

**Minutes of the Regular Meeting  
Potomac River Fisheries Commission  
La Plata, Maryland  
August 12, 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), and John W. White, Sr. (VA). Kenneth W. Williams, Sr. (VA) was unable to attend.

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

**Others Present:** Delegate Thomas E. Hutchins, Delegate Van Mitchell, Delegate John F. Wood, Jr., Virginia Benedict – Democratic Central Committee, Dr. Eileen M. Setzler-Hamilton – CBL, UMCES, Ellen Cosby – VMRC, Roy Scott and Mark Homer – MdDNR, Capt. Garland Nixon and Sgt. Charles Santerre- MdDNR Law Enforcement, Col. Steve Bowman and Dan Eskridge - VMRC Law Enforcement, Jim Drummond, John Dean, James Bowling, Dennis R. Newton, and T. A. McGuinness, Jr., - Finfish Advisory Committee, John F. Tucker Brown, Robert Boarman, Dean Bowie, Joseph Stine, Jr. John B. Morris, Jr., and George Smith, - Shellfish Advisory Committee, Douglas F. Jenkins, Sr. - Twin River Waterman's Group, Robert T. Brown and Ricky Morris - St. Mary's Watermans Association, Bruce Tugwell - CCA, , Francis Warring, Bill Bartlett, Joseph Hawkins, Wayne Morgan, Sr., Wayne Morgan, Jr., Steve Scala, Buddy Scala, George Moon, William Webb, Phil Hayden, Bert Hayden, George Perry, Harry Boyden, Jr, Eddie Hayden, Jimmy Morris, Mike Hayden, Charles Bourne, Nathan Bourne, Herman Beasley, Brian Buckle, Clifton Buckle, Sammie Dorough, Jr., Capt. Billy Robertson, Diane C. Newton, W. E. Green, Richard Daiger, Robert M. Lumpkins, Robert Tippet, Larry Crowder, Thomas P. Tippet, Jr., Thomas P. Tippet, III, Ken Hastings, Patrick Goldsmith, Jeffrey Thompson, Phyllis Frere, John Robertson, Fred Robertson, Stephen Norris, Jimmy Trossbach, William Rice, Jr. and several others who did not sign the register.

**Press:** Todd Shields – The Washington Post, Lawrence Latane, III – The Richmond Times-Dispatch, Samantha Levine – Free Lance-Star

Chairman Kellam called the meeting to order at 2:00 p.m.

### **Introductions**

The Chairman congratulated Dr. Sarah Taylor-Rogers, Ph.D. on her recent appointment as Secretary of Natural Resources for the State of Maryland. He also recognized Maryland Delegates Van Mitchell and John F. Wood, Jr.

### **Consideration of Minutes**

Commissioner Parran made *a motion to approve the minutes of June 25, 1999 as written and distributed*. The motion was seconded by Commissioner Taylor-Rogers and unanimously approved.

### ***Open Public Hearing***

Chairman Kellam opened the public hearing at 2:03 p.m. He stated comments on the crab issues of a daily bushel limit, a time limit and the culling requirements would be heard first, followed by the oyster size limit proposal.

The Executive Secretary reported that all items scheduled for public hearing today had been advertised in conformity with requirements of the Compact. He then briefly explained the three proposals for the crab fishery, noting that they would, if approved, only be effective during the rest of this year's season. The first was a daily harvest limit; the second was a time limit earlier than sunset and the third would require culling containers to be cleared by a certain time. Several tables and graphs of possible impacts on the crab industry, had a bushel limit been established in past years, were presented. One table showed, for example, that in September 1996, if a 15-bushel limit had been in place, 6,838 bushels of crabs would have been conserved. If there were a 40-bushel limit, only 658 bushels would have been conserved. The Executive Secretary noted that on the crab harvest report, through July, only 25,975 bushels had been reported compared with 64,000 in 1998 and the longer-term (13 years) average of 56,000 bushels for the same months. He also noted that this year's peeler harvest, while below 1998 is well above the average.

