

FINFISH ADVISORY COMMITTEE REPORT
February 22, 2017
PRFC Office, Colonial Beach, VA

Members Present

James A. Bowling – (MD)
Robert T. Brown, Sr. – (MD)
George G. Willett – (MD)
Thomas L. Lewis – (VA)
Arthur L. Loving – (VA)
Chris Owens - (VA)
Dusty Remington – (VA)
Ryan S. Rogers – (VA)
Jeff Schenemann – (VA)
Dandridge Crabbe – (VA) – via webinar
Jeff Pharis – (MD) – via webinar

Commissioners Present

None

Support Staff Present

Martin Gary – PRFC Staff
Ellen Cosby – PRFC Staff
Becky Butler – PRFC Staff

Press

Pamela D’Angelo - Virginia Public Radio and
Free Lance-Star

Members Absent

Harry Boyden – (MD)
Thomas Crowder, Sr. – (MD)
Russell A. Sullivan – (MD)
Martin H. Duby – (MD)
Paul Downey – (VA)

Others Present:

Jeff Deem, Paul Orlando – NOAA Sanctuaries, Gary Owens, Andrew Eaton, Bob Eaton, Dennis Newton, Monica Schenemann, Eric Robertson, Richard Riche, Dustin Westin, Randy Harding, Kenny Pearson, Glen Harding and several others who did not sign the guest register.

Chairman Brown called the meeting to order at 6:10 p.m. in hopes of having a quorum. There were 8 members in attendance. According to the by-laws in order to constitute a quorum, there must be at least 10 voting members with 5 from each state. The committee conducted their meeting, but will only make recommendations to the Commission.

Mallows Bay Discussion

Mapping Exercise – Mr. Gary stated this continued discussion was requested at the last meeting. The committee wanted to know where the ship wrecks are located, as part of the proposed Mallows Bay Sanctuary and how they relate to the PRFC fixed fishing gears in these areas. Dr. Susan Langley, from the MD Maritime Archaeology Program met with Mrs. Cosby and James Bowling to compare data.

Mrs. Cosby had marked the PRFC Fish Chart with the ship wreck sites provided by Dr. Langley using GPS coordinates. Dr. Langley had noted some sites still need to be assessed and added to the chart. Some wrecks are WWI era, one is a naval site containing a sunken military craft off of Quantico, and others still need to be assessed. The ship wreck sites are located between Possum

Point and Nanjemoy Creek. Mrs. Cosby reviewed most of the sites and showed where they were on the Fish Chart in relation to the commercial pound nets, gills nets and fyke nets. She stated there is a large rectangle marked on the chart in the middle of the river to show where vessels were potentially dumped, but they have not yet found any wrecks in that area. Currently there are four commercial gill nets in this area. After reviewing all of the sites, she explained that Dr. Langley stated the gill nets on or around the ship wreck sites do not need to be moved, because they would not damage the wrecks.

Chris Owens stated there are more sites that have been published on line that have not been included in Mrs. Cosby's list. They are part of alternative B. Mrs. Cosby stated she would check into that. She asked if Paul Orlando would like to take a look at Mr. Owen's list. He stated he wouldn't know anything about them.

There were various questions as to the age of the schooners and what is determined old. Mrs. Cosby stated Dr. Langley classified them as 100 years old. Mrs. Cosby is not aware of the historical definition.

Chris Owens stated he would believe that if a gill net is located on a site, that he would be required to relocate that net. He questioned if any specifics have been discussed on that. Mrs. Cosby stated that it has been stated that the nets do not need to be moved. Kenny Pearson asked if that could be placed in writing. Mrs. Cosby explained in the Memorandum of Understanding (MOU) that will be developed, she believes that information will be documented. She noted Dr. Langley stated she doesn't believe any of the anchors or nets will damage anything and doesn't think they will need to be moved. She said to make the watermen aware that there is a ship wreck there, but that they won't cause any damage.

Questions & Answers – Mr. Gary presented several pages of questions and answers that were submitted to Paul Orlando (NOAA Sanctuaries), Kelly Collins and Kim Hernandez (MD DNR).

