Given Omega Protein's recent threat to deliberately exceed their harvest cap, we hope you will deem them "Out of Compliance" at the next meeting of the Menhaden Management Board on October 23, 2019.

Menhaden are one of the most important fishes along the Atlantic Coast, providing food for striped bass, bluefish, tuna, codfish, whales, dolphins and osprey. Their abundance buffers depleted populations of river herring and shad from the effects of predatory fish and they clean our waterways of excessive phytoplankton and algae caused by sewage contamination.

I know that menhaden are an important fishery and I want to make sure they continue in abundance for all of us. The management quotas recommended by the ASFMC and our nation's top fishery scientists cannot be flouted by an industrial fishing company that already holds an 85 percent share of the quota.

I am counting on you to use your vote on the ASMFC to follow through and enforce the quotas. In the longer term, I am counting on the ASMFC to improve its approach to managing this species and use an ecosystem perspective, rather than menhaden's individual status as a species. We need to protect these fish.

Please protect our rivers and oceans from greed. The bounties of our earth should be for the many not the few.

Sincerely,

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████████████████████

Max Appelman

From: Robert Beal
Sent: Monday, October 21, 2019 11:10 PM
To: Max Appelman
Subject: Fwd: REBUTTAL OF LYNCH AND OMEGA LEGAL POSITIONS
Attachments: Scan_0157.pdf; ATT00001.htm; Scan_0158.pdf; ATT00002.htm

Max,

Can you also include these comments

Thanks,
Bob

Sent from my iPad

Begin forwarded message:

From: "rr" <foragematters@aol.com>
To: "james.gillmore@dec.ny" <james.gillmore@dec.ny>, "NICHOLA MESERVE" <nichola.meserve@state.ma.us>, "Robert Beal" <Rbeal@asmfc.org>
Cc: "Sen. Craig A. Miner" <craig.miner@cga.ct.gov>, "WILLIAM HYATT" <william.a.hyatt@snet.net>, "Melissa Ziobron" <melissa.ziobron@cga.ct.gov>, "Justin Davis" <justin.davis@ct.gov>, "david.saveikis@state.de.us" <david.saveikis@state.de.us>, "Craig D Pugh" <crabman31@aol.com>, "Roy Miller" <fishmaster70@comcast.net>, "john.clark@state.de.us" <john.clark@state.de.us>, "Rep. William J Carson" <william.carson@delaware.gov>, "Thad Altman" <thad.altman@myfloridahouse.gov>, "JIM ESTES" <jim.estes@myfwc.com>, "Bill R. Orndorf" <william_orndorf@ml.com>, "JESSICA MCCAWLEY" <jessica.mccawley@myfwc.com>, "Spud Woodward" <swoodward1957@gmail.com>, "Doug Haymans" <doug.haymans@dnr.ga.gov>, "Rep. TREY RHODES" <trey.rhodes@house.ga.gov>, "Patrick Keliher" <patrick.keliher@maine.gov>, "Rep. JAY MCCREIGHT" <jay.mccreight@legislature.maine.gov>, "Russell Dize" <mjdize@verizon.net>, "Stephen Train" <FVHATTIEROSE@aol.com>, "Sen. Dave Miramant" <david.miramant@legislature.maine.gov>, "LYNN FEGLEY" <lynn.fegley@maryland.gov>, "dana.stein@house.state.md.us" <dana.stein@house.state.md.us>, "Raymond Kane" <ray@capecodfishermen.org>, "PHIL LANGLEY" <captphillangle@gmail.com>, "sarahpeake@gmail.com" <sarahpeake@gmail.com>, "Sherry White" <sherry_white@fws.gov>, "Dan Mckiernan@state.ma.us" <dan.mckiernan@state.ma.us>, "Dennis Abbott" <swamper199@gmail.com>, "jkealin@lundsfish.com" <jkealin@lundsfish.com>, "G. RITCHIE WHITE" <r-dwhite@comcast.net>, "Cheri Patterson" <cheri.patterson@wildlife.nh.gov>, "TOM FOTE" <tfote@jcaa.org>, "Adam S. Nowalsky" <karenannii@karenannii.com>, "Joe Cimino" <joseph.cimino@dep.nj.gov>, "Maureen Davidson" <maureen.davidson@dec.ny.gov>, "Sen. TODD KAMINSKY" <kaminsky@nysenate.gov>, "steve.murphy@ncdenr.gov" <steve.murphy@ncdenr.gov>, "senandrzejzak@njleg.org" <senandrzejzak@njleg.org>, "james.gillmore@dec.ny" <james.gillmore@dec.ny>, "Emerson Hasbrouck" <ech12@cornell.edu>, "Chris Batsavage" <chris.batsavage@ncdenr.gov>, "Jerry Mannen Jr." <jmannen@yfmlaw.com>, "Andrew Shiels" <ashiels@pa.gov>, "Robert Ballou" <robert.ballou@dem.ri.gov>, "bob.steinberg@ncleg.net"

