

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

**March 20, 2017**

**Commissioners Present:** A. J. Erskine (VA) — Chairman, Lynn H. Kellum (VA) – Vice-Chairman, Phil L. Langley (MD) – Secretary, William L. Rice, Sr. (MD), Dennis C. Fleming (MD), John M.R. Bull (VA), Ida C. Hall (VA) and Dave Blazer (MD).

**Officers Present:** Martin L. Gary – Executive Secretary, Ellen B. Cosby – Assistant Executive Secretary and Michael C. Mayo – Legal Officer.

**Others Present:** 1<sup>st</sup> Sgt. Herbert Bell – VMRC Law Enforcement; Kelly Collins and Kim Hernandez – MD DNR, Dr. Susan Langley – Maryland Historical Trust, Sammy Orlando – NOAA, Robert T. Brown, James Bowling and Jeff Schenemann – Finfish Advisory Committee, John F. Tucker Brown – Oyster/Clam Advisory Committee, Elgin Nininger – Crab Advisory Committee, John Morris, Ken Hastings, Gail Kenson, Andrew Eaton, Emily Vainier, John Osakowicz, Victoria Brown, T. Kurtknoer, Monica Schenemann, Charlie Stek, John Neely, Zeb Brundage, Richard Riche, John Dean, Ray Gaskill, George Fish, Eddie Nolan, Carlos Colbertson, James Messick and several others who did not sign the guest register.

**Press:** Tim Wheeler – Bay Journal and David McGuinness – McGuinness Productions

Chairman Erskine called the meeting to order at 9:03 a.m. The invocation was provided by Chairman Erskine and Commissioner Kellum led the pledge of allegiance.

**Consideration of Minutes – December 2, 2016**

*A motion was made by Commissioner Rice, seconded by Commissioner Bull and unanimously passed to adopt the minutes from December 2, 2016 as presented.*

**Mallows Bay Presentation and Discussion – Paul Orlando (NOAA)**

Chairman Erskine stated this is going to be a lengthy discussion by Mr. Orlando followed by questions from the Commission regarding the presentation, and then questions from the public. After that, public comment will be received. Rest assured, everyone who wants to make a public comment will have the opportunity.

Mr. Orlando gave a lengthy presentation explaining in detail how the Mallows Bay proposal came about. He reviewed the Draft Environmental Impact Statement, stating the purpose and need for a sanctuary is for protection of maritime heritage resources and facilitating public access. Next, he explained the sanctuary designation process by going over the alternatives that NOAA is considering. He advised that the Draft Management Plan has five action plans: 1)

resource protection, 2) recreation and tourism, 3) education, 4) research, science and technology and 5) sanctuary operations and administration. The sanctuary designation process started in 2014 with a community nomination that was advanced to NOAA. Next is a public comment period followed by a Draft Management Plan being created and put back out for public review and comment. After review of all public comments and concerns, the Final Management Plan, Environmental Impact Statement and Proposed Management Plan are submitted to the Governor of Maryland for the final decision. This is a very lengthy process that has taken years to develop.

Mr. Orlando strongly advised that under the Draft Management Plan, there would be co-management to include NOAA, the State of Maryland, and Charles County representatives. He noted that recreational and commercial fishing would continue, as before, through management by MD DNR and the Potomac River Fisheries Commission. He explained there would be a Sanctuary Advisory Council that would consist of 15 members who advise the sanctuary superintendent on the operation of the National Marine Sanctuary. Members typically include conservation, fishing, recreation, education, boating and shipping, business, maritime heritage, and research and jurisdictional partners from local, regional, state, tribal, territorial and federal agencies, citizen-at-large, and/or youth. Should the sanctuary be established it would have a 5-year management plan that would be reviewed. There would be mitigation through the Memorandum of Understanding (MOU) and Sanctuary Advisory Council (SAC) membership.

Currently the proposal is in the public comment phase and NOAA will be accepting public comments until March 31<sup>st</sup>. Should anyone want to submit a “hybrid” solution to the alternatives presented by NOAA, they need to keep in mind the purpose and need for the National Marine Sanctuary. It must present no impact to fishing, and mechanisms to mitigate future impacts and should have extensive community based support for at least “Alternative B”.

Commissioner Rice wanted to clarify that the presentation stated the Tidal Fish Advisory Board supported Option B. He stated that is not true, they did not support Option B. When the board was presented with the options in 2014, the only body of water that was to be affected was Malloes Bay Proper, it did not go into the Potomac River at all. He stated that can be proven with the slideshow that was presented that night. He asked that be struck from the presentation because it’s false information. A letter was emailed Thursday stating the position of the Tidal Fish Advisory Board as of now because our position had vanished into outer space because that part of the proposal is gone. We do not support Option B, C or D and never supported Option B because that was never an option until now.

Commissioner Hall asked Mrs. Cosby if she could present the map of the Potomac River, give a brief outline of what is involved in the main stem, and relate it to the map to show how much area we are looking at and where the wrecks are. Mrs. Cosby presented the map that was provided by Dr. Langley showing the plotted wrecks. The coordinates were transferred to our PRFC fish charts to relate to our fixed fishing devices in the river. She reviewed the maps and showed which wrecks were considered old, WWI era, part of a Naval site and if any were close to PRFC gill nets or fyke nets.

Commissioner Hall asked if the wrecks were close to the shore. Mrs. Cosby stated they were pretty close to the shore and certainly not in the channel.

Commissioner Blazer thanked Mr. Orlando and his team for doing a job well done. They have been responsive and proactive with outreach even though their controversy surrounding this, but that is part of the public process. Where he has been involved is with the Maryland Sportfish and Tidal Fish Advisory Committee. Those two entities have supported the concept of a marine cultural sanctuary, it's just where those boundaries are. Commissioner Rice is correct that TFAC in their latest recommendation did not support options B, C or D but did support the concept of what is being presented. Hopefully as this process moves through there is something there that can be worked out. It's been said numerous times during the presentation that there would be no impacts to recreational and commercial fishing, so he feels that issue has been addressed for the first five years. He said to fast forward five years from now and asked what happens at that point. Is there a review for updating the management plan? If that changes, what are the steps? Mr. Orlando explained the management plan review is going to be based on condition reports. That's where staff goes out and take a look at the status of the resources relative to what they were last time we checked on them. A condition report has not been done for this area so this would be a baseline study of the area. We try to make the best decisions based on science when the data allows that to happen. Secondly, they take input from all the advisory councils that are representing the diversity of the interest groups. The management plan review can take on any range of activities. This is a very simple sanctuary that's being proposed here, and the hope would be to find out what we could do to expand the recreational access in a wide range of forms. The management plan review can look at the non-regulatory kinds of programs as well as the regulatory component of the program. If there is a change proposed through the regulatory process, it's subject to all the things we've talked about. It has to be approved by our state partners, have a public process with public hearings, and approved by the Governor. Keep in mind this is a very simple National Marine Sanctuary.

Commissioner Blazer asked where those proposed changes would come from. Who would initiate them? Mr. Orlando stated NOAA often gets recommendations from the Sanctuary Advisory Council. Most importantly when the recommendation comes in, it has to be approved. All parties involved have to say it's a good idea or there's a need for it. Commissioner Blazer stated the Advisory Council would know ahead of time that there was a proposal to modify the plan before it would go forward to NOAA, MD DNR or Charles County. Mr. Orlando stated that's one of the key functions of the Advisory Council.

Commissioner Blazer questioned when Thunder Bay Sanctuary was designated. Mr. Orlando stated 2000. Commissioner Blazer stated that sanctuary has been through two plan reviews and the recent expansion. In the 17 years, other than the expansion, have there been any other changes to the plan for Thunder Bay. Mr. Orlando stated he was not able to answer that. The concern here for Mallow's Bay is the commercial and recreational fishing communities being affected now and in the future.

Chairman Erskine noted that during the presentation that NOAA has the authority but they wish to not utilize that authority. He noted that Mr. Orlando also stated the commercial and recreational fishing will not be impacted. Maybe this is not the structure of a National Marine Sanctuary in the MOU but if there were to be designation and the advisory council saw impact to recreational and commercial fishing, would the designation revert? He asked because the majority of concern surrounding this sanctuary is the impact to commercial and recreational

fishing. What if it does take place? Mr. Orlando stated a designated sanctuary does not revert. In the draft designation documents, they called out all the known fishing gear types and determined that they do not trigger Regulation #1 (Damaging Sanctuary Resources). Again, if that language is not strong enough, the offer is to get that language into the final documents. If those things are in the final documents, he is finding it hard to understand what is damaging the resources if the documents call out specific fishing activities and gear types and conclude they don't have an impact on the sanctuary. If it happens, the question is what do we do about it? Do we need a study of what that looks like to even verify if that's true? Or is this something that can be changed around with simple education.

Commissioner Erskine stated we can identify gear types that would not impact the sanctuary but what happens if a new gear type that's not indicated in the documents comes into play? NOAA would say no because the gear type was not designated in the original sanctuary documents. He thinks there is skepticism when you get that specific with gear types. Again, if one is not included, then all of the sudden they are outside the bounds of being able to conduct that recreational or commercial fishing inside that sanctuary. Mr. Orlando stated that was a great example but that would be a situation for the council to review, and to bring forward for evaluation. There would be a discussion taking place. Today, there hasn't been any interference, and we would hope that would continue in the future.

Commissioner Bull congratulated Mr. Orlando and noted it's been a four year process. Clearly there has been a lot of work that's gone into it and he appreciates it. He questioned in regards to the MOU process, when would it begin and what would that entail? Mr. Orlando referred that question to the state of Maryland. Ms. Emily Vainieri, Assistant Attorney General is representing the State of Maryland Department of Natural Resources. She explained that right now MD DNR has the right to enter into MOU's with other state agencies, multi-state Commissions, and the process can be based on what your looking for and what you would like to be in the MOU. In terms of the details, that can be a collaborative effort on exactly what your looking for in terms of participating in the final designation documents and what you are looking for going forward in future management plans. As for timing, she's not exactly sure but stated it wasn't a long process. She stated a month or two but that would depend on how detailed the plan would be.

Ms. Vainieri clarified that Mr. Orlando talked about two things in his presentation, one of them is a MOA which is a memorandum of understanding between NOAA, MD DNR and Charles County and that is what goes into place after the final designation documents become effective. The MOU that she is talking about doesn't have a timeline right now and can be done as fast as the two parties would like to have it done. This one would be between MD DNR and PRFC. It's a very flexible process between the parties.

