

Attending: John Riehl, John Duane, Tom Slack, Tom Flynn, Laura Hewitt

Guest: Ryan Curley

- > Call to order 5:05 pm
- > Review joint meeting with Shellfish Advisory Board
  - Shellfish business is strong
  - Issues remain with QPX
  - Sediment concern at Mayo Beach
- > Review meeting of Wastewater planning
  - Concern about deterioration of Wellfleet Harbor waters in general
  - Many options for remediation: sewerage, innovative techniques, shellfish
- > Black Mayo issue
  - Need to promote "thin layer deposition"
- > Discuss outline of Harbor Management Plan (see attached)
- > Meet with Selectboard on November 26, 6 pm
- > Letter to support menhaden conservation (attached)
  - Approved 5-0
- > Minutes of October 23 and November 5
  - Both unanimously approved with corrections
- > Next meeting to be held mid-December
- > Closed 6:30

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2019 DEC 13 P 1:29  
TOWN OF WELLFLEET

## A. Complete priorities

HR, MC, Wastewater, Dredging

## B. Climate change

Protect salt marshes, eelgrass:

>ConsCom regulations

>OSC, WCT protection of shorelines

>Groundwater rise, run-off (affects wastewater)

- Permeable reactive barrier (PRB), sewerwering

>Wind erosion; barriers, shellfish reefs

>Thin layer deposition (TLD)

>Other restorations: east of Blackfish Creek, Fresh Brook

See Tuler report

## C. Maintenance dredging

> Future use of dredge spoils: inner harbor

> Sediments off Mayo Beach

## D. Harbor health

"Curley" report

>Terrapins, horseshoe crabs, shellfish, bait fish, etc

>Salt marshes

> Wild shellfish

> Every 5 years

## E. Shellfishing

Good management

Plastics

Biodiversity & diseases

## F. CPA

Lt Island

Partners: CCNS, MAS, WCT

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Append; CPA Report, "Tuler"teport



# TOWN OF WELLFLEET

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To: The Honorable Wilbur Ross  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

November 22, 2019

Cc: Earl Comstock  
Stuart Levenbach  
Alan Risenhoover  
Derek Orner  
Massachusetts Governor Charlie Baker, Senators Elizabeth Warren & Ed Markey  
Daniel Hoort –Wellfleet Town Administrator, Wellfleet Board of Selectmen  
Massachusetts Atlantic States Marine Fisheries Commission (ASMFC) representatives

From: The Wellfleet Natural Resources Advisory Board

Re: Non-compliance finding - State of Virginia

Dear Secretary Ross:

A brief word about a most important fish. Atlantic menhaden (menhaden) are a small bony fish unsuitable for human consumption. Menhaden represent the largest fishery by volume on the East Coast, reduced in large quantities by one company, Omega Protein for use as aquaculture feed, and fish solubles. This so called “reduction fishery” is pursued by large boats within Chesapeake Bay and into the Atlantic Ocean. Menhaden is also used as bait for the lobster and crab fisheries, and most importantly provide a key source of nourishment for most seabirds and east coast fish stocks.

Striped Bass, a flagship species also managed by the ASMFC are and have been adversely impacted by the reduction fishery, and the Bay Cap is necessary for their conservation. In the absence of science showing that the reduction fishery in the Chesapeake Bay does not cause ecological harm, then a catch limit equal to the average reduction catch over the previous five years (as implemented in 2017) is reasonable and justifiable.

The ASMFC notified you in a letter sent dated November 15, 2019 that the Commonwealth of Virginia failed to honor the Chesapeake Bay Catch Cap (bay cap) for menhaden, resulting in a non-compliance determination. This is based on Omega Protein willfully exceeding the 51,000-metric ton (mt) bay cap as set and approved by the ASMFC to protect the main nursery for menhaden, as well as for Atlantic striped bass. On September 6, 2019, Omega Protein, a Canadian owned company based in Reedville VA exceeded the 51,000mt bay cap, then announced on September 12<sup>th</sup> that they would not honor the Chesapeake Bay Cap of 51,000 mt, instead, declaring that it will fish to a cap of 67,000mt. This cap is not in the ASMFC Atlantic Menhaden Fishery Management Plan, or in any state regulations. The announcement suggests that Omega Protein doesn’t feel it needs to play by the rules, or comply with ASMFC plans and regulations. The flagrant move is being condemned by other ASMFC member states – including Virginia, and by many conservation organizations such as the Chesapeake Bay Foundation, Theodore Roosevelt Conservation Partnership, The Nature Conservancy, the Coastal Conservation Association, and the Virginia Saltwater Sportfishing Association.

