

**Minutes of the Regular Meeting
Potomac River Fisheries Commission
Colonial Beach, Virginia**

December 5, 2008

Commissioners Present: Robert H. Bowes (MD) – Vice-chairman, Steven G. Bowman – Secretary, William L. Rice, Sr. (MD), Ida C. Hall (VA), Dennis Fleming (MD), Kyle J. Schick (VA) and Harley Speir (MD). (Chairman J. T. Holland (VA) was unable to attend.)

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

Others Present: Sgt. Shawn Garren – MdDNR Law Enforcement; Capt. M. Ray Jewell – VMRC Law Enforcement; Joe Grist – VMRC; Paul Kellam – Former PRFC Commissioner; Herman Delvo, John Morris, George Smith and Jim Berthe – Crab Advisory Committee; John Higgs, Keith Lumpkins, Kim Unkle, W. G. Shelton, Shea Ridgell, Timmie Lamouroux, John Farrell, John Morris, III, Wayne Blackwell, William Hall, George Moon, Justin Drive, Dennis Edwards, Bill Whisenant, William Stine, Kevin McCabe, John Evans, Geryl Blackwell and several others who did not sign the guest register.

Vice-chairman Bowes called the meeting to order at 9:30 a.m. and recognized former PRFC Commissioner Paul Kellam.

Consideration of Minutes

A motion was made by Commissioner Bowman, seconded by Commissioner Rice to approve the minutes of September 11, 2008 as presented.

Open Public Hearing – 9:32 a.m.

Mr. Carpenter stated that the Commission had advertised this public hearing in accordance with the terms of the Compact, therefore the Commission is in a position to act on these items today.

Vice-chairman Bowes stated there are four items to be considered for public comment.

1. To adopt **Reg. I, Sec. 1(e)(2)** to establish a new crab pot fee of \$1,000 when a crab pot license is re-issued to any other person who is not an immediate family member. Revenue from this fee will be used exclusively to buy-back and retire crab pot licenses.
2. To amend **Reg. VII, Sec. 1(f)** to eliminate the harvest of “white” sign peelers by removing the word “white” from the definition of a peeler crab.
3. To amend **Reg. VII, Sec. 6(b)** to increase the hard crab pot cull ring size from one of at least 2-3/16 inches and one of at least 2-5/16 inches to at least two 2-3/8 inches.
4. To amend **Reg. VII, Sec. 5(e)** to change the crab pot depth restrictions from September 1st through November 30th to June 15th through September 15th.

Mr. Bowes asked Mr. Carpenter to review the 2008 crab harvest report before the Commission took public comments.

Crab Harvest Report

Mr. Carpenter stated while he provides the crab harvest report, staff will be passing out copies of comments received in regard to the public hearing as well as minutes of the last Crab Advisory Committee meeting, in case anyone needs to refer to this information.

Mr. Carpenter presented a report of the 2008 crab harvest landings for April through November; however the numbers for November are considered preliminary at this time. The Commission does expect those numbers to increase slightly. The report showed a harvest of 58,940 bushels of hard crabs, 22,276 pounds of peelers and 1,128 pounds of soft crabs compared to 59,905 bushels of hard crabs, 25,866 pounds of peelers and 1,343 pounds of soft crabs for the same period last year. The harvest for this season is about half of the long term average of 116,897 bushels of hard crabs.

When the winter crab dredge survey became available last season, there was a prediction that the 2008 harvest would resemble the 2007 season. That prediction held true right down to the monthly data. The fact that the winter crab dredge survey was able to predict this as close as it did goes to show that this survey can be a tool for Maryland, Virginia and the PRFC to use in future years in planning the management of the resource.

Public Comments

Vice-chairman Bowes stated that he would take each item advertised for public hearing one at a time. He called for comments for Reg. I, Sec. 1(e)(2).

Reg. I, Sec. 1(e)(2) – Crab Pot License Surrender – Mr. Carpenter explained this is a completely new Regulation that is designed to charge a transfer fee when a crab pot license changes ownership, excluding “immediate family members”. The revenue from this would go into a special fund that would be used to buy back unused or unwanted crab pot licenses. The concept is to reduce the number of crab licenses, therefore, reducing the number of crab pots that could potentially be fished in the Potomac River. The cap is currently set at 400 licenses and this program should help to achieve that cap.

Robert Lumpkins felt by eliminating licenses, which would prevent younger watermen from getting into the business. Vice-chairman Bowes stated this is not the intent of this proposed Regulation. The intent is to get the number of licenses to a level that makes the harvest compatible with the number of people that want to work. Mr. Lumpkins felt the harvest is already compatible. He stated there have been enough restrictions placed on the crab fishery and this is not needed. The Regulations that are being enforced now are affecting the lower river watermen, because their main harvest is female crabs.

Reg. VII, Sec. 1(f) – Peeler Crab – Mr. Carpenter explained this Regulation would eliminate the “white sign” peeler within the definition of a peeler, thereby prohibiting the possession of a

“white sign” crab less than 5 ¼”. It would recognize it as a small hard crab rather than a peeler. The Regulation, as it is proposed, would make a year round prohibition on “white sign” peelers.

John Morris felt at the last Crab Advisory Committee meeting, that the suggestion of eliminating a “white sign” peeler would be prohibited starting in June or July. Commissioner Rice stated that was part of the Crab Advisory Committee meeting minutes provided at the last Commission meeting. Mr. Morris asked why it was advertised as a year round prohibition. Commissioner Rice stated a Regulation has to be advertised to the most extreme, so that the Commission is able to work down from that if it so chooses.

Robert Lumpkins explained all the female “white sign” peelers tend to shed the first week in June, after that the water gets too hot and they start to die. He could support no “white sign” peelers, especially males, and the females should be prohibited after June 7th or 8th. Vice-chairman Bowes asked if Mr. Lumpkins was trying to distinguish between male and female peelers. Mr. Lumpkins stated yes because female peelers will shed better than a male peeler. A male “white sign” peeler will hardly shed at all in the spring.