Commissioner Hall thanked Mr. Orlando for his time and efforts to talk with the Commission to explain what's going on. She asked for him to explain how many shipwrecks are in the PRFC jurisdictional waters under Option C. Mr. Orlando deferred the question to Dr. Langley. Dr. Langley showed the Commission what shipwrecks were in PRFC jurisdictional waters on the maps presented earlier. Dr. Langley noted there were 13 single shipwrecks and a cluster of 12 vessels at Point of Wrecks.

Chairman Erskine asked how many were located in Mallows Bay proper. Dr. Langley stated there were approximately 80 to 90 vessels consisting of 80 WWI era and a few vessels brought in during the depression to be dormitory that are related to the WWI vessels but they are depression era among other heritage resources from different times.

Commissioner Hall asked Mr. Orlando if NOAA has considered anything besides sanctuary alternatives besides just marking off these shipwrecks so that we didn't have to create a sanctuary. Mr. Orlando stated there is no other alternative that NOAA looked at besides a National Marine Sanctuary for this area. There may have been other alternatives considered and not taken as part of the Draft Environmental Impact Statement.

Commissioner Hall stated she is not familiar with the Thunder Bay Sanctuary but knows that the Potomac River is a very unique body of water and the management under the PRFC is unique by-state. To her, she feels we are a historical resource having managed the fisheries brought together by the Oyster Wars. Her concern is why should the PRFC only have one or two seats on the Advisory Council when we have historically managed the river jointly. She feels the PRFC should have far more authority in overseeing what goes on should a sanctuary be approved. Mr. Orlando explained that none of the seats have been decided nor can they be decided until after designation. Typically, there is one seat on every other sanctuary that's related to fishing, he doesn't know that this one would turn out to be. Sanctuary Advisory Councils are just one mechanism going forward. Things like the MOU might be far more important to a seat at the table that's more of a continuum and more direct than maybe an advisory council seat would be. He thinks they are both excellent options that work in tandem together. The reason why the PRFC isn't more directly involved at this stage of the game is because of the way that the Draft Environmental Impact Statement laid out the resources that were to be considered and managed by NOAA and the partners and those were the maritime historical resources. Since PRFC is not a direct manager of those historical resources, that connection wasn't there. He stated NOAA is reaching out and trying to find those connectors going forward, and the Commission is making the case for a couple of good ones.

Commissioner Hall stated she has real concerns about the first regulation of don't take it, don't break it. She knows this sanctuary is not regulating fishery harvest but there is a mention of concern with anchors impacting the historical resources in a sanctuary. This concerns her that although there is not a direct management of the harvesting, there is an indirect and that to her does create a concern for the current proposed sanctuary plan. Mr. Orlando stated that they tried to call out the gear types and recognize those things, and if we missed them and didn't get them, that might be something that can be considered in the future that could be incorporated in the final version to help mitigate some of that concern. Some of these ships are 300' long and 40' wide and if there is a concern maybe there can be a discussion to ask if the anchor can be moved over 15' to avoid the risk of damage to a historical resource that was just discovered. This is they type of mechanism that is a workable solution codifying with the MOU so that we can get that taken care of.

Commissioner Hall asked if the majority of these wrecks are wooden hull. Mr. Orlando stated the majority are, but there are some that are composite and have metal strapping that holds the sides together. Commissioner Hall then asked how long they would survive because they are

constantly deteriorating, so what would we be protecting? Mr. Orlando stated we would be protecting the history and heritage of what they represent through time. These things will continue to be reclaimed by nature.

Commissioner Fleming noted in light of budget cuts, would there be funding available to do the things that you'd like to do? If it is designated and there is no funding, would it drain on the resources of the other facilities? Mr. Orlando stated he can not answer any questions related to budget because that is part of the Congressional Appropriations process and he would have to refer that question to others.

Commissioner Fleming then stated that these vessels over time are covered with sediment and asked Dr. Langley if there are other wrecks that are chartable that may stick above the sediment level? Or are they simply preserved in the mud? Dr. Langley explained that she has not picked up any in the dumping area. Side scan sonar and magnetometer have been used. The ones we know about are the obvious ones but if they are buried under, they will preserve just fine and that's not a problem. She would not want to excavate anything because that's another step in then trying to figure out how to preserve them once they are brought up.

Commissioner Rice stated that other than the couple of vessels on the Virginia side that are visible above the water line and that all the others in PRFC jurisdictional waters are under the surface of the water. Dr. Langley stated the ones at Mallows Bay proper and just south of it are exposed most of the time. The ones down around Caledon and Fairview are exposed all the time. The ones at Widewater are exposed most of the time. The rest of them are very shallow at about 10' max. below the water.

Commissioner Rice asked Mr. Orlando if NOAA has contacted Naval Surface Weapons Center, Dahlgren to explore the fact that there are unexploded ordinances in this area and if so, what is the plan? Mr. Orlando explained that they have talked with all four military facilities along this section of the Potomac River. They have in fact through the Department of the Navy signed on to what's called a cooperating agency. They have been working along side us, and are able to provide input directly into the documents. What we are looking to learn is more about what's going on at Dahlgren and Indian Head. These are ones that we have taken into consideration because of concerns at Indian Head but we are addressing that. This is the best information we have from those facilities.

Commissioner Langley thanked everyone for their work. He questioned what is the smallest footprint that NOAA would consider or has considered for the National Sanctuary besides Options B, C, and D? Is there a minimum size sanctuary that NOAA would entertain? Mr. Orlando stated he doesn't know the answer to that going forward. He can answer regarding the Draft Environmental Impact Statement, one of the alternatives that were considered early on, and was rejected was to have just Mallows Bay Park and did not show up as an alternative. Going forward, it has to meet the purposes and needs of a sanctuary. If the idea is to capture the historic and heritage resources, then just the ones in Mallows Bay were left out plus it's not providing the public access any better than what it has now. He noted that a hybrid is possible.

Mr. Gary also thanked Mr. Orlando and everyone else for their work. He noted there are 4 options being considered, he questioned if a hybrid can be proposed in this comment period for consideration? Next, he noted that Mallows Bay proper was rejected and asked if the idea of having just Mallows Bay proper is completely nonviable. Mr. Orlando stated that the public comment is for any type of comment to help frame what it is and what it isn't, reasons why and reasons why not. If you would like to provide a map with the proposed hybrid alternative make sure you explain why and how it helps meet the purposes and needs of the sanctuary under that option. Anyone is welcome to do that before March 31<sup>st</sup>. Secondly, with respect to Mallows Bay Park being a sanctuary, for the purposes and needs provided in the Draft Environmental Impact Statement, heritage resources and recreational access, something that small misses a bunch of the resources and misses a bunch of opportunities for access limiting everyone to one boat ramp. Is it something that could be considered going forward, yes, but it would have to be considered in the context of what are the final purposes and needs that would come out of the final versions of these documents. If you change those, then maybe Mallows Bay Park would fit those purposes and needs but as it stands, it was rejected because it didn't.

Mr. Gary noted that on March 31<sup>st</sup> the public comment period ends and then all the comments are reviewed. He asked who reviews all of them? He has been involved in similar projects and ultimately it comes down to one person, however it may not be that clean cut in this case but he would like to know who makes that final call. Mr. Orlando stated it will take about a year to review all the public comments because there are so many steps in the process. The first step is we have to understand what just came in and everything has to be translated. The initial group that would review the comments would be the co-managers, MD DNR, NOAA Historical Trust, Charles County, and NOAA. DOD through the cooperating agency status would have the opportunity to sit down and examine the comments as it relates to their particular mission requirements. John Armor, Director of the Office of National Marine Sanctuaries could make that decision without clearance from other parts of NOAA. To be doing so he would have to get clearance from the Department of Commerce at a minimum. A proposal going forward would go that high in cooperation with the states, PRFC with MD DNR through the MOU that would be proposed. There are tiers to achieve that as we go forward. That's why it takes so long.

Chairman Erskine asked if there were any questions from the public regarding the presentation and stated they would take them at this time.

Robert T. Brown asked what the benefit was to the commercial fishery if this sanctuary was established. Mr. Orlando stated he presented some examples in the presentation such as watermen heritage tours, buoys being out there to provide water conditions, the idea of stimulating volunteers to come out and clean up the area(s) to help the river and again, not directed to the commercial fishery side, but working on access that separates recreational users and provides access for recreational watermen would be beneficiary. Those are initial ideas that are in the works but would be open to partnership opportunities through the commercial watermen and the PRFC to expand on that.

Robert T. Brown questioned why there wasn't a presentation on the Virginia side of the Potomac River concerning this proposal. Instead they held one at Anne Arundel Community College in Annapolis, Maryland. This area doesn't even boarder the Potomac River and didn't have a very

good turnout. If one was held in Virginia, maybe some of the watermen who are from the area would have been inclined to attend. Mr. Orlando stated he had no answer for that. He said they should have had a hearing on the Virginia side and they didn't. They tried their best to reach out to others along the way. Press releases to the media in Virginia have triggered some public comments that have come in. Hindsight being what it is, we should have had one of the public meetings in Virginia.

David Maginnes stated in regards to the last public meeting it was stated that a user group planned to challenge commercial and recreational fishing under the MOU process. According to the user group it's not in the law as established now for the first five years that those rights are preserved. In conjunction with the Sturgeon Critical Habitat Area Designation, would require greater protection, up to three times higher water quality along with public oyster activity could work together to create a basis for undoing past use of commercial and recreational fishing in the sanctuary area. He can see this proving a basis through the public hearing and the MOU process but could also provide litigation under the Endangered Species Act if this sanctuary were established. For these reasons, commercial and recreational fishing may not be preserved. Has NOAA fully considered this because it conflicts with some of the statements being made? Mr. Orlando stated NOAA has not taken that into account directly because this is not about natural resource management at this site. Anything that happens with Sturgeon and other species is something that occurs through a separate process and goes through the proper authorities who have jurisdiction over those. As it relates to NOAA and the National Marine Sanctuary, Sturgeon fisheries, crabbing, oystering ect. Is something NOAA is not taking on. How that gets spelled out in the MOU between MD DNR and PRFC is up to them.

David Maginnes then questioned the status of the Maryland Legislature preempting MD DNR in terms of managing oyster resources. Currently the bill hasn't passed. Could this be an area that could be stripped away from MD DNR and be referred to the Maryland Legislature in terms of preserving fishing right within the sanctuary? Commissioner Blazer stated they are two separate issues. Anytime there is a proposal for a regulatory legal change, there's different bodies that can do that. MD DNR, NOAA, PRFC and the State Legislature have regulatory authority to do certain things. Anyone can get involved but we're allowing NOAA and MD DNR to go through the process of public comments so at this point there isn't any cross targets of what's going on in the Maryland Legislature and what's going on here.

