

**Minutes of the Regular Meeting
Potomac River Fisheries Commission
La Plata, Maryland
April 15, 1999**

Commissioners Present: Paul H. Kellam, III (MD) – Chairman, Gordon M. Birkett (VA) – Vice Chairman, John T. Parran (MD) – Secretary, William A. Pruitt (VA), William L. Rice, Sr. (MD), Sarah J. Taylor-Rogers (MD), John W. White, Sr. (VA), and Kenneth W. Williams, Sr. (VA).

Officers: Kirby A. Carpenter – Executive Secretary, J. Clifford Hutt and Michael C. Mayo – Legal Counsel.

Others Present: Delegate Tim Hutchins – Maryland House of Delegates, Bill Sieling – Maryland Department of Agriculture Seafood Marketing, Kevin Novo-Gradac – Maryland Department of Environment, Dr. Eileen M. Setzler-Hamilton – CBL, UMCES, Capt. M. Ray Jewell, Lt. Col. Lewis Jones – VMRC Law Enforcement, Capt. Garland Nixon – MdDNR Law Enforcement, Jack Travelstead – VMRC, Jim Drummond, John W. Dean, Marvin Louis Harley- Finfish Advisory Committee, Douglas F. Jenkins, Sr. – Twin River Waterman’s Group, Ken Hastings, Bruce Tugwell, George E. Krantz – CCA of MD, Samantha Levine – Free Lance Star, Richard Daiger, Robert T. Brown, Herman Delvo, Dennis Fleming, Charles R. Clift, Gregory N. Madjeski and several others who did not sign the register.

Chairman Kellam called the meeting to order at 2:00 p.m. Commissioner Parran provided an invocation.

Consideration of Minutes

The Executive Secretary noted a typographical error on page 10 in the second sentence of the second paragraph referring to fish trot lines that should read:

“It was changed from a personal license to a gear license and as a consequence of that action people who fish more than one line are being required to buy more than one license.”

A motion was made by Commissioner White and seconded by Commissioner Parran to approve the minutes of January 15, 1999 as distributed and corrected as noted above. The motion passed.

Advisory Committee Membership

The staff and legal counsel made a recommendation to add new wording to the Finfish and Shellfish Advisory Committee Membership and Procedures to allow the PRFC Chairman flexibility in filling vacancies if a qualified person from a particular area or fishery was not interested and willing to serve. The following motion was made, seconded and approved:

“In the event a candidate cannot be found to fill a specific position outlined in the Advisory Committee Membership and Procedures, the PRFC chairman may appoint an individual from another area or who uses a different commercial gear type to fill the vacancy.”

The staff also recommended amending the by-laws to include a Vice-Chairman for each of the advisory committees. This would enable an advisory committee meeting to proceed in the event the Chairman could not attend. The following motion was made by Commissioner White, seconded by Commissioner Williams and unanimously approved:

“To amend the Membership and Procedures and By-laws for the Potomac River Advisory Committees so as to include a vice-chairman.”

Introduction

The Chairman introduced Delegate Tim Hutchins from Charles County who welcomed the Commission to Maryland.

Extension of Striped Bass Season

The Chairman reported that the office had received a request to extend the commercial gill net season by two weeks. He stated that at the time of that request the spring season still had two weeks to run and there was a general consensus among the Commissioners that it was not an emergency as defined in our regulations.

Mr. Douglas F. Jenkins, representing the Virginia Twin River Waterman's Association, had requested the extension due to a mass algae bloom in the lower Potomac on the 27th of January. He had taken a sample to a scientist at VCU and in Maryland and they confirmed that it was a heavy algae bloom. He stated that from his area to the mouth of the river they could not catch any fish in their nets and fishermen in this area could only use 10-15% of their tags. Therefore, they felt it was an emergency. He stated that under the Fisheries Management Act, "due to an emergency you have the right to extend the season". Mr. Jenkins went on to accuse the Executive Secretary of not informing all of the Commissioners of the algae bloom problem and the effect it had on the fishery.

The Chairman asked what the catch records reveal. The Executive Secretary reported that there was a substantial increase in catch in both the numbers and average size of fish being caught the last few days of the season. He noted that it was still behind what it was last year at this time but there had been a dramatic change in the last couple of weeks of the season. The Chairman said that agreed with his own findings. He recommended Mr. Jenkins not wait until the last minute to try to act on issues next year. He also stated that between now and next year perhaps the Commission could review the definition of "emergency" in relation to extending a season.

The Executive Secretary denied the accusation of not passing on information to the full Commission and asked if there was any Commissioner who was not informed of the algae bloom problem. Commissioner Williams stated that he did not recall being aware of the algae bloom, however, he was fishing in the ocean when he had talked with the Executive Secretary.

