

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

September 10, 2009

Commissioners Present: Robert H. Bowes (MD) – Chairman,– Kyle J. Schick (VA) – Vice-chairman, William L. Rice, Sr. (MD), Ida C. Hall (VA), Dennis Fleming (MD), J. T. Holland (VA) and Thomas J. O’Connell (MD). Steven G. Bowman (VA) – Secretary was unable to attend the meeting.

Officers Present: Kirby A. Carpenter – Executive Secretary, Michael C. Mayo – Legal Counsel.

Others Present: Lt. Charles Sauter – MdDNR Law Enforcement; 1st Sgt. Adam Friend – VMRC Law Enforcement; Dr. Tom Miller – CBL; Mike Naylor – MdDNR; Joe Grist – VMRC; Stephen Abel – Oyster Recovery Partnership; Troy Tuckey and Rom Lipicus – VIMS; Elgin Nininger and Herman Delvo – Crab Advisory Committee; John F. Tucker Brown, Wayne France and Paul Springer – Oyster/Clam Advisory Committee; Robert T. Brown and Kenneth Wicker – Finfish Advisory Committee; Douglas F. Jenkins – Twin Rivers Waterman’s Association; Bill Trossbach, George Hundley, Bill Kilinski, Joseph Rodgers, George Decatur, Jeff Schenemann, Hugh Newton, William Flair, Crystal Flair, Kenny Pearson, Mark Hunter and several others who did not sign the guest register.

Chairman Bowes called the meeting to order at 2:08 p.m. Commissioner Schick provided the invocation and led the pledge of allegiance.

Delinquent Seafood Catch Report Hearing

Francis William Kilinski, Jr. – Mr. Carpenter explained this is Mr. Kilinski’s first offense for failure to file his crab catch reports. Mr. Kilinski did come in prior to the Commission meeting and filed his reports stating that he had not and he would not crab in the Potomac River this year. Staff’s recommendation would be probation for a year.

A motion was made by Commissioner Holland, seconded by Commissioner Schick and unanimously passed to accept staff’s recommendation of probation for a year.

Joseph Francis Stine, III – Mr. Carpenter stated this is Mr. Stine’s second offense for failure to file crab catch reports. As of this morning, Mr. Stine has yet to file the delinquent reports. Staff’s recommendation is a revocation of his crab pot license.

Mr. Stine stated he placed the reports in the mail last week, but the Commission has yet to receive them. He admitted he was late sending the reports in.

A motion was made by Commissioner Holland, seconded by Commissioner Schick to accept staff’s recommendation for revocation of all licenses.

Commissioner Rice questioned if the Commission should direct staff as to what to do when his reports are filed.

Mr. Carpenter asked Mr. Stine if he had been crabbing. Mr. Stine stated he had been crabbing this year. Mr. Carpenter stated he would need further direction from the Commission. Revocation of all licenses means a letter would be issued stating Mr. Stine would need to pull his crab pots as soon as possible and that he is finished crabbing for the year. The question is, how long does the Commission want to revoke Mr. Stine's license.

Mr. Mayo, legal counsel for the Commission, suggested the motion contain a "condition" where the sentence may be different if the reports are received 7 to 10 days after the meeting today.

Commissioner Schick asked for information about the first offense. Mr. Carpenter stated it was in 2004 for failure to file crab pot catch reports. The Commission decided "his license(s) are suspended effective immediately; further the ability to renew license(s) was also suspended until he appeared before the Executive Secretary; any license(s) issued for 2005 were on probation for one year and suspended July 1 through July 7, 2005." Mr. Stine did appear before the Executive Secretary and was issued a license after that.

Commissioner Fleming questioned if the Commission had received his reports today, what would have been staff's recommendation. Mr. Carpenter explained that staff goes by the guidelines adopted by the Commission and in order for staff's recommendation to change, reports would had to have been received one week prior to the Commission meeting.

Commissioner Fleming questioned when the last request was sent and how much time has Mr. Stine had to respond. Mr. Carpenter stated he has been receiving 1st and 2nd notices every week since the first part of June. Commissioner Fleming then asked Mr. Stine why he had not sent in his reports. Mr. Stine stated he forgot, was busy working and never took the time to send them.

Commissioner Schick stated staff recommendation is revocation of all licenses permanently. Mr. Carpenter stated it would be a revocation of his crab pot license, the only license he has right now, and at the minimum, a revocation for the balance of the year.

Commissioner Holland amended the motion to be: *revocation of Mr. Stine's crab pot license for the rest of the 2009 season and to be placed on probation for the entire 2010 crab pot season.* The motion was seconded by Commissioner Schick and unanimously passed.

Consideration of Minutes

A motion was made by Commissioner Holland, seconded by Commissioner Hall to approve the minutes of June 11, 2009 as presented. The motion passes without objection.

2008-2009 Oyster Harvest Report

Mr. Carpenter stated the harvesters have reported a total of 525 bushels of oysters compared to 529 purchased from the buyers. The tax collected was \$529.25 and the estimated dockside value was \$15,877.50. There were 18 people who purchased tonging licenses and 12 people who purchased hand scrape licenses for a total of 30 people. The catch was pretty evenly divided with hand scrape catching 265 bushels and tongers 260 bushels. The sad news is that the catch was just 525 bushels caught for the entire season compared to 1,304 bushels harvest last year, which was also extremely low.

Commissioner Hall suggested the Commission review the fall oyster dredge survey just to compare the data, especially with the emphasis of looking at Jones Shore. Mr. Carpenter stated the Commission received that data at the last Commission meeting but he would be more than happy to go over that data again if the Chairman approves.

Chairman Bowes asked if any other Commissioners had questions regarding Jones Shore. There were no comments at that time, therefore the Chairman chose to move forward with the meeting.