John Dean stated it was touched on earlier but he would like to know how much federal money is going to be involved in this because with this being a sanctuary, we know what federal monies can do. Mr. Orlando stated he can not answer any questions in regards to budgets and congressional appropriations. He can say this is something we expect to be done, in concert, with the co-managers. Not all money sources come from a single place but he is not able to answer anything related to the federal component of it.

Richard Richie representing the Working Watermen of the Potomac River asked Mr. Orlando if a public hearing could be scheduled on the Virginia side for public comments. He feels that would only be fair. He has done his homework on Thunder Bay as a marine sanctuary and went further and spoke with representatives from America Samoa and the Florida Keys on their National Sanctuaries and it doesn't sound as nice as what you are presenting with their



experience. With this inclusiveness, he then asked again for a public hearing on the Virginia side of the river. Mr. Orlando stated that in comparison to sites, he compares apples to apples and Thunder Bay is the only National Marine Sanctuary that is an apple to apple comparison. American Samoa is a Marine National Monument and the Florida Keys was a sanctuary designated of marine purposes. They are very different than what we are talking about here in the Potomac River. With respect to scheduling a public hearing, he doesn't know the answer to that and would have to follow up on that. With public comments there are options available to get your comments addressed and received if a meeting can not be scheduled.

Chairman Erskine stated that during the presentation it was stated that it was an oversight that a public hearing was not scheduled in Virginia. Everyone has the opportunity to make public comments on this until March 31<sup>st</sup> and by law, they are required to respond to every public comment and answer that question or public comment.

Mr. Mayo asked Mr. Orlando for clarification as to who are the stakeholders in the MOU. Mr. Orlando explained currently as it stands because of the resources that were identified in the Draft Environmental Impact Statement that are heritage based it is the state of Maryland through the Maryland Historical Trust, MD DNR because they control the bottom waters outside of the PRFC jurisdiction where these wrecks are and they control access as well as Charles County because they are the principal operators of Mallows Bay Park.

Monica Schenemann mentioned in the presentation there was a December meeting, January 25<sup>th</sup>, and February 22<sup>nd</sup> and these were all held here at the PRFC. She tries to talk to Virginia residents, make them aware of this and ask them to go to public comment meetings. She contacted the Patowomeck Tribal Chief and they questioned why this is just being heard of when it is down to the presentation and the public comment period that Virginian's don't really have a chance to understand the whole process and see these presentations. She questioned why is it so late even though Mr. Orlando stated that it was a mistake. Something needs to be seen for the residents of Virginia. Chairman Erskine stated this question is about access for Virginia again and that's been address already. He asked if Mr. Orlando had anything further to add and he said no.

Victoria Brown asked if the comment period can be extended at this time so that more of the public can be involved in the public comment process because it wasn't widely advertised. Mr. Orlando stated he did not know the answer to that. He stated NOAA provided more than a 90-day public comment period and reached out to local media on the Virginia with respect to everyone having access to public information that we knew how to do. The determination would be made as to whether or not access was provided through all reasonable mechanisms.

James Bowling was referenced in the presentation and the reference was pursuant to the conversation he had with Dr. Langley. His understanding of that conversation was the way it stood now with the Historical Trust there was no problem with where his gill net was located. Dr. Langley verified and stated, there is no problem. Mr. Bowling felt the way it's being presented seems different. In the presentation we were told this is strictly heritage and historical with no references to natural resources management for a purpose of action. On page 29 of the proposal he read "The purpose of the proposed action is to further NOAA's mission goal to

conserve and manage coastal marine ecosystems and resources.” He questioned why we are being presented that no where in the purpose for action is natural resources but he clearly reads it right there? Mr. Orlando stated it’s because NOAA has strictly defined sanctuary resources for the purpose of this National Marine Sanctuary as being maritime and heritage resources. That still falls under the giant umbrella of coastal marine resources. In this particular case, NOAA is saying the only thing they want to look at under the suite of coastal marine resources are the maritime and historical component and that’s why there’s no mention of natural resource management.

James Bowling stated that in the presentation it was stated that NOAA has looked at all the nets and anchors and found that they weren’t going to impact anything but on page 117 it states “Anchoring, particularly large or heavy anchors, disrupts the bottom substrates...” He didn’t know the bottom substrates were historical. Why is this in the proposal? If we are being presented with this, then they have already looked at it. This is specifically worded in the proposal. Dr. Langley stated that they have determined that no fishing anchors or tackle is going to hurt anything. She was more concerned with a few of the large vessels that still travel up to DC and some of the barges that travel using a mooring buoy and was hoping to have them use mushrooms or some other sort.

Robert T. Brown, President of the Maryland Watermen’s Association, noted that the PRFC was not included as part of the MOU. We are concerned with the crabs and fish that swim into the Potomac River. According to the Compact, it regulates the fisheries that are in this river. He wants to know why the PRFC was not included as part of the MOU. Mr. Orlando explained that when Ms. Vainieri spoke she talked about two types of agreements, the MOA and the MOU. The MOA is between MD DNR, NOAA Historical Trust, Charles County, and NOAA. They are the agencies that have direct management of the resources that are described in the Draft Environmental Impact Statement related history, heritage and recreational access. No other agencies, including the PRFC as far as we knew, have that authority and that’s why they are not included. The MOU that’s been discussed is between the natural resource management agencies, the PRFC and MD DNR. That is something that can start right away and can be written that is mutually agreeable between the two agencies but the two documents are different going in the same direction.

Commission Blazer clarified that the MOA is for the management of the cultural resources. The reason the PRFC wasn’t added is because it clearly states no commercial or recreational entities or activities would be impacted. If they’re not going to be impacted they don’t need to be included in the MOA on what you are trying to manage. The second part is the MOU between MD DNR and the PRFC that would outline the process that in the event there are any impacts to fishing commercially or recreationally that there is a process with discussions so that PRFC would have a voice in making those decisions going forward. Mr. Orlando stated that is correct.

David Maginnes stated as far as the proposal provided today was obviously developed under a different administration at NOAA and with the transition between the Obama and Trump Administrations, he questioned in a time of transition, with different priorities towards industry, small business and natural resources, has Wilbur Ross, Secretary of Commerce, or the Trump Administration taken a position on this proposal? Mr. Orlando stated no, there has been no

interaction with the new administration at this time that he's aware of.

Mr. Gary presented a punch list of questions and answers that were brought together by stakeholders, advisory committees and other sources. They were presented via email to Mr. Orlando, Kelly Collins and Kim Hernandez.

Next, he presented the language from the Draft EIS and Management Plan that has the affirming language that talks about NOAA impacts to fishing. Mr. Gary reviewed the maps of locations of maritime antiquities outside of Mallows Bay. This is where Dr. Langley came down and spent time with Mrs. Cosby to chart the shipwrecks on our fishing charts. They discussed and decided that the fixed fishing devices would have no impact on the vessels or access to the vessels.

### Formal Responses

#### **Virginia Attorney General, Mark R. Herring**

Mr. Mayo thanked Commissioner Blazer and Commissioner Bull for requesting these letters and getting them to the Commission before today's meeting. He read the conclusion from the letter submitted by Mr. Mark R. Herring, Virginia Attorney General. "The National Marine Sanctuaries Act (NMSA) establishes NOAA's authority to designate marine sanctuaries. NMSA enables NOAA to provide for more stringent fishing regulations in a sanctuary than are provided by existing authorities." Mr. Mayo stated the PRFC would be considered an existing authority. In the Mallows Bay/Potomac River proposed sanctuary however, NOAA is not proposing to exercise that authority and indeed they have firmly stated that. "Thus, NMSA provides NOAA with the authority to supplement or displace the Commission's fishing regulations in the Potomac Sanctuary. While NOAA has the authority to regulate fishing in a sanctuary, it has not proposed to exercise that authority in the Potomac Sanctuary and has not taken the necessary predicate steps to do so. In fact, NOAA has disclaimed any intent to regulate fishing at all." Mr. Mayo explained should NOAA decide in the future to regulate fishing within the Potomac sanctuary, it would need the concurrence of the Governor of Maryland to proceed and this has also been stated by Mr. Orlando. "While NOAA has said that it does not expect the designation to impact any commercial or recreational fishing activities, some fishing gear is anchored to, or disturbs, submerged land and could damage the historical resources in the river. A fisherman may mistakenly do so and, in doing so, violate the strict liability provisions of NMSA.

#### **Maryland Assistant Attorney General, Emily A. Vainieri**

Ms. Emily Vainieri, Assistant Attorney General for the state of Maryland, stated she was here as a representative and council for the Maryland Department of Natural Resources. She read the conclusion portion of her letter submitted to Dave Blazer.

"The proposed designation of MPNMS does not regulate fishing. The proposed rule is focused on protecting the shipwrecks and associated maritime cultural heritage resources. The three proposed regulations do not prohibit any fishing activities. Any future changes to the scope of the designation or prohibited activities are subject to the federal public notice and rulemaking process."

Commissioner Blazer stated in law school they talk about state rights versus federal rights. He knows NOAA has certain fishing authority from the 3 mile to 200 mile limit. Here with this express authority that's in the National Marine Sanctuary Act, especially with the way the management plan is written, it kind of goes that they are giving up on that and they are going to let the states manage that. In fact, Maryland and Virginia both say that in the Attorney Generals' opinions that it's that responsibility. He doesn't think that they talked specifically about the PRFC and he questioned if the PRFC would be included in that as well.

Ms. Vainieri stated she did not look specifically at that question. PRFC has the Compact but those are Maryland coastal waters. Mr. Mayo stated the PRFC would only come into conflict if for some reason NOAA in the future thought we weren't carrying out our job properly or something like that. He doesn't sense that.

Commissioner Blazer stated that NOAA would have to go back and prove the PRFC, Maryland or Virginia weren't doing their jobs in relationship to managing fisheries and in relationship to the sanctuary. The way NOAA has laid out the management plan, they see everything as fine and they are advocating their fishing regulatory authority. Mr. Mayo agreed.

Commissioner Blazer then stated that we all worry about precedence and change. One of the big factors here is trust of government and to him NOAA says they are not going to do anything with commercial and recreational fishing. The trust value here is everyone is worried 5, 10, 15 years down the road if that is going to change. He is worried about that and hopes the original management plan will hold up. Ms. Vainieri noted that any changes to the management plan, the terms of designation, either adding new regulations, amending the definition of sanctuary resource or anything like that would need to start the public process and go through this entire process again. This is how the rule making process works. Mr. Mayo stated not only that, but if that were to happen, the Governor of Maryland can veto and has veto power over that.