Reg. VII, Sec. 6(b) – Cull Rings Required

John Morris stated the Maryland cull ring law is 2 5/16” and if the Potomac River cull ring laws are changed, this would require more cull rings be added to your pots if you crab in both jurisdictions. Mr. Morris was unaware if Maryland was considering changing their cull rings sizes.

Vice-chairman Bowes verified that Virginia requires 2 3/8” cull rings. He asked for other comments.

Robert Lumpkins agreed with Mr. Morris, stating that some of the crab pots already contain four cull rings to be legal in Maryland and Virginia. He felt changing the Regulation so that it’s compatible with Virginia makes sense.

Reg. VII, Sec. 5(e) – Crab Pot Depth Restrictions

Jim Berthe stated on the crab harvest report, any of the harvest reported after September was not comparable to other years, because there were different laws in place this year. On the crab pot depth restriction, the theory was to give the female crabs a place to travel. If the Commission forces watermen to set crab pots in shallow water, then you are basically forcing them to catch female crabs. He supports the proposed regulation change. This will give the lower watermen a chance to catch male crabs during the fall season.

Dennis Edwards presented a letter to the Commission from the Maryland Department of Natural Resources, addressed to Mr. John Morris. Mr. Edwards explained that the letter presents scientific evidence showing that with the crab pot depth restriction in place, you are targeting female crabs. He stated he would like to endorse the proposed regulation changes presented today.

John Morris stated that this fall there was an 11 bushel limit on female crabs. He questioned the difference of catching them in 25 ft. of water or 35 ft. of water. We were limited to 11 bushels no matter what. The proposed regulation changes would be better than what was in place last year.

Mr. Carpenter posed a question to the last three speakers, asking them rather than changing the dates, should the proposed regulation say less than 30 feet MLW instead of greater than 30 feet MLW. Mr. Morris stated that is not what he implied. He said the regulation is not needed at all. It states that it doesn't work well in Maryland, so why have it in the Potomac River. Robert Lumpkins stated it doesn't work because some watermen work in deep water and some work in shallow water. Dennis Edwards stated that in order for the depth restriction to work you would have to close the entire Potomac River, according to the Smithsonian Environmental Research Center.

Commissioner Rice stated one thing to consider, there is quite a bit of crab season left after we have to start throwing all females back into the river. Dennis Edwards agreed.

Robert Lumpkins asked when the results will be available from the restrictions that were in place last year, especially from the bushel limits and closing the harvest to females. Mr. Carpenter explained the winter dredge survey will not be available until March or April 2009. That will be the first indication of how many females escaped and/or made it to the spawning grounds for next summer. Mr. Lumpkins asked for the data to be provided to the public when it becomes available.

Vice-chairman Bowes explained that at the last public hearing, there were several items that were changed to Orders instead of regulations, so that the Commission will have the flexibility to change requirements in a short period of time. Mr. Lumpkins stated that's going to be needed. Dennis Edwards questioned if the bushel limit is going to change for next year. Vice-chairman Bowes replied that the Commission would need to evaluate the winter dredge survey results before it makes any changes.

Paul Kellam questioned how many people would be affected by the transfer fee in an overall season. Mr. Carpenter explained that since this issue was first introduced in August to the Crab Advisory Committee, about 12 or so transfers have taken place. There are normally about 4 to 5 transfers done during the renewal season. Mr. Kellam was curious as to the amount of revenue the proposed transfer fee would bring to the Commission. Mr. Carpenter explained how the process of the transfer fee would fund a crab pot license buy back program. Eventually, the Commission will find where the market is and what the price is to retire a license. Mr. Kellam asked if it was legal for the Commission to buy people out of the fishery. Mr. Carpenter explained that any buy-back would be completely voluntary by the seller.

Mr. Kellam gave comments regarding peeler crabs and was concerned at what point law enforcement will be able to enforce that without getting into a lot of judgment calls. As for the crab pot depth restrictions, he did not support the regulation as it is. He stated the regulation restricts the harvest of female crabs. He suggested the Commission should coordinate with Virginia, especially in the lower part of the river, with the timing of Virginia's crab sanctuary so that it works together. Mr. Kellam felt the only regulation that would need to be addressed today

would be the cull ring issue, because watermen are working on their crab pots over the winter to have them ready by April 1st. He suggested tabling the other three proposed regulation changes until the March meeting, so that the winter crab dredge survey could be reviewed.

Dennis Edwards made a final point that he would like the change in the dates for the crab pot depth restrictions adopted today.

Close Public Hearing – 10:07 a.m.

Vice-chairman Bowes opened the discussion to the Commission and asked for comments on Reg. I, Sec. 1(e)(2).

Reg. I, Sec. 1(e)(2) – Crab Pot License Surrender

Commissioner Rice stated this is something that has been talked about quite a bit and has valid issues on both sides. He felt the only option for a young person to come into the business is to be able to buy a license, and the only way to do that is to purchase one from another crabber. The whole issue is a concern with latent effort. After listening to the comments made here today, Commissioner Rice could not support this proposed regulation at this time.

Commissioner Hall agreed with Commissioner Rice and added there was some discussion at a previous Crab Advisory Committee meeting about using some of the funds to create an apprenticeship program, so that another generation of crabbers would be welcomed into the fishery. She thinks if this proposed regulation passes today, there should be a provision to establish an apprenticeship program.

Commissioner Rice stated he realized there is a great concern for latent effort, but there's always been a natural transition through crabbers and the licenses. There always seems to be a constant flow of crabbers each season. He stated in the words of Bill Pruitt, "We have to deal with it if it becomes a problem" and it doesn't really seem to be a huge problem today.

Commissioner Schick felt latent effort is a problem today, even if it's not placing additional pressure on the resource. He felt the Commission needs to prepare for this now and this program is better than systems other areas have used. This process would allow you to have the choice of selling your crab pot license. The Commission needs to get out of this situation or there won't be crabs for anybody. Latent effort is a quiet problem that sneaks up on everyone. Commissioner Schick would like to see some type of program established and with this program everybody wins.