<bob.steinberg@ncleg.net>, "TIM SCHAEFFER" <tischaeffe@pa.gov>, "Sen. Susan Sosnowski" <sen-sosnowski@rilin.state.ri.us>, "Senator Ronnie W. Cromer" <RonnieCromer@scsenate.gov>, "Mel Bell" <bellm@dnr.sc.gov>, "DAVID BORDEN" <lizzy.2@charter.net>, "DR. MALCOLM RHODES" <rhodesmm@musc.edu>, "JOEY BALLENGER" <ballengerj@dnr.sc.gov>, "STEVEN G. BOWMAN" <steve.bowman@mrc.virginia.gov>, "MARTIN GARY" <martingary.prfc@gmail.com>, "Bryan Plumlee" <bplumlee@pbp-attorneys.com>, "Monty Mason" <district01@senate.virginia.gov>
Subject: REBUTTAL OF LYNCH AND OMEGA LEGAL POSITIONS

Bob Beal...please review and add to package....Thanks Tom

Subject: DRAFT LETTER ON LEGAL ISSUES ..RELEVANT AND NECESSARY
EVIDENCE SECOND EDITION

Chairmen ...Gilmore and Meserve. These are some thoughts I had about the basic issue here..the alleged lack of hard survey data to " prove " the need for the decreased cap.....this is what Mr Lynch was saying to the board. I thought this might be helpful for you to review these thoughts.... Bob could reply to Omega by saying that under the Charter, as we will explain below, the Commission uses the information that is available and isn't required to wait for data that may or may not be available in the future.

This concerns the review by the Secretary under Section 5106 of an action by the ASMFC under the " necessary for conservation " clause. The definition of conservation in the ASMFC Charter is " The restoring rebuilding and maintaining of any coastal fishery resource and the marine environment in order to insure..."

Lawyer Lynch's comments to the board were directed to the lack of a quantitative survey ,like an aerial count, to establish a threshold or ratio for the decreased cap. We know such a spotter plane abundance survey and multi factor depletion model exists in Rhode Island , but does not exist for the Chesapeake Bay.

The apparent assumption by both Omega and Lynch that the lack of such a quantitative number can prevent the board from taking action for conservation under the Charter and Amendment 3 should be explored.

In the past menhaden were managed under the single species approach that concerned sustainability and setting commercial quotas. There was an essential change in direction with the definition of "best scientific information available," under ASMFC Charter section 8 (f) which ;

" includes but is not limited to the body of biological, environmental, ecological, economic and social data concerning the fish stock and fisheries"

This change of emphasis from looking at only the single species to looking at the role of menhaden in the entire Atlantic ecosystem and basing management decisions on environmental , economic and social effects was carried further with Amendment 3.

(page 29. Equitable distribution to the four user groups ;, reduction, commercial and recreational fishermen, fish and wild life and businesses)

Under the Charter definition of "best scientific information available " we suggest the board was completely within its authority and discretion to pass the reduced cap measure or allotment without a quantitative survey or measurement. The definition is very clear that when certain data , such as an aerial survey , is not available, you use what is available. If the board had to wait until all the data or a certain piece of data was available to move toward it's goal of conservation there would never be any progress, never be any decisions !