Commissioner Bull explained the plan that's on the table doesn't impact commercial and recreational fishing in the Potomac River in any way. To do so, NOAA would have to come up with an entirely separate plan and start from scratch with all that it requires. Ms. Vainieri stated that is correct and because the definition of the purpose and need in the proposed documents and also because of the way NOAA has defined sanctuary resources very narrowly, that would be correct.

Mr. Gary noted in the Virginia Attorney General's letter he explicitly said that NOAA had the authority to regulate. He asked Ms. Vainieri if she agreed with that and she did.

#### Position Statements

Mr. Gary advised that the Commission has received letters from the Chesapeake Conservancy and Del. Margaret B. Ransone. The Chesapeake Conservancy is taking a different position and is an advocate in this process and outcome. Del. Ransone is opposed to the proposal. The third letter is from Congressman Rob Whittman who is also opposed to any of the sanctuaries being proposed and will be sending his thoughts to NOAA.

**PRFC Finfish Advisory Committee** – The committee agreed by consensus, 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.

**PRFC Crab Advisory Committee** – The committee agreed by consensus to support Alternative A and to oppose Alternatives B, C and D.

**PRFC Oyster/Clam Advisory Committee** – The committee unanimously passed a motion to oppose the designation of a National Marine Sanctuary in any part of PRFC jurisdictional waters, but would support a National Marine Sanctuary designation in Maryland jurisdictional waters of Mallows Bay.

**Virginia Watermen's Association** – JC Hudgins stated they are opposed, and stand by the Maryland and Virginia watermen on the Potomac and they stand by any opposition to any marine sanctuary going forward.

**St. Mary's Watermen's Association** – Chairman John Dean stated they are opposed to Alternatives B, C and D. Option A, if anything were to develop, stay in Mallows Bay proper.

**Charles County Watermen's Association** – Mr. Gary advised he has heard indirectly that they also support Option A. Member Andrew Eaton stated that is correct, and he is also speaking for himself to support Option A.

**Maryland Watermen's Association** – President Robert T. Brown stated they support Option A, because that is what was presented in 2014 at a meeting of MD DNR's Tidal Fish Advisory Commission, but is no longer an option.

**Potomac River Working Watermen's Association** – Richard Riche explained starting February 1, 2017 the association has met the first of each month, and currently they are in support of Option A. They would consider Mallows Bay proper if it was an option. The association has about 25 members and is growing. The next meeting is scheduled for April 6<sup>th</sup> at 7:00 p.m. in Callao, Virginia.

#### Public Comments

**Gail Kenson** – Regional Community Planning Liaison Officer for Naval District Washington. She is here on behalf of the Commanding Officer of Naval Support Activity South Potomac for Indian Head and Dahlgren. They appreciate the opportunity to give comments on the proposal that was presented today. They would like consideration that for any boundaries that are established, that they be established to ensure that there is no impact to the vital mission of South Potomac, both Indian Head and Dahlgren. Chairman Erskine asked if she supports a specific alternative. She stated not at this point that she is aware of. She was given this comment to present. She knows that the Navy is commenting on the proposals through the appropriate channels through NOAA and that we are cooperating.

**Dr. Kurt Knoerl** – He is a Virginia resident who has been doing research on shipwrecks in the Chesapeake Bay for over 20 years. He supports Alternative C. He thinks he can speak to

something that a lot of folks are not aware of, that in the field of underwater archeology it's been a growing consensus amongst professionals that we can not do our work without cooperation and local support of the residents. In his own work helping to train sport divers to access historic shipwrecks because we need them on our side. It's important to understand that the attitude of professional archeologists is that we want to work with the locals, that we have their interests at heart. The other hat he wears here is that he has been to Thunder Bay numerous times and has close friends who have started businesses that are only in existence because of Thunder Bay. One of the primary reasons their sanctuary has expanded is because local communities stated they want to be included in this region for economic reasons, and we need to keep that in mind that anything we can do to boost the economy in this region, especially Virginia, is important.

**Charlie Stek** – He has served as the Chair for Mallow's Bay Potomac River National Marine Sanctuary Steering Committee from the very beginning of this process. Our steering committee has been comprised of local citizens, land owners, fishing organizations, Maryland Bass has been part of this process and numerous organizations who have come together to submit the original nomination of this sanctuary. Listening to the comments today, we all share one thing in common, and that's the love of the water. Watermen rely on the water for their living and he relies on the water for his mental health. He would not be here today advocating for this sanctuary if he thought in any way that this would restrict traditional uses of the water. There's an unfortunate thing that you should be aware of, it's the term sanctuary. He thinks that scares people. That's a term that's in the statute and we can't change that. We would love to call this a National Maritime Heritage Area but that's not in our ability to do so. He pointed out the first sanctuary that was ever created was the USS Monitor off the coast of North Carolina, so it's a shipwreck sanctuary. Thunder Bay is also a marine sanctuary, a shipwreck sanctuary, not about fishing. Most of the opponents who came forward in the very beginning of this process objected to those sanctuaries because they thought somehow they were going to restrict traditional fishing activities. Many of those people are now the strongest supporters of those sanctuaries. He also pointed out there are two National Historic Trails that run from the mouth of the Potomac River all the way up to Washington DC: The Captain John Smith Chesapeake National Historic Trail; and the Star Spangle Banner National Historic Trail. These historic trails were created in 2006 and 2008. Nothing has changed as a consequence of those. You can still fish in those waters and there's no signs that say keep out. In many cases these have been a benefit to the water. Many of the watermen have benefited from some of the heritage tourism services that have come about. Finally he pointed out that we would all be worse off if this sanctuary were not created. We wouldn't have the economic benefits that come from the creation of sanctuaries. We are one of fourteen in the country. When he travels he looks for what has been designated as so important that it achieves a National designation. That's a tourism and economic opportunity. This is about educating our kids about the future and our history. We take the position on behalf of Mallow's Bay Potomac River National Marine Steering Committee to support Option C.

**Monica Schenemann** – Stated she was glad Dr. Knoerl referred to the USS Monitor Civil War Ironclad that sank off Cape Hatteras in 1862. She did some research on that and when they looked to expand the sanctuary, Commissioner Alan Burris stated specifically in the Virginia Pilot, "We are not going to take this chance again." She stated there was a problem. Commissioner Walter Jones of Dare County is fighting the overreach of regulations in the recreational and commercial fishermen fishing for these sanctuaries in their area, so please be

aware of that. She also stated that Bill Howeth is going to be sending a letter of opposition. His representative, Cathy Roberts, contacted Mrs. Schenemann today that the letter is on its way. Mrs. Schenemann feels like this is a threat to our state sovereignty and she feels it should stay out of Potomac River waters. Also, she has done research about the Lake Michigan site. A lot of the comments say why did NOAA disclose these rules, to hide the truth from the gullible. Just do some research on it, because there are some bad sides to it as well. Mrs. Schenemann stated she supports Alternative A.

**James Bowling** – Vice-chairman of the Finfish Advisory Committee stated at their meeting he made some points and was asked to type them up and present them to the Commissioners. He passed out the following:

PRFC Commissioners

Before approving NOAA's plans for a sanctuary in PRFC jurisdictional water, please request the following of NOAA.

1. NOAA, NMFS and P/MB sanctuary to recognize the Compact of 1958.
2. Adopt our laws, rules and regulations for PRFC jurisdictional waters of the sanctuary.
3. Follow all Compact Articles for PRFC jurisdiction.
4. Acknowledge that the PRFC is the fishery authority not MD DNR for PRFC jurisdiction.
5. MD and VA to be law enforcement for PRFC.
6. Sanctuary will not override authority of PRFC Compact of 1958. Nor NOAA, NMFS PRFC sanctuary adopt regulation, law, rules, etc., that will effect the fishery. They agree to abide by the Compact and regulations, laws, and rules adopted by PRFC in accordance with the Compact of 1958.
  - a. Including what gear type used, for example anchors.
7. Licensed fishermen/fisherwomen recreational or commercial will not be harassed, detained or harmed by a sanctuary authority, NOAA or NMFS while engaged in PRFC licensed fishery.
8. The PRFC will make all effort to minimize any effect to documented historical structures.

He pointed out that changes in the plan are to be made that through the state of Maryland and Charles County. The PRFC Compact states that changes can only be made by going through Maryland and Virginia Legislators. He referenced the Compact of 1785, Article thirteen "These articles shall be laid before the legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each state, never to be repealed, or altered, by either, without the consent of the other." He thinks if NOAA enacts a sanctuary as it is proposed, it goes against the Compact of 1958.

**John Neely** – Is speaking for himself. He is an independent businessman who has been self-employed for 37 years in Annapolis, Maryland. He is also a Commissioner on the Maryland Sport Fisheries Advisory Commission. He is speaking only for himself and is not representing the Commission. He will however reinforce that the Commission voted unanimously to endorse Alternative C. On Friday, he had a lengthy discussion with the Chairman of the Commission and he knows that they would endorse Alternative B to provide a smaller footprint. Mr. Neely is also on the Board of the Chesapeake Conservancy which has a presence in the five states of the Chesapeake Bay watershed. Because of the cultural and historical importance of the Mallows Bay site, the Conservancy with board members from those different states, have endorsed unanimously that Mallows Bay, in this case Alternative C, be endorsed and be adopted as a marine sanctuary. However, the President of the Conservancy has now come back and said if

Alternative B would be preferred because of the smaller footprint, the Conservancy would support that position. Finally, he is not a member of the Maryland Marine Trades Association. Their past President and their current Executive Director have instructed Mr. Neely to speak on their behalf saying that they endorse Mallow's Bay as a marine sanctuary, because it is good for economic development for Charles County, and more specifically for their membership along the Potomac River. Chairman Erskine asked if the Maryland Marine Trades Association supported a specific alternative. Mr. Neely stated, no they did not. They did endorse Mallows Bay as a marine sanctuary because of the economic development opportunity for their membership, but they did not take a specific position because they weren't asked for which alternative they preferred.

**Ken Hastings** - Board Member of the Mason Springs Conservancy is glad to see he is not the only one confused about what the size of the area should be. If he had to choose an alternative, he would go with Alternative D because he is looking for some federal dollars to come in. He knows that can not be predicted in the current climate, but we're not getting any federal dollars now to help Charles County's economic development. If we don't get any we are not any worse off than we are right now. Some questions have been asked how this will benefit commercial fishing. For years Maryland has had an arrangement with the Maryland Watermen's Association where various watermen who were interested in being tour guides would take courses and learn how to show people around the Chesapeake Bay. Certainly the bigger the sanctuary the more options you would have to do that kind of thing. He does not understand the argument of impacting the fishing. Either you accept that there is no impact or you do something if it changes. If the fishing isn't affected, who cares how much of the Potomac River is included. It is bazaar to him that we are having this drawn out discussion about impacts when you've had all the assurance you could possibly hope for that there won't be impacts and all the assurances about all the recourse you would have if there were impacts. The odds are there aren't going to be impacts and if that's the case, why do we care how much of the river is going to be a sanctuary. He sees a potential benefit there, we can't predict the future. He doesn't see a downside to making the sanctuary as big as it needs to be in order to maximize the benefits that we think will accrue at some point.