Commissioner Bowman agreed with Commissioner Schick regarding his comments toward latent effort. He felt that one way to ensure that the full-time watermen are somewhat protected, is when you start requiring a \$1,000 investment for a transfer. That certainly indicates your sincerity toward your dedication to working on the water. Commissioner Bowman is concerned with how do deal with latent effort. He is very confident that the crab fishery will rebound and when it does; there will be people who want to get into the fishery. He would like to have measures in place so that this issue does not have to be revisited again. He feels this program does have merit and is voluntary and is a step toward reducing the latent effort.

Commissioner Speir stated there is a huge difference between the number of crab pots being set and the number of crab pots that *could* be set. What bothers him about this proposed regulation is that the Commission would be paying people who do not intend to use the license. These people are simply license holders, because it is a limited entry fishery.

A motion was made by Commissioner Bowman, seconded by Commissioner Schick to adopt Regulation I, Section 1(e)(2) as presented.

Mr. Carpenter noted that he would like to have a clarification added to the regulation before the vote is taken. It would be to start the regulation with the words “Except under Reg. I, Sec. 2(d)(4) any crab pot license surrendered...” He explained recently adopted Regulation I, Sec. 2(d)(4) states *During December and January only, two lesser crab pot licenses can be surrendered for one 400 or 500 pot license at the current price of such license, providing however, once combined the new 400 or 500 pot license cannot be split into two licenses in the future. Renewal of such licenses shall be pursuant to Regulation I, Section 1(c).* The reason he felt this exemption needs to be added to this proposed regulation, is not to confuse a transfer fee with turning two licenses in for one 400 or 500 pot license. It’s a clarity issue. Commissioner Bowman and Commissioner Schick accepted the additional language.

A roll call vote was taken and the motion failed with 5 in favor and 2 against.

Commissioner Speir – Yes
Commissioner Hall – No
Commissioner Bowman – Yes
Commissioner Bowes – Yes

Commissioner Rice – No
Commissioner Schick – Yes
Commissioner Fleming – Yes

Reg. VII, Sec. 1(f) – Peeler Crab

Commissioner Rice questioned what the Crab Advisory Committee’s recommendation was on this issue. Mr. Carpenter advised that the Crab Advisory Committee recommended that the Commission allow the “white sign” to remain harvestable until June 15th and after that it would be prohibited. The Crab Advisory Committee made no distinction on male or female.

Commissioner Rice agreed with public comments made today. He felt the Commission needs to recognize there is a limited resource and therefore, he supports the recommendation of the Crab Advisory Committee.

A motion was made by Commissioner Rice, seconded by Commissioner Hall to restrict the taking of “white sign” peelers, male or female, after the 15th of June to the end of the crab season.

Commissioner Schick asked for input from staff and law enforcement on how they would handle this issue. Mr. Carpenter called the Commission’s attention to the comment made at the last Crab Advisory Committee by Lt. Charles Sauter of the MdDNR Marine Police. “*Lt. Sauter stated in Maryland, if you don’t have any “sign” then you have an undersized hard crab*”.

Commissioner Bowman was concerned with the tolerance if there was any and how law enforcement would handle it. Mr. Carpenter explained there is no tolerance on peelers, but there is a tolerance for undersized hard crabs. Capt. Ray Jewell, VMRC Marine Police, said eliminating the “white sign” was to cut out the confusion on behalf of the law enforcement.

Mr. Carpenter advised based on the motion before the Commission, and if the proposed regulation passes, staff would need the ability to rework the draft presented to accommodate the date change. Vice-chairman Bowes said he understood.

Commissioner Schick stated there is definitely a problem with the “white sign” peelers. The industry has been under fire because of possible overharvest and high mortality rates. He felt this is a good change, even if it’s year round or just part of the season. He stated he would support the compromise from the Crab Advisory Committee.

Vice-chairman Bowes called for the vote on the motion. The motion passed unanimously.

Regulation VII, Sec. 1 (f) Peeler Crab

A crab having a soft shell that is developing under the hard shell, on which there is a white, pink or red line or rim on the edge of that part of the back fin next to the outer section of this fin. After June 15th each year, only crabs showing a pink or red line or rim are considered peelers.

Reg. VII, Sec. 6(b) – Cull Rings Required

A motion was made by Commissioner Schick, seconded by Commissioner Bowman to adopt Reg. VII, Sec. 6(b) as presented.

Commissioner Schick stated it would be easier to have Potomac River and Virginia size limits alike. He didn’t know what Maryland’s intentions were for their cull ring sizes, but a larger cull ring would work in both the Maryland and Virginia tributaries. He supports this change and stated it’s worked in Virginia to have a larger cull ring and let the smaller crabs escape and not have to handle them. It causes less stress on the crabs and helps protect the resource.

Commissioner Rice commented on the concept of the Regulation itself. He agreed with Commissioner Schick that Virginia has a larger cull ring size. On the other hand, Virginia has a size limit of 5” for hard crabs. Virginia’s intent was to let a few crabs escape that were close to 5” in size, due to the fact that VMRC was unable to change the size limit. Commissioner Rice continued, stating the PRFC achieved its goal when the size limit was increased from 5” to 5 ¼”. He felt the PRFC has put forth the best effort of any of the three jurisdictions in preserving crabs. The watermen themselves, under the current size limits, may go to a larger cull ring size. He doesn’t feel the Commission should have to tell them to do so at this point. Commissioner Rice recommended that the PRFC, at its expense, should buy 2 ½” cull rings and distribute them during renewal season to crabbers who are willing to use them. He would be in favor of a larger cull ring if the hard crab size was 5”.

Commissioner Bowman stated Commissioner Rice makes a valid point. He thought the consistency aspect between the PRFC and VMRC would be a little bit easier for everyone, plus it’s a conservation method as well.

Commissioner Rice asked Commissioner Speir if the PRFC was consistent with Maryland. Commissioner Speir stated Maryland requires a 2 3/16" and a 2 5/16" cull rings. However, there is a law in Maryland that states you cannot require the cull rings to be opened.