One of the main questions that Mr. Gary wanted noted for the record was as follows:

Can NOAA change the management plan after adoption? Section 304(e) of the National Marine Sanctuaries Act requires that the management plan strategies and priorities be evaluated and modified, as appropriate, every 5 years through a public process. The management plan review is conducted in cooperation with sanctuary co-managers and in consultation with the sanctuary advisory council. The management plan review process is informed by a sanctuary "condition report" which characterizes the current status of and any changes to sanctuary resources, threats and management options consistent with the goals and objectives established for the sanctuary in the terms of designation.

NOAA's Office of National Marine Sanctuaries (ONMS) defines the management elements of a national marine sanctuary through the management plan, regulations, and terms of designation. These documents lay out the geographic area, resources, and regulatory and non-regulatory management. NOAA ONMS can update and realign these management elements to address changing conditions, community priorities, or based on new information about these resources and threats to the resources through public processes.

In the case for Mallows-Potomac, the proposed management plan, regulations, and terms of designation describe the proposed area, define the sanctuary resources as the maritime heritage assets, and describe non-regulatory program plans and proposed regulations to manage and protect those resources. The proposed designations do not include natural resources as sanctuary resources; therefore, the proposed sanctuary would have no authority to regulate commercial or recreational fishing. If after the designation of Mallows-Potomac as a national marine sanctuary, any intention to change the boundaries and/or impose Federal (NMSA) authority on the management of natural resources would have to be proposed through a public process like the current process and require consent from state and county co-managers. The public process would include an environmental analysis and public input on any proposed changes.

Chairman Brown stated if NOAA wants to manage a sanctuary in a way that it does not interfere with commercial and recreational fishing, that would be one thing, but we can't have them come back and say no one can fish here anymore. In the future, we don't know who we will be dealing with.

Vice-chairman Bowling questioned why the language is in the document if their only intention is to protect the ships. When you read the language of other sanctuaries created by NOAA, they state NOAA is not going to regulate the fishing; they are just going to regulate the historic part of the sanctuary. The purpose of this sanctuary is to further NOAA's mission goal to conserve ecosystems and resources. He feels if there was no intention to go after natural resources or biological resources, then why state in the management plan that it can be changed in the future by public process.

Mr. Orlando stated he hears Mr. Bowling's concern and it's a very valid one. Two things may be mitigating against the fears that are put forward. One is this would have to be approved by the co-management partners. MD DNR would have to come out and for some reason say that the natural resources and management of it through the current authorities are insufficient and therefore we would like to put out to the public the idea of changing the terms of designation of this document. The second thing is we can strengthen language in the final document to include a lot more about the Compact of the PRFC. When that information is documented in black and white for the legal analysis that is supposed to go forward, that says that the authorities for commercial and recreational fishing remain with the Potomac River Fisheries Commission and with MD DNR. It does not put a NOAA logo on top of that statement. So in writing, what we are doing is preserving those authorities the way that they are.

Chairman Brown then questioned how this will affect waterfowl. Paul Orlando explained there shouldn't be any interaction on that topic, because hunting does not fall under the authority of the National Marine Sanctuaries Act as it relates to this particular sanctuary. Hunting would be through MD DNR and he would suspect that all authorities for hunting would remain with that appropriate authority.

Chairman Brown questioned Mr. Orlando, asking what is stopping NOAA from preserving the wrecks in Mallows Bay or the Potomac River right now. There is no regulation that the PRFC has that can stop you from doing what you want. We don't anticipate on doing anything that will stop NOAA from doing what they want to do. Why should we turn our river over to you and

then we have to face different consequences down the road, because you can change the plan? Mr. Orland stated he wouldn't call it "turning the river over to us." Chairman Brown stated you never hear anything about Option A – that is to do nothing.

The general concern of the audience and the committee was if it's being stated that this is not going to affect commercial and recreational fishing, why does it need to be made a sanctuary.

Chairman Brown stated when all of this first started, it was restricted to Mallows Bay and a small area in the Potomac River. If you want a ship wreck in the middle of the Potomac River, then buoy it off. You don't have to take the entire Potomac River up for that.

