

MINUTES OF THE MEETING
POTOMAC RIVER FISHERIES COMMISSION
COLONIAL BEACH, VIRGINIA
MARCH 15, 1985

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PRESENT: COMMISSIONERS - John T. Parran, William A. Pruitt, Francis J. Russell, R. Wayne Browning, Lee E. Zeni and Henry S. Braithwaite

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

VISITORS - William Goldsborough, Chesapeake Bay Foundation; Elgin Dunnington, U of MD, CBL; Paul C. Wentzell, Henry Batchelor, Frank Wood, DNR Police; Ben Daniels, VMRC; Robert Markland, Donald O'Bier, VMRC Police; Bill Sieling, DNR, Brady Bounds, Mid-Atlantic Sport Fishing Council; Stan Tomaszewski, Walter Parkinson, Walter Hundley, Meverell Haynie, Marvin Newton, Dennis Newton, Dennis Woodruff, Norman Brock, Richard Morin, Thomas Hall, Wayne Balderson, Stanley O'Bier, Douglas Jenkins, William Rice, Hugh Newton, Willard Dutton, Robert T. Brown, William Jones, and several others who did not sign the register.

PRESS - Isobel Gough, Richmond News Leader; Larry Evans, The Free Lance-Star; Joseph Norris, Enterprise; Mary Mertz, King George Journal

The meeting was called to order at 9:05 a.m. by Chairman Pruitt. Mr. Pruitt requested consideration of the Minutes of the November 1, 1984 and January 14, 1985 meetings, copies of which had previously been sent to each Commissioner. The following motion was made by Mr. Browning and seconded by Mr. Zeni:

THAT THE MINUTES OF THE NOVEMBER 1, 1984 AND JANUARY 14, 1985 MEETINGS BE APPROVED AS WRITTEN AND DISTRIBUTED. The motion was approved.

HYDRILLA

Mr. Carpenter reported that the Corps of Engineers had proposed to test the chemical Diquat for control of the hydrilla infestation in the upper Potomac River. He had written to the Corps of Engineers expressing the Commission's opposition to the use of chemicals as a control method. Both the Maryland and Virginia agencies had also opposed the chemical control method. The Corps of Engineers is expected to drop their plans to use the chemical. Mr. Dunnington spoke in agreement with this opposition. Mr. Pruitt asked if a reply had been received from the Corps of Engineers. Mr. Zeni said he had been informed informally that it would not be used.

DISBURSEMENTS AND CASH ON HAND

Disbursements for the second quarter of FY 84-85 (Oct-Dec) were presented by budget item which totaled \$30,230.54. The insurance expenditure exceeded the budgeted amount which reflected an error in estimating the cost. The receipts from the sale of licenses and oyster inspection tax is below what was anticipated. Mr. Zeni said that the receipts being below what was anticipated indicated that additional sources of revenue are needed. Mr. Carpenter agreed with Mr. Zeni and suggested the subject of additional revenue should be addressed by the Commission. Mr. Parran inquired about the status of the legislation to enable the Commission to increase the oyster inspection tax. Mr. Carpenter said it was passed by the Virginia General Assembly and is being considered by the Ways & Means Committee in the Maryland General Assembly. Mr. Zeni said he would check on the status of the bill in Maryland.

A statement of cash balances as of March 14, 1985 was presented as follows:

First VA Bank - Northern Neck:

Checking (Includes \$200.00 Petty Cash)	\$ 73,834.64
Certificate of Deposit	100,000.00

Maryland National Bank:

Savings: (Maryland Office)	30,204.37
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Maryland Bank & Trust Company:

Certificate of Deposit	<u>150,000.00</u>
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Grand Total in Banks	3%4.039.01
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The following motion was made by Mr. Parran and seconded by Mr. Browning:

THAT THE FY 84-85 SECOND QUARTER DISBURSEMENTS OF \$30,230.54 BE APPROVED.
The motion was approved.