Our second question also relates to the information the Secretary will consider relevant in making his decision. . As we said the board considered the wide range of information relevant under " Best Scientific Information Available " , the effect on the entire ecosystem and the best means available to allocate the menhaden between the four user groups under Amendment 3. The combined training and experience of over forty delegates whose careers involve state level Fisheries management, commercial and recreational fishing and conservation, from every state on the Atlantic coast should be know and considered by the Secretary. The Charter and Amendment 3 require the delegates to make qualitative as opposed to quantitative value judgments as to the cause and effect of the decline in the bay fish and wildlife . To some extent this is a subjective decision. They use their judgment to propose allocations that equitably divide the menhaden resource between the four user groups. That is what the decreased cap is , it is an Amendment 3 allocation.

Therefore we should determine if we can proffer to the Secretary a summary of the qualifications and experience of the delegates who made the Amendment 3 decision .The social information to be considered is the effect of the decline of the Bay fish stocks and fishing over the last fifteen years. Some of the fisheries have declined more that 90%, the spawning rockfish stock is 35% below the threshold. The effect has been the loss of 80,000 fishermen and fishing families from saltwater fishing in Virginia and Maryland and the profound consequences to thousands of businesses and hundreds of communities.. The loss of our Bay traditions is at stake here. The Secretary should be aware of the social and economic effects on Chesapeake Bay

scan 0157 REQIEUM FOR TANGIER SOUND

0158 REDUCING RISK AS CONSERVATION PURPOSE, PROOF OF CAUSE AND EFFECT

Thank you.....Tom Lilly. 443 235 4465

From: TII foragematters@aol.com
Subject: Virginia noncompliance hearing 10/28/2019
Date: Oct 6, 2019 at 8:42:00 AM
To: Rbeal@asmfc.org, Max Appelman mappelman@asmfc.org
Cc: flypax@md.metrocast.net

Dear Mr. Beal;

Please file this in the Delegate's folder ...scans sent separately.

The purpose of this letter is to answer the claims by Omega Protein in their letter to you of September 12, 2019. Omega makes the following argument: the research does not show any evidence of negative impacts from menhaden fishing in the bay, the measure in Amendment 3 reducing the Bay cap to 51,000 metric tons was unscientific and arbitrary. Omega says it supports science-based management of menhaden.

Omega seeks to distract the Board by the often repeated no "scientific evidence" comment. In his reply to Virginia dated January 17, 2018 Chairman Gilmore emphasizes that Amendment 3 decisions were based on the ecological role of menhaden in the entire Atlantic ecosystem including the Bay. This is the holistic approach. Factors include equitable distribution to the primary user groups which include recreational fisherman, the fish and wildlife. The Chairman cited the overwhelming public support of the conservation purpose of Amendment.

Section Eight of the Charter states "Best Scientific Informative Available" .."includes but is not limited to that body of biological, environmental, ecological, economic and social data concerning the fish stock....."

This is definition allowed the Board to consider a wide range of factors in deciding that The Amendment 3 revised cap was needed for conservation as opposed to the narrow quantitative approach suggested by Omega in their September letter.

In deciding the conservation purpose of the decreased cap the Board members considered that allowing Omega to be in the Virginia Bay for the entire time the menhaden were there, with up to ten purse seine ships, was too much pressure on the menhaden. The Board considered the the rapid decline since of the 22 fish species that depend on menhaden forage since 2008. Background research such as "Evaluating Ecosystem-Based Reference Points for Atlantic Menhaden" Buchheister, Miller Houde, pub. Marine and Coastal Fisheries (2013) had been conducted. This reported a dependence of large Chesapeake Bay rockfish on menhaden. pg. 3/43. The Board had information that warming seas have caused a shift in the stock of menhaden toward New England leading to the inference Omega was catching out of a declining stock, leaving far less for the wild life. At page 23/43 of the Buchheister article it says...weights of striped bass fell significantly after 1998 correlated to declines in menhaden. Shifting to other food sources was not successful "given Atlantic Menhaden's rich lipid content

relative to nonclupeid fish"

There is research from New England, Mark Gibson, prepared for a symposium. (Scan 0106) citing Oviatt, C.A. "Environmental effects of Atlantic menhaden on Surrounding waters. Chesapeake Science 13:321-323, that " found that Large scale commercial fishing in the Bay could take up to 80% of the adult Menhaden present. From our personal aerial survey work over the Virginia bay there have been many times when we have heard the pilots say they have run out of fish.

