

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

June 9, 2011

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

Officers Present: Kirby A. Carpenter – Executive Secretary, Ellen B. Cosby – Assistant Executive Secretary, Michael C. Mayo – Legal Officer and J. Clifford Hutt – Senior Advisor.

Others Present: Lt. Charles Sauter – MdDNR Law Enforcement; 1st Sgt. Adam Friend – VMRC Law Enforcement; Joe Grist – VMRC; John Morris and Jim Berthe – Crab Advisory Committee; Robert T. Brown – Finfish Advisory Committee; John Morris, III, Dan McDougal, Guy Guthridge, Lynn Simarski, Ken Haskings, Ken Clark, Jen Clark, Katelyn Clark, Emily Clark, Joseph Nelson, Jr., Robert Lumpkins, Nancie Lumpkins, Robert Lumpkins, James Zafiropulos, Melinda Rice and several others who did not sign the guest register.

Chairman O'Connell called the meeting to order at 9:03 a.m. Commissioner Schick provided the invocation and Mr. Mayo led the pledge of allegiance.

Consideration of Minutes

A motion was made by Commissioner Hall seconded by Commissioner Rice to approve the minutes of March 11, 2011 as presented.

Special Presentation on the Potomac River “Oyster Wars” – Katelyn Clark

Katelyn Clark, a 7th grader at Picowaxen Middle School in Charles County Maryland gave a special presentation to the Commission on the Potomac River “Oyster Wars”. Miss Clark created a script of the oyster wars for a history fair project where she won 1st place at her school, as well as, 1st place in the county. She also received special recognition at the state level. Her script was spoken from the viewpoint of Berkley Muse who was shot and killed during the oyster wars and she was dressed as his character. The Commission appreciated her presentation.

Crab Harvest Report

Mr. Carpenter presented a preliminary crab harvest for April and May. He noted the April harvest of 2,926 bushels of hard crabs is the best on record since 1998. He projects that May's harvest will also exceed the long-term average. There has been an increase in the CPUE, which is also higher than the long-term 25 year average.

Commissioner Fleming asked if staff was seeing an increase in effort due to the increase in abundance. Mr. Carpenter explained that it's a little too early to tell with the season just beginning.

Commissioner Rice commented that it's been a very good crab season so far. To sum it up, he said we have more crabs, more crabbers and more crab pots than usual in this particular area, which means business is good and things are moving. This is a direct result of the smaller crabs being conserved in the fall and carried over into the spring.

Winter Crab Dredge Survey Results

Chairman O'Connell reported that earlier this spring a press release was issued with the survey results and he noted some of the highlights from the survey. The coordinated efforts between the three jurisdictions (MD, VA and PRFC) continue to show great results in regard to stock abundance and allowing the harvest to increase. For the second year in a row, the survey shows that we've been below the fishing target level. That hasn't been accomplished since the early 1990's. Our efforts to control harvest and protect the female crabs are working very well. The target for age one + crabs is 200 million and for the third consecutive year, we were above that level. The total abundance of crabs for all age classes was the second highest since 1997, so things are working very well. We did experience a significant over-wintering mortality event due to some very cold water temperatures. Despite losing 30 percent of the crab population, we still have the second highest abundance since 1997. It just shows that this more conservative management is helping us buffer some of these extreme environmental variables. A peer review is being conducted on a new stock assessment report, which is not available until early August. Work is being done on connecting the two abundance targets to facilitate management review of benefits of different fishery management structures. The report will also be recommending some sex specific targets pertaining to female crabs. The jurisdictions will be reviewing that report to determine where we are. At this point in time, the stock status will not change with the new recommended targets. The Commission will have more detailed information at a later meeting.

Crab Advisory Committee Report

Mr. Carpenter presented the Commission with the crab advisory committee report. The committee received updates on the 2010 crab harvest and winter crab dredge survey results and discussed the following items.

Crab Season – The committee discussed how it would like to handle the fall female harvest closures for the 2011 crab season. Staff presented a 2 area closure versus the 3 area closure that was in place for 2010. After a brief discussion, the committee concluded the 3 area closures in 2010 worked well and they voted to recommend having the same closures for 2011.

Reg. VII, Sec. 3(b) – Identification of Pots – At the last Commission meeting, the chairman directed this issue back to the Crab Advisory Committee to develop some workable solutions for enforcing the crab pot limits. The committee discussed things such as decals, tags and time limits. A motion was made to recommend using the same time limits Virginia has in place and to make this a one year trial basis to be reconsidered next year.

Identification of Crab Pot Buoys – A committee member brought up the issue of crab pot buoys during new business and requested that crab pot buoys that have the CP number burned into them should not have to be in contrasting colors. Most members agreed and recommend that Reg. VII, Sec. 3(b) to read ...must legibly display the boat decal numbers herein provided in not less than one (1) inch numbers either branded into the buoy or painted in contrasting colors.

Committee Membership Vacancies – The committee announced a vacancy for a Maryland recreational crabber and asked for nominations to fill the position.