Joe Grist, VMRC's staff provided a point of clarification that the 2 3/8" cull ring vote that came before their Commission had nothing to do with the 5" hard crab size limit. It had everything to do with the 6% savings on the female harvest as part of the 34% harvest reduction in Virginia. Commissioner Rice stated he appreciated Mr. Grist's clarification; however as a crabber he felt he was correct also.

Commissioner Fleming stated he was not a crabber and questioned if a 5 1/4" crab could escape from a 2 3/8" cull ring. Commissioner Rice answered absolutely not, unless the crab was very skinny.

Commissioner Speir stated the proposed regulation has no provision for a phase in, if the cull ring size were to change. He questioned how that would impact the watermen. Commissioner Rice felt the watermen had the winter to prepare their pots and this would be a reasonable amount of time, if the cull ring size were to change.

Vice-Chairman Bowes called for the vote on the motion and the motion failed with 4 in favor and 3 against.

Mr. Carpenter stated Commissioner Rice's cull ring recommendation would require a policy decision on behalf of the Commission. He felt the Commission could finance the purchase of a few thousand cull rings and hand them out in batches of 25 or 50. The Commission agreed and gave staff the approval to move forward.

Reg. VII, Sec. 5(e) – Crab Pot Depth Restrictions

Commissioner Rice stated there has been a lot of testimony heard today and there will be a lot of ongoing dialogue between PRFC, Maryland and Virginia this winter. Therefore, since this regulation does not affect the spring crabbing fishery, he would suggest tabling this regulation for a future meeting. He felt the issue of having an open crab season, when it's closed to females, needs to be addressed in the future.

Commissioner Speir noted that when this issue was discussed before, it was explained that the channel was where the female crabs were concentrated and this was an effort of trying to reduce the catch. He is concerned with the comments made today that that scenario may not be true. It seems like the bushel limits should be the controlling factor, rather than where the crab pots are set. He is not sure if this regulation accomplishes what the Commission set out to do, which was to reduce female catch.

Vice-chairman Bowes commented as the regulation is currently in place, it is more restrictive if we leave it alone. He questioned if the Commission would want to leave it alone or table it to a future public hearing.

Commissioner Rice explained the Commission has heard public comments on this issue and does not have to make a decision today. The Commission can consider the comments made today at a future meeting. Due to the comments received, the Commission may want to consider this regulation at another meeting when the Commission may be in a better position to possibly make a decision that will be resource friendly and also help the industry.

A motion was made by Commissioner Rice, seconded by Commissioner Bowman to table this proposed Regulation until the next meeting.

Mr. Carpenter recognized the intent of the Commission but is concerned with the way the regulation was advertised. It will limit the Commission to the exact draft regulation that was presented today. If the Commission feels the regulation is wrong, needs to be repealed, or change the depth restrictions, than that will require an additional advertisement. By postponing this action until the next meeting, the Commission will only have the option to change the date. The depth restriction or repealing the regulation will not be allowed.

Commissioner Bowes questioned legal staff how it should proceed. Mr. Mayo clarified if the Commission wants to make any other changes other than the dates, the Commission would have to re-advertise for the next Commission meeting. Mr. Carpenter added, if the Commission wants to look at the exact language presented today and be limited to this language at the next meeting, the motion on the floor to table the issue will accomplish that. If the Commission has anything else in mind, you may want to take no action on the regulation. Then, call the Crab Advisory Committee together and have them revisit the issue. They can make a recommendation at the March Commission meeting for a future public hearing to address this issue.

Vice-chairman Bowes questioned what would happen if the Commission abolished the regulation and asked if the Commission can do so. Mr. Mayo advised that the Commission would have to advertise to repeal a regulation.

Commissioner Rice withdrew his motion from the floor.

Commissioner Schick felt it may be a useful tool and suggested the Commission review the depths, date and other options. He proposed to take no action on this regulation and send it to the Crab Advisory Committee, so they can review all options ranging from doing nothing to eliminating the regulation and report to the Commission at the next meeting. Commissioner Rice agreed with a possible public hearing for the June Commission meeting. Mr. Hutt, legal council, suggested tabling it until the next meeting. Mr. Carpenter felt based on the comments today, there are other options the Commission may want to consider, therefore the cleanest way to resolve this is to proceed as Commissioner Schick stated.

The Commission took no action on Regulation VII, Sec. 5(e).

Order 2009-01 – 2009 Recreational and Charter Striped Bass Seasons and Restrictions

Mr. Carpenter stated that this Order will establish the recreational and charter boat striped bass seasons and restrictions for 2009. The recreational and charter boat quotas for this year have not been received and they will be added once we receive the bay-wide quota number.

A motion was made by Commissioner Rice, seconded by Commissioner Hall and unanimously passed to adopt Order 2009-01 as follows:

O R D E R #2009-01
(replaces 2008-01)

**2009 RECREATIONAL AND CHARTER
STRIPED BASS SEASONS AND RESTRICTIONS**

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary for the preservation of the striped bass (rockfish) population to impose restrictions on fishing for striped bass, and pursuant to its authority under Regulation III, Sections 9, 10, 11 and 13(b); **HEREBY DECLARES AND ORDERS:** the following restrictions shall apply to the recreational and charter striped bass fishery:

Spring Season:

| | |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dates: | April 18 through May 15, 2009 |
| Open Area: | Downstream of Harry W. Nice Bridge (Rt.301) |
| Creel Limit: | One (1) fish per person per day |
| Minimum Size Limit: | Twenty-eight (28) inches total length |
| No High-Grading: | Unlawful to return fish to the water after it is placed into a cooler or storage area. |
| Bait Restrictions: | No live eel. No more than two (2) hooks or sets of hooks for each rod or line may be used. Artificial lures or plugs with multiple hooks are considered one set of hooks. |
| Quota: | MD/VA/PRFC Combined Bay-Wide |

Summer/Fall Season:

| | |
|---------------------|---------------------------------------------------------------|
| Dates: | May 16 through December 31, 2009 |
| Open Area: | Downstream of Woodrow Wilson Bridge (I95) |
| Creel Limit: | Two (2) fish per person per day with only one (1) over 28" |
| Minimum Size Limit: | Eighteen (18) inches total length |
| Bait Restrictions: | None |
| Quota: | Recreational – TBA pounds Charter – TBA pounds |

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2009-01 shall become effective January 1, 2009, shall supersede and repeal Order #2008-01 and remain in effect until further notice.