**Elgin Nininger** – The word sanctuary, we've heard it a lot here today. He's been a fisherman for 60+ years without a sanctuary and made out pretty well. That's the reason he wanted to say something with all of the back and forth of it not going to affect us and it is going to affect us. If we get a sanctuary, we are in it and that's it. We'll have to go with what the powers to be say about the sanctuary. Interestingly enough in yesterday's Washington Post there was an ad saying discover Quest World War Commemoration Weekend the ghost fleet of Mallows Bay. He called them this morning and asked the lady if he could come see the fleet in Mallow Bay. She said anytime, we're open from 8 to 5 everyday. His question is if this is already here, people can already do what they want, why are we going through all of this? Naturally, he would support Option A.

**Andrew Eaton** – He would like to caution that the advisory council that they speak of has no power. Just keep that in your minds as you make your decision. He did a little bit of research on general sanctuary regulations and one of them is an emergency regulation and he believes this is under the power of the Superintendent. "Where necessary to prevent or minimize the destruction



of, loss of or injury to a sanctuary resource or quantity or minimize the inherent risk to such destruction, loss or injury any and all subsequent activities are subject to immediate temporary regulations including prohibition.” He stated he support Option A.

**Richard Riche** – Working Watermen of the Potomac River. He is so glad that we have this Commission right here. This is very unique like he’s heard. All of us that are involved in this river on a daily operation, whether it be fishing, crabbing, oystering, recreational fishing, our concerns with pollution, whatever it may be in this river, we got this structure right here and all these people behind us. In spite of our differences, we work together all the time. To me this is a bad dream. He personally wishes he could erase your whole little office and go away. This is stuff we read about and see on television. Kind of reminds me of waking up in the morning. I’m from the county, always have been going to the dock or working in the woods or whatever it may be, I get those spider webs on me. You’re always going to have a few of them but now with NOAA coming in here, it’s going to be like this to get anywhere every time we get up because we have to contend with NOAA. I hope we can’t compare apples to apples with NOAA with these marine sanctuaries, but this is just like a poisonous snake as far as I can tell. To the sovereignty that I’ve heard about of this Potomac River Fisheries Commission, Virginia and Maryland, no we can’t say that was this designation or that designation, he’s absolutely right, but it was still a designation and everything he’s read and he’s told us out loud representing NOAA that ultimately they have the right to the regulation of the whole thing once it’s designated a sanctuary. I don’t feel like for our sovereignty and our unique group that we have here that doesn’t exist anywhere on the east coast that we can support anything but Option A. Thank you.

**John Morris** – I have held a commercial license in the Potomac River since 1968. My son is 45 and has held a commercial license he was 14. My grandson just turned 14 and he just bought got a crab pot license. My concern is not for me because I’m just about done, but my concern is for what they can do to my son and grandson if they can come in and change the regulations at any time and we wouldn’t have any say about it. The way this started out, it kind of looks like a “bait and switch”. They started off with Mallows Bay and now were up to 100 miles of the river. I’m for Option A.

**John Dean** – We’ve talked about a lot here today but the basic thing is we’ve got free access to this now. Everything here is free. We can go here any time we want, dive on it, kayak on it, whatever. As soon as they get into this, it’s going to be like Point Lookout State Park. You can’t get in there. They are going to charge you for every little thing. People are going to lose their properties on the shoreline. It’s going to be rhetoric to the watermen as well because down the road the administration will change. I will put it like it is. When you get the green beans going, we’re in trouble. We’re going to be doomed and that’s our biggest fear. They started off in one little place and now look at it. Where are they going to stop? We got the Sturgeon sanctuary coming right on the back of this. That was brought up by the Bay Foundation in La Plata. That’s scary. We are going to have to continually fight, fight, fight and you’re going to laugh at me, but we as watermen are starting to feel like the American Indian. Look what’s going on. We are being pushed and pushed and pushed and pushed. Where are we going to end up, in some museum somewhere? Thank you.

**Robert T. Brown** – President of Maryland Watermen’s Association – Once you turn it over to NOAA and it becomes federal, you never get it back. It’s completely gone. Why do we want to give up our sovereignty to them? That’s one thing. The other thing is a couple of years ago we wanted to get hand scraping. For us to get hand scraping, this Commission could not do it. They had to go through the Legislature in Maryland and Virginia and bills had to be written word for word exactly the same. If it wasn’t it wouldn’t go. If this Commission was to vote in favor of it, could they do that without going through Legislation in both states? He would like that looked into. Mr. Michael Mayo, legal council for the Potomac River Fisheries Commission stated I would say it does. Chairman Erskine stated the designation is not under the jurisdiction of PRFC at this point because they are talking about Maritime and Heritage Resources. That’s not under our jurisdiction and it’s not affecting recreational and commercial fishing, which is under our jurisdiction. Mr. Brown stated every five years with a management plan if it changes and it does affect the fishery, you have already given your rights to them if they oversee you. Chairman Erskine stated just so I’m clear, it does bring up an important point that if the management plan were to change that would have to go through another rule making process such as this and this Commission would then have another opinion. This is my understanding because it would be affecting natural resources at that time. Is that correct council? Mr. May stated yes and I would like to add on top of what he just said, if that were to happen also the Governor of Maryland would have to weigh in and approve or disapprove. He has the veto ability. Mr. Brown stated we are in favor of Option A and if ya’ll decide not to have none in here and if we stop it now, we won’t have to worry about stopping it in five years from now.

#### Commission Comments

Commissioner Rice questioned how this was going to be handled, wanting to know if the Commission was going to discuss this and take action right now. Chairman Erskine stated there is no requirement to take action. He stated this is a discussion, to have the information presented and hear public comments. If the Commission wishes to take a position then there would have to be motion and a vote. He feels this is a discussion after closing the public comment period.

Commissioner Bull stated he has heard all the comments and has read all the supporting documentation and the legal opinions from both states. It’s good to have a legal framework on which to evaluate this proposal. From what he’s heard, he would say if the proposal had any impact on commercial or recreational fishing, he would be the first in line to object, but that’s not what this proposal is. This proposal states that it will not impact commercial and recreational fishing in the Potomac River. He doesn’t see this as a “bait and switch”. Legally if this were to come into play, that’s an entirely new plan that has to be dealt with. He doesn’t see a problem with this proposal and he thinks it’s in the best interest to protect these historical resources. He does not have a problem backing alternative C if that’s what the Commission would like to do. He also would support not doing anything at this point because this plan does not affect commercial and recreational fishing in the Potomac River and that’s what this Commission is mandated to do. If it doesn’t impact, why do we have a say, why should we take a stand?

Commissioner Rice feels he has a distinct and direct purpose to carry out his job and his job is to ensure, enhance and protect the natural resources of the Potomac River. The Commission should

not take a chance on needing permission from an outside entity to do what the Commission has the right to do right now makes no sense to him. There is no way he can turn his back on the recommendations from every advisory committee the PRFC has. How can he sit here and go against them? He stated he's not going to. There comes a time when we have to say that we're making out just fine and we've been doing fine for a long time and we can keep on making out fine. He doesn't see any reason and no benefit in taking any chance in diluting our means in protecting what is rightfully ours and what is rightfully ours is written in the Compact. He is prepared to make a motion at this point.

Commissioner Blazer added that he agrees with Commissioner Bull and Commissioner Rice noting that we've heard good comments today. There is a lot of concern. He appreciates Commissioner Bull's comments that right now this won't impact the PRFC or its constituents as we go through. He would hate to miss an opportunity that our other constituents are looking forward to. We may not have heard a lot of support here today but there is a lot of support for this initiative. When he looks at this from his PRFC position, he understands the concerns, but he wouldn't want the Commission to take a strict and total opposition to this opportunity. He felt the concerns and comments heard here today are on the size of the proposal. Those four proposals are not set in stone and we can accept a hybrid in some capacity. He is not sure that we as a Commission need to move forward with significant comments. We need to reflect what our advisory committees have said, but leave the size of the sanctuary area up to NOAA and we continue to be a part of that process. He is more worried about what's going forward and that we are engaged in that process. The concept of the MOU is very positive making sure if the designation goes through that the Commission is engaged with it if it impacts PRFC jurisdictional waters.

Chairman Erskine thanked the public for their comments that were provided today. There has been a great deal of research and information provided from the public and from NOAA on this proposal. One thing is for sure that there is support for this and there is opposition for this. A lot has to do with the terminology of the word "sanctuary". To him the word sanctuary means stay out. Sanctuaries are more or less in perpetuity. Unfortunately some of this gets hung up in terminology. If there were to be a designation, he would be in favor of a much smaller designation alternative because you can expand the designation area if warranted as opposed to going with a sanctuary that is 100 square miles. He sees some benefit in a designation that would protect historical and maritime resources. This is very different than what we normally do here at the Commission. This was brought to us in a good faith gesture to see if there would be support for this designation even though it's not specifically our jurisdiction. He thanked everyone for the process that has taken place. If the Commission chooses to make a motion that is fine and if we choose not to at this point that's okay too, because this doesn't specifically impact us at this point in time. He would entertain a motion or other comments from the Commissioners.

Commissioner Langley stated what strikes him the most is the majority of the opposition that we hear are from the families whose livelihoods are dependent on it. The scary part is for the people who solely depend on the water. He stated it's a shame that something can't be incorporated in the proposal to protect the watermen's rights for now and the future. On the flip side, he sees the benefits of the education, the cleaning of the river and the benefits that could possible come

from this type of designation. He's not sure that all of the options have been exposed in terms of the footprint. If a motion is put forward today, it will be one of the most difficult decisions he's had to make being on the Commission so far.

Commissioner Rice stated no matter what happens here today, we are only a small part of this process. What we decide here today is not going to yay or nay this project. It simply puts forth our position. He is not going to go home without giving his best shot to what he feels his position is.

***A motion was made by Commissioner Rice, seconded by Commissioner Hall that the Potomac River Fisheries Commission is not in favor of any sanctuary designation within its jurisdictional waters. That doesn't include Maryland waters. He requested a roll call vote be taken from his left to his right.***

Commissioner Fleming stated no one here today will have any doubt what side of the fence and where Commission Rice stands on this issue. Commissioner Rice stated he lives and works with these people. He went to the hearing in La Plata, Maryland and he's heard the comments here today. These people that butter his bread are against this proposal and the people that are for it are not too friendly to commercial watermen at times. Commissioner Fleming stated we can call for the vote but if the motion fails the Commission should entertain consensus and "punt" here. He doesn't see why we have to take a position at this time, especially when all the comments haven't been received yet. There will be more developments in the weeks coming and we'll be even more informed.