OYSTER SURVEY

Mr. Carpenter said the Commission had received a request from Secretary Torrey Brown to survey the "deep waters" of the Potomac to determine if there were any harvestable population of oysters. Mr. John Hess, Oyster Repletion Officer for the state of Maryland arranged to use two patent tong boats for the survey and DNR personnel aboard as observers. The survey was to be conducted outside of any charted oyster bar and in 20 or more feet of water. Each sample location was recorded with LORAN equipment. The only oysters found were on Cornfield Harbor but after investigating the LORAN readings it was determined that they were on a charted portion of Cornfield Harbor. They checked from Ver-Mar Beach to Hog Island and from Piney Point to Cornfield Point with only one small area in Piney Point Hollow showing any oysters at all. Based on what was observed on this survey Mr. Carpenter saw no need to have another survey. Similar surveys have been done many times before and no deep water oysters have been found. Mr. Zeni questioned why it was not immediately discernible that they were on a charted portion of Cornfield Harbor. Mr. Carpenter replied that they did not have an engineer with them.

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

TO ACCEPT THE REPORT ON THE DEEP WATER OYSTER SURVEY AND TABLE ANY FURTHER SURVEYS AT THIS TIME AND TO SO INFORM SECRETARY BROWN. The motion was approved.

OYSTER PRODUCTION REPORT

The Commissioners reviewed the oyster production report and it was noted that the most productive bars were Sheepshead, Swan Point, Ragged Point and Jones Shore. Mr. Zeni asked about the reduction in harvest. Mr. Carpenter said he attributed this to a reduction in effort which was due in part to availability of oysters in other areas of the Bay.

OYSTER REPLETION PROGRAM

Mr. Carpenter presented the recommendations of the Repletion Committee. The committee recommended the purchase of up to \$100,000.00 worth of James River seed this year because of its high quality and availability and the lack of seed from Jones Shore.

The committee had differing ideas about where to plant some of the fresh shells. The staff advisors suggested Hog Island and Bonums, while the watermen had suggested Heron Island and Heron Run/Blake Creek. Both groups had agreed on Kitts Point, Great Neck and St. Georges. A brief discussion on the pros and cons of the various locations for shell plantings ensued. The watermen also requested an area of Cornfield Harbor be cleaned and reshelled to increase its productivity.

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

TO ACCEPT THE COMMITTEE'S RECOMMENDED SEED PROGRAM, TO ACCEPT THE STAFF'S RECOMMENDED SHELL PLANTING, CLEAN AND RESHELL CORNFIELD HARBOR AND TO AUTHORIZE THE STAFF TO PROCEED WITH IMPLEMENTING THE PROGRAM. The motion was approved.

ROCK FISH STUDY GROUP

At the January 15, 1985 meeting when order #85-1 was adopted closing the February 15 thru March 31 period to gill netting or the taking of striped bass, a task force was formed to determine if additional measures needed to be taken to preserve the rock fish population. A meeting was held on March 7, 1985 where a wide range of subjects were discussed. Suggestions included (1) "no additional actions were needed", (2) "relax some of the regulations already on the books", (3) "increase the minimum size limit on rock fish to 16" and add the month of March to the fishing season", (4) "let the size of gill nets control the length limit", and (5) "support for a sanctuary at the mouth of the Bay."

There were several comments regarding the inability to judge the effectiveness of any regulation change since they are being changed too quickly and a suggestion that regulations be changed only once a year at such time to allow the industry to gear up for the following year. It was agreed that the spawning area/season closures should be maintained.

A motion was made to increase the minimum mesh size on gill nets to 4-1/2" with a provision to keep what you catch, maintain the current size limits for other fisheries and add the month of March. This motion did not receive a second. After a lengthy discussion as to the role of PRFC, ASMFC and the implications of the Studds Bill, a motion was made, seconded and approved to recommend that the Commission write the U. S. Secretary of Commerce asking what ability the Secretary of Commerce has to enforce the Studds Bill in the Potomac, what criteria must the PRFC meet to be in compliance with the provisions of the Studds Bill and if the PRFC is currently in compliance with that bill. A motion was also made, seconded and approved that no further regulations changes be made until we have received a reply from the U. S. Secretary of Commerce.

