

**FINFISH ADVISORY COMMITTEE REPORT**  
**JANUARY 25, 2017**  
**PRFC Office, Colonial Beach, VA**

**Members Present**

James A. Bowling – (MD)  
Robert T. Brown, Sr. – (MD)  
George G. Willett – (MD)  
Russell Sullivan – (MD)  
Thomas L. Lewis – (VA)  
Arthur L. Loving – (VA)  
Chris Owens - (VA)  
Dusty Remington – (VA)  
Jeff Schenemann – (VA)  
Martin H. Duby – (MD)  
Thomas Crowder, Sr. – (MD)  
Dandridge Crabbe – (VA)  
Jeff Pharis – (MD)  
Bob Warren (for Ryan Rogers)  
Elgin Nininger (for Harry Boyden)

**Commissioners Present**

William Rice  
Phil Langley  
Dennis Fleming  
Ida Hall – via webinar

**Support Staff Present**

Martin Gary – PRFC Staff  
Ellen Cosby – PRFC Staff

**Press**

None

**Members Absent**

Paul Downey – (VA)

**Others Present:**

Paul Orlando – NOAA Sanctuaries, Monica Shenemann, Gary Owens, Eric Robertson, Dean Bowie, Steve Bunker, Richard Riche, Kenny Pearson, Phil Zalesak and several others who did not sign the guest register.

Chairman Brown called the meeting to order at 6:03 p.m.. Mr. Gary announced modifications to the agenda, including a Black Bass Symposium, proposed critical habitat designation for endangered Atlantic Sturgeon in the Potomac River, Rt. 301 bridge replacement, and the solid waste containment permit sought by VA Dominion Power at Possum Point Power Generation Station. Chairman Brown approved those additions, and then asked for the members of the FFAC to go around the table and introduce themselves.

**Mallows Bay Discussion**

Mr. Paul “Sammy” Orlando with the National Oceanic and Atmospheric Administration (NOAA) was introduced. Chairman Brown asked for clarification of the sanctuary name for the proposal, and Mr. Orlando indicated that the technically correct name is “Proposed National Marine Sanctuary at Mallows Bay-Potomac River”. Before the presentation was provided, several questions were asked of Mr. Orlando, including: Robert T Brown: How did we get from a small area at Mallows Bay to a larger area all the way down to Nanjemoy Creek? Paul Orlando responded: Through the public comment during the public scoping period. Robert T. Brown: What about impacts to all the fishermen on the river? Paul Orlando: We are proposing a

sanctuary that is heritage based and does not impact fishing and the Potomac River Fisheries Commission. Chairman Brown mentioned concerns he had with the work NOAA conducted at Harris Creek (MD) that has had a negative impact. Jaime Bowling commented on a mapping exercise he participated in, and that he was led to believe the proposed area would be much smaller. Paul Orlando said DNR conducted that exercise, and that the comments in the broader scoping period led to the proposed alternatives. Jaime Bowling indicated that PRFC has not been involved, and he asked Mr. Gary to clarify what the Commission's involvement has been to date. Mr. Gary responded that NOAA and DNR reps presented to the Commission in December, 2016 and prior to that he had been in e mail communication regarding the timeline. Jaime Bowling indicated that he thought this was the end of the game, and we should have been more involved. Spike Loving asked if another wreck is further down river, are the boundaries going to be moved? Paul Orlando: No, the boundaries are set. The boundaries as drawn capture all the historic vessels. Elgin Nininger stated that the sanctuary would be co-managed by NOAA, MD DNR and Charles County, and there is nothing about PRFC. Robert T. Brown: What is the closest to the edges of the lines where ships are found? Paul Orlando: There are ships right up to the edge of the boundary lines. Robert T. Brown: How many ships are in this area? Paul Orlando: About 140ish ships. Rich Riche stated that it sounds to us like we can't trust you on this. Jeff Pharis asked if NOAA would close an area to fishing if a survey was underway? Paul Orlando: No, there would be no impact to fishing. We have and will continue to provide any affirming language that shows no impact to fishing. Robert T. Brown: There is nothing stopping kids or anyone else from going out to the wrecks. Paul Orlando: This is a plan, and I apologize that proposal was left out.