**Crab Bushel Limits, Time Limits and Culling Requirements** – These proposals would set a daily bushel limit on commercial crab harvesting, establish a cut-off time, and require the culling container to be cleared so many minutes after the cut-off time, during September, October and November, 1999 only.

Mr. William E. Green said the bushel limit maybe difficult to enforce and thought a time limit would be better.

Robert T. Brown speaking for the St. Mary's County Watermens Association opposed making any changes in the middle of the season. People bought licenses expecting the rule to be the same all year. Any changes should be made before new licenses are purchased.

Mr. Robert Boarman noted the data presented clearly shows a problem and the average catch is less than 15 bushels. He spoke in favor of a limit of 25 bushels per boat per day to allow some females to escape into the bay so they can reproduce so we will have more crabs next year. He was opposed to the time limit and culling requirements because a catch limit would be more effective. He also believed there is a problem of people fishing more pots than they are licensed to fish.

Mr. Tucker Brown, chairman of the Shellfish Advisory Committee, reported the committee voted 13-2 to leave the regulations as is for the remainder of the season and let the committee look into it over the winter. He cited market competition with crabbers from other parts of the bay; the need to have female crabs for the picking houses and a belief that the numbers of crabs which will be available this fall will reduce the price and therefore the effort. They are opposed to making any changes during the middle of the season.

Mr. James Bowling stated that he had spoken with several local watermen and they were in favor of a 25-bushel limit but he is opposed to a time limit stating that it would unfairly affect the part-time crabbers.

Commissioner Parran introduced Mr. Billy Robertson. Mr. Robertson, who owns a restaurant and is a crab buyer, stated that he has been going to North Carolina and Georgia to buy crabs. He felt the dry summer was the reason so many crabs were above the 301 bridge, and he questioned why no one was looking at a 5 ½" minimum size limit to increase the yield. Maybe if we had an 18" size limit on striped bass in the 1950's we would not have needed the moratorium in the 1980's.

**Oyster Size Limits in the Hand Scrape Area** – The proposal would amend the cull law size limit within the hand scrape area from a 3" minimum to 2 ½" and impose a 4" maximum size limit on all oysters harvested in that area. It would also provide a tolerance of 5% undersized oysters and 1 oversized oyster per bushel. The Executive Secretary noted that this proposal was similar to the slot limit that was in effect in that area for several years. He also reported a fax was received from Mr. Jack Russell this morning in opposition to making any changes.

Tucker Brown stated the Shellfish Committee's main concern was that they had no knowledge of the salinity in the water and didn't understand the emergency procedures for regulation changes. They voted against the proposed change, but they didn't want to see the oysters lay there and die either.

Roy Scott from MdDNR reported that they had sampled the hand scrape area last fall during the annual survey. About 80% of the oysters in the lower river were infected with Dermo and since then there have been elevated salinities which would create a better chance of mortality in that area. He expects as much, if not more, mortality this year as there was last year. August and September are the worst months for Dermo mortality and if MSX were evident it would be in October.

Doug Jenkins was concerned over salinity levels and asked if an emergency was happening could the Commission open up the river. He was told it would take at least two months to change the size limits, which is why the hearing is being held today.

Robert T. Brown remarked that with the raised salinity levels the oysters would probably die between the end of August through October and the hand scrape season doesn't come in until November. He stated that the St. Mary's County Waterman's Association voted to leave it at 3".

Eddie Davis was opposed stating that no oyster should be caught under 3". He also remarked that packers don't want oysters that are under 3".

There being no other comments from the public, the Chairman closed the public hearing at 2:40 p.m.

*Close Public Hearing*

**Consideration of Regulation Changes**

The Chairman stated that he would like to consider the crab bushel limit first, and then the time and culling requirements.

Crab Bushel Limits – Commissioner Taylor-Rogers asked Law Enforcement how a bushel limit would be enforced. Col. Steve Bowman – VMRC stated that enforcing this law would not be a problem. Capt. Garland Nixon – MdDNR stated that Maryland regularly inspects boats for bushel limits, and also felt it would be enforceable. He further suggested a requirement that each licensee use a unique color scheme to mark all of his crab pots would help with enforcement of the crab pot limits.