Mr. Zeni believed that a task force appointed by the Chairman should have had a formal agenda and testimony should take place rather than statements of opinion. He did not feel the task force filled its mandate. He suggested that the task force continue as appointed and bring before the Commission proper statements and recommendations. He also believed that the reported harvests for 1983 and 1984 show an increase and that when we go before the ASMFC we will be unable to show a decrease.

Mr. Hutt questioned whether the ASMFC requirement is directed as effort or harvest. Mr. Zeni said the harvest figures should have shown a reduction. Mr. Hutt felt the Commission has made a bonafide effort and the amount of harvest cannot be predicted. He said in his opinion we have met the criteria.

Mr. Browning agreed with Mr. Hutt that we have reduced effort by 55%. Mr. Carpenter said if you recalculated the catch of previous years by subtracting those catches during the 1984 closures and adjusting for the reduced gill net length, you arrive at a projected catch of 130,000 lbs. in 1981, 48,000 lbs. in 1982 and 70,000 lbs. in 1983, and this equates to reductions of 72%, 64% and 57%, respectively. Mr. Hutt believed that this was a reasonable approach. Mr. Zeni said the executive committee will vote on the recommendations made in December 1984 which had some additional recommendations regarding the Potomac River. If those additional recommendations are approved by that committee, he does not believe we will have met the requirements of ASMFC.

Mr. Owens said that Mr. Zeni wants to reconvene the study group but the fishermen do not have any nets in the river to determine what conditions exist. Mr. Zeni said the Federal Government will grant money for a study to

determine the stock size going up the river to spawn, which is just as important as harvest statistics. Two local watermen will be hired to work with the scientists in setting gill nets for this study.

Mr. Bounds said he serves on the study group along with the scientists and commercial fishermen and it is one of the best study groups he has served on. However, it is important that they know just what the ASMFC criteria is and someone should represent the Commission at the meeting of the ASMFC. Mr. Pruitt assured him that someone would be there. Mr. Bounds said that the proposed letter to the Secretary of Commerce would show that the PRFC is making an honest effort to meet the criteria.

Mr. Zeni said he would not recommend sending the draft letter that had been proposed but would recommend writing a letter that would be more positive and to the point. Mr. Hutt said he would help write the letter and he felt he should use Mr. Carpenter's statistics. The following motion was made by Mr. Zeni and seconded by Mr. Parran:

THAT THE COUNSEL PREPARE A LETTER FOR THE CHAIRMAN'S SIGNATURE TO THE SECRETARY OF COMMERCE ASKING FOR CLARIFICATION OF THE PRFC POSITION RELATIVE TO THE CURRENT FEDERAL LAW AND A COPY OF THIS LETTER BE SENT TO THE ASMFC. The motion was approved.

Mr. Rice said the Commission should be proud of the statistics because this indicates the fish are back. The watermen have high hopes that something will be done to allow them to continue making a living on the river. They especially would like to have the "window" reopened. Mr. Pruitt said Congress has said that certain actions must be taken. We have to get our data together to present evidence so they do not close the river.

NOMINATING COMMITTEE

The Nominating Committee presented a slate of officers for this year, nominating Mr. Parran as Chairman, Mr. Browning as Vice Chairman and Mr. Zeni as Secretary. The following motion was made by Mr. Russell and seconded by Mr. Braithwaite:

TO ELECT THE SLATE OF OFFICERS AS PRESENTED, The motion was approved.

At this time, the Chair was turned over to Mr. Parran. He said that this past year has been a difficult one with difficult decisions to be made and he wanted to congratulate Mr. Pruitt on his handling of the Chairmanship.

POUND NET TOLERANCES

Mr. Carpenter presented two resolutions, one from the Westmoreland County Board of Supervisors and one from the Northumberland County Board of Supervisors. Mr. Parran said the communication from the Northumberland County Board of Supervisors was a resolution supporting the establishment of a tolerance limit on rock fish caught in conjunction with menhaden and herring in pound nets. The Westmoreland County Board of Supervisors resolved to recommend a 6% tolerance of undersize striped bass in a single catch in a fashion similar to the oyster cull law.

