

MINUTES OF THE MEETING  
POTOMAC RIVER FISHERIES COMMISSION  
COLONIAL BEACH, VIRGINIA  
FEBRUARY 3, 1984

PRESENT: COMMISSIONERS - Francis J. Russell, John T. Parran, Lee E. Zeni, William A. Pruitt, Ivan D. Mapp and R. Wayne Browning

OFFICERS - Kirby A. Carpenter, Executive Secretary and J. Clifford Hutt, Legal Officer

VISITORS - Paul C. Wentzell, Frank I. Wood, Harvey Cook, Henry Batchelor, Maryland Department of Natural Resources Police; Beverly Jack, Charles Frisbee, Maryland Department of Natural Resources; Elgin Dunnington, CBL; Dexter Haven, Frank Wojcek, VIMS; Ben Daniels, Robert Markland, Donald O'Bier, VMRC; David Loveland, D. C. Government; Richard Arnold, David Sayre, St. Mary's County Commissioners; Brady Bounds, David Scholten, National Sport Fishing Assoc.; Robert M. Norris, Jr., Lewis T. Dameron, Jr., Louis Harley, Marvin Newton, Willard Dutton, Robert Harley, Richard Daiger, Wayne Balderson, Alan Hundley, Lewis T. Dameron, Sr., John Carter, Robert Brent, Larry Powell, Randy Harding, Lee Arnest, William Feldman, Edward Dent, Kenneth Cumberland, Kenneth Dent, Elgin Nininger, Douglas Jenkins and several others who did not sign the register.

PRESS - Viki Volk, WPTX; Larry Evans, The Free Lance-Star

The meeting was called to order at 9:30 a.m. by Chairman Russell. Mr. Russell requested consideration of the Minutes of the November 18, 1983 meeting, copies of which had previously been sent to each Commissioner. The following motion was made by Mr. Browning and seconded by Mr. Parran:

THAT THE MINUTES OF THE NOVEMBER 18, 1983 MEETING BE APPROVED AS WRITTEN AND DISTRIBUTED. The motion was approved.

#### LEGISLATIVE COMMITTEE REPORT

Mr. Carpenter presented a report of the legislative committee held on January 20, 1984. The items considered at that meeting included: (1) raising the minimum size limit of white catfish from 8" to 10", (2) establishing an 8" minimum size limit for white perch, (3) establishing a 12" minimum size limit on summer flounder, and (4) Westmoreland County Chapter, Virginia Watermen's Association Program of Action, 1983.

The committee recommended that the Commission: (1) proceed to increase the minimum size limit from 8" to 10" on all catfish except the bullheads, and to consider a tolerance level (3% to 5%) of undersize catfish caught incidental to other lawful fishing activities, (2) that no action be taken at this time with regard to a size limit for white perch, and (3) establish a 12" minimum size limit for summer flounder and consider the concept of a tolerance level for incidental by-catch of this species. A lengthy discussion was held by the committee concerning the items contained in the Program of Action, 1983. The committee rejected several of the items dealing with liberalizing the cull law for oysters, allowing power dredging, increasing the hand scrape area, and eliminating the requirements for boats with winches, winders, etc., to have a permit. Following this, Mr. Daiger, the association's representative and sponsor of the Program of Action, 1983, withdrew the entire package from further consideration at that time.

Mr. Daiger requested that this report be amended to state that the entire Program of Action, 1983 was not withdrawn but only portions of it.

Willard Dutton asked that the portion of the report that applies to catfish, only apply to white catfish as there are plenty of the other species of catfish in the river.

Jimmy Dent said there are plenty of channel catfish but white catfish are scarce. Leave the channel and bullhead catfish alone.

Marvin Newton requested that a 5% tolerance be allowed.

Frank Wojcek stated that in previous surveys of the river, there were practically no white catfish caught and, therefore, he did not believe there should be a tolerance.