Presentation on the History of the Oyster Fishery – AC Carpenter

Mr. Carpenter gave a presentation on the oyster fishery and its history dating back to the 1880's. The harvest records show the Potomac River produced about 1.5 million bushels of oysters during the 1880's. The number of bushels had declined to about a million in 1927 and hit a low of 25,000 in 1931, rebounded to 400,000 in the early 40's and climbed to 667,000 in the late 60's as the result of the 1963 river wide set. Tropical storm Agnes in 1972 resulted in the loss of about 70% of the oyster population from fresh water the first year and low dissolved oxygen during the subsequent summer. Using harvest closures of major parts of the river, seed and shell plantings the Commission was able to restore and maintain a stable fishery in the late 70's and through the 80's until the early 90's when the combination of MSX and Dermo impacted the seed area and lower and mid river harvest areas. The lack of natural spat sets in the upper river during the 70's and 80's made that area dependent on seed plantings. In 1992 a major natural set occurred in the upper river. Unfortunately, that set was lost to back to back freshets in 1993 and 1994. He presented a series of graphs on individual oyster bars showing the relationship with natural sets, seed and/or shell plantings and harvest, that until the freshets in the upper river and the MSX/Dermo impacts in the mid and lower river, had been some what sustainable. The combinations of freshets, MSX and Dermo in the Potomac have changed the Commission's ability to maintain and enhance the oyster resource.

Commissioner Hall asked, "If the spat set that occurred on Swan Point in the 1992 but with no corresponding later harvest, was due to a freshet"? Mr. Carpenter replied it was the same freshet that struck Cedar Point the same years. Commissioner Hall questioned how much money the Commission spent on the Environmental Impact Study (EIS). Mr. Carpenter stated it was roughly \$100,000 a year for 5 years. Commissioner Hall stated it was for nothing. Mr. Carpenter explained there was a lot of "good science" in a lot of areas that came out of the study, but he wasn't sure the Commission got the results they were expecting.

Paul Springer noted it was fairly common, during the presentation, that 1963 was the key year and that everything after that year got progressively worse. He felt there had to be a reason for that. Mr. Carpenter explained the dredge was introduced to the Chesapeake Bay region in the 1880's. Between the 1880's and the 1980's there has been a decrease of 90%. The same thing is true of sturgeon and American shad. There has been a change in the estuary and a reduction in a very healthy population to a population that's been heavily fished and an estuary that's been under pressure since.

Paul Springer noted the decline from the early 1880's and attributed that to poor record keeping back in those days. During that period of time, there was harvesting being done and he doesn't feel the pressure was being exerted like it was from the 1930's on, which was due to the depression. Mr. Carpenter agreed. Mr. Springer stated prior to 1963, the Potomac River was dredged and he questioned if there was some correlation between the spat set of 1963 and what happened prior to 1963. Mr. Carpenter explained if there were, the legal dredging in the lower Potomac River since 1977 would have resulted in an increased spat set, which would have resulted in an increased harvest, but that has not been the case.

Commissioner O'Connell stated as he reviews the information of the long history of harvest landings, he notices the population keeps escalating downward, and then a blip in harvest occurs. You can attribute that blip in harvest to management changes over a period of time.

Presentation by Dr. Romuald N. Lipcius, VIMS

Dr. Lipcius gave a presentation on some of the oyster restoration work conducted in Lynnhaven and the Great Wicomico River. Results were presented on the work of the Army Corp of Engineers who built about 100 acres of two different kinds of oyster reef in the Great Wicomico River. The two types of reef were high relief and low relief. A preliminary survey was conducted in 2006 to get a sense of what needed to be done to conduct a proper survey. A full scale survey was conducted in 2007. A follow up survey was also conducted on the 2008 year class earlier this year and there will be a continuation of surveys in future years.

In general the high relief structures have better survival, growth rates and spat setting than the low relief plantings. Given these results, it appears the use of large scale strategically placed oyster sanctuaries, as brood stock, i.e. as spat-donor areas, and other surrounding areas as harvest bars, i.e. spat-receptor areas, may be an appropriate management technique to overcome the stresses on the oyster population. The combination of separate sanctuaries and harvest areas could lead to both ecological and economic benefits.

Commissioner Hall stated she felt Dr. Lipcius' excitement and she was the one who urged him to provide a presentation to this Commission. She also liked the idea of alternative reefs and wondered why some of the "ghost pots" were not modified and used as reefs. She was curious as to how well that would work.

Mr. Robert T. Brown commended Dr. Lipcius on his presentation. He stated there have been similar studies done on the Potomac River in the past and they have not worked due to poor water quality. There is also a problem with dissolved oxygen levels in the Potomac River. Mr. Brown

wanted to point out that there are differences in the water quality between the two areas where these studies were conducted. Dr. Lipcius acknowledged the differences and stated further studies would need to be conducted to determine what type of reefs would need to be built based on the water quality in the Potomac River.

Commissioner O'Connell stated Dr. Lipcius mentioned there should be no power dredging on oyster sanctuaries, then he followed by stating there should be some cleaning that could be done by watermen on harvest oyster bars. Commissioner O'Connell stated the state of Maryland contracts watermen to use oyster dredges to clean oyster bars. He is concerned about what level of harvest removal will allow that harvest bar to be sustainable over time. Dr. Lipcius stated he could not address the power dredging, however he felt some sort of cleansing has to happen with the low relief reefs. If the reef is not cleaned before a spat set, that reef will not have good spat settlement and will eventually degrade.

Commissioner O'Connell felt the question that needs to be answered as the Commission moves forward with managing this oyster fishery, is what level of harvest removal will allow that population to sustain itself and what type of gear can be utilized to let that habitat be sustainable. He agreed that power dredging is a useful tool for cleaning oyster bars but he feels there is a second question to consider and that is if power dredging is an acceptable gear for harvesting oysters. That may be the case with an appropriate harvest target, but without a conservative harvest target it could be a risky gear to allow. Dr. Lipcius explained what needs to be considered is what percentage of harvest grounds needs to be set aside as oyster sanctuaries and where they are located.

Presentation by Mike Naylor, MdDNR

Mr. Mike Naylor gave a brief overview on what MdDNR is doing for the restoration of oyster reefs throughout the state of Maryland. There are a number of different challenges the state has to address with the various habitats they have to deal with. He explained the state needs to develop separate oyster restoration strategies for ecological versus commercial outcomes. Maryland is currently drafting a master plan for the various regions of the state. The plan will most likely involve the use of expanded sanctuaries, and will rely heavily on an analysis of the data from the annual oyster bar surveys. At this point the plan is still a work in progress.

