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**MINUTES OF THE REGULAR MEETING
POTOMAC RIVER FISHERIES COMMISSION
LA PLATA, MARYLAND
AUGUST 6, 1993**

Commissioners: John Thomas Parran - Chairman; John W. Freeman, Sr. - Vice Chairman, William A. Pruitt - Secretary, William A. Hudnall, James W. Peck and William L. Rice.

Officers: Kirby A. Carpenter - Executive Secretary and J. Clifford Hutt - Legal Officer.

Press: Ann Marie Maloney - The Enterprise and Lawrence Latane - Richmond Times Dispatch.

Guests: Dr. Eileen Setzler-Hamilton - Chesapeake Biological Laboratory; Dr. George Krantz - Oxford Biological Laboratory; Brendan Sweeney - Chesapeake Bay Foundation; Jim Wesson and Ellen Smoller - Virginia Marine Resources Commission Fisheries Management; Lt. Col. Thomas Turner and Lt. Steve Vaughn - Maryland Department of Natural Resources Police; Lt. Col. Steve Bowman and Capt. Ray Jewell - Virginia Marine Resources Commission Police; Tucker Brown - PRFC Shellfish Advisory Committee; Bobby Boarman - Charles County Watermen's Association; Cindy Woodburn - St. Mary's County Government; Joanne Roland - Charles County Government; Charles D. Carruth, John Guy, William T. Feldman, Cheryl Offenbacher and several others who did not sign the register.

Chairman Parran called the meeting to order at 9:30 a.m. and welcomed all those in attendance.

APPROVAL OF MINUTES

The following motion was made by Mr. Freeman and seconded by Mr. Rice:

"That the minutes of the meeting of May 7, 1993 be approved as written and distributed". The motion passed unanimously.

OYSTER REPLETION PROGRESS REPORT

The Executive Secretary reported \$115,042.00 had been spent on 230,084 bushels of fresh shell planted on Jones Shore during May and June. He noted that the original plan outline approved by the Commission in February called for shell plantings in the middle and upper portions of the river. However, after the spring freshet, the Commission directed the Executive Secretary obtain recommendations from the scientific personnel of Maryland and Virginia on how to proceed with the 1993 repletion program, and authorized the implementation of those recommendations. Mr. Carpenter stated that the plan was adjusted to plant the shell at Jones shore in hopes that, if conditions improve this summer, a spat set may occur in that area which could provide a source of seed for next spring, although the shell strings had shown no natural set thus far. The entire cost of the 1993 program, including count and control, was \$119,034.44.

JURISDICTIONAL LINE - ST. CATHERINE SOUND

At the May meeting the Commission voted to appoint a committee to research and discuss the issue of the jurisdictional line at St. Catherine Sound. The Chairman reported that he had appointed Commissioner Peck and Commissioner Pruitt to the committee, but they have not had the opportunity to meet, but he anticipated a report would be given at the Commission's next regular meeting.

FOURTH QUARTER DISBURSEMENTS AND CASH ON HAND

A report of the fourth quarter (April - June 1993) disbursements was presented by budget item which totaled \$192,437.40, of which \$118,037.36 was spent on the 1993 oyster repletion program during that quarter. A statement of cash on hand as of August 4, 1993 was presented as follows:

<u>First Virginia Bank - Northern Neck:</u>	\$66,074.78
Checking (includes \$200.00 Petty Cash)	
<u>Maryland National Bank:</u>	1,971.66
Savings: (Maryland Office)	
<u>Virginia Local Government Investment Pool:</u>	128,544.18
<u>Maryland Local Government Investment Pool:</u>	127,028.76
GRAND TOTAL IN BANKS:	\$323,619.38

Mr. Carpenter noted the statement of cash on hand reflected receipt of both the Maryland and Virginia appropriations for this fiscal year.

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

"That the fourth quarter disbursements of \$192,437.40 be approved as presented". The motion passed unanimously.