Dr. Eileen Setzler-Hamilton stated that some of the mature female crabs conserved by the daily limit this fall will escape the river and could return to the spawning grounds. The male and immature female crabs saved will be worth more next summer because, if they are just molting at the 5" size limit now, they will be caught and sold this fall for lower prices and unavailable next spring and summer.

Commissioner Rice stated that April, May and June has been the worst season that he has seen in the past 25 seasons and this is more of a local economic issue because the Potomac accounts for about 10-15% of the bay-wide fishery. Commissioner Pruitt stated that through the efforts of the Chesapeake Bay Commission's Blue Crab Committee, which is co-chaired by Delegates Wood (MD) and Bloxom (VA), both the Maryland and Virginia General Assemblies have appropriated money for a study to look at the entire crab industry. That study is currently underway and in addition, Virginia is also looking at its winter crab dredge industry. He supported Commissioner Rice's position that the proposal for a bushel limit is a local issue. He also agreed with Mr. Brown, under normal conditions, not to make any changes during the middle of the season. However, because of this year's drought, higher salinities in the upper river have concentrated more crabs in a smaller area thus making them more susceptible to harvest. He would be willing to consider a bushel limit for the remainder of the season.

The Chairman stated that over the past 10 years the crab pot effort in the Potomac has changed from river-wide to a concentration in the upper river. A lot of watermen in the past few years have gotten out of the business, not because they wished to retire, but because they had to find other things to do in order to support themselves and their families. Today the crab fishery supports most of the watermen and if you take the crabs away from them they will be out of business.

Commissioner White noted that several watermen had spoken to him about the need to conserve some crabs until next year and he would support a bushel limit for the remainder of this season.

Commissioner Taylor-Rogers noted the on-going efforts by both states to manage this resource. She spoke of her concern over the crab resource and the importance of the crab fishery to many people throughout the Bay, and the need to be prudent managers of the resource. For these reasons and based on the testimony here today and since the proposal was for just this fall she supported a bushel limit.

A motion was made by Commissioner Taylor-Rogers, seconded by Commissioner Rice and approved unanimously to adopt the proposed Reg. VII, Sec. 6(a) to read as follows:

***Section 6(a) Catch Limits. It shall be unlawful for the owner, captain, master, or any member of the crew of any boat licensed hereunder to take, catch, sell, offer to buy or sell, expose for sale or have in possession more than 30 bushels (or 12 barrels) of crabs during any single day between September 15<sup>th</sup> and November 30, 1999.***

Time Limits and Culling Requirements – The Executive Secretary stated several calls were received from part-time crabbers opposing the time limit.

Commissioner Rice made *a motion that no action be taken on time limits or culling requirements at this time and that it be referred back to the Shellfish Advisory committee for further study this winter.* Commissioner White seconded the motion and it passed unanimously.

Oyster Size Limits – Commissioner Rice asked Mr. Hutt if the size limit on oysters could be changed under the emergency procedures of the Commission. Mr. Hutt replied that the Commission could open or close the entire river or any part thereof under its emergency authority, but not change the size limit. Mr. Rice said he had added this item to the public hearing because he felt that the drought this year would result in the loss of the larger oysters in the lower river to disease. Based on Mr. Hutt’s advice now was the time to act if any change were to be made for this season. He also noted the lack of support from the industry for any change and therefore suggested the Commission take no action on this proposal.

**1999-2000 Oyster Season Dates, Days and Time Limits**

In light of the scientific advice regarding the possible impact of disease in the lower river there was some discussion regarding opening the hand scrape season on October 1<sup>st</sup> instead of the usual date of November 1<sup>st</sup>. *A motion was made* by Commissioner Rice, seconded by Commissioner Pruitt and unanimously passed *to adopt Commission Order #99-08 as follows:*

**ORDER #99-08  
1999-2000 OYSTER SEASON DATES, DAYS 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 2(b) and Regulation II, Section 3(b), **HEREBY DECLARES AND ORDERS:** The 1999-2000 oyster season dates, days and time limits shall be as follows:

<u>Gear</u>	<u>Season</u>	<u>Days</u>	<u>Hours</u>
Hand Tonging	Oct. 1 through Dec. 31, 1999	Monday through Friday	Sunrise to 1:00 pm
	Jan. 1 through Mar. 31, 2000	Monday through Friday	Sunrise to 1:00 pm
Hand Scraping	Oct. 1 through Dec. 31, 1999	Monday through Friday	8:00 am to 1:00 pm
	Mar. 1 through Mar. 31, 2000	Monday through Friday	8:00 am to 1:00 p.m.