Mr. Balderson, speaking on behalf of pound netters and bait buyers, requested that the Commission allow a 5% or 6% tolerance for undersize fish in the pound net catches. Mr. Brown spoke as a pound netter and President of the St. Mary's County Watermen's Assoc. If they are allowed this tolerance, it will afford them some protection from overzealous inspectors or unintentional violations of the Lacy Act. The Potomac River supplies bait for several states along the east coast and if they are not allowed to catch bait, it will put them out of business as well as affecting the local crabbing fishery.

Mr. Zeni believed that a 6% tolerance was too large to allow as an incidental rock fish catch. Mr. Hutt interpreted the Lacy Act to read that if you ship unlawful fish across state lines, it becomes a federal crime. He questioned how the courts would look at fish caught in the Potomac and landed in Virginia. However, he believed that all bait shipments would have to be clean with no undersize rock fish if they were shipped to another state.

The Draft Environmental Impact Statement (DEIS) for the Steuart Investment Company's Pier Extension had been reviewed by CBL and VIMS. Mr. Dunnington reported on the DEIS. He felt that if the additional "thru-put" of petroleum products was a foregone conclusion, then the pier extension at Piney Point, Maryland would be in the best interest of the marine resources. However, the additional "thru-put" should not be accepted as a foregone conclusion. In that case, the pier extension must be viewed differently and would not be justified on the basis of information contained in the DEIS. Dr. Davis said that he concurred with the statements of Mr. Dunnington.

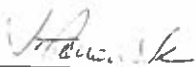
The Commission re-affirmed its position on Steuart Investment Company's expansions taken at the December 14, 1973 meeting. The Chairman asked the Executive Secretary to notify the U. S. Army Corps of Engineers of today's actions.

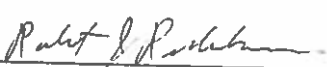
By a voice vote, a member of the Commission was authorized to attend the annual meeting of the Atlantic States Marine Fisheries to be held in October.

The date of the next meeting was set for December 5, 1975 at 9:30 a.m. The location of the meeting will be announced by the Chairman prior to that date.

Chairman Parran, noting the next meeting will be well into the oyster season, requested CBL, VIMS and the watermen to keep the Commission advised of all noteworthy developments regarding oystering; and if the situation warrants a special meeting, he will call such a meeting.

A motion to adjourn was made, seconded and approved at 11:55 a.m.


John T. Parran, Jr.
Chairman


Robert J. Rubelmann,
Secretary

Mr. Zeni suggested, because of several alternatives available, not making a decision until the next meeting. Mr. Brown said that bait fishing begins in April and they need an emergency measure to know what to do.

At 10:55 a.m. Mr. Hutt suggested going into executive session to discuss legal matters.

A motion was made, seconded and approved: TO DECLARE AN EXECUTIVE SESSION TO DISCUSS LEGAL MATTERS.

The meeting reconvened at 11:35 a.m.

Mr. Parran said the Commission had discussed the problems associated with undersize fish in the pound net fishery and the implications of the Lacy Act. Mr. Russell then made the following motion:

NOTWITHSTANDING THE PROVISIONS OF ANY OTHER REGULATIONS OF THIS COMMISSION AND PURSUANT TO THE PROVISIONS OF REGULATION III, SECTION 13(b) OF THE POTOMAC RIVER FISHERIES COMMISSION, A TOLERANCE OF THREE UNDERSIZE FOOD FISH PER BUSHEL IS HEREBY ESTABLISHED ON ALL CATCHES FROM POUND NETS LAWFULLY FISHED IN THE POTOMAC RIVER. THE COMMISSION FURTHER ORDERS THAT THIS CHARGE SHALL TAKE EFFECT IN 30 DAYS, (APRIL 14, 1985) AND WILL REMAIN IN EFFECT UNTIL FURTHER NOTICE.

Mr. Zeni asked if the motion should say pound nets used for bait fishing. Mr. Russell replied that today bait is the primary catch of a pound net. Mr. Hutt said it should be tied down to pound net catches without any further deliberations.

Mr. Braithwaite seconded Mr. Russell's motion and the motion was approved with Mr. Browning abstaining.