Paul Orlando then gave his presentation (attached and on the PRFC website). Mr. Orlando stated that we are in the middle of a 90 day public comment period that runs through the end of March. We are very interested in what you have to say. We are in the third step of a 5 step process, which started with a nomination process. There was an overwhelming endorsement from the public. The public asked us to look at additional resources and expand the boundaries. We heard very loud and clear we don't want any adverse impacts on recreational and commercial fishing. This is a shipwreck sanctuary, not a natural resources sanctuary. Mr. Bowling stated he had a problem with the use of the term shipwrecks. Paul Orlando: This is 99% nonregulatory. Mr. Orlando showed and explained the three options that the nominating committee brought forward. Paul Orlando presented the three regulations 1) You can't damage sanctuary resources 2) Don't damage sanctuary signs and 3) Don't interfere with investigations. Chris Owens read a section of the management plan that referred to anchors. Paul Orlando stated that anchoring related to fishing was rejected as impactful. Mr. Owens asked if gill net anchors would be considered a problem. Mr. Orlando: Anchors associated with fishing were rejected as impactful. Mr. Loving asked who is going to monitor this? Paul Orlando: Enforcement would be passive, with signage. Mr. Pharis remarked that he was concerned about a NOAA vessel being there to conduct an investigation that might preclude fishing activity. Paul Orlando: It's not with that intention in mind, but for rather for emergencies. Chip Crowder asked who becomes the most important, the public or the watermen? Paul Orlando: Recreational fishermen signed on early and were very strong in pushing for this to not be a natural resources site. We talked about co management with Charles County and Maryland DNR. We discussed the 15 member advisory council that would be established, and a seat could be made available to commercial or recreational fishermen or PRFC. A brief discussion then occurred on how to submit comments.

A question and answer period opened up after the presentation. Mr. Owens asked why NOAA was needed if Mallows Bay is already is a State park. Mr. Orlando mentioned funding benefits could be provided. Mr. Owens asked if the one square mile of Mallows Bay was originally proposed? Paul Orlando: I don't believe that is what Maryland proposed, as they were part of the partnership. Chip Crowder asked what happens if they accidentally break off a chunk of a wreck? Can that lead to a change? Paul Orlando: The terms of designation would have to be changed, and the process would have to be revisited. Your activities have already been reviewed and rejected as being impactful. Ellen Cosby asked if something was damaged by mistake, it's not significant? Paul Orlando: It is not significant. Ms. Cosby stated that a map was requested but not received. Mr. Orlando stated that Susan Langley of the Maryland Historical Trust would provide that information and that process is working through Marty. Jeff Schenemann: Does Virginia have any input? Paul Orlando: Early on we were working with the State of Virginia and Caledon State Park, and they are very much in favor of this. Rocky Rice stated that the language could lead to us being unemployed, and that this area is already protected and just needs a few signs. Jeff Pharis asked for clarification on historical sites that have yet to be discovered. Paul Orlando: If we come across one, we would like to make you aware of where it is. Robert T. Brown stated that you could make this much smaller, but you are are bringing forth a problem, and once you have a sanctuary, things can change as you go along. Paul Orlando: We can't do that by terms of the designation. You would have to start all over again. The Antiquities Act does not apply in State waters. Gary Owens asked if Maryland asked to take control of this at a later date, can they get it back. Paul Orlando: No. Gary Owens: What sounds good now, could change 2 or 5 years from now. Paul Orlando: What is stated as government control is very limited. Kenny Pearson asked about the PRFC and Compact of 1958. PRFC has a lot to say about this. Mr. Pearson asked ES Marty Gary if the Compact of 1958 has been brought to NOAAs attention. ES Gary explained that the Commission has made their concerns known as they relate to impacts to fishing access and privilege, and to the Bi State Compact of 1958 to NOAA. We are continuing to work with NOAA with that in mind. Rocky Rice stated that there is a lot of non fixed gear that fishes that part of the river. Can NOAA simply close this area? (Paul Orlando: Investigations are for emergencies, not for shipwreck investigations. Ellen Cosby clarified by asking if a wreck was being tampered with, could NOAA law enforcement not allow fishing around that area? Paul Orlando: I can't answer that. Jamie Bowling: Is there a regulation that the Director or issuing agency can send you a letter that your permit is no longer valid? Paul Orlando: I will follow up. Jaime Bowling: Are any of the other parks potentially involved closed off? Paul Orlando: No.

Chairman Brown concluded the discussion by hoping the remaining information could be provided and encouraged everyone to submit their comments. Mr. Gary asked if there was additional information that could be provided to the Committee. There was a lengthy discussion about the process forward. Marty explained the time line leading up to the end of the comment period on March 31<sup>st</sup>, including: the PRFC meeting on March 3<sup>rd</sup>, a public hearing in LaPlata on March the 7<sup>th</sup>, a public hearing in Annapolis on March the 9<sup>th</sup>, leading up to the final day of comment on March 31<sup>st</sup>. Commissioner Billy Rice (BR) suggested that staff reach out to legal counsel to see what options would be available to have a meeting after the March 3<sup>rd</sup> meeting. Mr. Orlando suggested requesting a Memo of Understanding between PRFC and NOAA to address concerns of the Commission.