***A roll call vote was taken and with 3 in favor (Rice, Hall and Kellum) and 5 against (Blazer, Fleming, Bull, Langley and Erskine) the motion fails.***

Commissioner Bull stated he would like to get a consensus from the Commission that we leave this be for the time being on the grounds that this does not require a position from the Potomac River Fisheries Commission at this point. He suggested to leave this be and if further information comes along that indicates that the Commission should take a stance on a particular option then we can do that when it's necessary.

Commissioner Fleming questioned if the comments heard here today will go on the record as public comments to NOAA. Mr. Orlando stated the Commission could decide if they want to submit them to NOAA and if the Commission chooses to do so they will go up on the website and comments received. Commissioner Fleming stated at this point they are internal comments unless we send them to NOAA before March 31<sup>st</sup>.

Chairman Erskine stated they are not official comments to NOAA. He reminded everyone that if you have specific comments they should be submitted to NOAA before the deadline.

Commissioner Blazer questioned what the Commission would like to do in terms of the comments that were received here today. He thinks it's a good idea to forward them on to NOAA. Mr. Gary stated the Commission would need to direct staff to do so. Commissioner Fleming stated he would suggest taking the comments and submit them to NOAA as the

Potomac River Fisheries Commission Public Comments received at the March 2, 2017 Commission Meeting. Chairman Erskine directed staff to do so and there was no opposition from the Commission.

Commissioner Kellum suggested that staff produce information on other sanctuaries that may have had management issues towards other fisheries. Chairman Erskine stated he doesn't think this will come back to the Commission again for consideration. The Commission is just one of many opinions, and right now it doesn't affect the Commission jurisdictionally. This process is going to continue to move forward. He again recommended for everyone to make their comments known to NOAA. He doesn't feel this will be an item of discussion at the June meeting.

Mr. Gary explained after the public comment period closes there is an ~ year long process where NOAA will consider everything that's been submitted. He doesn't see the Commission discussing this at the June meeting. He doesn't feel there would be any new information available at that time. Commissioner Kellum stated with that being said she will research that on her own. Chairman Erskine stated if it should come before the Commission, we could ask staff to research that and have it to present at that time.

Commissioner Rice noted that taking no action today suggests that the Commission's opinion is that we don't see this as a threat or conflict at this time. Chairman Erskine explained that taking no action indicates that the proposed national marine sanctuary intent is to protect maritime and heritage resources which is outside the jurisdiction of the Potomac River Fisheries Commission.

Commissioner Rice stated he wants the record to reflect that he does not agree.

Commissioner Langley questioned if the suggestion of alternative sizes to the designated area would be handled through public comment. How would an additional option be presented moving forward? Chairman Erskine explained the four proposed areas were presented for public comment. During the public comment period, the public has the opportunity to submit additional alternatives and NOAA would be responsible to answer those submissions.

Mr. Gary advised that alternative proposals should be submitted to NOAA and describe the basis for that. That would be the emphasis for consideration by NOAA. Chairman Erskine stated if a Commissioner would like to suggest an alternative then that could go on the record here and could be submitted to NOAA as part of the public comments. For example Mallows Bay Proper was brought up and if the Commission wanted to suggest that as an alternative option then that could be taken to NOAA and submitted as a suggested alternative.

Commissioner Rice stated if any Commissioner who voted against his motion would like to bring it back again, that was exactly the intent of his motion. He has no problem with the designation being in Mallows Bay.

**Executive Session: 12:20 p.m.**

***A motion was made by Chairman Erskine, seconded by Commissioner Hall and unanimously passed to go into Executive Session to discuss personnel and legal matters.***

**Reconvene: 1:35 p.m.**

*A roll call vote was taken to confirm that only legal and personnel matters were discussed in Executive Session. All Commissioners agreed.*

**Crab Harvest Report**

Mrs. Cosby presented the crab harvest report through November to the Commission noting it is a preliminary summary. The report shows 79,301 bushels of hard crabs, 16,046 pounds of peelers and 1,203 pounds of soft crabs harvested. These numbers are higher than the last several years. In most cases the current month was higher than previous months. She felt it was a successful crab season.

Commissioner Fleming noted that landings for 2016 almost doubled what was harvested in 2013 and 2014. The question is was there anything that the Commission did from a regulatory standpoint result in there being higher numbers. We'll never know the answer to that but we should take credit.

**Order 2017-06 – 2017 Crab Season**

Mrs. Cosby presented the Order explaining that this is setting the crab season for 2017. Last year the crab season was extended through December 10<sup>th</sup>. This Order would revert the crab season back to the traditional season of April 1<sup>st</sup> to November 30<sup>th</sup>.

*A motion was made by Commissioner Hall, seconded by Commissioner Blazer and unanimously passed to adopt Order 2017-06 as presented.*

**ORDER #2017-06  
(replaces #2016-12)**

**2017 CRAB SEASON**

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**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: – December 1 through March 31 next succeeding.  
Mature females –In addition to the season see Order 2016-11 for bushel limits.
- (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 #2017-06 shall become effective March 31, 2017 and remain in effect until further notice.

### **Oyster Harvest Report**

Mrs. Cosby noted this is a preliminary report and staff is waiting for outstanding reports to be received in order to reconcile them with the buyer's reports. To date there have been 6,969 bushels harvested. There were 67 tong licenses, 82 hand scrape and 13 registered buyer licenses sold. The bulk of the harvest came from Jones Shore (2,810 bu.) for hand scrapes and Cedar Point (2,451 bu.) for tonging.

### **Oyster Strategic Planning Panel Report – January 4, 2017**

Mr. Gary advised this was primarily an informational meeting where three sets of data were presented to the panel. Presentations were given by Tom Parham, MD DNR on dissolved oxygen & salinity, Jay Lazar, NOAA Chesapeake Bay Program on benthic surveys and Dr. Elizabeth North, UMCES on mid-lower Potomac hydrodynamics & larval transport modeling. The panel finished up by having a discussion on sanctuaries. Once they received that data they were able to start talking about what the Commission had previously tasked them with doing, which is start looking for area(s) to designate as sanctuaries. Currently there are three sanctuaries, none of them are providing ecological services of any significance. The idea is to move and identify other alternative areas for sanctuary and ecological services. This committee did not get into that discussion and moved it to their next meeting scheduled for March 29<sup>th</sup>.

### **Update on Oyster Management Programs (OMR & RNOHP)**

**OMR Program** - Mrs. Cosby advised the OMR participants met on January 30<sup>th</sup>. A motion was made and passed to open Ragged Point on March 13<sup>th</sup> and allow harvest from sunrise to 3:00 p.m., with a 20 bushel daily limit per licensee, and a boat decal required for each boat to identify the boat as a participant. A motion was made and passed to go with Shopcove Aquaculture, and spend \$100,000 for as much spat on shell as possible, use tripliod eyed larvae, and make sure the contract had guarantees in it. The contract has been worked out and is being signed this week. Another motion was made to consider Sheepshead Bar as a backup bar for the OMR for the future.

A conference call was held on February 13<sup>th</sup> to discuss the oysters that were surveyed on Ragged Point on February 7<sup>th</sup>. It was decided that the oysters were ready to harvest. Ragged Point opened on March 13<sup>th</sup> and currently the boats are catching their limits.

The financial records have not been updated because the renewal season just ended. The OMR program has approximately \$110,000 in the reserve account and that does not include the funds from the current renewal season that just finished up.

**RNOHP** - This program planted on Green Hill last year and this year Gum Bar will be planted. Staff is going to see if Great Wicomico seed is available, if not, James River seed will be used again. That planting should take place around the end of May.

## **NRG Energy Funding Update**

Mr. Gary was delighted to advise the Commission that after two years, numerous meetings and many rewrites of the proposal, NRG has awarded the Commission \$500,000 at \$100,000 a year for the next five years. He will email the final document and made the Commission aware that this money does come with strings attached. In order to qualify for the money, the Commission had to demonstrate that we would be putting oysters in the water and would achieve nutrient reduction benefits. Dr. Miller worked with staff in developing the documents that made this possible. The plan will allow for some flexibility to harvest on these areas, but will be restricted equal to or less than natural mortality. Staff will work with our scientific advisors on how to achieve that. Mr. Gary suggested taking the plan to the OSPP and have them start to determine a recommendation and bring that back to the Commission for implementation of those funds. NRG would like to see some oysters on the river bottom in 2017. Mr. Gary advised that he is going to reach out to a few businesses to inquire about additional leverage funding. Chairman Erskine stated he was glad to hear Mr. Gary was moving in that direction.

Commissioner Fleming gave special thanks to Tucker Brown for the idea of getting other users of the river to kick in funding. When Mr. Gary was hired he took this on and achieved a task that is huge for this Commission. The Commission thanked Mr. Gary for all his time and effort in making this happen.

Regulation VIII - Mrs. Cosby advised that there has been a request from the participants of the OMR program to be allowed to work on weekends to help harvest the oysters. Shopcove wants to start planting oysters the last week of April. The participants were polled and the eligible participants are 100 percent in favor of asking the Commission for permission to harvest on the weekends. The Regulations for the OMR program give the flexibility to grant this if the Commission so chooses.

Mr. Mayo stated he has reviewed this with staff and feels this is okay to do.

Commissioner Bull questioned if there would be any impact on law enforcements ability to enforce this and would there be any confusion with the public oyster fishery thinking they can harvest on the weekends. 1<sup>st</sup> Sgt. Bell of Virginia Marine Police felt there would be no impact on law enforcement.

Chairman Erskine stated when he spoke to a few of the participants they had concerns that smaller boats would not be able to get out there and work because of the weather, but the way this is managed every participant has to use their 100 oyster tags before more can be issued. Therefore, no one can monopolize the harvest. Mrs. Cosby agreed.

Chairman Erskine advised that Shopcove wants to use Ragged Point to plant, and he wants the participants to get in there and clean up the area before the planting takes place. Mrs. Cosby explained currently Ragged Point is open for harvest, and they hope to clean up the bar then Shopcove will come in and plant. Chairman Erskine stated we run the risk of planting seed oysters on top of big oysters if we don't clean up the bar. Mrs. Cosby agreed. Chairman Erskine stated that sounds like mismanagement of where you would be planting seed oysters on top of



market oysters. Mrs. Cosby explained the reason for the weekend request would be to get the area cleaned up before planting. Mr. Mayo stated this is their investment and that's what they want.