REPORT ON OYSTER MORTALITY

The Executive Secretary reported that the spring freshet experienced in the Potomac resulted in high oyster mortality rates in the upper Potomac. Maryland Department of Natural Resources personnel surveyed that area and prepared a written report on their findings. Their summary was as follows:

"OYSTER POPULATIONS IN THE UPPER POTOMAC RIVER DID NOT FARE WELL DURING THE RECENT, EXTENDED FRESHET OF 1993. MORTALITIES RECORDED ON UPPER RIVER OYSTER BARS WERE COMPARABLE TO THOSE CALCULATED AFTER TROPICAL STORM AGNES. PARTICULARLY HARD HIT WERE TWO BARS JUST BELOW THE ROUTE 301 BRIDGE, PASCAHANNA AND LOWER CEDAR POINT WHERE MARKET OYSTER MORTALITY EXCEEDED 90%. HOWEVER, BEACON AND POPES CREEK, CURRENTLY THE TWO MOST IMPORTANT COMMERCIAL OYSTER BARS, ALSO SUFFERED SUBSTANTIAL AND SIGNIFICANT MORTALITY OF BOTH SUBLEGAL AND LEGAL SIZED OYSTERS."

The Commission then asked the scientific personnel present for their comments on this situation.

Dr. Krantz stated that he agreed with the MdDNR report and conclusions, based on observations made by himself and his staff. He noted the mortality which occurred this spring was as severe as that occurring after Tropical Storm Agnes in 1972. The difference being, after Agnes the lower river had live oysters abundant enough to support a fishery, whereas now, there are not enough live oysters in the lower river to support a fishery due to the effects of the parasites MSX and Dermo. Upper river areas where virtually all of last year's harvest occurred have experienced 75% to 90% mortality. In the Agnes situation, the Commission chose to close the river and allow the residual brood stock to repopulate the river, and natural sets occurred in 1983 and 1985 in the upper river. The harvest which has occurred above the 301 bridge during the past few years are a result of mother nature healing herself, which took from 15 to 18 years. His suggestion, as a most prudent approach to this situation, was to allow mother nature to begin her healing process as soon as possible without taking any more oysters out of the river. However, if the Commission chose to keep the fishery open, he did not feel it would be a very successful season.

Dr. Eileen Setzler-Hamilton concurred with Dr. Krantz's recommendation to close the river to oystering, adding that the river never fully recovered from the damage sustained during Tropical Storm Agnes. Prior to Agnes, the overall Potomac harvest averaged over 300,000 bushels per year with substantial numbers being harvested above the 301 Bridge. When the middle river bars came back into production, they never got back to the level of harvest prior to Agnes, so they never did fully recover even with substantial repletion efforts and a 5 year closure. The only area to recover to pre-Agnes levels was the area above the 301 bridge, which was closed for 15 years with no repletion efforts. She noted that the oysters which currently make up the brood stock are the only ones left and have suffered very high mortalities. Yet, if the river is opened, they will be the basis of this year's fishery. If that brood stock is fished, she asked how the oyster resource could be expected to rebound when it didn't fully recover after Agnes.

Commissioner Peck stated that the question regarding the number of oysters needed for brood stock seems to have the most disagreement among scientists. He then asked if Dr. Krantz and Dr. Setzler-Hamilton felt the Potomac's brood stock was at a dangerously low level. Dr. Krantz emphasized that the upper river area Dermo is not killing oysters and there is a good survival rate, but it only receives spat sets about once every ten years. He further stated that although you cannot get a one-to-one relationship between the density of brood stock and recruitment level, you must have brood stock present in order for recruitment to occur, and natural recruitment is what re-established the oyster fishery in the upper Potomac. The logic for protecting the few living oysters left in the upper river would be to increase the potential for having a naturally re-established fishery in the future.

Mr. Carpenter noted that the brood stock question was never fully answered in the striped bass issue. However, they operated under the assumption that more eggs were better than fewer eggs.

CONSIDERATION OF RESTRICTIONS FOR 1993-94 OYSTER SEASON

Tucker Brown, Chairman of the Shellfish Advisory Committee, reported that the committee was opposed to a closure but did support a limited season. The Committee's formal recommendation was a November 1 through March 15 season with a sunrise to noon time limit and no daily bushel limit for hand tonging. Further, they recommended a hand scrape season of 8:00 a.m. to noon during November and December and 8:00 a.m. to 3:00 p.m. during February and March. These recommendations would decrease the hand tonging season by six weeks and increase the hand scrape season by one month (February).