Following the Crab Advisory Meeting, law enforcement was asked to meet and provide their input into how best to enforce the crab pot limits. The Commission was provided with a copy of their report following the Crab Advisory Committee Report.

Commissioner Fleming questioned why staff recommended a 2 area closure versus the 3 area closure. Mr. Carpenter stated there were two things that contributed to that. The two 10-day closures are not back-to-back. There is a 4-day window between the closures. There were a few situations last year that caused some confusion between working within the 3 areas during the specific dates. Statistically, there is no major difference between areas 2 and 3 in terms of the timing and staff felt simplifying it to only 2 areas would help. The other reason noted was the eighth day of harvest for females was substantially larger than what would have been expected. That is attributed to holding female crabs during the week closure.

Mr. Carpenter advised there was a letter received regarding this issue and is in the back of the packet for you to review. It was received after the draft packets were mailed out.

Order 2011-07 – Crab Season

Chairman O'Connell explained that the Crab Advisory Committee was unanimous in its recommendation to leave the female harvest closures the same as last year and staff is recommending changing that to two areas with ten day closures.

Commissioner Rice asked why the Crab Advisory Committee was reluctant with recommending the two area closure versus the three area closure. Mr. Carpenter stated there was no specific reason noted and a decision was made based on their experience from last year.

Chairman O'Connell stated this issue seems to be based on industry preference and he doesn't feel comfortable with it being an enforcement issue. This is a situation where the Commission has to ensure that enforcement and conservation issues are met and then decide what will work best for everyone.

Mr. Carpenter stated if the Commission is going to stick with status quo could there be a two day break between the areas to avoid the confusion of when or where you can't crab. Commissioner Fleming stated the two ten day closures are just simpler for everyone involved.

A motion was made by Commissioner Holland, seconded by Commissioner Fleming and unanimously passed to adopt Order 2011-07 with staff's recommendations.

ORDER #2011-07
(replaces 2010-09)

CRAB SEASON

THE POTOMAC RIVER FISHERIES COMMISSION, having found it necessary for the preservation of the crab population, having considered the protection, promotion, growth and conservation of the crab resources, and pursuant to its authority under Regulation I, Section 7(a) and Regulation VII, Section 4.

HEREBY DECLARES AND ORDERS: it shall be unlawful for any person to take or catch, or attempt to take or catch any crabs by any means in the Potomac River during the closed season(s) as follows:

- (1) Hard crabs:
 - i) Males and immature females – December 1 through March 31 next succeeding.
 - ii) Mature females –
 - a) Above St. Clements Island / Hollis Marsh from 9/20/2011 to 9/30/2011
 - b) Below St. Clements Island / Hollis Marsh from 10/4/2011 to 10/14/2011
- (2) Soft crabs – October 31 through April 30 next succeeding.
- (3) Peeler crabs – October 31 through April 30 next succeeding.

IT IS FURTHER DECLARED AND ORDERED: it shall be unlawful to set, fish or use in the Potomac River any:

- (1) Crab pots – December 1 through March 31 next succeeding.
- (2) Trotlines and dip nets – December 1 through March 31 next succeeding.
- (3) Peeler traps – July 1 through April 30 next succeeding.

AND IT IS FURTHER DECLARED AND ORDERED: this Order #2011-07 shall become effective June 19, 2011 and remain in effect until further notice.

Identification of Crab Pots

Chairman O'Connell stated staff has reviewed the item and the issue is crab pots are used to help achieve our conservation targets and it's important that we be able to enforce the number of crab pots being set. There have been some enforcement problems with that and during the season staff received numerous reports of people exceeding their crab pot limits. Staff had been looking at utilizing a decal or tag and the industry has raised some concerns with that. There seems to be some mixed feedback as to whether or not the decals stay affixed and some concerns with replacement decals. At the last Commission meeting it was referred back to the Crab Advisory Committee to try and solve that problem. Ultimately, if they can't solve the problem, the Commission will have to take action. The Crab Advisory Committee moved away from the decals and recommended a commercial crabbing time limit.

Chairman O'Connell gave some thoughts to this issue and questioned through the time limits, how do you enforce the crab pot limits. Secondly, there are limited resource personnel and with a crab pot tagging program, it can be enforced anytime law enforcement is working on the water. Whereas, a time limit is forcing law enforcement to be out on the water certain times to ensure the time limit is being enforced. It removes some of the flexibility in regard to the officers being able to get out there and enforce the rules. He opened the issue up for discussion.

Commissioner Schick commented the idea of a time limit will not stop a person from over fishing crab pots. That's not a direct solution to the issue. Plus he feels it's unfair to others that may need to do other things in the morning and may need to crab later in the afternoons. It's unfair to take those that are abiding by the rules and punish them to help the situation for those who are not abiding by the rules. As far as the tags go, we know the tags stay on and we know the tags work. The two issues that need to be solved are the crab pot to peeler pot change over and having to exchange buoys, and the loss of pots and buoys with decals on them in reference to the replacement issue. He would like to see the Commission move forward with a public hearing on these issues.