Correspondence from Dr. Jim Wesson, VMRC

Mr. Carpenter explained that Dr. Jim Wesson was unable to attend the meeting but had sent a letter to the Commission that essentially says he supports the idea of protection of the 3 to 4-inch oyster with the 4-inch minimum cull size. Dr. Wesson related his experience with oysters larger than 4 inches, that they were buying back, and the poor brood stock performance with the larger oysters. The results using the moderately sized (2 ¾ to 4 inch) oysters have been better than using the larger older ones. The 4-inch minimum cull size may be an option the Commission might want to consider. The complete letter was provided to the Commission in their packet.

Commissioner O'Connell commented that Dr. Wesson's letter did state these were preliminary results. Production in Maryland's hatchery is largely based on larger brood stock oysters. Dr.

Wesson's findings are not consistent with the results in Maryland, and further investigation is needed.

Oyster/Clam Advisory Committee Report

Tucker Brown, Chairman of the Oyster/Clam Advisory Committee presented the report to the Commission. He noted that the presentations received today were done very well. However, the Commission does need to realize that the Potomac River is a different body of water. He stated he would give further comments during the public hearing on this issue.

He stated the Oyster/Clam Advisory Committee received updates on the history of the oyster fishery, the 2008 fall oyster survey, the 2008-2009 oyster harvest report and a final report on the oyster EIS. The committee discussed several options for the upcoming 2009-2010 oyster season. The committee voted as follows:

1. Voted against a moratorium in the Potomac River
2. Voted to leave the season dates, days and time limits as is
3. Voted to keep power winders on the boat
4. Voted to open Jones Shore to hand scraping
5. Voted to keep 3" size limit with no slot limit
6. Voted to make Heron Island and Hogg Island 'managed reserves'
7. Voted to open the entire Potomac River to hand scraping, from DC to Point Lookout

The Committee also announced there were three positions vacant on the committee and Mr. Tucker Brown was elected Chairman and Mr. Wayne France as Vice-chairman.

Open Public Hearing – 4:07 p.m.

Mr. Carpenter stated the legal advertisement was duly advertised under the terms of the compact and all notifications have been received from the newspapers. The following options were advertised for the public hearing.

1. A moratorium on oystering in specific area(s) up to and including the entire Potomac River.
2. Change the opening and closing season dates and/or times (i.e., shorten the season/times).
3. Status quo, where the Regulations will remain as they were during the 2008-09 season.
4. Open Jones Shore to hand scraping.
5. Changing the minimum size limit, establish a maximum size limit, and/or a slot limit.
6. Opening new area(s) up to and including the entire river to hand scraping.
7. Establish a new oyster sanctuary in the area of the Hog Island fishing reef, and/or modify the boundary of the Heron Island sanctuary.
8. To take no action at all, such that the right to the use of "power" (i.e. winders) for hand scraping would terminate under the sunset provisions of the regulations of the PRFC.

Chairman Bowes opened the public hearing and asked that everyone limit their comments to a reasonable amount of time.

Mr. Joe Rodgers from Piney Point, Maryland explained he has done extensive study of the finding of the PEIS and found that in the no harvest case, three out of four eggs produced will come from oysters with sufficient disease resistance to live 5 or more years. Of course only

about 1 in 14 oysters is robust enough to live that long, yet those few long lived oysters produce three out of every four eggs. More than 1 out of 4 eggs will come from oysters with the genetic robustness to survive 9 years or more. Only 1 in every 125 oysters can survive more than 9 years, yet those critical few oysters provide more than 1 out of 4 eggs produced! That is a tremendously powerful evolutionary advantage for longevity, one which will compound generation after generation until the oysters have achieved the one thing which will truly allow this fishery to recover – disease resistance. He continued saying, that under an 80% harvest removal condition, eggs created by oysters that live 5 or more years will be a tenth of what they would be under no harvest conditions. For oysters that live 9 or more years, it'll be less than a thirtieth; for even longer lived oysters it drops to less than a fiftieth of what their egg creation would be without harvest. The evolutionary pressure for development of disease resistance has been decimated by continued harvest. All harvest should be suspended until the native oyster has recovered.

Bill Trossbach stated his interest was with Jones Shore. To restore the oyster industry, you first have to restore the habitat. You have to have something for the oysters to strike on and they will not strike on sand. Speaking strictly about Jones Shore, the habitat can be restored because there are a lot of shells there. However, it can not be restored with 22" hand scrapes and pulling it by hand. The Commission would have to allow us to use larger dredges with longer teeth that would reach down into the bottom and pull the shell back up for habitat. Next, the question is, how do you get an oyster to spawn. He felt that part is best left to the scientists.

Doug Jenkins referred to a book Life on the Potomac River by Edwin W. Beitzell. It had pictures of oysters that had attached themselves to hard crabs, diamondback terrapins, and horseshoe crabs. The reason he presented the photos was to show that the water quality played a huge part in oysters living from one end of the Potomac River to the other during that time. Mr. Jenkins stated Mr. Carpenter has done a lengthy job on the oyster production over the years with the data he had at hand. Prior to the compact, Mr. Jenkins felt thousands of bushels of oysters never got reported and would have changed the historical findings that are on record today. Watermen working the river have always helped. The oyster production is down because of several things, freshets, disease, pollution and bad water quality all play an important part. To get this river back into shape it's going to take money. He suggested going to some of the people and companies who have caused the poor water quality and have a user fee imposed.

Paul Springer felt a moratorium is the answer then there should be places this in this river that would be teaming with oysters. We have effectively been observing a lack of harvest for years. The only significant increase in harvest has been when there was an event that altered the ecosystem so as to allow a spat set. Most if not all of these events flushed the river so the oyster larvae could adhere to a stationary object. There is basically no cultivation of this river's traditional oyster bars and there has not been an event to flush the river. If we choose to continue to do nothing, what precious resource we have left will certainly continue to downward spiral. We are going in the wrong direction! Mr. Springer went on to say that he would advocate opening at least some of our traditional oyster bars to dredging. That statement will no doubt invoke some strong feelings both negative and positive. It's true, dredging got a black eye years ago, but let me remind everyone, this extremely efficient method of harvesting oysters did not catch the last one and we had both oysters and oysterman. A limit of 10 bu./day/man, 20 bu./day/boat,

from Nov. 1 thru Dec. 31, 2009 would provide the incentive to get the bottom cultivated. The amount of oysters caught will determine the amount of participation. Other restrictions can be put in place to protect the fishery, but please allow us to at least cultivate and clean the bottom. The Commission's attention to this river's desperate plea for help is needed. By doing nothing we will most certainly reap what we sow - nothing!