Mr. Brown reminded the Commission of the sacrifices which have been made over the years in order to try to make things better for the oyster resource. The oystermen gave up Saturday oystering a long time ago, went to a 3:00 p.m. time limit, and other time limitations as they were needed. The committee unanimously opposed a closure. He said that he thought brood stock was important but felt it was a touchy subject that could get out of hand and before long it would be another "keg to settle".

Richard Daiger, representing Bevans Oyster Company and Cowart Seafood, was opposed to a complete closure. He stated that the companies he represents would not have been able to survive the past few years without the import of oysters from other regions. His companies were concerned about losing customers if the Potomac were to announce a closure as it would imply that the processors did not have a product. He noted that at the present time, Louisiana has an abundance of oysters and are shipping them to the Northern Neck to be processed and repackaged for about \$20.00 per gallon. He recommended an October 15 opening instead of November 1, so that the processing industry wouldn't lose their market, and closing January and February and reopening during the month of March.

Mr. Tommy Leggett, President of the Working Waterman's Association and member of the PRFC Shellfish Advisory Committee, submitted a letter which supported the Advisory Committee's recommendations.

The Executive Secretary reported that since the middle 1980's the Potomac's oyster harvest has been concentrated in the upper portions of the river and since 1990 virtually all oysters harvested have been from the upper half of the river. This was due primarily to the impact of the parasites MSX and Dermo in the lower half of the river and the growth of the natural sets and seed plantings of the 1980's in the upper half of the oyster producing area.

This past spring was one of the wettest on record. The resulting freshet caused oyster mortalities equal to or greater than those experienced following Tropical Storm Agnes, 21 years ago. The mortality survey prepared by Maryland DNR personnel details mortalities approaching 100% on Cedar Point Oyster Bar, 90% on Pascahanna, 75% on Popes Creek and 63% on Beacon Bar. Those oyster bars accounted for over two-thirds of last year's harvest.

The massive losses in the upper river and the persistence of the parasites in the lower river have had dramatic consequences for the oyster populations in the Potomac and will have similar impacts on the oyster fishery. This information was presented to the Shellfish Advisory Committee and their suggestion was to delay the opening of the season by one month, maintain the noon cut-off time all year, add one month to the current hand scraping times and close the season two weeks early. The Committee recommendations do not, we believe, adequately restrict the harvest in order to preserve brood stock for reproduction. The two week closure at the end of the season will do very little to preserve any oysters and the concept of "increasing effort" in the hand scrape fishery in light of a 178 bushel harvest last year is irresponsible. Closing October will simply delay the harvest and allow oystermen from other areas in Maryland and Virginia the time to harvest their stocks before coming to the Potomac. Additionally, the October closure will force more people to continue crabbing, putting more pressure on that fishery.

A number of other options should be considered.

1. Close the entire river to all oystering for a three year minimum and re-open when surveys indicate natural reproduction has occurred in the upper river or substantial survival of the lower river oyster population.
2. Allow oystering five days per week from sunrise to noon with a 3 bushel per man per day limit during October, November and December by hand tongs and November and December by hand scrape. Close entire river to all harvest January, February and March.
3. Allow tonging Monday, Wednesday and Friday, sunrise to noon, October, November and December only and hand scraping Monday, Wednesday and Friday, sunrise to noon, November and December only. Close entire river to all harvest January, February and March.

The option of a total closure will accelerate natural recovery through total protection of the brood stock. But, unlike the post Agnes period, today there are no viable alternative fisheries or immediate oyster repletion options for the fishery. The daily 3 bushel limited harvest option will discourage complete and accurate reporting (and tax payments) and impose an artificial limit on the oysterman's abilities. The limit is, however, below the expected catch per man. The Monday, Wednesday, Friday option has a number of advantages. It spreads the harvest over the best market periods. It does not artificially make all oystermen "equal". There is no advantage to under report the catch. It allows people to do something other than "crab" in October and it allows better utilization of available law enforcement efforts. By closing January, February and March, the length of the season is cut in half but the harvest is only reduced by one-quarter to one-third. Those three inch oysters not caught in January, February and March are available to spawn next summer as well as benefit from additional growth before subjected to harvest next fall.