Commissioner Bowman explained Virginia has used time limits for a number of years and they have seen over the last several years a liberalization of the time limits dependent of special circumstances. One thing Virginia can't get a hold on, because of funding, is the effort that is being exerted on the fishery through the inability to count crab pots. From a law enforcement perspective, without the ability to have a tag on the crab pot, there is no way an officer can sustain a conviction for over the amount of crab pots unless every crab pot is counted, which is literally impossible. He feels the Commission has the opportunity to go to a crab pot tagging program and will then seek funds in Virginia to implement a similar type of program there.

A motion was made by Commissioner Bowman, seconded by Commissioner Holland to advertise for a public hearing with all the options that have been listed, including time of day restrictions and crab pot tagging.

Commissioner Rice suggested staff explore different types of tags that could possibly be removed to support two different types of gears and also to look into where the funding may come from so the burden doesn't fall on the watermen all the time. Mr. Carpenter explained there are number of devices that can be considered. With regard to the cost, staff is suggesting a \$50 fee for the initial set of tags that would be paid during the renewal period. The tags themselves would not be issued until sometime in March. The reason being is that not everyone actively uses their crab pot license and knowing who is going to crab will cut down on the amount of tags that will need to be purchased. The \$50 fee will not cover the entire cost but will substantially contribute helping the Commission maintain the program.

Commissioner Bowman stated the motion is intended to be as broad as possible to cover the expenses, utilization, design and whatever mechanism that staff feels should be in place to create the Regulation.

John Morris stated he and his son hold the permit that allows two crabbers to work from one boat. He is familiar with the decals and stated he was notified that there would be no replacements issued after the initial decals were provided. He explained the decals do come off and there is also the issue of lost pots and having to replace them. Chairman O'Connell asked Mr. Morris what type of tag/decals he would recommend using. Mr. Morris stated VIMS has conducted a study and found a 10 to 30% loss in crab pots and as for the type of tag/decals to use he has no idea. Mr. Morris's main concern is receiving the proper amount of replacement decals.

Robert T. Brown representing St. Mary's County Watermen's Association stated the problem is

not using the decals, it's keeping them on the crab pots. He felt there needs to be some other type of tag, other than a decal that is placed on the corks. It should be something that's attached and not stuck on the pot.

Dan McDougal stated his standing on opposition against the Crab Advisory Committee's recommendation for the 8 hour time limit. The 8 hour day may have a slight effect on the over fishing problem, but one thing it will do is put the afternoon crabber out of business due to the misdeeds of others. Putting these folks out of business is just plain unfair.

Jim Berthe stated working on the water is a hard way to make a living. As far as the tags are concerned, he has a problem with them because he works multiple jurisdictions and feels the tagging system will not work for that reason. He says there's enough free work in this business and he doesn't need anymore free work to do.

Chairman O'Connell called for the vote and the motion passed with 6 in favor and 1 in opposition.

Chairman O'Connell thanked the Crab Advisory Committee for all the hard work they have put into resolving this issue.

Oyster Harvest Report

Mr. Carpenter stated the report has changed slightly from the last Commission meeting. Staff received some late reports and the 2010-2011 season oyster harvest now stands at 189 bushels harvested.

Oyster Leasing Legislation Update

Mr. Carpenter stated the Commission and the Maryland Department of Natural Resources had agreed to have discussions on this issue in the near future. There is a telephone meeting scheduled for later this month (June) and staff will keep the Commission updated as things develop.

Blue Ribbon Oyster Panel Report

Mrs. Cosby presented the Blue Ribbon Oyster Panel Report to the Commission. She stated Tom O'Connell chaired the meeting that took place on May 11, 2007. Several members had called to report that they were unable to attend the meeting. Mr. O'Connell reviewed the agenda, noting that the Commission had requested the panel reconvene to look at probability runs with Dr. Miller's model and to discuss capping the number of boats on the management reserves and different surcharge fees. The panel looked at the model and ran several probability simulations and discussed the different scenarios. They appreciated the work Dr. Miller had done on the model, but suggested it be fine tuned a little further. It was determined that only the gross profit was shown with the model, so it was suggested that the cost of operations be included in the model calculations for a better interpretation of the net profit. Dr. Miller has not been able to make these adjustments yet, and should have them done soon.

There was also a discussion on the cost of spat on shell production and how they would be produced. Dr. Jim Wesson provided some information about how the original number for the amount of spat per bushel in the model (6,000 spat/bushel), may not be the count that will be the best for production for the industry in this project. While working with the industry in producing spat on shell for harvest on private ground, Virginia is beginning to develop a “cookbook” of how to mix amounts of eyed larvae with shell to minimize costs at planting, while still maintaining a profitable harvest. Spat on shell clumps as they grow out should be large enough to deter cownose ray predation, but not so large a clump that growth rates are slowed, or predation from crabs or flatworms are too large. Some of the newest work in Virginia would indicate that placing enough larvae in the setting tanks to get 10 or more spat per shell may actually increase the mortality rate during handling and early grow-out, when compared with reducing the larvae to the point that only 5-6 spat are produced per shell. It is hoped by the time this project is ready to start, that there will be an ideal “recipe” for Potomac River spat on shell that can lower the production costs, while at the same time maximizing the number of oysters that can reach market size in the shortest period of time.