Order 2009-02 – 2009 Commercial Striped Bass Catch Limits and Restrictions

Mr. Carpenter explained these are the commercial catch limits and restrictions. Here again the only change will be to input the quota numbers once they have been received.

A motion was made by Commissioner Rice, seconded by Commissioner Schick and unanimously passed to adopt Order 2009-02 as follows:

ORDER #2009-02
(replaces 2008-03)

**2009 COMMERCIAL STRIPED BASS
CATCH LIMITS AND RESTRICTIONS**

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary for the preservation of the striped bass (rockfish) population to impose restrictions on fishing for striped bass, and pursuant to its authority under Regulation III, Sections 10 and 13(b); **HEREBY DECLARES AND ORDERS:** the catch limits for striped bass (rockfish) provided for in Regulation III, Section 10, Sub-sections (a) and (b) shall be TBA pounds and divided by gear type as follows:

- 1) Commercial Hook and Line: TBA pounds (TBA ID tags) total for all licensees, plus any available gill net allocation as may be allowed under Regulation III, Sec. 13(d).
- 2) Pound Net: TBA pounds (TBA ID tags) total for all licensees. Each pound net licensee must have at least one net set and fishing before receiving his share of the total, and such share will be proportional to the total number of pound net licenses issued and the number held by the licensee.
- 3) Miscellaneous Commercial Gear: TBA pounds (TBA ID tags) total for all licensees. This gear type includes and is limited to fyke net, haul seine, fish pot, and fish trot line licenses only. The yearly total number of ID tags shall be divided 50% haul seine, 30% fyke net, 10% fish pot and 10% fish trot line, and further divided equally among fishermen who have held the specific license type and who have fished such gear and reported catch of other species during each of the last 3 license years.
- 4) Gill Net: Published Separately

BE IT FURTHER DECLARED AND ORDERED: that striped bass identification tags may be used only on fish harvested with the gear type for which the striped bass identification tags were issued.

AND, IT IS FURTHER DECLARED AND ORDERED: this Order #2009-02 shall become effective January 1, 2009, shall supersede and repeal Order #2008-03 and remain in effect until further notice.

Order 2009-03 – 2009 Recreational and Charter Fishing Season, Size and Catch Limits

Mr. Carpenter explained there is a change in this Order dealing with summer flounder. He recalled that last summer Maryland had requested the Potomac River Fisheries Commission close their recreational summer flounder fishery. A telephone poll of the Commissioners had to be conducted in order close the recreational season. Staff has added language in the event the recreational summer flounder fishery would need to be closed in the future, and this would enable staff to react without having to poll the Commissioners. The black sea bass and summer flounder regulations have not been received from the MAFMC/ASMFC. They will be added and presented at the March Commission meeting.

A motion was made by Commissioner Schick, seconded by Commissioner Hall and unanimously passed to adopt Order 2009-03 as follows:

ORDER #2009-03
(replaces 2008-04)

**2009 RECREATIONAL and CHARTER
FISHING SEASON, SIZE AND CATCH LIMITS**

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary to comply with certain provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) and the provisions of Regulation III, Sections 9, 10 and 11; **HEREBY DECLARES AND ORDERS:** recreational and charter seasons, size limits, and catch limits provided for in Regulation III, Section 9, 10, and 11 shall be for the species named therein as follows:

| <u>Species</u> | <u>Season</u> | <u>Size Limit</u> | <u>Catch Limit</u> |
|-----------------------------------|---------------------------------------------|---------------------|--------------------|
| American Eel | Jan. 1 - Dec. 31 | 6" min. | 50 per person |
| Atlantic Croaker | Jan. 1 - Dec. 31 | No limit | 25 per person |
| Black Bass (Large or Small Mouth) | March 1 - June 15 | 15" min. | 5 per person |
| | All other times | 12" min. | 5 per person |
| Black Drum | Jan. 1 - Dec. 31 | 16" min. | 1 per person |
| Black Sea Bass | Jan. 1 - Dec. 31 | TBA | TBA |
| Bluefish | Jan. 1 - Dec. 31 | No limit | 10 per person |
| Catfish: Bullhead | Jan. 1 - Dec. 31 | 6" min. | No limit |
| Channel | Jan. 1 - Dec. 31 | 8" min. | No limit |
| White | Jan. 1 - Dec. 31 | 10" min. | No limit |
| Blue | Jan. 1 - Dec. 31 | No limit | No limit |
| Pike or Chain Pickerel | Jan. 1 - Dec. 31 | 14" min. | No limit |
| Red Drum | Jan. 1 - Dec. 31 | 18" min. – 25" max. | 5 per person |
| Shad (American or Hickory) | C L O S E D..... | | |
| Spanish Mackerel | Jan. 1 - Dec. 31 | 14" min. | 15 per person |
| Spot | Jan. 1 - Dec. 31 | No limit | No limit |
| Spotted Sea Trout | Jan. 1 - Dec. 31 | 14" min. | 10 per person |
| Striped Bass | P U B L I S H E D S E P A R A T E L Y | | |
| Sturgeon (Atlantic or Shortnose) | C L O S E D..... | | |
| Summer flounder | TBA* | TBA | TBA |
| Tautog | Jan. 1 - Dec. 31 | 14" min. | No Limit |
| Weakfish | Jan. 1 - Dec. 31 | 12" min. | 6 per person |
| White perch | Jan. 1 - Dec. 31 | 6" min. | No limit |
| Yellow perch | Jan. 1 - Dec. 31 | 9" min. | 5 per person |

(1) – Black Sea Bass – The tail filament is not to be included in the total length of the fish.

***IT IS FURTHER DECLARED AND ORDERED:** that when the recreational summer flounder fishery is closed in either the Maryland or Virginia portion of the Chesapeake Bay, the Potomac River recreational summer flounder fishery will be closed.