The Monday, Wednesday, Friday, sunrise to noon, three month season option is recommended by the staff.

Brenden Sweeney, of the Chesapeake Bay Foundation, read the following CBF Position Statement:

"The oyster resource of the Potomac River is in the worst condition ever recorded as a result of disease-induced mortalities in the lower river combined with fresh water-induced mortalities in the upper river. This condition dictates changes in the way the fishery is managed if any fishery is to continue without further damage to the resource.

The Chesapeake Bay Foundation has for two years supported a temporary moratorium on harvest throughout the Bay in combination with oyster bar restoration as the best course of action for reviving this resource. At the same time we support efforts underway in both Maryland and Virginia to build consensus for long term strategies to rebuild the oyster resource. We recommend to the Commission that it plan to apply innovative restoration approaches as recommended by the Maryland Oyster Roundtable and the Virginia Shellfish Study Committee. These may include oyster reef rebuilding, sanctuaries, hatcheries and the promotion of controlled culture. Every effort should be made to provide opportunities for working watermen in these programs.

In the short term the Commission is faced with what course of action to take for the upcoming season. Given the severity of the situation, harvest controls should be adopted which make maximum use of minimal resource. Therefore we recommend the adoption of the staff's preferred option of a Monday-Wednesday-Friday fishery with a noon curfew running from October 1 through December 31. This is an enforceable package which will conserve oysters for the future while bringing harvested oysters to market at the optimal time.

Thank you for the opportunity to comment.

Bobby Boarman, representing the Charles County Waterman's Association, stated the oystermen he represented opposed a moratorium but supported an October through December fishery with a sunrise to noon time limit.

The following motion was made by Mr. Rice and seconded by Mr. Hudnall:

"That the 1993/94 tonging season opening date be delayed until October 15, 1993, close the entire month of January, and impose a 12 o'clock noon curfew for the entire season". The motion passed unanimously.

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

"That the 1993/94 hand scraping season be closed during the month of March and impose a 12 o'clock noon curfew at all other times". The motion passed unanimously.

A motion was then made, seconded and unanimously approved to incorporate the foregoing motions into Order #93-7 as follows:

ORDER #93 - 7**1993/94 OYSTER SEASON AND TIME LIMITS**

THE POTOMAC RIVER FISHERIES COMMISSION, having considered the protection, promotion, growth and conservation of the oyster resources, and, pursuant to its authority under Regulation II, Section 3(b), **HEREBY DECLARES AND ORDERS:** that Regulation II, Section 2(b) **Time for Taking or Landing Oysters** is hereby **MODIFIED** to read:

"It shall be unlawful for any person to take or attempt to take or catch oysters on Saturday or Sunday or before sunrise or after 12 noon (legal established time) on any other day. It shall be unlawful to land or unload oysters earlier than sunrise or later than sunset, or for any buy boat to unload oysters earlier than sunrise or later than sunset at any time."

AND FURTHER ORDERS: that Regulation I, Section 2(f)(1) **Tonging** is hereby **MODIFIED** so as to establish the 1993/94 oyster tonging season as follows:

"No oysters shall be taken or caught except during the tonging season, which shall begin on the 15th day of October and end on the 31st day of December and begin on the 1st day of February and end on the 31 day of March next succeeding."

AND FURTHER ORDERS: that Regulation II, Section 2(a)(2) **Time for Use and Possession of Hand Scrape** is hereby **MODIFIED** to read:

"The use of a hand scrape shall be permitted only on Monday through Friday, inclusive, during the months of November and December. On any of the aforesaid permitted days the use of a hand scrape shall only be permitted during the hours of 8:00 a.m. to 12:00 noon (legal established time), in such areas as shall from time to time be designated by the Commission as hand scraping areas. Possession of a hand scrape shall be permitted during the aforesaid times and from one (1) hour before and for two (2) hours after such hours. The use or possession of any hand scrape at any other time is unlawful."

BE IT FURTHER DECLARED AND ORDERED: That this Order #93-7 shall be effective October 1, 1993 and remain in effect through March 31, 1993.