At the September Commission meeting, the Commission will review this Panel’s recommendations and consider setting surcharge fees which could be in place in the fall of 2011. With Commission approval, spat on shell could be planted on the management reserves next spring.

Commissioner Fleming questioned the status of the hydrographic model that was to be completed by Dr. Lipcius and will it part of the decision making process. Mr. Carpenter explained that Dr. Lipcius who presented the idea to the Commission, has a number of other duties at VIMS besides this and unless the Commission is in the position to fully fund his time, Mr. Carpenter does not expect to see the model anytime in the near future. This is part of the reason the Blue Ribbon Oyster Panel was formed.

Commissioner Hall stated she had a question about something that was not mentioned in the report concerning the oyster bar cleaning that took place on Jones Shore in hopes of obtaining a natural strike. She asked when spat sets normally take place in the Potomac River and how long does it take to for a cleaned area to silt back over. Commissioner O’Connell explained shell plantings have been taking place for over 40 years and they have been monitored to look at the longevity of shell plantings. On average, shell plantings perform for 5 ½ years and are very site specific. In regard to the timing, shell plantings are generally done the first part of July and it’s a very supportive way of achieving the objective.

Order 2010-03 – “Revised” 2011 Recreational and Charter Fishing Season, Size and Catch Limits

Mr. Carpenter explained at the December Commission meeting this Order was adopted with the coast-wide default measure for the Black Sea Bass pending the outcome of the ASMFC meeting. In March, ASMFC did meet and developed a state by state program and as a consequence to be consistent with Maryland and Virginia, the season in place at that time needed to be changed. The Commission acted through a mail ballot, a new Order was enacted and it is presented today as an informational document to show what was adopted.

ORDER #2011-03 "Revised"
(replaces 2010-03 "Revised")

**2011 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 ⁽¹⁾	May 22 – Oct. 11 & Nov. 1 - Dec. 31	12 ½" min.	25 per person
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
River Herring	.....	C L O S E D .....	.....
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	Jan. 1 - Dec. 31	17 ½" min.	4 per person
Tautog	Jan. 1 - Dec. 31	14" min.	No Limit
Weakfish	Jan. 1 - Dec. 31	12" min.	1 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.

AND, IT IS FURTHER DECLARED AND ORDERED: this Order #2011-03 shall become effective April 10, 2011, shall supersede and repeal Order #2010-03 "Revised" and remain in effect until further notice.

Blue Catfish Presentation

Chairman O'Connell presented the Blue Catfish Presentation to the Commission. Blue catfish are native to the Mississippi, Missouri and Ohio River drainages. Outside of their native range, they are considered 'biologically harmful', with potentially negative effects on native fauna. Their expansion has been aided by tolerance for a wide range of environmental conditions, high densities and perhaps even angler redistribution. Diet analyses studies have shown that this top predator feeds mainly on other fish once it reaches about 24 inches in length, including

anadromous fish such as American shad and river herring. MD DNR will begin an annual sampling program to monitor relative abundance and distribution of blue catfish in tidal Potomac River. Studies are ongoing in Maryland and Virginia on determining contaminant loads of all size-groups. A tagging study with VIMS to help determine movements and population sizes will be conducted (pending grant approval).

Commissioner Schick stated from his gill netting experience on the Rappahannock River and Monroe Bay, there are times that you will catch two to three catfish for every rockfish. At only \$.50 per pound compared to \$2 or \$3 per pound for rockfish, they are a pest, not to mention they tear up your gill nets. He feels it's an economic hardship on the commercial side of it. On the recreational side of things, fishermen love to catch them and he hopes they continue to catch more and more each day.

Chairman O'Connell explained the next step to implement a policy bay-wide plan for this fishery. Today is to inform everyone of the issue and to start the thinking process on this issue.

Commissioner Holland felt this is a grave problem in both states and something needs to be done with this species. He expressed passing some type of motion today to conduct some type of study and provide both states a copy of the study to see what can be done to rectify this problem.

Commissioner Fleming noted the catfish landings are up in the Potomac River again. With the fish consumption advisories, he was concerned with where the fish are coming from that are sold in local area markets. Chairman O'Connell says at this point it's up to the consumer to ask.

Commissioner Hall stated the group she is affiliated with is working with VIMS and the Virginia Marine Products Board to try to come up with a way to market blue catfish as a means of trying to lessen the problem and make them more favorable. Information was provided as to how hard this is to do because of competition with farm raised fish and the market demands a standard size fish and meat.

Mr. Carpenter advised from the studies done in Virginia through the health department that the smaller, younger fish carry a smaller contaminate load. It may be possible to have targeted harvest on just smaller fish. In the Potomac River, data has been collected on species specific catfish since 2003. At that time, eleven percent of the total catfish harvest was blue catfish. In the most recent years, they account for two-thirds of the catfish harvest. There has been a dramatic increase over the years.