Robert T. Brown representing the St. Mary's County Watermen's Association stated they recommend the following:

1. Opposed to a moratorium
2. Would like to see the season open with the same time limits as last year
3. Recommend opening Jones Shore so it can be cleaned and possibly made into a seed area
4. Keep the size limit at 3"
5. Supports Hogg Island as a fishing reef with the possibility of someday planting oysters there
6. Would like Heron Island designated as a 'managed reserve'
7. Supports opening the upper part of the Potomac River so that area can be worked as well
8. Wants to keep power winders on the boats

He felt water quality is the worst thing that has to be dealt with. There has to come a time when this Commission addresses the main pollutants on the Chesapeake Bay. He stated he understood that the Compact only allows the Commission to regulate the fishery, however, when pollution is overtaking the fishery, and it's stopping oysters from reproducing, that's the next step the Commission must take. Our water is far from being pure.

John F. Tucker Brown stated we have heard a lot of comments today and it comes down to the same thing. The watermen want to do their part and do what they know to try and build something back. He felt there needs to be some planting in the river and if nothing is done he feels in 2 to 3 years, most of the Potomac River will be silted over so bad that reefs will have to be built. He asked the Commission to try and stay with the industry on this issue. He felt Mr. Jenkins had some valid points. Mr. Brown felt the oyster bars in the Potomac River could be productive once again.

Kenny Pearson stated that two to three years ago the Commission was deciding how much money to spend on the EIS study. He recalls that the Commission decided to fund a study on the Asian Oyster, which cost the Commission \$33,000. Mr. Pearson thought the Commission should have taken that money and invested in seed plantings throughout the river. He felt the Commission's money is not being spent wisely and the bars need to be replenished.

Elgin Nininger stated the problem is we don't want to close the river. He feels the river is already closed and he would like to see the river opened. He felt the way to open the river is to plant oyster seed. The problem is there's no money. As several people have said today the seed is available from local areas. The Commission needs to find a way to purchase some seed and do some plantings. The more live oysters in the river, the more chance there is for reproduction. The Asian oyster situation seems to be a dead issue.

Commissioner Rice asked Mr. Nininger what happened when he checked his oyster planting ground and what did he see. Mr. Nininger stated he planted some oysters about three years ago and the skates had been there and used it as a feeding ground. Mr. Nininger figured all of his oysters were gone and the skates had silted the oysters over. They couldn't be caught with oyster tongs, but he used an oyster dredge and was able to catch a few oysters. He felt his story proves that you have to work the bottom of the river so silting doesn't occur and it helps keep the shells clean so there could be a potential strike.

Close Public Hearing – 4:50 p.m.

Chairman Bowes explained what he would like to do is go through the eight issues that we have for public hearing and speak on each one of them.

Commissioner Schick suggested dealing with the issue of a moratorium first seeing how that would dictate what comes next. Chairman Bowes agreed.

Commissioner O'Connell stated he would like to clarify in his mind what the end point is that needs to be achieved today. He felt the Commission did not have to necessarily make any changes to this season's oyster fishery. Chairman Bowes explained the Commission could go back to status quo and leave it just as it is. Commissioner O'Connell felt that would give the Commission time to decide what needs to be done. He felt there was a lot of agreement between the scientists, the industry and the environmentalists, however he feels there needs to be more time to develop a management plan for the Potomac River that expands certain limits for restoration, look at opportunities for rehabilitating the oyster industry and now may not be the right time to make hasty decisions. Commissioner O'Connell felt drastic changes may not be needed at this time and a little bit more discussion over the course of the year and looking at a new fisheries management plan and a restoration plan that we can all pull together as part of the Potomac River may be what's needed at this time.

Commissioner Schick agreed with Commissioner O'Connell and felt it was obvious that low relief oyster bars need to be worked or they will silt over and the oysters will die. A moratorium will not solve any issues for low relief oyster bars.

A motion was made by Commissioner Schick, seconded by Commissioner Rice and unanimously passed not to have a moratorium for the 2009-2010 oyster season.

Commissioner O'Connell stated there have been some statements made with regard to the EIS and he feels there was a lot gained from that study. One component of the EIS was a cultural analysis, talking to the Chesapeake Bay community, as to what's important to them when you say the words oyster and oyster restoration. Despite the diverse groups of people, the cultural analysis shows that all these groups agree that they want to see more oysters, but they also don't want to lose the oyster industry. Commissioner O'Connell felt there has to be a better way than a moratorium in the Potomac River.

Commissioner Fleming had a feeling that the Commission maybe leaning towards status quo with taking more time to do workshops with the Commissioners. He said he worked really hard to educate himself about oysters and he is more confused than when the meeting started.

Commissioner O'Connell verified if the Commission went with status quo that meant everything would revert back to what it was five years ago. Commissioner Hall took status quo to be the same as last season. Chairman Bowes explained status quo is to keep the regulations as they are and the regulation for power winders will revert back to no power winder as it was in 2003, because of the sunset clause in the enabling regulation. Mr. Carpenter concurred and noted the Commission will need to consider the season dates and times because that order expired at the end of last year's oyster season.

Commissioner Rice thought the Commission would also need to deal with the possible opening on Jones Shore. He verified if the Commission went with status quo that would not include the opening of Jones Shore. Mr. Carpenter agreed that was the case. Commissioner Rice asked if the Commission could, in the single motion, go with status quo, but include the opening of Jones Shore for power hand scrape. Mr. Carpenter stated that would be possible. Commissioner Rice felt the bottom of the river needs to be worked and it's not going to get done under the present system. However, he feels there needs to be a plan in place. There are oyster bars upriver that need to be worked and cleaned up. There needs to be funding in place and a plan to bring the oysters back. He would hate to see the Commission delay the process for another year based on the fact that Jones Shore has been closed for 5 years already, but he doesn't really see another way.