Louis Harley said he believed the white catfish are on the way back. There are more in the river than he has seen in years. He is a buyer and firmly believes a 5% tolerance is needed.

A lengthy discussion ensued concerning the identification of a white catfish. The watermen and scientists were unable to arrive at a mutually agreeable description.

The following motion was made by Mr. Mapp and seconded by Mr. Parran:

TO TABLE THIS DISCUSSION UNTIL THE NEXT MEETING, AT WHICH TIME AN AGREEABLE DESCRIPTION CAN BE FORMULATED. The motion was approved.

The Commission accepted the legislative committee's recommendation not to establish an 8" minimum size limit for white perch.

The recommendation by the legislative committee to establish a 12" minimum size limit on summer flounder was discussed. Mr. Carpenter said that both Maryland and Virginia currently have a 12" minimum size on the summer flounder but there is no size limit in the Potomac.

Robert Reamy said there is no market for summer flounder under 12", but he believes a tolerance is needed.

Robert T. Brown also asked for a tolerance.

Brady Bounds saw no problem with a tolerance. He believes there should be a minimum size limit the same as Maryland.

Frank Wojcek said a reasonable tolerance would be acceptable to VIMS.

Many of the watermen spoke in favor of an immediate implementation of a 5% tolerance for undersize catfish.

Mr. Zeni asked if the Commission could lawfully adopt a tolerance for catfish at this time. Mr. Hutt replied that the Commission's power to adopt anything of this nature is embodied within the power to change regulations which must be preceded by a public hearing. He said the Commission could express an opinion on how it felt but the regulations could not be amended until a public hearing was held.

Mr. Zeni made the following motion which was seconded by Mr. Parran:

THAT THE COMMISSION HAVE A POLICY OF ENCOURAGING THE LAW ENFORCEMENT PERSONNEL TO ALLOW A 5% TOLERANCE ON UNDERSIZED WHITE CATFISH.

Mr. Browning said everyone should know that this could only be considered an expression of opinion, it will not change the regulation and they can still get a ticket.

Mr. Hutt explained that the PRFC does not employ marine inspectors and has no direct control over them, therefore, we can only express what we feel.

Willard Dutton said a similar "policy" situation some years ago resulted in a person being taken to court and fined. He believes the Commission would be putting themselves out on a limb and putting the watermen and law enforcement officers in a bad situation.

Mr. Zeni said he felt confident in sponsoring this motion because the recommendation was made with everybody's participation.

Mr. Brady Bounds was sympathetic with the watermen in regard to the tolerance, however, he believes the Commission would be setting a precedent by circumventing the law. The only answer would be to work out an in-house agreement with the law enforcement officers to "look the other way."

Mr. Mapp disagreed with this idea and believed the Commission cannot ask the officers not to enforce the law.

Mr. Zeni at this time withdrew his motion and Mr. Parran withdrew his second.

Mr. Russell determined this issue could not be resolved today and ruled that it would be carried through the public hearing process at the next meeting.

Mr. Hutt explained for the benefit of all concerned that this requires a draft regulation with specifics, the advertisement of that proposed change and a date of public hearing. At that point in time, we can adopt the change as proposed or modified to become effective 30 days hence.

Harvey Cook stated that citations on undersize catfish are almost nonexistent. The officers understand the problem and try to work with the watermen. Mr. Hutt said that he has been informed of the same thing by Mr. Markland of VMRC.

The following motion was made by Mr. Parran and seconded by Mr. Pruitt:

THE STAFF IS AUTHORIZED TO FORMULATE THE REGULATION CHANGES NEEDED TO ACCOMPLISH THE RECOMMENDATIONS OF THE LEGISLATIVE COMMITTEE REPORT AND TO ADVERTISE THEM FOR PUBLIC HEARING.

Mr. Mapp suggested putting the scientific name for each fish in the proposed regulation and suggested a 5% tolerance by weight. Mr. Browning suggested that the tolerance be 5% by count. Harvey Cook suggested using a 1/2 bu. oyster tub as a sample size and then use the number to determine a percentage. He spoke against a tolerance by weight, saying this involves the use of scales, the accuracy of which are often questioned.