The decision was supported by thousands of comments from the public and scientists. We request those comments be made part of this record. Please also include the proposed Addendum 6 to Amendment 6 of the to rockfish FMP. This contains a wealth of information on the serious decline of the rockfish particularly the large breeding stock. They are overfished and are now subject to conservation management by the Commission. Virginia had to close its Spring season.

The above information links the dependence of the large rockfish on Menhaden to poor condition if the menhaden are scarce. The lack of food becomes at least one cause of the problem, it becomes a very likely cause when we consider the intensity of the Omega fishing in Virginia. The Virginia Bay in surface area is only about 3% of the Atlantic Coast but 40% of the entire Atlantic catch is caught there.

The question becomes ; Does it benefit conservation to stop the factory fishing at 51,000mt. If that took effect all of the menhaden in the Bay and all of the menhaden entering the Bay would be food for the fish and wildlife.

Regarding the issue of conservation purpose I think most people would agree that they would insult the intelligence, experience and conservation values of any fisheries manager to question a cap that would leave an additional 30,000 tons of menhaden in the water to feed a distressed and declining population of fish and wildlife.

The second question here is the risk to Chesapeake Bay if the Amendment 3 reduced Cap fails.

If we pay any attention to history there is a clear and present risk here. In the 1980s there was a serious decline in the rockfish particularly the large breeding stock. This is the same thing that is happening now. There was a moratorium for a number of years and the fish rebounded. Unfortunately the supply of menhaden had not been increased. As a result of a lack of menhaden forage the Chesapeake Bay rockfish became undernourished and a bacterial infection set in. For the next five years most of the rockfish in the bay showed lesions and poor body condition. Fishing virtually stopped. This was a very difficult time for anyone who fished

in Virginia and Maryland. See Uphoff Article (2003 scan 0129) and Uphoff , Sharov Article (2018 scan 0131)

We are on the same track right now . We understand the rockfish Biomass is now 137,000 tons and the target is 230,000 tons , a 60% increase. The Chesapeake Bay ecosystem and it's wildlife are already under severe stress. We have low oxygen levels, pollution, red tides and huge influx of polluted water from the Susquehanna River . Adding 60% more rockfish without increasing the forage base substantially almost certainly will lead to history repeating itself. The reduced cap could help prevent that. It could protect over 30,000 tons of Manhattan forage in the fall of the year. This is the time that the large migrating rockfish are in the bay . This is the distressed stock of fish, these fish need to fatten up for the winter,

In summary, the commissioners decision to promote conservation with a decreased Cap even without any exact measurement of the resource is the normal and expected way managers make these decisions. We will never have all the data because the Chesapeake Bay ecosystem is so complicated and changing with thousands if not millions of variables. We have a decision made by 40 commissioners. Many have spent their careers as fisheries managers and working together and sharing information and understanding the importance of Chesapeake Bay as a nursery for the Rockfish and all of the other fish species. They demonstrated a shared value for conservation. Mathematical formulas and statistics do not contain conservation values and the goal of fairness and equity promised in the commission charter.

Thank you. Menhaden Project. Tom Lilly

From: rr foragematters@aol.com
Subject: Addendum to this mornings mail with scañs
Date: Oct 6, 2019 at 9:27:53 AM
To: rbeal@asmfc.org

Bob:

Can this be put in the Delegates Material ?

The scans are attached. Can the scans be printed out for the package or could I mail them in?