Chairman O'Connell stated in regard to the recreational fishery, there is a large constituency group that wants this species managed for a trophy recreational fishery estimated at \$2,000,000 a year. These big fish are caught and released back into the water to continue their growth in hopes of catching them again.

Commissioner Bowman noted that you can't put a dollar sign on an ecosystem. He is pleased with the dialog that's taken place and it will ultimately become a policy matter that will be addressed at a higher level than the Commission. This is something that deserves the attention from all groups and based on the evidence received, it is right for us to give this issue attention

and pause for the cause. It may be a very valuable recreational opportunity, but at the same time at what price.

Robert T. Brown added this situation is a lot worse than what people realize it is at the present time. Mr. Carpenter stated catch reports are reviewed at the end of the season and reports of large harvest were noted in unusual areas this season. They do come down the river in the spring of the year and move back into the freshwater tributaries and colonize. It's an increasing problem.

A motion was made by Commissioner Holland, seconded by Commissioner Hall and passed with 5 in favor and 2 abstaining to have the Commission write a letter to the appropriate state agencies of the grave concern with the blue catfish and send documentation of what's been discussed today.

Commissioner Bowman stated he abstained as agency head for the state of Virginia and Chairman O'Connell followed suit on behalf of Maryland.

Discussion of River Herring

Mr. Carpenter explained last year an Order was enacted that closed the directed fisheries for river herring in the Potomac River in anticipation of Amendment II of ASMFC's management plan. At the same time, pound netters were required to install fish cull panels in their nets to help release small fish. Both Virginia and Maryland are moving towards a total moratorium. Staff is presenting to the Commission today a one page summary titled River Herring Biological Monitoring Plan that could be used to assess river herring in the Potomac River. This plan will maintain a total moratorium, and continue the 50-pound daily by-catch for pound nets from which we will sample river herring to collect biological information on this species. Staff would like to have the Commission's authority to present this plan to ASMFC's technical committee to see if they can deal with it. Open negotiations would be considered to tweak this plan as necessary to establish a mechanism for this Commission to monitor the runs of river herring. Eventually we hope that tracking the CPUE on pound nets could become an indicator similar to which is done with shad, as a way of tracking the status of the stock.

Commissioner Bowman explained that this fishery is in dire straights and that any gamble with experimentation that would allow any continued catch could not be responsible. He doesn't believe that now is the appropriate time to allow for any by-catch of this fishery until we can see a rebound.

Commissioner Fleming questioned if Maryland's proposal included a by-catch provision. Chairman O'Connell explained that Maryland is proceeding with a complete moratorium of all directed and by-catch fisheries. They recognize there is a by-catch occurring, and the state is trying to structure it's penalty system to include a penalty for possession of river herring. He noted there are some independent surveys that are used to track changes in the population. Chairman O'Connell questioned Mr. Carpenter if there were other fishery independent surveys that would provide a tool for tracking changes in abundance or are they just not serving the Potomac River. Mr. Carpenter explained the YOY index does include the Potomac River and

that data is available. As far as he knows, there are no other adult surveys ongoing in the Potomac with the exception of one being conducted in the District of Columbia.

Mr. O'Connell, speaking on his responsibilities for the Maryland Department of Natural Resources, said he shares Commissioner Bowman's concerns. It may be worth some discussion in regard to would some monitoring facilitate further understanding in tracking this population under a moratorium situation. With that said, if it was valuable, how many samples would be needed? There needs to be a strong level of assurance that this is going to provide data and try to figure out what type of collection is needed to achieve that sampling.

Commissioner Rice questioned if Maryland and Virginia have cull panels in place with their pound net fisheries. Commissioner O'Connell stated Maryland does not right now, but it is one of the ideas they are exploring to reduce the by-catch as well as with the fyke netters. Commissioner Rice spoke in favor of staff's recommendation, there are a lot of fish that are being caught and let go unharmed in the Potomac River because of pound net cull panels that don't have to go through the handling process. The few that are left in a pound net have a low survival rate. From a fishermen's point of view, we are being more conservative with the by-catch in place.

Commissioner Fleming asked with both states seeking a total moratorium, will this create a greater demand in the Potomac River since we have a by-catch in place.

Chairman O'Connell stated staff is looking for guidance on how to proceed. Absent the submittal of a sustainable fisheries management plan, all jurisdictions along the Atlantic Coast are required to implement a moratorium beginning January 1, 2012. Mr. Carpenter needs guidance as how to proceed with this proposed plan.

Robert T. Brown stated he is a Potomac River pound netter and currently uses the cull panels in his pound nets. There have been a few problems with the cull panels breaking in half due to tide issues; other than that they have worked. The difference in by-catch in pound nets that have the cull panels and pound nets that don't is unbelievable. He stated the cull panels are very effective and they need to be considered in Maryland and Virginia. There should be some type of tolerance considered for this fishery.

A motion was made by Commissioner Rice, seconded by Commissioner Hall to recommend staff to move forward with the River Herring Biological Monitoring Plan to be submitted to ASMFC technical committee. The motion failed with 2 in favor and 5 against.