Mr. Hutt suggested it would be more certain if you had a tolerance by count because everybody can count.

Mr. Parran amended his motion to add the following:

. . . . AND TO ALLOW A TOLERANCE OF 5% FOR CATFISH AND FLOUNDER BY COUNT USING A SAMPLE OF AT LEAST A 1/2 BUSHEL OYSTER TUB. The amended motion was seconded and approved with Mr. Russell voting "No."

Mr. Daiger asked if every change has to be brought before the legislative committee before a public hearing can be held.

Mr. Hutt replied that the Commission has the authority to direct advertisement of any proposed regulation. The legislative committee only makes recommendations.

Mr. Daiger said that the committees he has served on have generally been able to arrive at recommendations for the Commission to consider. However, not many watermen participate in these meetings. The staff is on salary but when the weather permits the watermen have to work. He does not believe every item should necessarily be brought before the legislative committee before being considered by the Commission.

Mr. Pruitt suggested nighttime meetings of the legislative committee for the benefit of the watermen.

#### WESTMORELAND COUNTY WATERMEN, ET AL VERSUS PRFC

Mr. Hutt summarized the litigation. He said that the previous week the Commission was delivered a copy of a motion for a temporary injunction against the PRFC with regard to enforcing the regulation banning rock fishing from January 1 thru February 15 and April 1 thru May 31. On January 27 at 2:50 p.m., he was advised by phone that there would be a hearing in the Federal District Court,

Richmond, VA at 8:30 a.m. the next morning. There was little time to prepare, however, they did appear at which time the judge ruled against the preliminary injunction but set a hearing date for February 28. Mr. Hutt said the Commission has been advised of the suit and he has received guidance on how to proceed. (See minutes of special called meeting February 2, 1984.)

#### DISBURSEMENTS AND CASH ON HAND

Disbursements for the second quarter of FY 83-84 (Oct - Dec) were presented by budget item totaling \$62,480.41. It was noted that the cost of printing regulations and the water service had exceeded expectations. The rise in the water bill was due to a one-time \$25.00 excise tax that was attached by the Town of Colonial Beach. Mr. Carpenter also pointed out that the oyster inspection tax receipts have fallen short of anticipated income, but license sales were in line with estimates.

A statement of cash balances as of February 1, 1984 was presented as follows:

##### First VA Bank - Northern Neck:

Checking (includes \$200.00 Petty Cash)	\$ 34,330.07
Statement Savings	51,962.99
Certificate of Deposit	50,000.00

##### Maryland National Bank:

Savings: (Maryland Office)	14,307.25
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##### Maryland Bank and Trust Co.:

Certificate of Deposit	150,000.00
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##### Peoples Bank of Montross:

Certificate of Deposit	<u>50,000.00</u>
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Grand total in banks	\$350,600.31
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Mr. Parran made the following motion which was seconded by Mr. Pruitt:

THAT THE FY 83-84 SECOND QUARTER DISBURSEMENTS OF \$62,480.41 BE APPROVED. The motion was approved.

#### PRESENTATION OF AWARDS

At this point in the meeting Mr. Russell introduced Mr. David Sayre and Captain Dick Arnold from the St. Mary's County Board of Commissioners. They expressed their appreciation for being introduced and given time to speak. They wanted to say a few words about Robert M. Norris, Jr., who had worked with and assisted the people on the Potomac. Captain Arnold presented Mr. Norris with a commendation from the Board of County Commissioners of St. Mary's County for outstanding achievements and many years of service to the people of St. Mary's County and awarding him the honorary title of MR. POTOMAC RIVER. Mr. Sayre presented Mr. Norris with a plaque containing the St. Mary's County seal in recognition of outstanding work in the river and St. Mary's County. Mr. Norris expressed his appreciation and thanks for the friendships of persons on both sides of the river and thanked the Commissioners from St. Mary's County for allowing him to be a part of this.