I need to add to the discussion that Omega may be suggesting that all the factors were not known when the decision was made.

As I pointed out in the prior mail that is the normal situation involving a complex ecosystem. To the extent this could refer to not having an abundance survey Omega is not in a position to complain as they have in the past and are now frustrating survey efforts. The proof of this is in scan 0141 titled History of Omega Noncooperation. Please review that

Scans for the Noncooperation piece...0137,0138,0139, 0140,0141

Scans for the Discussion main mail to Beal 0106,0129,0131,0109,0107,0142

<p>Tap to Download Scan_0137.pdf 848 KB</p>	<p>Tap to Download Scan_0138.pdf 310 KB</p>	<p>Tap to Download Scan_0139.pdf 864 KB</p>
<p>Tap to Download Scan_0140.pdf 938 KB</p>	<p>Tap to Download Scan_0141.pdf 1.3 MB</p>	<p>Tap to Download Scan_0106.pdf 2.9 MB</p>
<p>Tap to Download Scan_0129.pdf 1 MB</p>	<p>Tap to Download Scan_0131.pdf 1.7 MB</p>	<p>Tap to Download Scan_0109.pdf 1.4 MB</p>

From: Tom Lilly foragematters@aol.com
Subject: Second edition of my topics.
Date: Oct 17, 2019 at 10:38:43 AM
To: kdrew@asmfc.org
Cc: flypax flypax@md.metrocast.net, foragematters@aol.com

Katie

I thought I should outline the topics to be discussed. This is about ways to articulate the conservation purpose of the reduced cap. This is relevant to the menhaden board meeting coming up.

THE REDUCED CAP CAN HELP PREVENT A SERIOUS THREAT TO THE ROCKFISH

The menhaden board is well aware that since 2004 the spawning rockfish stock has fallen from 250 million pounds to 150 million pounds. Efforts will soon be implemented to increase this population by as much as another 100 million pounds.

If we pay any attention to history there is a clear and present risk involved here. In the 1980s there was a serious decline in the rockfish. The same thing is happening now. There was a moratorium on all fishing and the stock rebounded. Unfortunately, the supply of menhaden in the bay had not been increased to accommodate this. As a result of the lack of menhaden our rockfish became under nourished and disease set in. There followed a five-year period when most of the rockfish had sores, lesions and high mortality. This was a very difficult time for Maryland and Virginia fisherman. The connection between the lack of menhaden and the disease that weakened the rockfish is well documented in two journal articles by Jim Uphoff and Alexei Sharov.

We are on track to repeat the mistakes of the 80s unless we protect and increase the supply of menhaden in Chesapeake Bay. During the entire time menhaden are entering the Virginia bay Omega Protein has eight factory purse seine boats catching them. There is no measurement of the amount of menhaden left in the water while this fishing is going on day after day. There is information however, that all of the species of fish that depend on menhaden have declined significantly in the last 10 years. From this information the menhaden board in

passing Amendment 3, properly inferred a link between the intense fishing and the decreased fish in Chesapeake Bay.

The board recognized the purpose of the decreased cap was to protect the resource. What happened to the rockfish in the early 90s adversely affected 100s of thousands of people in Virginia and Maryland and thousands of businesses. Right now Omega is fishing over the reduced cap of 51,000 tons. If the reduced cap was in effect all of the schools of Menhaden in route to Virginia or in the bay as of September 1st would have been protected . That could be 1000 schools of menhaden. The fall is when the migrating schools of large pre-spawning rockfish will be migrating into Chesapeake Bay. This is the time of the year that these fish need abundant menhaden as they should be fattening up to survive the winter.

The purpose of Amendment 3 was insure these fish had enough food.