Executive Session

A motion was made by Commissioner Pruitt, seconded by Commissioner Parran and unanimously passed to go into Executive Session at 2:20 p.m. to discuss personnel matters.

The Commission reconvened at 2:55 p.m. and Commissioner Pruitt corrected the record by stating that they had gone into executive session to discuss legal matters not personnel matters. A motion was made by Commissioner Pruitt, seconded by Commissioner White and unanimously approved that:

"The only things discussed in the Executive Session were legal matters pertaining to what was before the Commission."

The Chairman addressed Mr. Jenkins saying that he was also requested by Commissioner Rice to call a special meeting on this issue and that it was up to his discretion, as Chairman, whether to hold it or not. However, after his review of the facts at the time, he did not see the need to call a special meeting.

Mr. Richard Daiger thanked the Commission for the action taken at a recent meeting to extend the fishing season five extra days. He stated that he had caught more fish in those last five days than he had the whole season. He also stated that had it not been for those five extra days he would have had 250 tags to return in instead of about 120 tags.

Financial Reports

A report on the third quarter (January 1 through March 31, 1999) disbursements by budget item was presented totaling \$125,491.93. No unusual expenditures were reported.

The Executive Secretary reported the Virginian and Maryland Auditors had finished the field portion of their work at the office yesterday and will be publishing their report in the next few weeks. He noted the auditors recommended splitting item #290 (ACFCMA) under contractual services into two different categories, #801A for capital goods and #290 for contractual services. The total amount of expenditures will remain the same but the amount for each category will be reported separately. He noted this change would be reflected in the first and second quarter disbursements reports approved at prior meetings.

A report of cash on hand as of April 12, 1999 was presented as follows:

First Virginia Bank (Checking – includes \$400 petty cash)	\$ 76,356.52
Nations Bank (Savings – DNR License Sales)	12,941.08
Virginia Local Government Investment Pool	288,717.59
Maryland Local Government Investment Pool	<u>284,332.15</u>
	\$662,347.34

The following motion was made by Commissioner Pruitt, seconded by Commissioner White and unanimously approved:

“That third quarter disbursements of \$125,491.93 be approved as distributed.”

Oyster Harvest Report

An oyster harvest report was presented which showed the amount of tax collected, licenses sold and oyster harvest by bar and gear for the period of October 1, 1998 through March 31, 1999. Tongers (65 boat licenses) reported 3,620 bushels while handscrapers (117 boat licenses) reported 9,440 bushels for a total harvest of 13,060 bushels compared to 1997-98 season harvest of 39,561 bushels.

The Executive Secretary stated that he reviewed the 1996-97 harvest report and it showed about 15,000 bushels harvested. He noted that if you subtract the Jones Shore harvest from last year's harvest it would have been about 12,000 bushels for the season. Therefore this year's harvest is in line with recent years without Jones Shore. He stated that the action taken 2 years ago when the Commission opened Jones Shore to handscraping during the 1997-98 season accounted for the increase in last year's harvest. He also noted this year was the first year for handscraping on Ragged Point and Coles Point.

1999 Oyster Repletion Program

The Commission budgeted \$168,447 for the 1999 oyster repletion program. The staff met with law enforcement, scientist and oyster repletion management personnel from Maryland and Virginia in March to develop a plan. That plan was reviewed by the industry members of the Oyster Repletion Committee, who reviewed, discussed and endorsed the proposal. The plan contains three elements:

1. Plant any available MdDNR seed on Swan Point. It may be 3,000 to 5,000 bushels of seed, which are actually 2-year-old oysters, so the count will be low. Swan Point was selected because it is down stream of most freshets and far enough up stream to be free of MSX and Dermo.

2. Plant available (approximately 40,000 bushels) fresh shells on Ragged Point. This was the bar in the new hand scrape area that had the most oysters harvested, therefore would be an appropriate place to plant the fresh shell. It would be sprinkled very lightly over the entire bar.

3. Plant reef shell on Jones Shore. Some of the reef shell will be planted in mounds on the lower end of the bar in case a seed quality spat set occurs and the rest will be “sprinkle planted” on the upper area of Jones Shore.

Mr. Robert T. Brown, from St. Mary's County Waterman's Association, suggested that part of the seed be put back in the upper section of the handscrape area and recommended Huggins or Posey's. He stated that there hasn't been a good strike in either of those areas in a number of years and perhaps they could get about 1,000 bushels of seed there. Mr. Douglas Jenkins said Ragged Point is currently loaded with shells and suggested putting 20,000 bushels on Tall Timbers, stating that if shells were put on Ragged Point it would be a waste of resources.