**BE IT FURTHER DECLARED AND ORDERED:** Possession of a hand scrape shall be permitted during the aforesaid times and from one hour before and for two hours after such times. The use or possession of any hand scrape at any other time is unlawful.

**AND, IT IS FURTHER DECLARED AND ORDERED:** That this Order #99-08 shall become effective September 12, 1999, shall supersede and repeal Order #98-14 and remain in effect through March 31, 2000.

**Oyster Repletion Program**

The Executive Secretary noted the seed and fresh shell portion of the repletion program had been completed earlier this summer and reported on at the last meeting. Since then, a portion of the reef shells had been planted in mounds on the lower part of Jones Shore, and the remainder were sprinkle planted on an 84-acre portion of the upper end of the same bar. The total cost of the repletion program, including count and control, was \$159,641.54. The Executive Secretary thanked MdDNR for their cooperation, help and assistance with this project, noting Maryland had provided the seed and the reef shells to the Commission at their cost.

**Interstate Shellfish Sanitation Committee**

The Executive Secretary reported that at the ISSC meeting they passed a requirement that all oysters being harvested in an area where there have been documented cases of Vibrio will have to be labeled ‘for cooking only’.

**Legal Officer's Report**

The Legal Officer reported that subject to the direction of the Commission and under the authority granted at the last meeting, a contract has been executed for the purchase of three lots located next to the office in Colonial Beach for \$175,000. He noted the price was less than the authorized amount and he expects closing should be within the next couple of weeks.

**Financial Reports**

A report on the fourth quarter (April through June 1999) disbursements was presented with budget items totaling \$154,643.21. No unusual expenditures were noted. The report also contained information on receipts and disbursements for the entire FY 1998-1999 year.

A report of cash on hand as of August 11, 1999 was presented as follows:

First Virginia Bank (Checking – includes \$400 petty cash)	\$ 176,280.27
Nations Bank (Savings – DNR License Sales)	13,272.46
Virginia Local Government Investment Pool	263,386.07
Maryland Local Government Investment Pool	<u>257,802.72</u>
	\$ 710,741.52

The Executive Secretary noted that the amount included in the checking account represents the appropriation just received from Virginia, and in toady's mail, the Maryland appropriation was received, which is not yet reflected in the above amount.

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

***“That fourth quarter disbursements of \$154,643.21 be approved as presented.”***

**Shellfish Advisory Committee Report**

Tucker Brown presented the following report of actions taken at the last Shellfish Advisory Committee meeting held on July 28, 1999.

Daily Bushel and Time Limits for Commercial Crabbing – Several members spoke in opposition of both crab proposals and expressed concern over changes being made in the middle of the season after crabbers have already paid for their licenses.

*After much discussion the committee recommended (13 yes, 2 abstentions) that the crabbing regulations for the 1999 Fall Season remain unchanged.*

Oyster Size Limits – Robert T. Brown was concerned about re-implementing the 2 ½ inch cull law stating that he had trouble marketing oysters of that size and supported keeping the cull law at 3 inches with no maximum. Several other members also supported not changing the current size limits for oysters. There was some discussion over the level of salinities in the water and concern over oysters dying, but no information was available to verify the levels. There also were questions raised on the definition of an “emergency” and the committee requested clarification of what the criteria is for an emergency and how long it would take to reduce the size limit if there was proof the oysters were dying. Jewel Hudson stated she would pass the request along to the Commission.