WHERE THERE ARE TWO POTENTIAL CAUSES OF THE DECLINING ROCKFISH SPAWNING STOCK THE COMMISSION AND THE MENHADEN BOARD CAN PROPERLY

ADDRESS EACH WITHOUT KNOWING THE EXACT PERCENTAGE EACH CONTRIBUTES. A CONSERVATION MEASURE THAT IS INTENDED TO SOLVE A PART OF A SERIOUS PROBLEM HAS GREAT VALUE TO THE BAY WILD LIFE

The decline in the spawning stock could be due to a shortage of food , as we just discussed or it could be due to "overfishing" , it may be due to both combined. Taking the research you discussed with the board in February and the inferences I just discussed the shortage of food is a potential cause. The expected significant increase in the need for forage just discussed There will be a significant increase in the need for forage due to the spawning stock conservation . This increases the likelihood food is the factor. If we use the licensing data I sent you from MDNR we have information of a significant decline in people fishing during the period "overfishing" was to be happening. As many as 60,000 fewer fishermen. This may not "prove" the alternative cause of food shortage is most

important but it does support that as the primary cause.

From all of the information available, using the multi species and qualitative process required by Amendment 3 , do you agree the board was correct in passing the reduced cap to address one of the two likely causes of the fishery declines in the bay? Even if the cause addressed was responsible for only part of the problem the Board acted properly to solve that part. Would you agree?

Thanks. Tom Lilly

TOPIC TWO. CAUSE AND EFFECT

We are making the usual assumptions. Qualitative decisions based on the overall ecosystem under Amendment 3.

Conservation purpose to restore or rebuild the stock, valuing menhaden for its forage purpose, multi species analysis, fairness for each of the four user groups, the industry, the fisherman the fish and wildlife and marine oriented businesses and communities.

Additional facts are the eight or more Omega purse seiners operating in the Virginia Bay five days a week from early May too late November. The fact that it is not know how much menhaden is left in the Virginia bay on a daily basis after Omega finishes fishing.

Also consider the overall decline in the bay of the fish species, including the female spawning stock of rockfish over the last 10 years. These fish favor menhaden forage.

We also have information from the MDNR that ^{60,000} of the recreational anglers in Maryland have quit fishing during that time. ~~the 30,000 people at least~~ Certainly the others have fished a lot less if the fishing was bad enough to make half of their fellow anglers quit.

Can this be reduced to a simple Issue of likely cause and effect? As we said, there are two suggested causes for the decline in the fish and the fishermen. They are lack of food and overfishing. It could be a combination of both. In the absence of a quantitative survey the Commission has made its decisions using the Best Evidence Available and applying Amendment 3 goals. The goal under the Charter is conservation of the resource.

Now to the question. Is it a correct statement to say the fact over half of the Maryland fishermen were quitting or had quit fishing during the period of fishery decline argue very strongly that "overfishing" was not the significant cause? Fishermen that have quit don't "overfish". Doesn't that leave a lack of food as the most likely primary cause? Am I correct the Commission could decide the lack of food was not the primary cause but was a significant factor in the decline? If so, wouldn't they still be justified in decreasing the cap? Can't it be said that adding up to 30,000 tons of forage to the bay, when the migrating rockfish were there, would likely "restore, rebuild or maintain" the spawning rock fish stock? Isn't the Board completely justified, even required, to act to solve a serious problem, using the tools it has available, even if their action doesn't solve the complete problem? Obviously there are many other factors cited by Dr. Drew from which the board could infer causation. Also, I am not aware of any evidence that the lack of food is not the cause of our dwindling fish stocks.

The other topic is the risk to conservation if the cap fails. I discussed that in the letter to Bob Beal at the end of page 2. Do you agree with that?

If you could weigh in on this it could help the Commission find a path to save the Bay cap and restore the Commission's reputation. (scans sent separately)



THIS IS THE EFFECT OF THE OMEGA HAVEST IN CHESAPEAKE BAY.

From MDNR records there are 60,000 fewer salt water fishermen than fifteen years ago. These are our friends and neighbors, these are the parents, the grandparents, the kids. Do they matter? I have just been told the Virginia number is 20,000 less. Do these people matter? At least a thousand Maryland businesses are losing about 180 million dollars a year on those missing customers. There are many hundreds of jobs lost. Do these business and jobs matter? Some of our small marine oriented communities are failing because head boats and charter businesses have dried up. Do they matter?