The Executive Secretary suggested that fresh shells could be planted on any bar in the new handscrape area, however the number of large stones and rocks in places such as Posey's and Tall Timbers would affect the ability to effectively work with handscrapes. He stated that staff had recommended Ragged Point because it had the most culch material removed from it this year. He also stated that the industry members of the Repletion Committee had discussed alternate places for planting, but endorsed those listed. There was further discussion on where to plant the seed and the Chairman asked if Mr. Jenkins would be willing to buoy off an area of Ragged Point where there aren't a lot of shells. Mr. Jenkins agreed to do so.

A motion was made by Commissioner Williams, seconded by Commissioner Pruitt and unanimously passed to:

“Approve items #1 (the seed planting) and #3 (the reef shell planting) of the Repletion Committee recommendations as presented and put the fresh shell on the area of Ragged Point as marked by Mr. Jenkins.”

Oyster Sanctuary

The Commission previously designated two oyster sanctuaries, one in the upper river and one in the mid river area, as part of the 1,000 acres called for in the Maryland-Virginia Chesapeake Bay Oyster FMP. The oyster repletion committee recommends investigating the Middle Banks/Vir-Mar Beach area in the lower river as the third and final part of the Potomac’s sanctuary program. This sanctuary could include a ‘deep’ water area which could be used for Woodrow Wilson Bridge rubble disposal and create a combination oyster sanctuary/fishing reef. We would work with people familiar with the area and select an appropriate location for such a combination artificial fishing reef/oyster sanctuary. One of the constraints to be considered is that the artificial fishing reef has to be located outside the ship channel and have a 15 foot minimum water depth over the finished height of the reef, therefore it needs to start in relatively deep water.

A motion was made by Commissioner Pruitt, seconded by Commissioner Taylor-Rogers and unanimously passed to:

“Investigate the Middle Banks/Vir-Mar Beach area as a site for the third oyster sanctuary in the Potomac, as recommended by the Oyster Repletion Committee.”

Finfish Harvest Report

A report of the 1998 finfish landings from the Potomac was presented that showed striped bass having the highest dockside value. Excluding menhaden, the dockside values, in descending order, of some other species were eel, croaker, summer flounder, catfish, spot, sea trout, white perch, gizzard shad, and bluefish. The Executive Secretary noted that croaker, which was the most valuable catch last year, dropped to #3 this year, he also noted that eel was #2. Commissioner Rice commented that he felt we had underestimated the value of yellow perch. Mr. Carpenter noted that 1999 is the first year that we have been asking for values from the harvesters themselves, in 1998 we received the values from VMRC. The total finfish harvest, including menhaden, was 6,424,054 pounds valued at approximately \$1,953,398.

1998 Striped Bass Harvest Report

The 1998 Striped Bass Harvest Report, as filed with the ASMFC, was presented. A summary of the information is contained in table #1.

TABLE 1
Preliminary Estimates of Striped Bass Harvest
Potomac River - 1998

	<u>Number</u>	<u>Pounds</u>	<u>1998 cap</u>	<u>Mean per Fish Pounds</u>	<u>Effort Data (Units)</u>
<u>Commercial</u>					
Gill Net	64,977	542,798		8.3	1,035,265 (yds.)
Hook and Line	2,695	10,866		4.0	1,364 (hrs.)
Pound Net	24,387	162,921		6.6	2,157 (net days)
Miscellaneous	<u>1,240</u>	<u>9,594</u>		7.7	207 (gear days)
Sub-Total	93,299	726,179			
<u>Charter</u>					
Spring	26	406		15.6	50 (hrs.)
Fall	<u>1,124</u>	<u>5,188</u>		4.6	982 (hrs.)
Sub-Total	1,150	5,594			
<u>Recreational</u>					
Spring	72	1200		16.7	934 (hrs.)
Fall	<u>10,382</u>	<u>45,608</u>		4.4	39,392 (hrs.)
Sub-Total	10,454	46,808			
TOTAL HARVEST	104,903	778,581	1,600,000	7.4	
<u>ASMFC Mandated Adjustments</u>					
Poaching (15% of Harvest)	15,735	116,787		7.4	
Hook & Release Mortality (8% of released fish)					
Spring	22	86		3.91	
Fall	<u>3,484</u>	<u>6,620</u>		1.90	
Sub-Total	19,251	123,493			
ADJUSTED TOTAL	124,154	902,074			

Mr. Robert T. Brown stated the pound netters have not been catching all of their quota because they caught smaller fish and wondered what was the status of raising the number of pound net tags given each year. Commissioner Rice recalled this issue had been addressed and dealt with at the last meeting when the Commission had extended the pound net season into February and March. Mr. Jenkins was concerned about the cap being 1,600,000 pounds and the harvest only shows 800,000 pounds. He was also concerned about extending the gill net season so the fishermen have some time to use up their tags. The Chairman recommended that Mr. Jenkins go through the finfish advisory committee to come up with a plan to have an emergency extension. Mr. Jim Drummond, Chairman of the Finfish Advisory Committee reminded everyone that the Commission added 41 days to the commercial fishery this year and the recreational season is up to 180 days so we have already added a lot of days to the seasons.