CRAB HARVEST REPORT

A preliminary report on the 1993 crab landings through July showed a total of 58,114 bushels of hard crabs and 45,904 pounds of peelers had been harvested from the Potomac. This compares with the 1992 March through July totals of 65,250 bushels of hard crabs and 34,666 pounds of peelers and a long term average for those months of 59,113 bushels and 32,996 pounds respectively.

The Executive Secretary noted that there had been a great deal of discussion in the press regarding the poor crab season this year in Maryland and Virginia. The Potomac harvest data showed that May was near average and June was better than average. The July data was unfair to compare because only 3 weeks of information had been gathered thus far for that month, however it did not show any sign of a drastic decline. He further noted that the Shellfish Advisory Committee is currently reviewing the crab harvest information and considering the need for imposing harvest restrictions on that fishery.

CLAM HARVEST REPORT

A 1993 soft shell clam harvest report was presented which showed a total soft shell (Mia) harvest of 512 bushels with an average catch of 1.13 bushels per hour and 835 bushels of razor clam harvested with an average catch of 2.17 bushels per hour.

Tucker Brown stated that there was a good supply of soft shell clams, although they were too fat to sell. Likewise, it appeared there was a good supply of razor clams for this fall.

SPORT FISHING LICENSE SALES REPORT

The Executive Secretary reported that for the first year of sport fishing licenses sales, the Commission had sold, to date, approximately 480 licenses. It appeared as though the fishing public had accepted the license structure very well. However, there was still some confusion over jurisdictional boundaries and the reciprocal licenses. The Commission has published a pamphlet entitled "*Fishing the Tidal Potomac*" which will hopefully alleviate some of the confusion.

SUGGESTED REGULATION CHANGES FOR 1994

The Executive Secretary recommended holding public hearings on the following items for implementation in 1994. He stated that all of the items except for the cull rings and the limited entry pound net fishery were currently in practice by the Commission, under the authority of certain Commission Orders or temporary regulations.

1. Require crab cull rings in all crab pots starting January 1, 1994.
2. Require commercial hook and line renewal by a certain date so as to allow random drawing for unexpired licenses each year.
3. Modify regulation establishing first come first serve procedure for unexpired gill nets and pound nets so as to allow the random drawing method.
4. Establish limited entry pound net fishery.
5. Codify requirement to tag all commercially caught striped bass.
6. Adjust season, length limits and mesh size for gill nets to reflect current practices.
7. Remove reference to moratorium on commercial hook and line and gill net licenses.
8. Codify requirement for recreational striped bass fishing permit.

Mr. Bob Holden asked if the recreational striped bass permit was an AMSFC requirement and, if so, why didn't Virginia require a permit. Mr. Carpenter responded that the permit was not a specific requirement of the ASMFC, however, the ASMFC does require the gathering and verification of certain catch information and the permit is the most cost effective way for this Commission to gather the required data. He explained that Virginia pays a significant fee to participate in the National Marine Fisheries Service recreational survey to gather their data.

The following motion was made by Mr. Freeman and seconded by Mr. Rice:

"That the Executive Secretary be authorized to advertise the above items for public hearing which shall be held at the Commission's next regular meeting." The motion passed unanimously.

ADVISORY COMMITTEE VACANCIES

The Executive Secretary reported the following vacancies on the advisory committees: Shellfish Advisory Committee - Northumberland County Hand Scraper, St. Mary's County Hand Scraper and a King George County Crabber; Finfish Committee - Prince Georges County Charter Boat Captain. The Chairman asked that anyone desiring to serve in the available positions get in touch with a committee or commission member. Richard Daiger warned against the advisory committees becoming special interest groups and requested the placement of a marketing representative on the shellfish committee. Mr. Carpenter noted that currently there were no licensed hand scrapers from St. Mary's County to fill that vacancy on the shellfish committee and perhaps that position could be changed to represent the packing industry.

TRI-COUNTY COUNCIL LETTER

Chairman Parran acknowledged the receipt of a letter from the Tri-County Council for Southern Maryland regarding the Potomac River Fisheries Commission and concerns of the St. Mary's County Waterman's Association.