Kenny Pearson questioned how much money the Federal Government will give NOAA for this sanctuary for upkeep and maintaining it, from their budget. There's no more that can be done to it other than put signs up, so that's the real question, how much money is involved here.

Bob Eaton stated he's never received an answer to his question of what lingering or imminent threats to the shipwrecks in Mallows Bay exist that can only be mitigated by marine sanctuary designation. They have been laying there for 90 years. What do we need to watch out for and why is the marine sanctuary the only way to protect that? Mr. Orlando explained in the designation documents, part of what the draft Environmental Impact Statement has to identify what the potential threats to the resource are. They have to do with vandalism, defacing, moving and taking the resources themselves. They can be addressed through regulatory kinds of actions or non-regulatory kinds of actions and to a large degree, almost exclusively, NOAA is going with non-regulatory actions. They are providing supplemental legislation for "don't take it, don't break it" rules to mitigate some of these threats. The rest will be handled through education, interpretation, signage and other aspects like that. There are three new regulations. One is you can't damage or deface or take the historic artifacts. Maryland or Federal Law already has made that against the law. Maryland has some protection for the vessels under their own law through the Maryland Historical Trust. They don't have the same authorities for protection as the National Marine Sanctuaries Act does. Maryland also does not have the same non-regulatory programs that allow the education, interoperation and those kinds of things that mitigate against those potential threats without having to impose additional regulations.

Mr. Eaton asked if these types of threats are or have occurred to the shipwrecks. Mr. Orlando stated the evidence is out there that this is going on, but he has not witnessed it himself.

Arthur Loving questioned why NOAA wants to take the whole river when all you say you are after are the shipwreck sites. That's a lot of water where there are no sites that are being included in this plan.

Chris Owens stated it sounds like if this goes through NOAA, Maryland will get more federal funding, but Maryland could do all of this themselves. It sounds like Maryland doesn't want to invest the money to do this. By asking NOAA to come on board, Maryland will get federal dollars to pay for it and it's not coming out of Maryland's budget.

Dennis Newton stated 90 years has passed, why do they want to save the ships now? Vice-chairman James Bowling stated he wanted to address that and some comments made by Mr. Orlando of the ships being vandalized. Mr. Bowling noted the ships were taken to Mallows Bay to be destroyed. They were taken there and when the funding ran out, they were abandoned and set on fire. They weren't vandalized; they were destroyed. In addition, they were not used in WWI. They were built to be used, but never were. It was decided that they were worth scrap and when the scrap wasn't worth it, they took them to Mallows Bay, set them on fire and abandoned them.

Mr. Eaton explained at one time they were designated as non-combative vessels that were surplussed to someone who took them to Mallows Bay to be scrapped. Burning them to the water line was a way to get all the useless wood out of the way in an effort to recover the metals. The ships were deemed of no value when they were taken there, and he is not aware that they have any historical significance. If anyone tried to do what was done back then, we would never get through the antipollution, toxic metal, environmental hazard navigation regulations, because we'd go to prison. Having said that, he thinks the wrecks are pretty cool, and a great place for the fish to live, but what threat exists that we have to protect them now. If there was anything to steal, it's been taken already, so we're not going to recover anything of value or importance. He is a bit suspect when someone shows up and says "I'm here from the government and I'm here to help you". When he heard the area proposed is 52 square miles, he knew that was a lot larger than Mallows Bay, and he's not hearing anything that convinces him they are at threat and this is the only way to fix it.

Chairman Brown stated he has not heard any reasons either. There is one option that is 102 square miles, one that is 52 square miles and one that is 18 square miles. Some of these wrecks are on the bottom that you can't even see. They are in areas for our gill nets and when the water is murky, you can't dive down and see anything. As far as he's concerned, the ones that are on the shore and in the middle of the river can be buoyed off without going through this sanctuary process. Most of the time when NOAA comes in, it doesn't work in our favor.