Omega Protein has a checkered history in Chesapeake Bay. The company has regularly violated the Clean Water Act and has been slapped with dozens of OSHA violations. Omega justifies their recent exceedance by claiming that bad weather this year forced their fleet into the Bay, but that claim is unsupportable when comparing 2019 with 2018 weather conditions. The environmental consequences of their industrial scale operations taking place within the bay is of little concern to Omega. The reduction fishery is however a serious threat to those species in the bay dependent upon a healthy supply of menhaden as forage. Striped bass, which supports a critical commercial and recreational fishery in Chesapeake Bay have been suffering from malnourishment from lack of menhaden. Chesapeake Bay is the major nursery for those same striped bass<sup>1</sup> which follow the menhaden up our coast each year, providing the backbone of Massachusetts own recreational and commercial fisheries.

Omega Protein has over the years bitterly complained about any ASMFC regulations that limit their catch of menhaden. The Commission has however been very generous to Omega Protein, allowing the company to harvest 70 percent of the coast-wide menhaden catch, even though no other Atlantic state still has a reduction fishery. Yet despite being granted this large share of a public resource, they continue to ignore the fact that removing so many menhaden from the Bay is environmentally unwise and is having a detrimental effect on the health of many species - including striped bass. Given that striped bass are considered overfished, and anglers are now being asked to reduce their catch, this violation of the Chesapeake Bay Cap is making a bad situation even harder to swallow. Speaking of striped bass, let's look at the economics. A recent Southwick study found that the 2016 recreational striped bass fishery generated \$7.8 billion alone toward our nation's gross domestic product.<sup>2</sup>

Menhaden recruitment in the Chesapeake Bay has been low for many years according to the Maryland DNR and striped bass in the Chesapeake Bay have been showing increased incidences of mycobacteriosis. As 70-90% of striped bass spawn in the Chesapeake Bay, lack of a sufficient supply of menhaden in the bay is likely a factor in their poor health and is a major contributing factor in their overfished status.<sup>3</sup>

Here are the recent facts: The ASMFC voted unanimously (with two abstentions from the federal agencies) in favor of a non-compliance finding for the state of Virginia. That's because the only company that practices reduction fishing on the east coast, Omega Protein, willfully violated the current Chesapeake Bay reduction fishing cap established by the ASMFC in 2017.

Recreational fishermen coastwide are adversely impacted by this violation, because of the substantial impact the reduction fishery has on striped bass populations. While fishermen pursue the now diminished supply of Striped Bass, Omega Protein's huge trawlers frequently chase anglers off their fishing grounds while setting their nets.

According to the ASMFC press release regarding the non-compliance finding:

"the Commonwealth of Virginia has failed to effectively implement and enforce Section 4.3.7 Chesapeake Bay Reduction Fishery Cap of Amendment 3. In order to come back into compliance, the Commonwealth must implement an annual total allowable harvest from the Chesapeake Bay by the reduction fishery of no more than 51,000 mt. The implementation of this measure is necessary to achieve the goals and objectives of Amendment 3 and maintain the Chesapeake Bay marine environment to assure the availability of the ecosystem's resources on a long-term basis."

The Secretary of Commerce has the legal authority to uphold the finding based on the following:

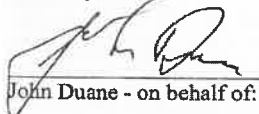
**Sec. 5106.** - Secretarial action (a) Secretarial review of Commission determination of noncompliance Within 30 days after receiving a notification from the Commission under **section 5105(b)** of this title and after review of the Commission's determination of noncompliance, the Secretary shall make a finding on - (1) whether the State in question has failed to carry out its responsibility under **section 5104** of this title; and **6 (2)** if so, whether the measures that the State has failed to implement and enforce are necessary for the conservation of the fishery in question.

- The term "conservation" means the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis.
- The definition above provides a strong justification for upholding a non-compliance finding, given the risks that the reduction industry poses to the striped bass fishery.

For all of the above stated reasons, and in the interest of supporting the integrity of the interstate management system and the health of the coastwide recreational fishing sector, we encourage you to concur with the ASMFC non-compliance determination and place a moratorium on the menhaden reduction fishery until Virginia, and Omega Protein take the necessary steps to come back into compliance.

Thanks for taking the time to consider our comments.

Sincerely,



John Duane - on behalf of:

The Wellfleet Natural Resources Advisory Board  
*John Riehl (Chair), John Duane, Thomas Flynn*  
*Laura Hewitt, Thomas Slack*

*Sources:*

<sup>1</sup> NOAA Chesapeake Bay Office (2019). *Striped Bass*. <https://chesapeakebay.noaa.gov/fish-facts/striped-bass>  
*Buchheister*

<sup>2</sup> Southwick <https://mcgrawconservation.org/wp-content/uploads/McGraw-Striped-Bass-Report-FINAL.pdf>

<sup>3</sup> Austin, H.M. & J.F. Walter (Mar. 2001). *Food Habits of Large Striped Bass in the Lower Chesapeake Bay and its Tributaries*.