Chairman O'Connell questioned how we proceed from here. Mr. Carpenter stated by adjusting the Order to be presented in 2012 to be a complete moratorium. Chairman O'Connell suggested having some type of discussion with the technical committee to see if some type of monitoring program would be of benefit and if so what would it be as well as the penalty structure.

Mr. Clifford Hutt, Senior Legal Advisor feels the Commission should not pass laws that are going to cause watermen to receive citations. Some minor tolerance should be considered and in conjunction with that, pound nets should be required to have cull panels and the fish which are

taken should not be available for sale. He felt this would be fair to the watermen and serviceable to the ones who wish to conserve the fish.

Commissioner Bowman stated Virginia addressed Mr. Hutt's concerns and came to the conclusion that the officers need to exercise significant discretion when enforcing the total moratorium, realizing this is a difficult situation.

Commissioner Rice stated the pound netters have been very cooperative throughout the years on various projects and have been straight forward on using the cull panels. Commissioner Rice would hate to see citations written because of a total moratorium, and this management plan should be considered in the future.

ASMFC Issues

Summary of the 2011 Spring Meeting and Annual Compliance Reports – Chairman O'Connell stated the summary of the 2011 ASMFC spring meeting is included in the meeting packet for information as well as copies of all the PRFC annual compliance reports.

Financial Reports

Third Quarter Disbursements and Statement of Cash-on-Hand – Mr. Carpenter noted the third quarter disbursements (January through March) for the operational budget was presented by budget line totaling \$144,179. A report of the cash-on-hand was also presented totaling \$388,361.82, as of June 7, 2011

A motion was made by Commissioner Bowman, seconded by Commissioner Holland and unanimously passed to accept the third quarter disbursements and statement of cash-on-hand as presented.

Budget Committee Report

Commissioner Bowman stated himself, Commissioner Bowes and Mr. Carpenter held a conference call back in May to review the proposed budget line by line. It looks to be almost level funding and level expense with one exception of one capital outlay item, which is a new vehicle for the Executive Secretary.

The budget committee report explained a number of budget projections, a section for disbursements and personal services. It also included the PRFC salary grade system, a special worksheet for FY-'11-'12 budget, surplus property, changes to the commercial license replacement fee and modifications to the PRFC policy manual.

A motion was made by Commissioner Bowman, seconded by Commissioner Holland and unanimously passed to adopt the FY 2011-2012 budget as presented.

POTOMAC RIVER FISHERIES COMMISSION
2011-2012 DISBURSEMENTS BUDGET

	<u>2011-2012</u> <u>BUDGET</u>
<u>PERSONAL SERVICES:</u>	
101-109 Compensation of Commissioners & Salaries	\$278,694
<u>CONTRACTUAL SERVICES</u>	
201 Advertising	9,000
201 Agent Fees	3,800
204 Postage	11,000
205 Telephone	4,500
206 800 Line	800
207 Internet Service	600
208 Electric Current	5,000
209 Freight Expenses	1,000
212 Lease of Equipment	4,500
214 Membership Dues & Subscriptions	300
216 Printing Regulations*	2,500
220 Travel Expenses	16,000
221 Water Expenses	720
224 Photographic Services-Charts	500
230 Computer Support	13,000
235 Sport Lic Registry	5,000
270 Repairs to Equipment	1,500
275 Building Maintenance	3,500
280 Interest Expense	0
281 Bank Charges	500
290 ACFCMA**	96,000
299 Other Contractual Services	<u>17,000</u>
	196,720
<u>MATERIALS & SUPPLIES</u>	
301 Automotive Expenses	3,800
313 Office Supplies	13,500
330 Household Furnishings & Supplies	1,600
332 Licenses, Tags, Report Books	32,000
400 Resale Supplies	<u>2,000</u>
	52,900
<u>CURRENT CHARGES & OBLIGATIONS:</u>	
240 Insurance - surety bonds, fire auto liability, workmen's comp.	<u>7,000</u>
	7,000

PENSION AND OTHER CONTRIBUTIONS:

510 Retirement	12,265
511 Group Life Insurance	687
512 Group Health Insurance	52,062
513 Employer's FICA	16,107
513 Employer's Medicare	3,767
514 Deferred Compensation Match	<u>3,000</u>
	87,888

CAPITAL OUTLAY:

801 Office & Other Equipment	5,000
801 Furniture & Fixtures	2,500
803 Auto	<u>25,000</u>
	32,500

DEVELOPMENT & REPLETION EXPENSES:

331, 333 & 335 Seed Oysters and/or Shell	100,000
337 Oyster Research	0
338 Crab Research	0
339 Artificial Reef Construction/Transportation	<u>0</u>
	100,000

CAPITAL RESERVES

98 Reserve - future oyster work/hatchery	31,500
99 Reserve - future retiree health insurance	50,000

<u>UNEXPENDED CASH BALANCE:</u> (contingency fund)	<u>26,748</u>
TOTAL	\$863,950

*Partially supported by ACFCMA (Atlantic Coastal Fisheries Cooperative Management Act) funds