It's the people that do matter, isn't it? Our bay fish dependent on menhaden have declined...That affects hundreds of thousands of people in Virginia and Maryland. Do these people count? The data shows declines of trout 99%, bluefish 85%, flounder 92%, mackerel 80%, rock fish 34%. Does that matter? The decreased cap could save about a thousand schools of menhaden for the fish in the fall when the migrating breeding stock is in the Bay. Does that matter? What about the ten or fifteen million new rock fish spawners that may come from the planned conservation measures? These fish could restore the bay to the nursery of the Atlantic. If we don't enforce measures like the reduced cap to increase and protect the bay menhaden we are on track to repeat what happened 25 years ago when the increased rock from the moratorium overwhelmed the supply of menhaden. There followed five years of weakened fish and diseases. Fishing stopped. Do we want to try to avoid that awful episode? Does it matter? Carrying out the conservation purpose of the Charter and the holistic approach of Amendment 3? Do we care about that or not?

IF YOU THINK THESE PROBLEMS AND CONCERNS MATTER THEN WHAT JUSTIFICATION DO YOU HAVE FOR CONTINUING TO ALLOW ONE NONRESIDENT CORPORATION THAT SELLS ANIMAL AND FISH FOOD TO TAKE THE FOOD NATURE INTENDED FOR OUR WILDLIFE?

AS COMMISSIONERS WILL YOU TAKE CONTROL AND CHANGE THIS INJUSTICE THAT HAS HAPPENED TO THE PEOPLE OF MARYLAND AND VIRGINIA? WHAT IF YOUR CHILDREN AND GRANDCHILDREN HAD LOST INTEREST IN FISHING? WOULD THAT MATTER? THAT IS WHAT HAS HAPPENED TO THOUSANDS OF US.

The Commission has such tremendous power over the lives of so many people. We can only hope they will use that power wisely. Please protect the cap. Please have a plan



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Cancel

What really matters ?



JUSTIFICATION DO YOU HAVE FOR CONTINUING TO, ALLOW ONE NONRESIDENT CORPORATION THAT SELLS ANIMAL AND FISH FOOD TO TAKE THE FOOD NATURE INTENDED FOR OUR WILDLIFE ?

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The Commission has such tremendous power over the lives of so many people. We can only hope they will use that power wisely. Please protect the cap . Please have a plan review team revise the current allocation system and bring it into line with principles of fairness and equity among the states required by Section Six (a)(7) of the Charter. Have the review team suggest how the Amendment 3 requirement of fairness to the four user groups can become a reality. As things are now these are just hollow words. Do what is needed to right the ship . Get the ship on a course that considers the people and the proper allocation of the people's natural resources. Look at some of the ratios of the number benefiting and the number harmed .. its often close to a thousand to one. There is a lot of value in 150,000 tons of menhaden that's being given to Omega. They have showed how grateful they are by fishing in the bay in defiance of what the public and the states wanted. There would be ten times the value if the menhaden were left in the water to grow our fish. Instead of millions in profits going to Canada those fish produced would bring a 100 thousand fishermen back and allow many watermen a chance to make some additional money. The money would be spread out among hundreds if not thousands of businesses. That's what is at stake here.

Sincerely. Tom Lilly



REQUIEM FOR TANGIER SOUND

R.I.P. 2008

It is never pleasant to read an obituary. It is equally, if not more difficult, to write one for someone, in this case some thing, that you care about. When I think back on all the memories I have a good many of them are about good times on the River and the Sound with friends and family . If you spend much time fishing then you know what has happen to the Bay.

Tangier Sound was a very busy place twenty years ago. Lots of fishermen, charters and head boats. It was also a noisy place with hundreds of birds working over schools of "bait" as fish in turn fed on the bait schools. On a typical day during the Spring and Fall trophy seasons would see 25 to 30 private boats and a number of charters off Deal Island bridge, there were flounder off Wenona , lots of nice fish were being caught. There was some very good speckled trout to be caught off Crisfield and Dave's tackle shop in Crisfield sold a lot of umbrella rigs. That is all gone now.