#### OYSTER HARVEST

Mr. Carpenter presented the oyster harvest report for the period from the beginning of the season thru January 27. Approximately 60,000 bushels were harvested so far this year as compared to 154,000 bushels for the entire season last year.

Fifteen thousand dollars have been received in oyster tax and this corresponds to the decrease in harvest. The harvest by bar records indicate that Ragged Point is the most productive bar followed by Swan Point and St. George's Island.

Mr. Parran asked about the oyster harvest being so low. Mr. Carpenter explained that the plantings in the upper river have not reached market size as yet and the number of tongers is lower this year.

#### OYSTER REPLETION PROGRAM

Mr. Carpenter reviewed the report of the repletion committee. Surveys indicate the lack of sufficient 1983 spat fall on the Jones Shore shell planting to justify any large scale seed transplanting program this year. For this reason the committee recommends the bulk of the program will be planting 500,000 bushels of reef shell on areas #2 of Jones Shore and 450,000 bushels of fresh shell planted on five areas in the lower river. In addition, they recommend cleaning area #2 of any live oysters before planting the shell with the oysters going to Sheepshead.

Randy Harding questioned the plantings and how it is decided just which portion of these bars the shell and seed will be planted. Mr. Russell explained that when the plantings take place, local watermen are consulted to make sure they are planted in the appropriate places.

The following motion was made by Mr. Mapp and seconded by Mr. Browning:

TO ACCEPT THE RECOMMENDED OYSTER REPLETION PROGRAM AND AUTHORIZE THE STAFF TO PROCEED WITH IMPLEMENTATION OF THE PROGRAM. The motion was approved.

#### SEED AREA

Mr. Zeni announced that he had come prepared to make an offer to buy seed from the PRFC. He explained that Maryland has very little seed containing high spat count and he would replace the seed with twice the amount of shell.

Mr. Carpenter said that at this point in time, there is skepticism as to how much high count seed will actually be available. Mr. Zeni asked about getting the seed from Jones Shore or Cornfield Harbor. Mr. Carpenter said he would meet with Dr. Krantz to determine what the situation is on seed. However, earlier surveys of the areas failed to show enough seed available to meet the needs of the Potomac.

The following motion was made by Mr. Mapp and seconded by Mr. Browning:

THAT THE STAFF INVESTIGATE THE FEASIBILITY OF MR. ZENI'S PROPOSAL AND SUBMIT A RECOMMENDATION AT THE NEXT MEETING. The motion was approved with Mr. Zeni abstaining.

#### COMMEMORATIVE STAMP

Mr. Carpenter announced that Mr. Fred Tilp, author of THIS WAS POTOMAC and a maritime historian is petitioning the Postmaster General of the United States to issue a commemorative stamp honoring the Chesapeake Bay skipjack. The following motion was made by Mr. Parran and seconded by Mr. Browning:

TO INFORM THE POSTMASTER GENERAL OF THE COMMISSION'S SUPPORT FOR MR. TILP'S EFFORTS. The motion was approved.

#### OYSTER REPLETION PROGRAM

Mr. Carpenter said that a suggestion had been made that the Commission allow the tongers and hand scrapers to go into area #2 of Jones Shore, after the season is closed, to harvest any live oysters before this area is shelled. There was considerable opposition to this suggestion because of the regulations governing culling and season, therefore, no action was taken.

NOMINATING COMMITTEE

Mr. Parran reported that the nominating committee had met and is nominating Mr. Mapp as Chairman, Mr. Russell as Vice Chairman and Mr. Browning as Secretary. Mr. Mapp reminded the Commissioners that his term as PRFC Commissioner would expire in June. Mr. Pruitt expressed the opinion that the quality of his service would outweigh the brevity of his service.