AND, IT IS FURTHER DECLARED AND ORDERED: this Order #2009-03 shall become effective January 1, 2009, shall supersede and repeal Order #2008-04 and remain in effect until further notice.

Order 2009-04 – 2009 Commercial Fishing Season, Size and Catch Limits

Mr. Carpenter stated this is to change the year and to await the new limits for the black sea bass and summer flounder fisheries.

A motion was made by Commissioner Bowman, seconded by Commissioner Schick and unanimously passed to adopt Order 2009-04 as presented.

ORDER #2009-04
(replaces 2008-05)

2009 COMMERCIAL FISHING SEASON, SIZE AND CATCH LIMITS

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary to comply with certain provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) and the provisions of Regulation III, Sections 9, 10 and 11; **HEREBY DECLARES AND ORDERS:** that commercial seasons, size limits, and catch limits provided for in Regulation III, Section 9, 10, and 11 shall be for the species named therein as follows:

| <u>Species</u> | <u>Season</u> | <u>Size Limit</u> | <u>Catch Limit</u> |
|-----------------------------------|-------------------|---------------------------------------------|--------------------|
| American Eel | Jan. 1 - Dec. 31 | 6" min. | No limit |
| Atlantic Croaker | Jan. 1 - Dec. 31 | None | No limit |
| Black Bass (Large or Small Mouth) | | C L O S E D | |
| Black Drum | Jan. 1 - Dec. 31 | 16" min. | 1 fish |
| Black Sea Bass ⁽¹⁾ * | Jan. 1 - Dec. 31 | TBA | TBA |
| Bluefish* | Jan. 1 - Dec. 31 | None | No limit* |
| Catfish: Bullhead | Jan. 1 - Dec. 31 | 6" min. | No limit |
| Channel | Jan. 1 - Dec. 31 | 8" min. | No limit |
| White | Jan. 1 - Dec. 31 | 10" min. | No limit |
| Blue | Jan. 1 - Dec. 31 | None | No limit |
| Pike or Chain Pickerel | Jan. 1 - Dec. 31 | 14" min. | No limit |
| Red Drum | Jan. 1 - Dec. 31 | 18" min. - 25" max. | 5 fish |
| Shad (American or Hickory) | | C L O S E D | |
| Spanish Mackerel* | Jan. 1 - Dec. 31 | 14" min. | No limit* |
| Spot | Jan. 1 - Dec. 31 | No limit | No limit |
| Spotted Sea Trout | Jan. 1 - Dec. 31 | 14" min. | No limit |
| Striped Bass | | P U B L I S H E D S E P A R A T E L Y | |
| Sturgeon (Atlantic or Shortnose) | | C L O S E D | |
| Summer flounder** | Jan. 1 - Dec. 31 | TBA | TBA |
| Tautog | Jan. 1 - Dec. 31 | 14" min. | No limit |
| Weakfish*** | July 28 - Dec. 31 | 12" min. | No limit*** |
| White perch | Jan. 1 - Dec. 31 | 6" min. | No limit |
| Yellow perch | Jan. 1 - Dec. 31 | 9" min. | No limit |

(1) – **Black Sea Bass** – The tail filament is not to be included in the total length of the fish.

***BE IT FURTHER DECLARED AND ORDERED:** the commercial fisheries for black sea bass, bluefish, and/or Spanish mackerel, may have daily catch limits (landing limits) imposed subject to ASMFC notification and may be closed immediately by Order of the Commission upon notification by both Maryland and Virginia that the ASMFC/MAFMC established commercial harvest quota for such species has been landed and the state waters are closed for the harvest of such species.

****BE IT FURTHER DECLARED AND ORDERED:** that when the PRFC summer flounder quota, based on the ASMFC quota as established by the MD/VA/PRFC In State Commercial Summer Flounder Landings Memorandum of Understanding, is reached the fishery shall be closed. Providing that daily landing limits may be imposed when 80% of the quota is projected to be landed.

*****BE IT FURTHER DECLARED AND ORDERED:** that subject to the provisions of Regulation III, Section 11(c)(4) and the ASMFC Weakfish Management Plan qualified pound netters are permitted to possess no more than 150lbs. (3 bushels) of legal size weakfish from January 1st through July 27th. The allowance must be less than or equal to the poundage of other lawfully harvested species.

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2009-04 shall become effective January 1, 2008, shall supersede and repeal Order #2008-05 and remain in effect until further notice.

Oyster Harvest Report

Mr. Carpenter presented the preliminary 2008/2009 oyster harvest report. He reported 248 bushels harvested with 172 from hand tongs and 76 from hand scrape. At this point last year there had been 663 bushels harvested, which is still quite low in comparison to the traditional

fisheries of the past. The effort is also down with only 43 licenses sold this year compared to 63 licenses sold last year.

Oyster Survey Update and Status of Jones Shore

Mr. Carpenter stated the annual fall oyster survey has been delayed this year and is still not complete statewide, because of weather conditions and mechanical problems. He then presented preliminary numbers that were just received and noted they had not been evaluated. He noted for the Commission that the report shows no spat set for 2009. Given the very high salinities that were present this summer, this is somewhat surprising.

Mr. Carpenter explained that during the survey, there were several extra samples taken from Jones Shore and neighboring areas, in order to evaluate the Jones Shore closure that took place several years ago. He stated staff would like time to evaluate that data more closely and bring a report back to the Commission at the March meeting.

Commissioner Rice commented that the oyster business in the Potomac River is pretty much dead in the water. He felt that after the EIS study is completed, the Commission should take a good look at this fishery and head in some direction, because there is no wrong direction at this point. Something needs to be done in the future in a different manner to try and make something out of what little we do have.

ASMFC Issues

Mr. Carpenter stated this year's annual meeting was held in Rehoboth Beach, Delaware and the meeting summary was provided in the packet for informational purposes. There were a few Commissioners that were able to attend and staff would like to express appreciation for their attending these meetings. The next ASMFC board meetings will be scheduled for February in Alexandria, Virginia.