SPORTS FISHING

Mr. Hutt reported that the sport fishing license committee met. They found that all Maryland salt water sport fishing licenses could be combined with a fresh water license; that if Virginia adopts a salt water fishing license, there will be a license required in both states but there is no license required for the Potomac River. The committee believed there was no great potential for revenue from a single Potomac River license and whatever money would be received should be spent for the preservation of the finfish population. They also recognized the fact that the Commission does not have staff or technical knowhow presently to handle this type of program. With these thoughts in mind, they suggest that the Commission consider a regulation which would require a salt water fish license for all persons sport fishing in the Potomac River. It could either be a Virginia or Maryland license issued by either state provided the funds were entrusted for the use of promulgating the finfish population in the Bay. It would, in essence, be a Chesapeake Bay license.

Mr. Zeni suggested Mr. Hutt contact the attorney Generals in the two states and see if it is possible under the laws of both states to implement such a requirement. Mr. Browning suggested waiting for Mr. Hutt's report before taking any further action.

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

THAT MR. HUTT CONTACT THE ATTORNEY GENERALS OF BOTH STATES IN THIS REGARD AND BRING HIS REPORT BACK TO THE NEXT MEETING.

Mr. Bounds asked what plans were being made to bring the public into the planning stages. Mr. Parran replied that this would be in the form of a public hearing. Mr. Bounds believed that the public should know where and who the suggestion came from. He asked that it be placed on the record when the committee was appointed, by whom and what they were told to do. He expressed the hope that the public would be involved prior to the formation of the exact language of any advertised regulation.

Mr. Dunnington, speaking as a private citizen, urged the Commission to make every effort to fully publicize this issue so that the public has an opportunity for input prior to formation of regulations.

Mr. Carpenter explained that Mr. Zeni requested the idea of a Potomac River sports fishing license be explored, since Maryland had adopted a sports fishing license that went into effect January 1, 1985. Chairman Pruitt was advised of the request and he appointed a committee to investigate this suggestion and report their findings to the Commission. Mr. Parran assured Mr. Bounds that this subject would be aired publicly before any final decision is made.

Mr. Zeni's motion was approved.

FINANCES

Mr. Browning questioned the wisdom of depositing \$150,000 in only one bank, as normally monies are only insured up to \$100,000 by the Federal Deposit Insurance Corporation. Mr. Carpenter replied that we are covered by the Public Funds Acts of Maryland and Virginia.

STUDY GROUP

Mr. Zeni asked about the study group set up by Dr. Brown and Secretary Diener and suggested having a status report at the next meeting.

TOXICS

Mr. Bounds said that he and Mr. Brown are concerned about the toxic residue being found in fish. They would like to see tissue samples tested to make sure that the Potomac River fish are free from toxics. Mr. Carpenter said the Commission does not have the facility to test or evaluate the type of information Mr. Bounds is suggesting. He suggested that this may fall under the purview of CBL and VIMS and maybe they could be asked to report any findings to the Commission on a continuing basis. Mr. Zeni offered to have his staff put together a paper on what is being done in Maryland on bio-assay work.

EXECUTIVE SESSION

At 12:17 p.m. the Commissioners approved a motion to go into executive session to discuss personnel matters.

The meeting reconvened at 12:23 p.m.

BUDGET COMMITTEE

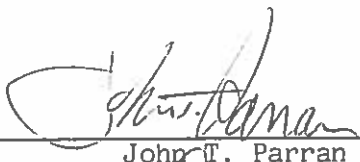
Mr. Parran appointed Mr. Russell and Mr. Braithwaite to the budget committee, asking them to present a proposed budget for next year at the next meeting.

Mr. Bounds said he and others believe that Article I, Section 5 of the regulation book dealing with compensation for the Commissioners was established in 1958 and that \$25.00 per day is totally inadequate. Mr. Parran replied that this had been addressed by the study group set up by the Secretaries.

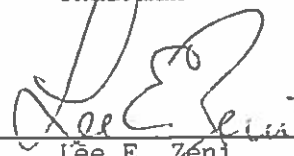
NEXT MEETING

The next meeting will be held on May 17, 1985 at the Commission office in Colonial beach, VA.

The meeting adjourned at 12:33 p.m. upon a motion duly made, seconded and approved.



John T. Parran
Chairman



Lee E. Zeni
Secretary