The following motion was made by Mr. Zeni and seconded by Mr. Pruitt:

TO ACCEPT THE SLATE OF OFFICERS AS PRESENTED BY THE NOMINATING COMMITTEE. The motion was approved.

OYSTER REGULATIONS

Mr. Richard Daiger requested that the Commission include a discussion on the expansion of the hand scrape area on the agenda for the public hearing. He believes the oyster cull law is different in the Potomac than it is in either Maryland or Virginia and he would also like to have it discussed at the public hearing.

Mr. Hutt said the purpose of a public hearing is to receive comments regarding a specific proposed regulation. For items to be considered at the public hearing it requires the advertisement of a specific proposed regulation. Mr. Carpenter said both these items were discussed at length during the legislative committee meeting and defeated.

Mr. Daiger asked if any of the watermen present at the legislative committee meeting were opposed. Mr. Willard Dutton said he was present and is opposed. In the beginning of the hand scrape era he favored hand scraping but has since changed his opinion because he does not believe that hand scraping is that advantageous to the river bottom.

Robert T. Brown said the strike is so heavy on the Maryland side of the river that it is hard to cull the oysters. George Herbert spoke about the excessive number of boats in the hand scrape areas and said this was because there are no oysters in the tonging areas.

Mr. Russell said in order to receive input from the watermen on this subject, the expansion of the hand scrape area would be included on the agenda of the next meeting.

NEXT MEETING

The next meeting will be a public hearing and will be held on May 11, 1984 at 9:00 a.m. at the Colonial Beach Fire House.

CATCH REPORTS

Mr. Carpenter advised the Commission that Mr. Thomas B. Abell had applied for a license at the DNR Mechanicsville office and the St. Mary's County Circuit Court Clerk's office. Both offices were instructed not to issue him any licenses until we have received his catch reports. Mr. Lee Arnest and Mr. Glen France are both currently on probation but are again delinquent in their catch reports.

The following motion was made by Mr. Parran and seconded by Mr. Browning:

THAT THE LICENSES OF MESSRS. ARNEST, FRANCE AND ABELL BE PULLED UNTIL WHICH TIME THEY HAVE FILED THE OUTSTANDING CATCH REPORTS. The motion was approved.

ADJOURNED

The meeting adjourned at 12:20 p.m.

Francis J. Russell  
Francis J. Russell  
Chairman

R. Wayne Browning  
R. Wayne Browning  
Secretary

MINUTES OF A SPECIAL CALLED MEETING  
POTOMAC RIVER FISHERIES COMMISSION  
COLONIAL BEACH, VIRGINIA

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FEBRUARY 2, 1984

PRESENT: COMMISSIONERS - Francis J. Russell, John T. Parran, Lee E. Zeni,  
William A. Pruitt, Ivan D. Mapp and R. Wayne  
Browning

OFFICERS - Kirby A. Carpenter, Executive Secretary and  
J. Clifford Hutt, Legal Officer


Chairman Russell called the meeting to order at 8:00 p.m., explaining that this special called meeting had been requested by the Legal Officer to discuss the Westmoreland County Watermen's Association, et al suit against the Potomac River Fisheries Commission.

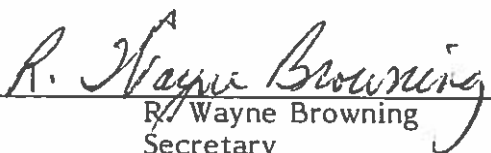
Mr. Zeni moved to go into executive session to discuss legal matters, Mr. Browning seconded and the motion was approved unanimously.

At 9:50 p.m. Mr. Pruitt moved to reopen the regular meeting and Mr. Mapp seconded. The motion was approved unanimously.

The Chairman announced that the Legal Officer had apprised the Commissioners of the suit and that the Legal Officer was given advice on how to proceed in this case.

Mr. Parran moved to adjourn, Mr. Browning seconded and the motion was approved at 9:52 p.m.

  
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Francis J. Russell  
Chairman

  
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R. Wayne Browning  
Secretary