*The committee recommended (10 yes, 3 no, 2 abstentions) that the oyster size limits in the hand scrape area remain at 3 inches with no maximum.*

1999-2000 Oyster Season – *The committee voted (13 yes, 2 abstentions) to support the following staff recommendation for the 1999-2000 oyster season:*

Tonging	Oct. 1 through Dec. 31, 1999	Mon. through Fri.	Sunrise to 1:00 p.m.
	Jan. 1 through Mar. 31, 2000	Mon. through Fri.	Sunrise to 3:00 p.m.
Hand	Nov. 1 through Dec. 31, 1999	Mon. through Fri.	8:00 am to 1:00 p.m.
Scraping	Mar. 1 through Mar. 31, 2000	Mon. through Fri.	8:00 am to 1:00 p.m.

Election of Chairman and Vice Chairman – The committee nominated and approved Tucker Brown for Chairman and Elgin Nininger for Vice Chairman.

Crabbing Regulations Review – The Commission has asked the advisory committee to review current crabbing regulations and make recommendations for long term management measures before next season.

### ASMFC Issues

The Executive Secretary reported on recent actions of the ASMFC meeting in Alexandria, VA.

American Eel – The following management measures were adopted by the Eel Management Board with final Commission approval expected at the November Annual Meeting:

- Recreational – establish uniform regulatory possession limits for recreational/subsistence fisheries in all of the participating states/jurisdictions of a six inch minimum size and possession limit not to exceed 50 eels per person while engaged in the harvest of eels, with no sale allowed by recreational/subsistence fishermen. (*PRFC will need to adopt possession limit*).
- Commercial – Maintain existing or more conservative American eel commercial fishery regulations, including gear specifications and minimum size limits as currently in effect, for all life stages. (*Existing PRFC regulations meet this management measure*).
- Fishery-dependent monitoring – Estimates of directed harvest by month, gear, life stage, cpue, etc. (*Existing catch reporting will provide most of the data needs*).
- Fishery-independent monitoring – Start an annual young-of-year survey. (*PRFC will need to work with Md. and Va. to begin, in 2000, an annual survey in the tributaries of the Potomac*).

Weakfish – The annual state reports were reviewed, the PRFC's report was approved and the annual reporting due date was moved back to September 1<sup>st</sup> each year. The Technical Committee reported progress was being made toward lowering the "F" (the fishing mortality) and they continue to refine biological reference points.

Shad and River Herring – The annual state reports were reviewed, the PRFC was asked to provide additional information and to explain our 2% pound net by-catch provision. The PRFC will also need to develop a rebuilding schedule with an appropriate "F" (fishing mortality). Staff will be working with our scientific advisors to meet the reporting requirements.

Striped Bass – Work on the year 2001 and beyond fisheries has been interrupted by a report from the technical committee. Analysis of the last year's annual state reports revealed that the coast-wide "F" for 1998 was 0.38, which exceeds the target "F"=0.31 for the second year in a row. Calculations showed the "F" on the larger (older) fish was much higher than that on younger (smaller) fish. Under terms of the plan the ASMFC must take actions to reduce the fishing mortality in the year 2000 fishery. The technical committee was asked to evaluate a number of options to reduce "F" for next year. An accelerated schedule of meetings between now and the November Annual ASMFC Meeting are being planned. We anticipate being able to leave the annual meeting with an approved bay-wide fishing plan for the 2000 fishery.

Menhaden – The draft FMP was provided to the Commissioners.

Summer Flounder – The ASMFC Flounder Management Board met jointly with the Mid-Atlantic Fisheries Management Council in Philadelphia, PA on August 11<sup>th</sup> to develop the 2000 commercial quotas. Staff had recommended a reduction but the outcome of that meeting is unknown. The results will be given at a later meeting.

Bluefish – The ASMFC Bluefish Management Board is meeting today with the Mid-Atlantic Fisheries Management Council in Philadelphia, PA to adopt the commercial harvest limits on bluefish for the year 2000. The outcome will be given at a later meeting.

The Executive Secretary asked those Commissioners planning to attend the ASMFC Annual Meeting in Mystic, Connecticut to contact the office as soon as possible so the necessary arrangements can be made.