Mr. Orlando respectfully stated there is historical significance to this. Even if people can't see all the pieces to it, it still is in fact there. He asked if national battlefields that are nothing but grasslands at this point in time, no longer have their historical significance anymore. We should just pave over Gettysburg because we can't see some of the artifacts, the remains of history that were there at one point in time. The history of this area is quite significant and these wrecks actually did serve their purpose in WWI, and some did make it across as transport vessels as they were intended to do. Some ran coastal missions, so that the bigger battle ready ships could be taken across for those purposes. The other thing this does is it belies an entire history of a war making effort, a complete transformation of the US during WWI. We were not a ship building country and more than 50 ship yards around the country were built up. This dramatically increased the capacity of ship building and naval power that this county is now, and that came out of the beginnings of that effort. Our Merchant Marines came out of that particular effort. So there are a lot of pieces to this that people have not taken the time to understand, that have real historical value in nature that we are trying to preserve, tell the story of, to interpret the same way we would if we were talking about battlefields in inland areas. There is history there documented by the Parks Service, not by NOAA. The Parks Service is the one that said this has

national significance to this country and needs to be preserved. This is where the impetus comes from to try to create this community based partnership to preserve the history and interpret that history through time.

Chairman Brown stated to compare these bunch of junk wrecks to Gettysburg, you lose what little bit of clout he thought Mr. Orlando did have, because there is no comparison. That is where men died for what they believed in on both sides and there is no comparison to a battleground like that to what is located in Mallows Bay. He felt Mr. Orlando was completely off base on that statement.

Dennis Newton stated what Mr. Orlando is saying about artifacts on battlefields is correct. If an artifact is found on your property, the government can stop you from working the land or building on it. If they get their foot in the door at Mallows Bay, this is what's going to happen to us.

Monica Schenemann questioned at what point does the language become clear that this will not affect the commercial and recreational industry. Mr. Orlando explained as part of the designation process, the federal government is required to do a number of consultations to build the final product. What we are doing tonight, by engaging the consultation process of sharing information, is part of that process. What is being offered to the PRFC is a chance to look at the language, say it's inadequate and provide the language you would like to see in the final document that spells out the authorities of the PRFC in the Compact, and puts that language in the document. You build it with NOAA, not have it presented to you. He is not sure how the PRFC would like to move forward with creating the language. If you want to designate a person or group of people to work with him directly on that issue, that can be done. He reminded everyone that this is still in the public process and we are still gathering input from a lot of sources. When we put all those pieces together, part of those pieces that will be included will be from the PRFC in terms of that extended language.

Mr. Eaton apologized if he came across suggesting that Mallows Bay was void of history. That was not his intention and he does not agree that it's like a battlefield, but he would say it's more like a trash hole dump in the woods. He says that as someone who has spent a lot of time exploring a lot of woods searching for household waste dumps with artifacts and tools. It's a cool thing and he thinks that Mallows Bay should be protected. He is at a loss as to why so much area has to be included to protect Mallows Bay.

Mr. Pearson stated he doesn't see anyone here tonight except for Mr. Orlando, who wants this sanctuary, so he urged the committee to go with Option A to do nothing and forward that to the Commission. Mr. Eaton stated that he's not opposed to a marine sanctuary designation, but he doesn't feel it needs to be as big of an area that they are proposing. He thinks it should be a little bit bigger than Mallow Bay.

Mr. Owens explained the way he reads the proposals now, Option A is no longer a viable option. It's one of the four options and just Mallows Bay proper is no longer an option.

Mr. Bowling stated we are being asked to make a recommendation to the Commission, but there's language to be determined later that's not put before us, so we can make another kind of motion. He recommends that if it needs to be a sanctuary, keep it inside the jurisdictional waters of Mallows Bay, Blue Banks, Wades Bay and out of PRFC waters. Extend the Maryland Historical Trust which protects all the archeological historical sites for the proposed area of the sanctuary.

Mr. Gary typed the recommendation on his laptop so the committee and audience could review it. He then read it out loud as follows:

James Bowling recommends: should Mallows Bay be designated as a National Marine Sanctuary, the boundaries should be restricted to Maryland jurisdictional waters from Smith Point to Sandy Point and the request be made that Maryland expand the Mid-River Historical District to cover the additional archeological sites.