I personally date the disappearance of our fish as follows ..trout – 10 years.....flounder -10 yearshardheads... 8 yearswell nourished young rockfish.....2-5 years schools of juvenile menhaden in the fall...steady decline from 8-10 or more years ago to practically nothing last fall.....schools of adult menhaden in the mid bay and Tangier sound : steady decline for thirty plus years to about nothing now.

I spoke to Arby Holland, who has the store and fuel dock in Wenona. Ten years ago they had 18 charter boats , many ran two charters a day on weekends. Now there are three or four left. During the week "one to none" operates , there are a few that will get a charter on a weekend. These captains are aging and there is no interest in the younger people. Arby's tackle and restaurant business is just "hanging on" financially.

I also spoke to Mary Taylor about Sommers Cove Marina. With the decrease in fish over the last ten years their charter boats have gone from 10 to 3 or 4. Now, as with Wenona ,the captains are older and have other jobs during the week..its just a weekend charter here and there. There are no head boats any more. There were four. The last one to leave was the Barbara Ann, the one before that was 5-6 years ago.

The "Barbara Ann" owned by John Asanovich was sold for whale watching in Maine where there are plentiful menhaden for whales and tuna to feed on. As the menhaden stock has moved north and increased off New England there are whale watching excursion boats operating From Maine south and several are taking customers into the Atlantic just outside of Manhattan.

In four flights last Summer with an experienced menhaden spotter pilot covering Tangier sound and Pocomoke Sound , from Hooper's straights to Tangier Island we did not see a single school of menhaden. If you use the Rhode Island work as a benchmark, as I have explained in that section of the notebook, we should have seen up to 100 schools of adult menhaden in the sound. That is the effect of factory fishing in Virginia.

We have five osprey nests at Whitehaven ,two are in my front yard on the river. I have watched these nests for over forty years. For the last three years or more these birds have struggled to raise even

one chick and several nests have been abandoned. The nesting eagles we have left the area. For many years we had a blue heron rookery behind the Whitehaven hotel but most of those birds have also left.

Our Bay was once the nursery for the Atlantic menhaden, that means there were plentiful juvenile menhaden. This was important for the entire Atlantic Coast. Menhaden spawn offshore, their eggs change into nymphs which eat plankton; these are carried by currents into the Bay and become juveniles. It is the nutrients coming from the rivers that draws the menhaden into the Bay to start off with. The DNR has sampled juvenile menhaden for many years and has found severe declines for the last twenty years. These juveniles should be one of the primary food sources for our young rockfish, blues, trout and flounder.

The reasons for the juvenile menhaden situation in the Bay and what can be done to change it is a subject I do not hear discussed. It should be. Omega is probably catching thousands of schools of menhaden before they spawn. There is currently no sampling of the catch, no protection of the spawning fish and no seasonal closures to protect the spawn. All of these tools are used in the herring fishery, none are used for menhaden.

As for the future of Tangier Sound? It will take some thinking and planning and leadership by the Department of Natural Resources and the Delegates to the ASMFC to begin to reverse the downward spiral of Tangier Sound and Chesapeake Bay. The people look to the State to protect their natural resources and environment. This needs to be an open process with input from the citizen of Maryland. I think there are many bright people who care deeply about the Bay but to a large extent they have been shut out of the process and feel they have been ignored. Without this input the flawed process moves on and on.

Tangier Sound its people, fishermen, captains and small businesses are just an unwilling poster child for what is happening all over Chesapeake Bay. There are hundreds of thousands of people directly affected by this... There are another ten million people who live on or near the Bay. There needs to be a day of reckoning here and an acceptance of responsibility for what has happened. There needs to be change; there needs to be action now not years from now. If we continue to repeat over and over again the same process that has caused this situation the downward spiral of our Bay will continue.

There are many obvious steps that could be taken now to restore menhaden to the Chesapeake Bay. If the Department of Natural Resources will encourage and promote a discussion of menhaden then we can restore menhaden to Chesapeake Bay.