Mr. Carpenter noted the biggest action taken by the ASMFC was regarding the American Eel Addendum II. There was a proposal that could have impacted our fishery directly by requiring cull rings in the eel pots to restrict the size of the eel. It could have also incorporated other management measures. There was no action taken on any of these issues and they were tabled for a future addendum. The Shad and River Herring Plan is still in progress and could result in some kind of coast-wide moratorium or restrictions on the river herring fishery.

Delinquent Seafood Catch Report Hearing

Stephen M. Holcomb – Mr. Carpenter explained Mr. Holcomb called this morning and stated this crab license is used as a part-time job and he planned to attend today's meeting but was called in to work his other job. He asked that the Commission consider that he has filed all of his reports and note this is his first offense. ***A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to accept staff's recommendation and place Mr. Holcomb on probation.***

William G. Shelton, III – Mr. Shelton explained his only excuse was that he did not check the “finished for season box” on the catch report. ***A motion was made by Commissioner Rice, seconded by Commissioner Hall and unanimously passed to accept staff’s recommendation and place Mr. Shelton on probation.***

John S. Evans – Mr. Evans stated that he filed all the reports with the Commission before today’s meeting. He stated it was a lack of responsibility on his part. He asked the Commission to take into consideration that working on the water is his way of living and asked that his licenses not be suspended.

Vice-chairman Bowes asked Mr. Carpenter if staff’s recommendation would change, since he turned in his catch reports today. Mr. Carpenter explained staff is following the guidelines adopted by the Commission. The guidelines state if the catch reports were filed one week prior to the Commission meeting, then it would change from a week’s suspension to just probation. Mr. Carpenter noted that Mr. Evan’s did not crab the first week in April and suggested that the Commission may consider suspending the crab pot license for the first week in April 2009. He felt that it would not impact his livelihood. Mr. Evan’s stated that he plans to start a little earlier this year and would not like to have his license suspended.

Commissioner Bowman verified that this was Mr. Evans’s first offense. He sensed from staff’s prospective that although this is a serious matter, some leniency might be in order. To suspend someone for a week that they normally do not work is really the same as probation. He addressed Mr. Evans’s and explained to him that it’s very important to turn in catch reports that are accurate and on time.

A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to place Mr. Evans’s on probation.

Kevin E McCabe – Mr. Carpenter explained Mr. McCabe was called to the hearing for failure to file catch reports for his eel pot license. This is his first offense and as of today, Mr. McCabe has not filed his catch reports with the Commission.

Mr. McCabe explained that he has spoken with Cathy and his reports are now up to date. He believes what happened was that he stopped eeling in July and sent in crab reports with the eel pot bar codes and that somehow triggered the system that the eel reports were negligent. He felt it was negligence on his part for ignoring the yellow cards. However, he thought he was not responsible for filing eel reports because he had already stipulated he was finished for the season.

A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to place Mr. McCabe on probation.

Wayne M. Morgan, Jr. – Mr. Carpenter stated he was called to the hearing as a first offense for failure to file his Fyke Net reports. The Commission received correspondence and updated catch reports from Mr. Morgan yesterday. He asked that his written explanation be submitted on his behalf.

A motion was made by Commissioner Rice, seconded by Commissioner Hall and unanimously passed to place Mr. Morgan on probation.

William J. Rawlings – Absent – *A motion was made by Commissioner Bowman, seconded by Commissioner Rice to place Mr. Rawlings on a one week suspension on all licenses starting the first week in May and be placed on probation.*

Commissioner Schick questioned if Mr. Rawlings would still be responsible for updating these reports. Mr. Carpenter stated that Mr. Rawlings would have to take care of this regardless. Commissioner Schick asked if all of his licenses should be suspended until he appears before the Commission. Commissioner Bowman felt that would be the wiser thing to do. He withdrew his previous motion.

A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to suspend all of Mr. Rawlings' licenses effective today, until he appears in person before the Commission, he files all of his catch reports, and that he will have a one week suspension during the first week in May and be placed on probation.

Timothy I. Dean – Absent – Mr. Carpenter explained Mr. Dean was called as a second offender for failure to file his crab pot reports. Under the new guidelines, as a second offender, the recommendation is revocation of all licenses. If the Commission were to take this action, Mr. Dean would not be able to renew the license until he appeared before the Commission.

A motion was made by Commissioner Schick, seconded by Commissioner Rice and unanimously passed to revoke all of Mr. Dean's licenses.

Female Crab Harvest Violation Hearing

Mr. Carpenter explained this is a unique situation this year. It is not the failure to file catch reports; it is receiving catch reports with female crab harvest after the season was closed or exceeding the bushel limit. He noted in the back of the Commission packets there are photo copies of original crab harvest reports received by the Commission. Each individual has been called to appear before the Commission and explain the violation of regulations dealing with daily bushel limits or season closure dates for females.

John W. Blackwell – Mr. Blackwell submitted a catch report for week ending Oct. 25, 2008 showing that he harvested 5 bushels of female crabs on that Saturday after the season ended on Oct. 22, 2008.

Mr. Blackwell stated that he wrote it down incorrectly for the wrong Saturday. That harvest should have been reported for Saturday, Oct. 18, 2008. Mr. Carpenter noted his report for Oct. 18, 2008 did show that he reported catching 5 bushels of female crabs. Mr. Blackwell stated he did not catch any females after the closure date. Mr. Carpenter stated from the reports it looks like Mr. Blackwell double counted his catch for that Saturday.

Commissioner Bowman stated he is pretty tough on violations that may potentially harm the resource. Without accurate paperwork, it makes it very difficult for staff to do its job. He advised that it's everyone's responsibility to turn in accurate paperwork. He felt he had a difficult time, today and today alone, hearing cases in which individuals have not filed their mandatory reports. These are individuals who have done their job, but unfortunately have done it incorrectly. This is almost the situation where you have to admit that you've done wrong and here's the report to punish me by. Commissioner Bowman has a difficult time deciding to punish these people for a mistake on their part. He believes that errors have been made on the number of bushels harvested and has a hard time using evidence provided by the individual to determine a course of action.