***A motion was made by Commissioner Hall, seconded by Commissioner Bull and unanimously passed to support allowing the watermen to work on Ragged Point as part of the OMR program on the weekends through April.***

Richard Riche commented that Bobby Boarman recommended Sheepshead for the next OMR site. He attended the Oyster/Clam Advisory Committee and feels that through general consensus of that committee, the OMR participants can't just go grab an oyster bar without due process. It seems that program doesn't have that. This needs to be taken into consideration before that's done.

### **2016 Finfish Harvest Report**

Mrs. Cosby presented the preliminary commercial finfish landings for 2016. She noted they are ranked in order of pounds. She noted the salinity in the river was very high for 2016 and that may have contributed to higher amounts of some species of fish being harvested. Blue catfish surpassed 1.5 million pounds harvested. Several species were slightly higher than in 2015. She noted that spot was very low, but overall it was a good season for the commercial fishery. Overall, the total poundage for 2016 was 5,131,925 pounds with a dockside value of \$5,281,827.

Commissioner Bull noted that he likes seeing the Blue Catfish and Northern Snakehead landings increasing.

Commissioner Fleming stated that is a 26 percent increase compared to 2015 landings. The question becomes, when does it level off? It's almost scary at the rate it's growing. Of the 27 species that are reported, 20 of them are below the historic levels and should be of great concern to us.

### **Fish Trot Line Revenue**

Mrs. Cosby explained the structure of the license was changed for the 2016 to allow up to 5 fish trot lines for \$50. There were 76 licenses sold for a total of \$3,755. The revenue went down because of this. Prior to 2016, the license fee was one line for \$50, so there were fewer licenses sold as a result of that. For the 2017 season, the fee structure was changed back to what it originally was.

### **Finfish Advisory Committee Reports**

January 25, 2107 – Mr. Gary presented the report noting the main topic of discussion was Mallows Bay. The committee made a motion that passed with 13 in favor that NOAA will consider and execute any regulation and/or in cooperation with the state of Maryland, Charles County, the Potomac River Fisheries Commission and other Federal authorities as appropriate. They then requested a meeting as soon as information on additional shipwreck locations can be

cross referenced with PRFC fixed fishing gear GPS coordinates.

They received updates on ASMFC regulations regarding Striped Bass, Atlantic Menhaden and Summer Flounder. A motion was made to support Maryland's appeal for relaxation of current recreational and charter requirements for Striped Bass.

The committee received updates on Blue Catfish inspections from the USDA, Atlantic Sturgeon and Cow Nose Rays. They discussed the upcoming Rt. 301 bridge replacement and concerns they may have for water quality and the natural resources.

February 22, 2017 – The committee met to continue further discussions on Mallows Bay. There were not enough members present to make formal motions to the Commission so they met and made recommendations under consensus instead. They had a mapping exercise to show where the shipwrecks were located and how they may or may not affect any of the fixed fishing devices in the Potomac River. After a lengthy discussion, a recommendation was made that should Mallows Bay be designated as a National Marine Sanctuary, the boundaries should be restricted to Maryland jurisdictional water from Smith Point to Sandy Point.

Committee members received updates on Blue Catfish USDA inspections, Dominion Coal Ash and the addendum dealing with Striped Bass through ASMFC to consider liberalizing coastwide commercial and recreational regulations.

### **Order 2017 -03 – 2017 Recreational and Charter Fishing Season, Size and Catch Limits**

Mr. Gary notified this is to update the Order to reflect the Summer Founder and Black Sea Bass season, size and catch limits. Summer Flounder will increase 1" with a minimum size limit of 17" and a catch limit of 4 per person. Black Sea Bass is status quo from last year.

Commissioner Blazer stated there is still some debate going on with NOAA and Maryland is holding out. Commissioner Bull agreed concerning Black Sea Bass and VMRC is waiting for the final outcome. The stock is in good shape coast wide, but there is concern because of the way the recreational catch numbers were tabulated, and it may require a slight reduction in harvest.

Mr. Gary noted based on this new information he feels the Commission should place a TBA on Black Sea Bass until the final numbers come from NOAA. Commissioner Fleming stated he says the same thing every year that Black Sea Bass will not be caught in the Potomac River this year and feels all of this is a nonissue. Mr. Gary explained Commissioner Fleming is right but there are a large number of juveniles in the river.

Commissioner Bull stated his is intrigued by Commissioner Fleming's statement and agrees this really isn't an issue. Commissioner Blazer noted that NOAA doesn't know what is going to happen at this point and he would suggest not changing anything until we hear back from them. He would be concerned with being in compliance if we adopt what is proposed. He suggested bringing the Order back at the June meeting for Black Sea Bass and adopting the Summer Flounder regulations today.

*A motion was made by Commissioner Blazer, seconded by Commissioner Fleming and unanimously passed to adopt Order 2017-03 with a TBA for Black Sea Bass and an open season, 17" minimum size limit and 4 per person creel limit for Summer Flounder.*

**ORDER #2017-03 "Revised"**  
(replaces #2017-03)

**2017 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	9" min.	25 per person
Atlantic Croaker	Jan. 1 - Dec. 31	9" min.	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 <sup>(1)</sup>	TBA	TBA	TBA
Bluefish	Jan. 1 - Dec. 31	8" min.	10 per person
Catfish: Bullhead	Jan. 1 - Dec. 31	6" min.	No limit
Blue	Jan. 1 - Dec. 31	No limit	No limit
Crappie	Jan 1 - Dec. 31	No limit	10 per person
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 .....	.....
Snakehead <sup>(2)</sup>	Jan. 1 – Dec. 31	No limit	No limit
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" min.	4 per person
Tautog	Jan. 1 - Dec. 31	14" min.	No Limit
Weakfish	Jan. 1 - Dec. 31	12" min.	1 per person
Yellow perch	Jan. 1 - Dec. 31	9" min.	10 per person

- (1) – **Black Sea Bass** – The tail filament is not to be included in the total length of the fish.
- (2) – **Snakehead** – It shall be unlawful to possess a live snakehead fish (of the family *Channidae*) only so long as necessary to **kill the fish** as specified in Order 2010-06.

**AND, IT IS FURTHER DECLARED AND ORDERED:** this Order #2017-03 "Revised" shall become effective March 30, 2017 shall supersede and repeal Order #2017-03 and remain in effect until further notice.

**Order 2017-04 – 2017 Commercial Fishing Season, Size and Catch Limits**

Mr. Gary advised the same issues as the recreational hold true for this Order. Summer Flounder quota is shared with Maryland and Virginia, and the PRFC quota share is set at 21,962 pounds with a minimum size limit of 14” and an open season. The landings for Summer Flounder are well below the historic and average levels. We have the same situation with Black Sea Bass as in the previous Order. Staff recommends a TBA for that species until the June Meeting.

*A motion was made by Commissioner Blazer, seconded by Commissioner Fleming and unanimously passed to adopt Order 2017-04 with a TBA for Black Sea Bass and an open season, 14” minimum size limit and a quota of 21,962 pounds for Summer Flounder.*

**ORDER #2017-04 “Revised”  
(replaces #2017-04)**

**2017 COMMERCIAL  
FISHING SEASON, SIZE AND CATCH LIMITS**

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

<u>Species</u>	<u>Season</u>	<u>Size Limit</u>	<u>Catch Limit</u>
American Eel	Jan. 1 - Dec. 31	9" min.	No limit
Atlantic Croaker	Jan. 1 - Dec. 31	No limit	No limit
Black Bass (Large or Small Mouth)	C L O S E D		
Black Drum	Jan. 1 - Dec. 31	16" min.	1 fish
Black Sea Bass <sup>*(1)</sup>	TBA	TBA	TBA
Bluefish*	Jan. 1 - Dec. 31	No limit	No limit
Catfish: Bullhead	Jan. 1 - Dec. 31	6" min.	No limit
Channel	Jan. 1 - Dec. 31	8" min.	No limit
White	Jan. 1 - Dec. 31	10" min.	No limit
Blue	Jan. 1 - Dec. 31	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 fish
River Herring	C L O S E D		
Shad (American or Hickory)	C L O S E D (See Order #2013-01 for By-Catch Provisions) ...		
Snakehead	Jan. 1 - Dec. 31	No limit <sup>(2)</sup>	No limit
Spanish Mackerel*	Jan. 1 - Dec. 31	14" min.	No limit
Spot	Jan. 1 - Dec. 31	No limit	No limit
Spotted Sea Trout	Jan. 1 - Dec. 31	14" min.	No limit
Striped Bass	P U B L I S H E D S E P A R A T E L Y		
Sturgeon (Atlantic or Shortnose)	C L O S E D		
Summer flounder**	Jan. 1 - Dec. 31	14" min.	21,962
Tautog	Jan. 1 - Dec. 31	14" min.	No limit
Weakfish***	July 28 - Dec. 31	12" min.	50 lbs / day
White perch	Jan. 1 - Dec. 31	6" min.	No limit
Yellow perch	Jan. 1 - Dec. 31	9" min.	No limit

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

(2) – **Snakehead** – It shall be unlawful to possess a live snakehead fish, (of the family *Channidae*) only so long as necessary to **kill the fish** as specified in Order 2010-06.

**\*BE IT FURTHER DECLARED AND ORDERED:** the commercial fisheries for black sea bass, bluefish, and/or Spanish mackerel, have daily catch limits (landing limits) imposed subject to ASMFC notification and may be

closed immediately by Order of the Commission upon notification by both Maryland and Virginia that the ASMFC/MAFMC established commercial harvest quota for such species has been landed and the state waters are closed for the harvest of such species.

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

**\*\*\*BE IT FURTHER DECLARED AND ORDERED:** that subject to the provisions of the ASMFC Weakfish Management Plan pound netters are permitted to possess no more than 50 lbs. (1 bushel) of legal size weakfish from February 15<sup>th</sup> through July 27<sup>th</sup>. The allowance must be less than or equal to the poundage of other lawfully harvested species.

**AND IT IS FURTHER DECLARED AND ORDERED:** this Order #2017-04 "Revised" shall become effective, March 30, 2017 shall supersede and repeal Order #2017-04 and remain in effect until further notice.

### **Striped Bass Tag Exchange Program Update**

Mrs. Cosby passed out the commercial Striped Bass landings table by gear type for the 2016 commercial fishing season. All gears were under their quota for the season and gill net is ongoing. The Striped Bass Tag Exchange Program (SBTEP) had 88 people in the program. There were 495 tags exchanged through the program, and of that, 279 of the tags were used.