CHARTER BOAT CONCERNS

Mr. Bob Holden, on behalf of the Area I charter boat captains, stated he was concerned about the Commission's policy of suspending charter boat captain licenses for not filing timely catch reports. Mr. Holden's opinion was that the charter boats were receiving unequal treatment in this matter. It was his impression that the Commission allowed other user groups to come before the Commission to explain why their reports were late and only the charter boat captains licenses were suspended immediately. The Legal Officer responded by reading regulation III, Section 13(c)(3) which stated that "Any person licensed by this Commission to fish any gear capable of catching striped bass and who fails to properly file the weekly seafood catch reports shall not be allowed to catch and/or sell striped bass and his license(s) shall be automatically suspended.....". Mr. Hutt stressed that this regulation pertained to all gear capable of catching striped bass, not just charter boats and the only time licenses are immediately suspended is during the striped bass season.

Mr. Holden then stated that he did not feel Maryland, Virginia and the PRFC make an effort to adopt the same size and creel limits for fish. He did not approve of the Commission's requirement to list the party organizer on the weekly charter boat catch report form as he felt this was a violation of his privacy. He stated that someone working at the PRFC might give privileged information to a friend in the charter boat industry, thereby invading trade secrets.

Cindy Woodburn asked that the Commission include more watermen and charter boat captains in the lobbying effort to the ASMFC for increased striped bass quotas.

HOOK AND LINE ISSUES

Charles Carruth had several questions regarding the commercial hook and line fishery: 1) what was the reason for the drawing for the new licenses; 2) how was it advertised; and 3) what happened to the poundage of the 9 licensees who turned in gill net licenses for a commercial hook and line. Also, Mr. Carruth wanted to know how Virginia keeps track of striped bass caught during its recreational season.

Mr. Carpenter explained that the moratorium was place in the issuance of new commercial hook and line licenses in 1985 and through attrition the number of licenses had fallen to 64. It was determined to raise the number of licenses to 75, which created 11 available licenses. It was further determined that the most fair and objective way to issue those 11 licenses was to hold a "drawing". News releases were sent to all local newspapers and radio stations outlining the procedure and time frame to register for the drawing as well as being announced at the Commission's last meeting. One the third item, Mr. Carpenter explained that the individuals who traded a gill net for a commercial hook and line brought their striped bass quota with them. They did not get allocated any more fish, only that they will be able to harvest the same fish by a different method. Mr. Carpenter then explained that Virginia participates in the National Marine Fishery Service recreational survey to gather data for their recreational striped bass fishery.

MIGRATORY FISHERIES MANAGEMENT BILL

Bobby Boarman, on behalf of the Charles County Waterman's Association, asked the Commission to take a position, either pro or con, on the migratory fisheries bill and submit it for record to Congress. No one present had a copy of the bill and the Executive Secretary stated that the last copy he had seen was several months ago and could be very different by this time. However, at the time he saw it, the bill basically contained language which would give all migratory species of fish the federal protection that the striped bass conservation act provided for striped bass. Mr. Peck stated that Maryland supported the bill and Mr. Pruitt stated that Virginia opposed it.

The following motion was made by Mr. Rice and seconded by Mr. Hudnall:


"That the Potomac River Fisheries Commission express their formal opposition to the migratory fisheries bill currently before Congress." Upon a roll call vote, Mr. Hudnall voted aye, Mr. Rice voted aye, Mr. Pruitt voted aye, Mr. Freeman voted aye, Mr. Parran abstained stating he had not seen the bill, and Mr. Peck abstained. The Legal Officer ruled the motion defeated.

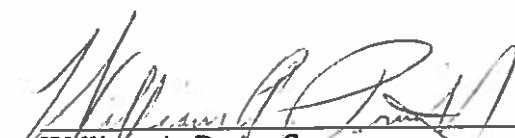
DATE AND PLACE OF NEXT MEETING

The next regular meeting of the Potomac River Fisheries Commission was scheduled for 9:30 a.m., Friday, November 5, 1993 in Colonial Beach, Virginia. The exact location would be announced at a later date.

ADJOURNMENT

A motion was made seconded and unanimously approved to adjourn the meeting at 11:50 a.m.


John Thomas Parran, Chairman


William A. Pruitt, Secretary