A motion was made by Commissioner Schick, seconded by Commissioner Hall to allow power winders on vessels.

Commissioner O'Connell asked if Commissioner Schick would consider adding to the motion a sunset clause that would require the Commission to come back and discuss this issue at a later time. Commissioner O'Connell is in favor of supporting the motion but there are some issues that need some attention. He felt allowing the hand scrape with power winders to occur over the last five years did not attribute to an increase in harvest and he felt it was important to come back and discuss this at some near point in time.

Commissioner Schick agreed and felt it was a useful tool to continue working on low profile reefs in the river. He asked Commissioner O'Connell if he had a specific time limit in mind. Commissioner O'Connell felt this issue should be discussed at the same time next year. Commissioner Schick accepted idea as a friendly amendment. Commissioner Hall agreed therefore the revised motion was: ***to allow power winders on vessels for the 09-10 season.***

Commissioner O'Connell then asked the Commission if the regulation needs to specify the allowance of this gear on board for the Commission to permit watermen to rehabilitate the bottom for habitat purposes. He explained in Maryland, the state will contract watermen to use power dredging in an area that may be closed to power dredging but we permit them to do so. Mr. Carpenter explained these regulations are designed to regulate the fishery. If there's a restoration effort, that would be handled with a contract and not be subject to the regulation, but rather by the terms of the contract.

Mr. Carpenter verified what the motion, as stated, is taking the existing regulations and changing the April 1, 2009 date to April 1, 2010 so that the oyster issue can be revisited before the 2010-2011 season.

Commissioner Rice verified if this motion is adopted, then Jones Shore will remain closed. Mr. Carpenter stated that would be the case. He then suggested coming back to Regulation II, Sec. 2(a)(4) and addressing the issue of opening Jones Shore.

A revised motion was made by Commissioner Schick, seconded by Commissioner Hall and unanimously passed to allow power winders on vessels and to change the date on the sunset clause from April 1, 2009 to April 1, 2010 on Regulation II, Sec. 1(e), Regulation II, Sec. 2(a)(3), Regulation II, Sec. 2(e) and Regulation II, Sec. 2(a)(4).

Mr. Carpenter then asked the Commission if they would like to open Jones Shore. Commissioner Schick asked if Jones Shore was considered a low profile oyster bar. Mr. Carpenter stated he considers all the oyster bars in the Potomac River to be low profile.

Commissioner O'Connell stated he was not familiar with the history of Jones Shore and asked how many years it has been closed. Mr. Carpenter explained Jones Shore has been closed to hand scraping, but it has been open to hand tonging, however, no one has worked there in many years. It was a seed area the Commission designated and was the main area where 90% of the seed came from in the 1970's and 80's. As Jones Shore's spat sets began to decline in the late early 1990's on account of disease, so it was opened up for hand scraping. The first year it was open there were 25,000 to 30,000 bushels of oysters harvested.

Commissioner Holland asked what staff's recommendation was in regard to opening Jones Shore. Mr. Carpenter explained Jones Shore was closed for the past 5 years to hand scrape with power in order to evaluate it compared to the other areas surrounding that did have the use of power. When surveyed last fall, it was observed that there was no major difference between the spat set or the available shell or any other part of Jones Shore versus Kitts Point, Cornfield Harbor or St. George's Island. Mr. Carpenter noted staff's recommendation, back at the June Commission meeting, was to open Jones Shore and allow hand scraping with or without power. It really makes no difference as long as you control the size of the hand scrape and keep it at 22 inches.

Commissioner Fleming questioned if the goal is to clean the bottom of the oyster bars, why is it limited to a 22" hand scrape. He thought a larger hand scrape would be more productive if that is the goal. Mr. Carpenter explained hand scraping was authorized by Maryland and Virginia Legislators' in 1977 and at that time the Potomac River was opened to hand scraping and hand scrapes were designed and limited to 22" catching bar. At that time it was not used for the theory of "cleaning the bottom". Five years ago, the Legislators' removed the restriction for just hand scraping, allowing us the authority for power dredging. At the time it was thought that the best thing to do, rather than increase the size of the dredge, was to simply allow winders on the boat and maintain the gear in place because there had been no detrimental effect seen in the hand scraping area as a result of the hand scraping activity. Mr. Carpenter said that Commissioner Fleming raised a very valid point about covering more bottom with the use of a larger dredge; however, that was not one of the regulations advertised for public hearing.

Commissioner Rice questioned if Jones Shore was the only area south of hand scrape line that remains closed. Mr. Carpenter stated Heron Island is also closed to hand scraping.

Commissioner Fleming asked staff if the surveys state there's no reason to keep Jones Shore closed. Mr. Carpenter explained in the absence of consistent spat setting, the area will not be used for a seed area in the foreseeable future. It could be used as one of the 'managed reserve' areas that have been talked about today, or it could be left closed to provide brood stock as a possible reef that the Commission may want to build on and design as a high relief reef in that area. Until the master plan is developed, staff does not see a need to keep it closed.

Commissioner O'Connell noted the fall survey shows that Jones Shore yields some of the highest densities of small oysters compared to other sited sampled. Mr. Carpenter stated that was correct. Commissioner Hall stated Jones Shore also has a high mortality rate.

A motion was made by Commissioner Rice, seconded by Commissioner Schick to open Jones Shore to hand scraping. The motion failed with 5 in favor and 2 against.

Order 2009-XX – 2009-2010 Oyster Season Dates, Days and Time Limits

A motion was made by Commissioner Rice, seconded by Commission Hall and unanimously passed to adopt Order 2009-XX with the same season, dates, days and time limits as last year.

Commissioner Schick questioned what the benefits would be if the Commission adopted a shorter oyster season. Mr. Carpenter explained the harvest data was reviewed from last season and 74% of the total harvest occurred during the months of November and December.