Motion was made by Jaime Bowling that read: **“NOAA will consider and execute any regulations and/or permits in cooperation with the state of MD, Charles County, the Potomac River Fisheries Commission and other Federal authorities as appropriate.”** 2<sup>nd</sup> by Dusty Remington. (from page 16 of the draft Mallows Bay-Potomac River EIS). There was discussion about what this would mean. Russell Sullivan stated that anywhere these partners are mentioned, PRFC should be inserted. VOTE: 13 IN FAVOR, 0 OPPOSED, 1 ABSTENTION. Mr. Bowling spoke to the desire to insert language into an addendum and other documents to acknowledge regulatory authority of PRFC through the Compact of 1958. Mr. Orlando suggested that is a great suggestion, but he is not legal counsel. That an MOU could be drafted to achieve this. Ellen Cosby asked about the possibility of holding a meeting in February to review maps and address other questions. The **FFAC REQUESTED a meeting as soon as information on additional shipwreck locations can be cross referenced with PRFC fixed fishing gear GPS coordinates.** Marty and Ellen will coordinate a meeting with Susan Langley of the Maryland Historical Trust. Once that meeting takes place, a follow up meeting of the FFAC will be scheduled.

### **Eternal Reefs**

The eternal reef discussion was postponed.

### **ASMFC Update**

Mr. Gary updated the FFAC on the upcoming winter meeting of the ASMFC. Regarding Atlantic Menhaden, Amendment III discussions on allocation will likely occur in October of this year. Summer Flounder cuts of up to 40% may be on the table. The state of NJ has reached out to PRFC and other states if they would be willing to delay management action. Willie Dean stated that he is on the ASMFC Summer Flounder Advisory Board, and that the northern states have most of the flounder and have the most influence. Mr. Gary asked if the FFAC would like to take a position. The FFAC deferred to the Commission on how they would like to address the State of New Jersey’s Summer Flounder request. Mr. Gary discussed a possible motion that the State of Maryland might make to seek “relief” for its summer-fall Striped Bass fishery. Because the entire coastal fishery is managed collectively as a single unit of fishing mortality, all states would be getting relief. Phil Langley spoke about the basis for the request and his perspectives on the possibility of it getting support. Jeff Pharis asked if this constitutes a request for an increase in quota. Mr. Gary replied no, it’s more like allowing some relaxation to regulations based upon being below the target fishing mortality rate.

**Motion by Jeff Pharis to: “TO SUPPORT MARYLAND’S APPEAL FOR RELAXATION OF CURRENT RECREATIONAL AND CHARTER REQUIREMENTS FOR STRIPED BASS”. 2<sup>nd</sup> by Dusty Remington. VOTE: UNANIMOUS IN FAVOR**

### **Blue Catfish/USDA FSIS Inspections**

Mr. Gary informed the FFAC on impending mandatory inspections of catfish at seafood processors. Starting in September, 2017, inspectors will need to be on hand when catfish are delivered. The two issues at hand are: 1) Are there a sufficient number of inspectors available?

As a by product of this question/issue, if a sufficient number of inspectors or coverage is not available, then will additional costs be incurred to address this shortfall? 2) Will inspections be applied with consistency? Mr. Gary informed the committee that this is mainly an FYI, and that he is hoping to hold meetings with a USDA representative through either the Chesapeake Bay Program or with the Commission directly. There is still a great deal uncertainty as we move toward September of 2017.

### **Striped Bass Hook & Line Exchange Program**

Ms. Cosby showed the FFAC a summary of the 2016 commercial H&L exchange program. A total of 88 people opted into the program, 9 people transferred tags, and 8 fishermen received tags. Chairman Brown asked Ms. Cosby if we caught more fish with this system in place. Ms. Cosby replied that she was not sure, but thought so. She could provide that figure at the March Commission meeting. Jeff Pharis asked Ms. Cosby if the program created difficulties for staff. Ms. Cosby indicated the program was manageable.

### **Rt. 301 Bridge**

Mr. Gary informed the FFAC on the status of the Rt. 301 (Harry Nice) bridge replacement. He indicated that there are two points of interest: 1) concern related to oyster bars located just above and below the old bridge and the site of where the new bridge will be constructed, and 2) interest from the charter community for use of the clean materials for PRFC's two fish reefs below the bridge. PRFC has requested a meeting with the Maryland MTA to discuss both.

### **Atlantic Sturgeon**

Atlantic Sturgeon were designated as an endangered species in 2012. In 2016, NOAA conducted public hearings for critical habitat designation on a number of locations up and down the Atlantic coast. Under the proposed rulemaking, the entire Potomac River from the mouth of the river up to Little Falls would be designated as critical habitat. Mr. Gary informed the FFAC that he is hoping to have a representative from NOAA's Office of Protected Resources come to speak to the full commission. Perhaps as early as this summer.

### **Cow Nosed Rays**

Mr. Gary informed the Commission on regulations being scoped by the State of Maryland to prohibit bow hunting from July 1 through December 31<sup>st</sup> and legislation that would prohibit tournaments in Maryland waters. Mr. Gary mentioned that Bob Fisher of VIMS is an expert on Cow Nosed Rays and has been invited to provide a presentation to PRFC at the March 3<sup>rd</sup> meeting. This topic will likely come back to the FFAC this coming summer.

The meeting adjourned at 8:35 p.m.

Respectfully submitted,

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Robert T. Brown, Chairman