Commissioner Fleming agreed with everything Commissioner Bowman stated. Commissioner Fleming then questioned if there were any law enforcement actions (tickets issued) involving over the limit or after the season closure. Mr. Carpenter was not aware of any citations issued for harvesting female crabs after the season was closed. He was aware of a few citations that were issued for over the limit during the season, which pertained to the bushel limits.

Commissioner Rice stated anyone that has shown up today is making a sincere effort to correct the problem or explain their situation. He felt that everyone who has appeared today deserves a "second chance" for something we have never dealt with before. Reports are sometimes difficult to deal with and mistakes are made. Commissioner Rice felt the Commission may not have an avenue to deal with this issue.

Mr. Carpenter stated the Commission has Regulation I, Sec 4(a) under which these individuals were called to the hearing, provides for hearings in the case of violations of the regulations. Staff was in the position where evidence was presented that violations had occurred. Staff doesn't have any authority to deal with this other than to call the individuals to appear before the Commission. Commissioner Bowman applauded staff for doing a diligent job. This is not an indictment or any indication that staff had done anything other than a professional job. He also wanted to make it very clear that he has been difficult on other situations before and not to let this be an indicator that things are going to change if situations become difficult for staff, law enforcement or others involved in management.

Vice-chairman Bowes asked Mr. Carpenter to take a roll call to see how many of these individuals have shown up today.

John W. Blackwell – Present
Timmie W. Lamouroux – Present
George W. Moon, Jr. – Present
Kim R. Unkle - Present

John L. Higgs, III – Present
Keith S. Lumpkins – Present
William A. Stine – Present

Mr. Carpenter explained there is a situation with Mr. Lamouroux that was called to staff's attention and he would like to hear an explanation from Mr. Lamouroux. He asked Mr. Lamouroux to come forward.

Mr. Carpenter explained that a Mr. Farrell called the office questioning Mr. Lamouroux's catch reports. Staff advised Mr. Farrell that we could not speak with him because he was not the license holder. In the course of the conversation, Mr. Farrell stated he was using Mr. Lamouroux's crab pot license. Mr. Lamouroux stated that Mr. Farrell accompanies him occasionally in the river and he lets Mr. Farrell file the reports and deal with the crabs. Mr. Carpenter advised Mr. Lamouroux that he, the licensee, must be aboard the boat when crab pots are being set or fished. Mr. Lamouroux agreed that he was aware of that regulation. Mr. Carpenter advised Mr. Lamouroux that it may be wise for him to take care of his own paperwork for a license that is in his name.

Vice-chairman Bowes stated this situation is all first time and appears that some of these could be honest mistakes. He asked how the Commission would like to proceed.

Commissioner Rice commended staff on their hard work and dedication. He felt that each one of these individuals that showed up today have some kind of logical reason as to why this happened. He suggested, since this is a first time situation, not to take any further action.

A motion was made by Commissioner Rice, seconded by Commissioner Bowman and unanimously passed not to take any action towards the individuals called before the Commission today, but to maintain these records as part of their files.

First Quarter Disbursements and Cash on Hand

A report of the first quarter disbursements (July through September) for the operational budget was presented, by budget item, totaling \$202,791. A report of the cash-on-hand was presented \$238,568 as of December 2, 2008. Mr. Carpenter explained the increase under contractual services for building maintenance was due to an air conditioning problem and a unit needed to be replaced.

Commissioner Hall questioned the item of Future Oyster Work in the amount of \$40,000 on the cash-on-hand statement. Mr. Carpenter stated these funds, which would normally be budgeted for oyster replenishment work or work on the EIS, have been invested in the LGIP until after the EIS is completed so that the Commission has a clearer picture of how to best use it.

A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to accept the financial reports as submitted.

Appointment of the Nominating Committee

Vice-chairman Bowes nominated Commissioners Speir and Holland to serve as the nominating committee, asking them to report a slate of officers at the next meeting.

First Draft of PRFC Disaster Recovery Plan

Mr. Carpenter explained in last year's audit it was noted that the Commission did not have a written disaster recovery plan. A draft plan has been provided in the Commission packets and is based on what our mission critical elements are and other such things. He advised that the Commission should adopt a formal plan once the plan has been reviewed and approved.

Commissioner Bowman questioned which auditors provided this request. Mr. Carpenter stated it's a joint Maryland and Virginia audit with a single audit report published by the Virginia auditor's office, noting that the Virginia auditor is the lead auditor in the case. Commissioner Bowman stated that the PRFC and 95% of other agencies received the same request. He suggested putting this into action or at least having a table top exercise to legitimize that it's been reviewed and practiced. The auditor will ask at the next audit if the plan has been practiced and if there were any deficiencies found during the course of the year.

Vice-chairman Bowes stated that he had not had time to review the plan and recommended that held over until next meeting.

A motion was made by Commissioner Bowman, seconded by Commissioner Rice and unanimously passed to allow additional time for review the draft disaster recovery plan and place it on the next agenda for consideration.

New Business

Paul Kellam felt there was an issue that is being out played that is involved in the crab emergency fund dealing with ghost pots. Some of the funding is being allotted for watermen to possibly go search for ghost pots. He questioned if there is any way the Commission can check on it and try to avoid having this issue become the next hot topic.

Request for Holiday Closing

Commissioner Fleming stated in conjunction with the states of Maryland and Virginia asked if the Commission would consider closing early on Thursday December 24th and Friday, the 26th and Friday January 2, 2009.

A motion was made by Commissioner Fleming, seconded by Commissioner Rice and unanimously passed to adopt the above closures as requested.

Date and Place of Next Meeting

The next meeting is scheduled for Friday, March 6, 2009 at 9:30 a.m. in the John T. Parran Hearing Room of the Potomac River Fisheries Commission Building.

Adjourn

The meeting adjourned at 11:50 a.m.

Respectfully submitted,

Robert H. Bowes, Vice-chairman

Steven G. Bowman, Secretary