**Tag Reallocation**

Mr. Robert T. Brown stated that over the past couple of years the pound netters have not been catching their entire striped bass quota. He asked, if it appears they are going to miss their quota again this year by a large margin, can the Commission reallocate unused tags to fishermen who are using their tags so that they can at least come close to their quota. The Executive Secretary stated that staff could conduct an analysis to compare the catch this summer with the last several years, and make a report at the next meeting.

The following motion was made by Commissioner Taylor-Rogers, seconded by Commissioner Parran and approved:

*“To provide authority to the Executive Secretary to do an assessment of the striped bass identification tags issued to the pound netters and, if there are those that can be reallocated, to use his judgement to do so.”*

**Introductions**

Commissioner Parran introduced Delegate Tim Hutchins and Virginia Benedict, Chairlady of the Charles County Democratic Central Committee.

**ASMFC Bluefish Advisory Committee Membership**

The Executive Secretary reported that Mr. Bryan Jewell, who had been serving as our commercial representative on the ASMFC Bluefish Advisory Committee, has asked to be relieved of those duties. Mr. Tommy Crowder is willing to serve and staff will be forwarding his name to the Bluefish Management Board for inclusion on the panel. He thanked Mr. Crowder for his willingness to serve.

**Surplus Equipment**

The Executive Secretary reported that a Sharp Facsimile Machine, Model # FO-800, Serial Number 90108367 needs to be declared surplus. This item has been replaced by a more updated machine. *A motion* was made by Commissioner Pruitt, seconded by Commissioner Kellam and passed *that the item listed above be declared surplus and be disposed of accordingly by the Executive Secretary.*

**Deferred Compensation**

The Executive Secretary reported that this item had been adopted as part of the budget at the last meeting. *A motion* was made by Commissioner Pruitt, seconded by Commissioner Rice and approved *to adopt the resolution for deferred compensation matching plan as follows:*

**RESOLUTION  
DEFERRED COMPENSATION MATCHING PLAN**

**WHEREAS**, the Potomac River Fisheries Commission has adopted a Deferred Compensation Plan which is available to all eligible employees, pursuant to Section 457 of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, certain tax benefits accrue to employees participating in said Deferred Compensation Plan; and

**WHEREAS**, the Potomac River Fisheries Commission wishes to provide an additional incentive to its employees to voluntarily set aside and invest portions of their current income to meet their future financial requirements and supplement their existing retirement program(s); and

**WHEREAS**, Nationwide Retirement Solutions, Inc. (NRS) has provided the Potomac River Fisheries Commission with a specimen plan document (the NRS Governmental Deferred Compensation Matching Plan and Trust);

**NOW, THEREFORE THE POTOMAC RIVER FISHERIES COMMISSION DOES  
HEREBY RESOLVE AS FOLLOWS:**

LA PLATA, MARYLAND

AUGUST 12, 1999

The Potomac River Fisheries Commission, meeting in regular scheduled session, the 12<sup>th</sup> day of August, 1999, hereby adopts the PEBSCO Governmental Deferred Compensation Matching Plan and Trust (Plan) and hereby establishes the Potomac River Fisheries Commission Deferred Compensation Matching Plan to provide additional benefits for all qualifying participants in the Potomac River Fisheries Commission Deferred Compensation Plan. The Executive Secretary is hereby authorized to execute an Adoption Agreement for said plan.

The Trustee(s) shall be: the Chairman, Vice Chairman and Secretary of the Potomac River Fisheries Commission as elected annually.

The Plan Administrator shall be: the Executive Secretary.

All qualifying employees covered under the Potomac River Fisheries Commission Deferred Compensation Plan shall be covered under this Plan.

The Employer Contribution shall be: 25% of the individual employee's contribution to the Potomac River Fisheries Commission Deferred Compensation Plan, not to exceed \$100 per employee per month.

The plan shall be effective as of July 1, 1999.

#### **Next Meeting**

The next meeting was scheduled for Friday, November 19, 1999 at 9:30 a.m. in Colonial Beach, VA.

#### **Adjourn**

The meeting adjourned at 3:35 p.m.

Respectfully submitted,

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Paul H. Kellam, III, Chairman

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John T. Parran, Secretary