Commissioner Rice noted for the record that under the present scheme of the Commission's current harvest methods, he sees no detrimental effect to the stock to leave the season open to run its full length. *The motion then passes as follows:*

ORDER #2009-08

(replaces #2008-11)

2009-2010 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 I, Section 7(a)(1), **HEREBY DECLARES AND ORDERS:** The 2009-2010 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 thru Dec. 31, 2009	Monday thru Friday	Sunrise to 1:00 p.m.
	Jan. 1 thru Mar. 31, 2010	Monday thru Friday	Sunrise to 3:00 p.m.
Hand Scraping	Nov. 3, 2009 thru Mar. 31, 2010	Monday thru Friday	8:00 a.m. to 1:00 p.m.

BE IT FUTHER 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 #2009-08 shall become effective September 30, 2009 and remain in effect through March 31, 2010.

Chairman Bowes stated the last item that needs to be addressed was modifying the boundary of Heron Island and adding Hog Island artificial reef to the oyster sanctuaries.

Mr. Carpenter noted that item #3 in the notice would take the entire area of Heron Island and include it as a sanctuary. Right now hand tonging is permitted on Heron Island with 18" shafts. This recommendation would be to eliminate hand tonging on Heron Island and would use it as part of the sanctuary system. The draft regulation presented will accomplish that and also establish the Hog Island reef area as a potential oyster sanctuary.

Commissioner Rice questioned if the Commission adopts the regulation as presented, will that stop the Commission from designating or using Heron Island as an oyster reserve in the future. Mr. Carpenter explained if it's designated as a sanctuary, it will remove it as a reserve area. He understood from both states and a scientific view point, there needs to be oyster sanctuaries strategically located throughout the Potomac River.

Chairman Bowes felt designating the entire area of Hogg Island as a sanctuary is an overkill and he would rather see the Commission designate a nominal area around the reef itself and would be within the concept with what the scientists are telling us.

Mr. Carpenter explained the Hogg Island reef is only 50 acres and is not located on a natural oyster bar. When surveyed, there were no oysters located on the proposed sanctuary site. Designating the fishing reef 50 acre site as a sanctuary will enable us to sprinkle plant the reef part of it and try to obtain something elevated oyster habitat. Trying to redefine the sanctuary to the 10 to 15 acres within the entire 50 acre site would be trying to fine tune it more than necessary.

A motion was made by Commissioner Schick, seconded by Commissioner Holland to accept staff's recommendation on Reg. II, Sec. 4(a) as presented. The motion failed with 5 in favor and 2 against.

Commissioner Rice stated he voted no because Heron Island was included and Commissioner Hall stated she voted no because she felt the Commission should not designate any sanctuaries until a plan is in place. Commissioner Rice also agreed with Commissioner Hall's statement.

Crab Harvest Report

Mr. Carpenter presented the preliminary crab harvest report for the 2009 crab season. It shows 28,599 bushels of hard crabs harvested, a peeler crab harvest of 18,748 pounds and a soft crab harvest of 1,203 pounds, which were all down except for the soft crab harvest. He noted the harvest is tracking similar to the harvest in 2008 and this was predicted with the winter dredge survey.

Commissioner Hall asked staff for an update on the request for funds from each state for buying back crab pot licenses. Mr. Carpenter stated the Commission received a reply back from the state of Virginia stating they were going to wait until they had their reverse auction proceedings before they would commit to funding the Commission. Mr. Carpenter then asked Commissioner

O'Connell for his response on behalf of the state of Maryland. Commissioner O'Connell explained Maryland is willing to make a commitment of funding immediately to support a buyback program with the Potomac River. He stated Maryland needs to follow up with NMFS to verify they would support using those funds towards such a program. Mr. Carpenter stated if the Commission were to receive funding, he suggested a motion be made for staff to proceed this fall with a buyback program pending the availability of the funds.

Commissioner Schick stated one thing that is making Virginia's program work is implementing a control date and those who weren't crabbing were put on hold. Once the crab population rebounds, they could re-enter the crab fishery. The buyback applies to those who are active licensed watermen. He felt it made the program more effective. Mr. Grist from VMRC clarified that 20% of the buyback funds will be used toward the waiting list. There are currently three categories, full-time, part-time and the waiting list category.

A motion was made by Commissioner Rice, seconded by Commissioner Holland and unanimously passed to direct staff to look into how the Commission could use funding for a buyback program if funds are provided.

Mr. Carpenter asked Mr. Grist what the timing would be for Virginia's buyback program. Mr. Grist said all bids would have to be in hand by November 1st. The impact of the buyback program will not be complete until probably January 2010.

American Eel YOY Survey

Mr. Troy Tuckey presented the findings of the 2009 American eel young-of-year survey. This project is in fulfillment of the ASMFC American eel FMP and is supported with federal grant funds. The project has been a learning process because the eel recruitment is highly variable and several attempts at statistical treatment of the raw data have been tired over the years. While the year to year variances are noted it is the longer term patterns that are more important. This year they have developed an alternative index calculation method that is unaffected by fluctuations in the daily recruitment pattern. It is the "area-under-the-curve" method and the results obtained from this method indicate relatively stable recruitment during the time series for glass eels at each site. This new data treatment may enhance future use of the data.

Order 2009-XX – 2009-2010 Gill Net Season & Restrictions & Commercial Striped Bass Catch and Size Limit

Mr. Carpenter noted the only change to the order is to change the year from 2009 to 2010 and set the number of stands from March 16th through March 25th back to the original number of 2 stands allowed.

A motion was made by Commissioner Holland, seconded by Commission Hall to accept staff's recommendation and adopt Order 2009-XX as presented.

Kenneth Wicker, a member of the Finfish Advisory Committee, explained over two years ago the committee sent a recommendation to the Commission for the commercial gill net season to start during the middle of October due to the economy and the market for the fish. Last year when the season opened on November 15th the market did not support the fishery. He felt starting the season earlier would allow an optimum price and would relieve pressure from the crab and oyster fishery.

Kenny Pearson felt Mr. Wicker was correct with requesting the season to open mid-October, or first of November. Starting the season in the middle of November causes the market to go down. He suggested opening the season on November 1st through March 25th and that was approved by the Finfish Advisory Committee.