**Fully supported by ACFCMA

POTOMAC RIVER FISHERIES COMMISSION

2010-2011 BUDGET

RECEIPTS2010-2011
BUDGET

UNEXPENDED CASH BALANCE FORWARD: (AS OF 7/1/10)	60,000
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SALE OF LICENSES:

CLR - Commercial License Registration	30,000
Fish	75,000

Oyster	5,000
OLS - License Surcharge	1,500
Crab	70,000
Clam	250
Fish - Recreational	125,000
Crab - Recreational	1,000
OYSTER BUSHEL INSPECTION TAX:	200
APPROPRIATIONS BY STATE:	
Maryland	140,000
Virginia	148,750
SPECIAL GRANTS:	
Atlantic Coastal Fisheries Cooperative Management Act	97,850
DRAWDOWN of Oyster Reserve	100,000
INTEREST ON SAVINGS (C/D's)	600
RESALE SUPPLIES:	1,800
MISCELLANEOUS: Limited entry license drawing	5,000
Confiscated Property, Sale of Tags, Etc.	<u>2,000</u>
TOTAL	\$863,950

Date and Place of Next Meeting

The next Commission meeting is scheduled for Thursday, September 8, 2011 at 9:00 a.m.

Commissioner J.T. Holland

Commissioner Bowman noted that this will be Commissioner Holland's last Commission Meeting. Commissioner Holland has served the maximum amount of time allowed by the Code of Virginia. Mr. Holland has served two full terms under two Governors and feels that he has served the PRFC well. We look forward to having Commissioner Holland back in September to properly honor him.

Meeting Recess – 10:55 a.m. / Meeting Reconvenes – 11:10 a.m.

Striped Bass Violation Hearing – Robert M. Lumpkins

Chairman O'Connell called the meeting to order at 11:10 a.m. and stated the last item on the agenda was the striped bass violation hearing. He called Mr. Robert M. Lumpkins to the podium. Mr. James Zafiropulos, an attorney representing Mr. Lumpkins, spoke on his behalf.

Mr. Mayo asked Mr. Zafiropulos if he was also here representing Golden Eye Seafood. Mr. Zafiropulos stated yes. Mr. Mayo then asked Mr. Zafiropulos if he would like to waive the reading of the show cause. Mr. Zafiropulos stated he would like the show cause read for the record. Mr. Mayo read the show cause notice listing the PRFC violations detailed in the documentation of the Federal Lacey Act violations. Mr. Zafiropulos was then given the opportunity to present evidence and make a statement on behalf of Mr. Lumpkins. The evidence that was presented had not been reviewed by the Commission prior to today's hearing.

Commissioner Bowman noted that Mr. Zafiropulos stated he was recently retained by Mr. Lumpkins and questioned Mr. Mayo if it was important to ascertain whether he has had enough time to adequately prepare for this proceeding today. Mr. Zafiropulos stated he would like more time, but he felt he was ready to engage the Commission in a discussion and is familiar with the situation. He then began his statement with background information on himself and then talked about Mr. Lumpkins, his character and his family.

Chairman O'Connell stated the industry has a black eye right now and questioned if any of Mr. Lumpkins peers, state organizations or associations submitted letters on behalf of Mr. Lumpkins. Mr. Zafiropulos stated not that he could recall but there are two letters from state Delegates, a retired police officer and a few from local fisherman.

Mr. Zafiropulos ended his statement asking the Commission to exercise careful discretion when making their judgment.

Chairman O'Connell turned the meeting over to Mr. Carpenter to provide staff's recommendation in regard to penalties.

Mr. Carpenter advised the Commission that staff has reviewed the case as well as prior cases and actions of the Commission. Based on the nature of the violation and consistent with prior actions of the Commission, *staff is going to recommend in the case of Robert M. Lumpkins to revoke all PRFC commercial licenses, refuse to issue any new licenses in the future, and to prohibit Mr. Lumpkins from working as an agent, employee or crew member on any other PRFC licensed boat or gear.*

Mr. Carpenter asked if the Commission wanted to handle this all at one time or deal with each one separately, because there is a separate sheet for Golden Eye as well. Commissioner Bowman felt it is all one case and the Commission should consider everything together and suggested the Executive Secretary should continue with staff's recommendations. There were no objections, therefore Mr. Carpenter continued with his recommendations.

Mr. Carpenter stated in the case of Golden Eye Seafood, *the recommendation would be to revoke any and all licenses*. Mr. Carpenter stated he doesn't believe there are any in the name of Golden Eye Seafood at the present time. *Also to refuse to issue any other licenses in the name of Golden Eye Seafood.*

In the matter of Maryland Crab & Fish Company, Mr. Carpenter stated *staff's recommendation is to revoke all PRFC striped bass identification tags for 2011 as well as suspend his privileges for all striped bass tags for three years.*

Chairman O'Connell asked for clarity on the three-year suspension. Mr. Carpenter anticipated he would be able to regain striped bass tags in 2015, this year plus three.

Commissioner Fleming stated he was confused. Before us we have Robert M. Lumpkins and Robert M. Lumpkins trading as Golden Eye Seafood, LLC and now we're talking about Maryland Crab & Fish Company. Mr. Carpenter asked Mr. Mayo to explain.