ASMFC Issues

The Executive Secretary reported on issues that were presented at the March ASMFC meeting.

Weakfish (gray trout) – The ASMFC Weakfish FMP called for dramatic reductions in fishing pressure because the stocks were depressed and the age structure was limited to only a few year classes. It was believed the “F” (the fishing mortality rate) was very high in the early 1990’s as a result of commercial and recreational fishing and the by-catch associated with the ocean trawl fisheries for other species. The PRFC implemented a January 1 - July 28 closure for commercial harvest of weakfish and a 14” minimum size limit and a 10 fish creel limit for the recreational fisheries.

The most recent preliminary stock assessment done by the technical committee is showing that the “F” has begun to drop to levels seen as sustainable. If further review of this analysis confirms these findings it will be very good news, because we should be able to continue with the existing regulations without the need for more restrictive regulations over the next several years.

Summer Flounder – At our last meeting we adopted a recreational size limit of 15 inches, a 4 fish daily creel limit and a May 1 – Dec 31 season based on the tables approved by ASMFC/ MAFMC. The Maryland Department of Natural Resources submitted an alternative plan for the recreational fisheries in the Chesapeake Bay that was based on a 14” size limit. That proposal was not approved, and Maryland has now implemented a 15”, 8 fish creel and a May 8 – Dec. 31 season. They used the same tables but interpolated between two dates on the tables to get a higher creel limit but shorter season than we have in the Potomac.

American Eel – The ASMFC started to draft a combined horseshoe crab/American eel FMP last year. The joint plan was found to be too cumbersome and was split into two separate plans. The draft eel FMP has sections on the life history, food habits, stock assessment and habitat issues. It also has sections on the fishery for eels. Eels are harvested in all states from Florida to Maine, as well as in Canada and Europe (a European species) and the markets are world wide for both bait and as food for humans. Virginia, PRFC and Maryland rank number 1, 2, and 3 respectively in eel harvest for the last 10 years, accounting for about 62.4% of the East Coast total.

The draft FMP has a number of options for management measures and will be the subject of ASMFC sponsored public hearings in the next several months. These options range from maintaining existing or more conservative regulations, to instituting ‘escapement periods’, to limited entry fisheries, to capping harvest at the 1998 landings. No option was listed as preferred and the ASMFC eel management board will meet again during the May meeting week. This FMP will be very important to the PRFC since we are the second largest fishery on the East Coast.

Commissioner Pruitt said Virginia had issued several special experimental elver fishery permits and asked if ASMFC plan was considering something about the elvers. Mr. Carpenter replied ASMFC was considering a 6” minimum size limit on eels, and since the PRFC already has that limit in place, it should not impact our fishery, but did not know how it affects Virginia. He also noted a requirement to annually monitor the spring elver run which would impact the Commission because it may not be possible within our jurisdictional waters. We will be working with the eel technical committee and Maryland and Virginia to locate an appropriate site(s) in the tributaries of the Potomac.

Striped Bass – In 1998 the ASMFC adopted Addendum III that maintains the 1998 state regulations (and quotas) through 1999 and 2000, providing that alternative plans may be submitted. We (MD, VA, PRFC) submitted just such a proposal for a larger bay wide quota, but it was not approved. The ASMFC has begun discussions about the form and format of the post 2000 fisheries. One of the biggest questions will be how to allocate between the producer and the coastal areas. The one thing that is apparent is that by the year 2002, possibly 2001, the overall bay wide quota will be lower. This is because the 1996 year class will be moving off shore, and our quotas are tied directly to the YOY and status of the stocks in the Bay.

Fish Advisories

Mr. Kevin Novo-Gradac reported that the Maryland Department of the Environment is considering issuing a fish consumption advisory for the tidal Potomac River downstream of the District of Columbia because of PCB levels found in some species. He stated that the Secretary of the Environment is reviewing this, along with several other people and he believed that an advisory would be issued within the next few days. This advisory would be directed toward recreational fishermen and limited to only channel catfish, American eel, and carp. The current levels of PCBs are below FDA action levels for interstate commerce and therefore the advisory should not directly impact the commercial fishery. He noted several newspaper articles had already been published on the general findings and probable details of such a warning. For example, to limit consumption of channel catfish larger than 18" to 1 meal per month and to advise children, and women of childbearing age to limit their consumption of these fish. The eel and carp have had no specific amount given at this time but reduced consumption is advised.