Commissioner Fleming questioned if the ASMFC had adjusted the striped bass quota to accommodate for the illegally harvested fish last year and did this factor into the gill net quota. Mr. Carpenter explained the ASMFC has taken no action at this time. The Chesapeake Bay jurisdictions operate on a Bay wide quota and the commercial catch is only a portion of that total quota. Factoring in the illegal harvest, Mr. Carpenter felt the Commission would not have exceeded its quota for last year.

Kenneth Wicker questioned how many tags were going to be issued per gill net stand this year. Mr. Carpenter anticipates the Commission will be issuing 90 striped bass tags per stand, because the quota this year should not change.

Commissioner Rice asked Commissioner Holland if he would consider amending the motion to include allowing 3 licensed stands to be set from March 16th through March 25th with the rational that during the February meeting, if the quota is close to being reached, the Commission could revert back to 2 stands being set instead of 3. **Commissioners Holland and Hall accepted that amendment.**

Commissioner Fleming felt staff would have taken that amendment into consideration when drafting the order and questioned why staff did not recommend that. Mr. Carpenter explained staff did not take that into account. He noted that for the last two years the Commission has changed the Order in February from 2 stands to 3 stands from March 16th through March 25th. He advised the Commission the risk involved in allowing 3 nets to be set for that long could result in exceeding the quota. If that's the case, it just comes off of next year's quota for the gill nets.

Commissioner Fleming asked staff to respond to the comments made earlier about opening the season on November 1st. Mr. Carpenter felt the November 15th date has worked well since switching to a continuous season. The Finfish Advisory Committee recommended a November 1st start to the season when it was a calendar year season with a 2 week closure in January. When the two weeks were eliminated in January, staff felt taking the 2 weeks off the start of the season would keep the number of days consistent to what was fished before.

Commissioner Fleming requested to amend the motion to change the season dates from November 15th to November 1st through March 25, 2010.

Commissioner Rice felt starting the season on November 1st is not going to cause larger fish to enter the market and in reality would help the Commission stay within the quota. Mr. Carpenter stated giving the Commission's reporting system, there is a built-in two week lag. For gill nets, the largest part of the harvest is taken with the last two weeks of the season, it's highly unpredictable if the quota will be exceeded. **Commissioner Fleming withdrew his portion of the amended motion.**

Commissioner O'Connell stated he could not support a season change without knowing how it would affect the fisheries in Maryland or Virginia.

Commissioner Holland accepted the first amendment by Commissioner Rice but did not accept the amendment by Commissioner Fleming, which was withdrawn. Commissioner Hall also accepted the first amendment to the motion. The motion passed unanimously to adopt Order 2009-XX as follows:

ORDER #2009-09
(replaces #2008-12 "revised")

**2009-2010 GILL NET SEASON AND RESTRICTIONS
& COMMERCIAL STRIPED BASS CATCH AND SIZE LIMIT**

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary for the preservation of the striped bass (rockfish) population, and pursuant to its authority under Regulation I, Section 8 and Regulation III, Sections 9(a), (b) and 10(a): **HEREBY DECLARES AND ORDERS:** the gill net fishery shall be allowed under the following conditions and limitations:

- a) **Season** - The gill net season shall be from November 15, 2009 through March 25, 2010.
- b) **Permitted Nets** - Each licensee, shall be permitted to set and fish a single properly identified net, in the number of his licensed locations (stands) as follows:
 - i) November 15th through February 29th – all stands, and;
 - ii) from March 1st through March 15th – 4 stands, and;
 - iii) from March 16th through March 25th – 3 stands.
- c) **Other Conditions** – Once renewed no change of the ownership of any gill net licenses will be allowed during the remainder of the open gill net season. Two or more licensees may, and are encouraged to, jointly fish lawfully licensed and set nets belonging to one or more of the individuals.
- d) **Quota** – The gill net striped bass quota shall be 507,846 pounds (66,690 ID Tags) total for all licensees, less any taken with a hook and line as may be allowed under Regulation III, Sec. 13(d). Each individual's striped bass quota will be proportional to the number of gill net licenses held by that individual and will be represented by a number of striped bass identification tags issued to that individual.
- e) **Striped Bass Size Limit**

November 15, 2009 through February 14, 2010	18" Min.
February 15, 2010 through March 25, 2010	18" Min. / 36" Max.

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2009-09 shall become effective November 1, 2009, shall supersede and repeal Order #2008-12 "revised" and remain in effect for the year 2009-2010 or until such time the Commission has taken further action.

ASMFC Issues

Mr. Carpenter noted the summary was included in the Commissioner's packets for the 2009 ASMFC summer meeting. He advised there will be a number of public hearings scheduled this fall in preparation for the ASMFC November meeting. Based on lack of participation at previous ASMFC hearings, the PRFC will not host any ASMFC public hearings because both states will be hosting public hearings on the various items for discussion.

Chairman Bowes asked what hearings are to be held. Mr. Carpenter stated there will be a weakfish proposal with the possibility of a moratorium, or catch limits that would make it a by-catch fishery only. There will be an amendment to the river herring plan, a striped bass commercial allocation hearing concerning the coast, a scup transfer quota and the menhaden plan, which is an extension of the cap in the Virginia fishery. Mr. Carpenter felt they were issues that did not directly affect the Potomac River fishermen.

Mr. Carpenter announced that the 68th annual ASMFC meeting is scheduled for November 2nd through the 5th in Newport, Rhode Island and all Commissioners are encouraged to attend.

Fourth Quarter Disbursements and Cash on Hand

Mr. Carpenter presented a report of the fourth quarter disbursements (April through June) for the operational budget. It was presented by budget line totaling \$131,763. A report of the cash-on-hand was also presented totaling \$463,777.21, as of September 10, 2009.

He did note there was an error in the draft packets on the checking account balance listed on the cash-on-hand page. The balance contained an error where the Maryland appropriations check of \$175,000 was posted twice. However the statements presented today are correct.

A motion was made by Commissioner Rice, seconded by Commissioner Hall and unanimously passed to accept the fourth quarter disbursements as presented.

Kenny Pearson questioned why the public is not provided with a copy of the financial reports. Mr. Carpenter stated a copy could be provided if he would like it.