Mr Mayo stated under Regulation I, Sec. 3(e) it states "... In addition to any penalty imposed under Regulation I, Sec. 6, the Commission may, after a hearing, recall all striped bass identification tags issued to any person found guilty of this section, and/or refuse to issue any tags in the future to him or his assignee". Maryland Crab & Fish Company is considered an assignee, although that transfer was done in 2008.

Mr. Zafiropulos stated in regard to Maryland Crab & Fish Company, we didn't appear here on that issue. That quite candidly comes as a shock to him. He stated he came here for Robert M. Lumpkins and Golden Eye Seafood. Anything that transferred before then is a due process issue. He would argue and agreed with Commissioner Fleming that it's a little out of sorts for them not to get a notice and now another sanction comes. Commissioner Fleming stated that was his position. Mr. Zafiropulos stated he did not come to the Commission to defend that action and he would have to file under due process rights. He felt that would destroy the entire family for earning an income.

Commissioner Bowman noted there are copies of two certified letters addressed to Robert M. Lumpkins and Golden Eye Seafood c/o Robert M. Lumpkins. He asked Mr. Zafiropulos if he received these letters. Mr. Zafiropulos stated that he did receive those letters.

Commissioner Fleming expanded on his earlier comment and questioned who owned Maryland Crab & Fish Company and how did this part come into play. Mr. Mayo explained the Maryland Crab & Fish Company is in the name of Mr. Lumpkins' son. Mr. Mayo has not been able to verify that Maryland Fish & Crab Company is a recognized entity in the state of Maryland. Therefore, we don't know what Maryland Fish & Crab Company actually is, but because striped bass tags were transferred to Maryland Fish & Crab Company, they can be recalled because they are considered an assignee.

Chairman O'Connell asked if there were any other questions or comments.

Commissioner Rice wanted clarification that staff's recommendation would take away Mr. Lumpkins' crab pot license. Mr. Carpenter stated that was correct as well as his fyke net license(s). Commissioner Rice questioned if this would also take away Mr. Lumpkins' right to go on a boat with his son to fish a pound net. Mr. Carpenter stated that is correct. Commissioner Rice questioned if this would remain in effect for the rest of Mr. Lumpkins' life. Mr. Carpenter stated that is also correct. Commissioner Rice felt the Commission should take into account what the judge's sentencing was and the severity of that sentencing and the jail time Mr. Lumpkins served. Commissioner Rice stated he would not support banning Mr. Lumpkins from the Potomac River for the rest of his life. He thinks Mr. Lumpkins knows he's done wrong and has served his time and has also deterred other illegal actions from taking place in the Potomac River because of his actions and Commissioner Rice stated he could not support a recommendation that has a lifetime price tag.

Commissioner Schick noted that when the Commission dealt with previous violators who had less offences, the Commission did completely eliminate them from the fishing business on the Potomac River for the rest of their lives. There are thousands of people who struggle everyday due to the economy, at no fault of their own, and to allow somebody to continue in the industry where they have caused harm to themselves is unjust. He can't see allowing a person to go on into an industry when they have violated it to such an extent. He stated he would support staff's recommendation.

Chairman O'Connell stated making decisions like this are very difficult because they affect their life as well as their family life. The reason he asked if there were any letters from his peers is because, following on this incident and the incidents that occurred in Maryland this past winter, they have made a bad public image of our commercial fishery to the point where its existence is threatened. There is great frustration among our commercial fishing community and their recognition of increasing the penalties to change this behavior. What that level is, is yet to be determined. As a result of these actions, it's putting tremendous inconvenience and burden on the honest watermen. Maryland is reevaluating its management system for accountability and enforceability. This is a very serious case, but the impact of these actions goes well beyond the individual or companies. It's affecting all of these fishing communities in this region and probably beyond. It's a very serious matter.

Commissioner Bowman stated that counsel did a great job. On a number of occasions, Mr. Zafiropulos noted how hard it is to make a living on the water. Yet in this situation, by all accounts and the evidence before us, this individual exploited the system and was not working as hard as those law abiding watermen were during the course of these actions and he exploited the system that was in place in order to profit. The other item that was mentioned dealt with the fact that the fish were property of the Federal Government. The fish are considered public trust and are owned by everyone. To be involved in the exploitation of the rules and Regulations that are in place to manage a very volatile fishery, he thinks is not appropriate and the appropriate sanction is staff's recommendation.

A motion was made by Commissioner Bowman, seconded by Commissioner Fleming and passed 6 to 1 to accept staff's recommendations in regard to Robert M. Lumpkins, Golden Eye Seafood, LLC and Maryland Crab & Fish Company.

Mr. Carpenter stated staff would proceed to recall the striped bass tags that were issued and give due notice to everybody of the outcome of this case.

Commissioner Bowman verified with Mr. Mayo that they have the right to appeal. Mr. Mayo agreed.

The meeting adjourned at 11:55 a.m.

Respectfully submitted,

Thomas J. O'Connell, Chairman

Dennis C. Fleming, Secretary