Delegate Hutchins stated concern about how the information will be released to the public and the possible misinterpretation of it. Mr. Carpenter said he had asked Mr. Novo-Gradac to brief the Commission today because the EPA has already started to release this information to the press. The PRFC has been working with the Maryland Department of the Environment, the Virginia Health Department, the District of Columbia and the ICPRB toward a regional approach to this problem. The MD Department of the Environment has been extremely helpful and responsible in their handling of this matter. Mr. Novo-Gradac emphasized that neither the Secretary nor the Governor's office has approved an official statement, and that the situation is neither a ban on fishing, a major health crisis, nor an emergency.

Maryland Legislative Update

Delegate Hutchins briefed the Commission on several issues of interest which were discussed during the just ended session of the Maryland General Assembly. They passed a bill to eliminate the special \$2.00 striped bass permit and increase the sport fishing license fees. There was a bill to allow power dredging of oysters in the Chesapeake Bay. Another bill, which Delegate Hutchins supported, that would reinstate the 0.10 blood alcohol level as prima facie evidence of operating a vessel under influence of alcohol.

He apologized for not knowing the final outcomes of these bills but explained that things were very hectic during the final hours of the General Assembly.

Introductions

Dr. George E. Krantz, formerly with the MdDNR, said that he is now representing the Coastal Conservation Association. An association of recreational fishermen which has chapters in Maryland, Virginia, the District of Columbia and a number of other coastal states. They would like to sit in on and actively participate in PRFC advisory and commission meetings. The Chairman welcomed their participation and invited those who would like to be on our mailing list to leave their names and addresses with the staff.

Oysters

Mr. Bill Sieling with the Seafood Marketing Division of the Maryland Department of Agriculture reported the FDA had received a petition from the Center for Science and Public Interest (CSPI) requesting a non-detectable performance standard for marine vibrio valenificus in shellfish be established. He explained if that request were granted, oysters from any state that had ever detected vibrio in its waters could not be sold in interstate commerce as raw, and that would include Maryland and Virginia. The CSPI wants all oysters to be cooked or pasteurized before

being sold, thereby eliminating the raw bars and shell stock trade and that would be detrimental to the local oyster industry. There is a petition being circulated by the industry to oppose the CSPI request. Mr. Seiling asked the Commission to also oppose the CSPI's petition, but comments must be in by April 21, 1999.

The Executive Secretary felt that this issue was very important however, he questioned why there was such a short notice. He suggested that the Commission contact both states to get their position on this issue and requested authorization to submit a letter from the Commission supporting the state positions. Commissioner Taylor-Rogers stated that Maryland would need more time to examine this issue and suggested that we also inform our congressional members because they may be able to get an extension of the comment period. Commissioner Pruitt suggested asking the two states Congressional Liaison Offices for help in requesting an extension of the public comment period, given that an issue of this importance and effecting so many states should not be acted on by the FDA before the Interstate Shellfish Sanitation Commission meets in July.

A motion was made by Commissioner Taylor-Rogers, seconded by Commissioner Rice and unanimously passed that:

“The staff contact the two liaison offices and ask for a 90 day extension on closing of the public hearing records.”

Fish Trot Line

The Executive Secretary said he had reviewed the record of the changes in the fish trot line license structure and fees. The fish trot line went from a personal license to a gear license in January. It is believed changing it from a gear to a vessel license for next year would accomplish what the fishermen have said would be appropriate, but he stated that more time was needed to review this issue.

Law Enforcement Issues

Mr. Harley stated that a law enforcement officer from Maryland had stopped a man from Texas who had drifted into his net and when the man went to go forward he got his propeller tangled in the net. When the man asked the law enforcement officer how he could get out of this, the officer's response was “that's your problem”. Captain Nixon asked Mr. Harley to give him the information and stated that Mr. Harley could file a claim with the state and they would make a ruling on reimbursement for loss.

Budget Committee

The Chairman appointed Commissioners Pruitt and Taylor-Rogers to serve as the budget committee.

Next Meeting

The next meeting was scheduled for Friday, June 25, 1999 at 9:30 a.m. in Colonial Beach, VA.

Adjourn

The meeting adjourned at 4:20 p.m.

Respectfully submitted,

Paul H. Kellam, III, Chairman

John T. Parran, Secretary