FY '09-'10 Budget Modification

Mr. Carpenter stated at the last meeting the Commission adopted the FY '09-'10 budget. Later in that same meeting the Commission decided to fund the Smithsonian Crab Pot Tagging Study to be conducted this month. At that meeting Mr. Carpenter stated the program would be funded through Other Contractual Services, however he has rethought that and believes it should be designated expense for that program for tracking purposes. The budget approved at the June 2009 meeting estimated \$105,000 in cash brought forward and did not have a proposed crab research expense. The total cost of the project is \$13,161 of that, \$8,775 will be due this FY year with \$4,387 due in November 2010 (next year's budget).

Final estimate of the cash brought forward was \$120,000. The staff proposed an amendment to the FY '09-'10 budget by increasing the cash brought forward by \$15,000 and including an expense of \$8,775 for crab research with a balance of \$6,225 added to the unexpended cash balance category.

A motion was made by Commissioner Schick, seconded by Commissioner Rice and unanimously passed to adopt the amendments to the FY '09-'10 budget.

Advisory Committee Vacancies

Mr. Carpenter noted there were the following vacancies on the advisory committees:

Crab Advisory Committee	Virginia Recreational Crabber
Finfish Advisory Committee	Maryland At-Large Recreational Fisherman
	Maryland St. Mary's Co. Commercial Fisherman
	Virginia Middle/Upper Recreational Fisherman
	Virginia At-Large Recreational Fisherman
	Virginia Upper River Commercial Fisherman
Oyster/Clam Advisory Committee	Virginia Oyster Buyer

Commissioner Schick stated he has a nomination, Mr. Mark Hunter, for the position of a Virginia Recreational Crabber on the Crab Advisory Committee. Chairman Bowes appointed Mr. Mark Hunter to the Crab Advisory Committee and Mr. Richard W. Chatham to the Oyster/Clam Advisory Committee as a Virginia Oyster Buyer.

Commissioner O'Connell stated he would follow up and try to find some people to fill the vacancies of the Maryland positions on the Finfish Advisory Committee.

Pre-Payable Fine Schedule

Mr. Carpenter explained that its been several years since the pre-payable fine schedule had been updated. Staff reviewed the dollar value and compared the wording to the regulations that may have changed. He advised that the court costs in Virginia can be as high as \$90.00 and in Maryland they are around \$50.00. Therefore, he felt any fine that was set at \$100 should be raised to \$125. Another change is dealing with undersized fish. The fine was \$100 per fish and staff has recommended a change to \$125 for the first fish plus \$10 per each additional fish. Law enforcement felt the previous fine was a little steep. Mr. Carpenter noted two new fines were added to the fine schedule, which are failure to separate crabs and exceeding the crab harvest limit. Both impose fines of \$150 per container or bushel. He then explained there were 5 regulations that did not match the language to the fine schedule so these regulations will be added to the next public hearing for language clarification. Staff recommended adoption of this fine schedule and authorization for the technical corrections to be dealt with at the next public hearing. Staff also recommends the authority to submit the draft fine schedule to the Supreme Court of Virginia for approval.

A motion was made by Commissioner Holland, seconded by Commissioner Hall and unanimously passed to accept staff's recommendation.

George D. Decatur, Jr. – Crab Pot License Renewal

Mr. Decatur asked to appear before the Commission because he forgot to renew his crab pot license for the 2009 season. He stated there was confusion when he purchased his gill net and he thought he had purchased his crab pot license at the same time. Mr. Carpenter explained that when Mr. Decatur renewed his gill net licenses the renewal season was not open for the crab pot licenses, therefore he simply thought he had purchased it when he had not. Mr. Decatur stated he has held a crab pot license for almost 60 years.

Chairman Bowes asked Mr. Decatur when he discovered he had not renewed his crab pot license. Mr. Decatur stated he realized it when his tool box was stolen off his boat and he called the office to get a replacement license only to find out that he had not renewed the license.

Commissioner Rice truly feels this is an honest mistake and asked Mr. Mayo how the Commission can help this gentleman get his crab pot license back. Mr. Mayo asked Mr. Carpenter for an explanation. Mr. Carpenter explained that any limited entry commercial license not renewed by the last business day of January would then be subject to late fees. After April 30th if the license had not been renewed then it is surrendered back to the Commission and becomes non-renewable.

Commissioner Schick stated he understood, and based on the fact that Mr. Decatur asked to renew his crab pot license there should be something we can do.

A motion was made by Commissioner Rice, seconded by Commissioner Hall and unanimously passed to allow Mr. Decatur to renew his crab pot license, out of confusion, and pay the late fees associated with the renewal.

Mr. Mayo saw no legal matters with this issue.

Mr. Carpenter suggested using a license deposit system for the other gears if they renew their gill nets in November and ask to do that.

Commissioner Fleming stated the Commission is setting precedent by doing this and if the Commission does for one they should do for all. Commissioner Rice felt each situation could be looked at separately and the Commission could decide if a license should be renewed or not.

New Business

Dr. Rom Lipcius from VIMS noted that there is another study being conducted to study cull rings and by-catch reduction. The study uses different cull ring sizes including those required by current regulations. Also being used are by-catch reduction devices that may reduce the number of terrapins, blue catfish, and other fish getting caught in the crab traps and dying. There are two

watermen working in the Potomac River and as soon as the data is collected, the results will be presented to the Commission.

Commissioner Hall felt in light of all the scientific evidence presented today, the watermen showed their desire to come up with a plan for managing the oyster fishery. She felt the Commission should come up with an idea today before the meeting ends to start this process.

Chairman Bowes questioned if it would be appropriate to assign a committee to start the process.

A motion was made by Commissioner O'Connell, seconded by Commissioner Holland and unanimously passed to direct staff to form some type of working group with managers, scientists and appropriate communication to get the industry involved and try to develop a plan that can be presented to the Commission sometime before the June 2010 meeting.

Commissioner Schick stated he would like to volunteer to serve on that committee. Mr. Carpenter state he would follow up on that and hope to have some preliminary information by the December Commission meeting.

Date and Place of Next Meeting

The next meeting is scheduled for Friday, December 4, 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 7:10 p.m.

Respectfully submitted,

Robert H. Bowes, Chairman

Steven G. Bowman, Secretary