Mr. Owens suggested that the recommendation should stop at "...from Smith Point to Sandy Point". Chairman Brown agreed.

Mr. Bowling explained that the Mid-River Historical District is already established and is 18 square miles. He said no one even knows it's there. There is a site that's located under one of his gill nets. Dr. Langley was there surveying the site and asked if Mr. Bowling's net ever got hung up on the site. Mr. Bowling stated that's never happened and she stated if it's not bothering Mr. Bowling, it's not bothering her. Mr. Bowling doesn't have a problem protecting historical objects, but he doesn't want to leave it open for someone to come along later in life and make changes when they are not educated on the issue.

Chairman Brown stated he could not support the latter part of the recommendation and feels like there's a loop hole being left.

Mr. Gary explained that Mr. Bowling views his recommendation as Maryland has ownership of the river bottom, so it's not a federal management regime. Mr. Bowling stated they already have a historical district and that's to protect those historical objects.

Mrs. Cosby explained Dr. Langley stated there's a Maryland Historic District and in that area they requested it be placed under the National Register of Historic Places. That's how it is categorized now. Under Maryland Historic District, they had no legal protection so they had to get it under the National Register of Historic Places. Consequently there is no collection of artifacts and they can only limit archeological collections; so it's under National Register of Historic Places at this time.

Chairman Brown called for the consensus of the committee for the approval of the recommendation. The committee did not approve the recommendation made by James Bowling.

Chris Owens recommended removing the last part of the recommendation to read as follows: Should Malloes Bay be designated as a National Marine Sanctuary, the boundaries should be restricted to Maryland jurisdictional waters from Smith Point to Sandy Point. The Committee agreed by consensus.

Mr. Gary advised after a teleconference held January 18th, Mike Mayo, PRFC Legal Counsel, recommended to make a formal request to the Attorney General offices of Maryland and Virginia for a legal analysis of potential impacts to the regulatory authority of PRFC through the Maryland and Virginia Compact of 1958. That request was put forward and Maryland is working on it. We hope to hear from them next week. He has not heard from Virginia. The Commission meeting has been moved to March 20, 2017, specifically to accommodate this request.

USDA Catfish Inspections

Mr. Gary advised there's been some headway on this issue. There have been some discussions between the USDA and the processors. Catfish inspections were transferred from the FDA to the USDA as part of the Farm Bill. It was to head off the importation of Vietnamese and other South Asian catfish that were flooding the market. As a by product but not intentional, the fish were required to be delivered alive to the processor. Unintentionally, the blue catfish that were being taken to the processors were going to be subject to a live delivery. Negotiations took place so that these fish did not have to be delivered alive, but they are still subject to an inspection when a USDA FSIS employee is on premise. Concerns were raised on the number of inspectors available and how the inspections would be conducted. Mr. Gary is hearing there are enough inspectors and they would be provided for up to 40 hours, after that it's the processors responsibility to pay them. There is a concern as to how they inspect the fish as well. Mr. Gary is going to bring these concerns up to the Chesapeake Bay conference call. He's hoping to have someone from USDA attend the June Commission meeting to talk about this.

Dominion Coal Ash Update

Mr. Gary testified at the one and only public hearing and the Commission is adamantly opposed to going forward with the solid waste containment at Possum Point. There is a huge body of literature that suggests if the coal ash were to be introduced into Quantico Creek and the Potomac River, it could have significant and long lasting effects to almost all of the aquatic life in the waters. This is an ongoing situation that he will keep everyone up to date on.

ASMFC Striped Bass Addendum

Mr. Gary explained at the ASMFC winter meeting, Maryland's motion passed for the Atlantic Striped Bass Management Board to initiate the development of Draft Addendum V to Amendment 6 to the Atlantic Striped Bass Fishery Management Plan (FMP) to consider liberalizing coastwide commercial and recreational regulations. This may potentially provide some relief to the restrictions. It will be discussed at the ASMFC meeting in May that will be held in Alexandria, Virginia. Attendance is key to this issue.

Mrs. Cosby reminded everyone the Commission meeting has been moved from March 3rd to Monday, March 20th at 9:00 a.m.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Robert T. Brown, Chairman