### **Online Recreational Sport License Sales Proposal(s) Update**

Mr. Gary stated the objective is to provide a capability for the PRFC to sell recreational licenses through our website. It is difficult to find a 3<sup>rd</sup> party vendor to set up a site to handle this. He has talked to a few companies and Brandt comes highly recommended, but we are apparently too small of an entity for them. He did find two other companies recently that he will follow up on.

### **ASMFC Issues**

Summary of the ASMFC Winter Meeting – January 31<sup>st</sup> – February 2<sup>nd</sup> – Mr. Gary stated that Striped Bass was the highlight of the week. There was a dramatic motion that passed when Maryland put an addendum on the table to provide relaxation to the cut backs that were implemented in 2015. That motion passed by 1 vote. That will come back to the spring meeting for further consideration. The PRFC Finfish Advisory Committee supported Maryland because we share similar characteristics in our recreational and charter seasons. He stated this is still an uphill battle that needs to play out. Commissioner Bull stated that Virginia also supported Maryland's efforts concerning Striped Bass. Commissioner Langley thanked Commissioner Bull for his support. Mr. Gary noted that this addendum would affect all constituencies and all fisheries not just recreational and charter. The relaxation would be across the board.

The other species of interest is Summer Flounder and the discussions still continue. Maryland and Virginia have more of an interest in this than the PRFC.

### **Second Quarter Disbursements and Cash on Hand**

Mr. Gary presented the second quarter disbursements (October through December) for the operational budget totaling \$159,266. He noted the budget for 2017 is less than it was for 2016

because we stopped one of the two subsidies this year. The budget for 2016-2017 is \$811,375. We are at 39 percent of the budget half way through the year. Nothing sticks out that would raise flags at this point. He noted that the third HVAC unit blew up about two weeks ago. They cost about \$10,000 to replace. We have received two bids and we will start working on that as soon as possible. Money will need to be moved around to accommodate that. The other item to note is the vehicle purchase. There will be a report later on that. A report of the cash-on-hand was presented showing \$736,432.23 as of March 16, 2017. Mr. Gary advised that he is contemplating setting aside funds for the 4<sup>th</sup> HVAC unit in the upcoming budget.

*A motion was made by Commissioner Fleming, seconded by Commissioner Langley and unanimously passed to adopt the second quarter disbursements and cash on hand as presented.*

### **Report of the Nominating Committee (Rice and Hall) and Election of Officers**

Commissioner Hall stated that she and Commissioner Rice met and they would like present the following as the slate of officers for 2017:

Chairman – Dennis Fleming  
Vice Chairman – John Bull  
Secretary – Lynn Kellum

*A motion was made by Commissioner Blazer, seconded by Commissioner Langley and unanimously passed to accept the slate of officers for 2017.*

Chairman Fleming took over the meeting from that point.

### **Advisory Committee Vacancies**

Mr. Fleming announced the advisory committee vacancies are due to expire on March 31<sup>st</sup>. All members have agreed to serve another term if appointed. There are three vacancies, one of the Crab Advisory Committee for a Virginia lower river peeler potter and two on the Oyster/Clam Advisory Committee. Roger Hill has submitted a nomination form to fill the vacancy for a Virginia Commercial Oysterman. The other vacancy is for another Virginia Commercial Oysterman. Chairman Fleming approved the nominations and directed staff to prepare the letters of appointments.

### **Appointment of the FY 2017-2018 Budget Committee**

Commissioner Blazer and Commissioner Kellum volunteered to serve as the budget committee. Chairman Fleming accepted that and asked that they budget for a 4<sup>th</sup> HVAC unit.

### **PRFC Committee Vehicle Committee Report**

Chairman Fleming stated that he and Commissioner Hall served on that committee. A green F150 Ford pickup truck was purchased. This truck is user friendly and staff has already delivered fish to VIMS in efforts to help free up Mr. Gary's time.

### **Operations Policy Manual Update**

Mr. Gary advised this is mainly housekeeping to clean up the manual. He went through some of the edits and asked for the Commission's approval of the manual. Chairman Fleming asked what prompted these updates. Mr. Gary explained that staff tries to do this once a year with himself and Claudette being the principal collaborators.

*A motion was made by Commissioner Erskine, seconded by Commissioner Kellum and unanimously passed to accept the operations manual as presented.*

### **Any Other New Business**

George Fish asked the Commission to extend the oyster season to the end of April for the public fishery mirroring what they did for the OMR Program. Mr. Mayo explained that seasons are generally not extended for weather reasons. The OMR Program is an investment program which operates under a separate set of regulations.

Chairman Fleming reviewed what has been harvested from Jones Shore noting 46 bushels have been harvested. Mr. Fish stated that's correct because they all died.

### **Delinquent Seafood Catch Report Hearing**

Edward B. Lowery – Present - Mr. Lowery was called to the hearing for failure to file seafood catch reports for his hand scrape license. This is his first offense and reports were filed one week prior to the hearing. Mr. Lowery stated it was an honest mistake on his part. Staff recommendation is one year of probation. Mrs. Cosby stated there were inconsistencies on his reports that have since been corrected. She worked with him and his partner and they were very good about getting their reports straight and were very cooperative in the process. *A motion was made by Commissioner Erskine, seconded by Commissioner Blazer and unanimously passed to place Mr. Lowery on probation for one year.*

Michael C. King – Absent - Mr. King was called to the hearing for failure to file seafood catch reports for his fish trot line license. This is his first offense and reports were not filed one week prior to the hearing. Staff recommendation is one week suspension on all licenses and one year of probation. Based on the policy guidelines, *a motion was made by Commissioner Erskine, seconded by Commissioner Blazer and unanimously passed to suspend all licenses until Mr. King appears before the Commission.*

William M. Maske – Present until 2:10 p.m. - Mr. Maske was called to the hearing for failure to file seafood catch reports for his fish trot line license. This is his first offense and reports were not filed one week prior to the hearing. Staff recommendation is one week suspension on all licenses and one year probation. Mr. Gary advised that Mr. Maske was here for the hearing earlier but could not stay any longer. We informed Mr. Maske that the proceedings would start around 1:00 p.m. He left at 2:10 p.m. to open his business. He told Cathy that his reports were late because his boat sank and he was out of work for a few months. He forgot to fill out the reports while he wasn't working. Cathy advised that he turned in his reports today. Chairman Fleming stated it's not that he didn't appear; it's that he couldn't stick around. The Commission needs to figure out how we want to handle this.

Commissioner Erskine felt since he was here, the Commission should move forward this case as if he were here.

***A motion was made by Commissioner Erskine, seconded by Commissioner Bull and unanimously passed to accept staff's recommendation of one week suspension and probation for a year based on the fact that he did file his reports and is currently up to date.***

Mr. Gary questioned if the Commission wanted staff to decide on what week to impose the suspension. Chairman Fleming agreed and advised staff to review his history and implement the suspension accordingly.

Jeffrey S. West – Absent - Mr. West was called to the hearing for failure to file seafood catch reports for his hand scrape license. This is his first offense and reports were not filed one week prior to the hearing. Staff recommendation is one week suspension on all licenses and one year probation. Mrs. Cosby stated Mr. West called on March 9<sup>th</sup> and was very disrespectful to Cathy. The phone call was turned over to Mrs. Cosby. He confirmed he oystered the month of October, didn't catch much and quit. He never sent a written report in. He talked several times with Mr. Gary and Mrs. Cosby regarding this. He was advised to send in his reports and he refused. He said he would not drive here for today's meeting. He stated he was assured there were plenty of oysters, but he could not find them so he contends he was "robbed" of the oyster license money. He said we should keep our oysters and to have a nice day. ***A motion was made by Commissioner Bull, seconded by Commissioner Hall and unanimously passed to suspend all licenses until he appears before the Commission.***

Christopher M. Yates – Absent - Mr. Yates was called to the hearing for failure to file seafood catch reports for his fish trot line license. This is his first offense and reports were not filed one week prior to the hearing. Staff's recommendation is for one week suspension and one year probation. ***A motion was made by Commissioner Bull, seconded by Commissioner Blazer and unanimously passed to suspend all licenses until he appears before the Commission.***

Ray E. Gaskill, III – Present - Mr. Gaskill was called to the hearing for failure to file seafood catch reports for his crab pot license. This is his second offense and reports were filed prior to the hearing. Staff's recommendation is one month suspension on all licenses and one year probation. Mr. Gaskill apologized for being here and wasting the Commission's time. He said it was his fault and he crabbed for two months. He thought he had checked that he would no



longer be crabbing in the Potomac. He was received the late notices, but never called to see what was wrong. He asked for leniency because his wife has lost her job and he really needs to work. Commissioner Bull stated this is the second time he's appeared for the same thing and he's asking for a break. Mr. Gaskill stated he would not be here again for this reason. ***A motion was made by Commissioner Erskine, seconded by Commissioner Bull and unanimously passed for a 2 week suspension (staff's discretion) on all licenses and one year of probation.***

Mrs. Cosby advised this next session of people were called to the hearing for failure to pay their oyster tax, failing to file their oyster reports on time or filing inaccurate oyster reports. She handed out an activity report that contained individual harvest information of everyone that worked on Lower Cedar Point. She advised this was confidential information and it could not leave the hearing room. There was a daily call in required for this and most complied, with the exception of a few. Mrs. Cosby called everyone by phone who was delinquent in their reporting. They have been called in for the hearing today.

Kenneth L. Clark – Present, but left - Mr. Clark was here earlier and had to leave to pick up children from school. Chairman Fleming stated these meetings can go on all day, but feels the Commission went out of its way to inform these people there was a time frame in which they need to report. He feels the Commission needs to be careful of the situation where someone comes to the meeting, but doesn't stay for the hearing. Commissioner Bull feels that it's up to the person to make arrangements to be here for the day and not for as long as it's convenient for them. He has no sympathy for them. Chairman Fleming stated it should be noted that the Commission has already granted leniency to others here today who have come and gone.

Mrs. Cosby stated she has been trying to reach Mr. Clark since December. The office did receive his report, but there is a discrepancy between the buyers report, his written report and the number of bushels he called in. She assumes he owes tax money on some of these oysters. The Regulation states that penalties and interest can be imposed on uncollected oyster tax. His taxes owed are 86 days late totaling \$8.06. She is unable to reach him by phone and needs direction from the Commission on how to proceed. He was here today but did not resolve anything before he left.

Commissioner Bull questioned if this is a small tax issue, a bigger issue of falsifying harvest reports or both. Mrs. Cosby felt it was both. Commissioner Bull asked if staff has a recommendation. Mr. Gary stated there is a common issue with these people, but no set recommendation for any of them. From staff's position we want everyone to understand the process moving forward most importantly going forward. Commissioner Bull stated this is not about \$8, this is about inaccurate reporting and this gentlemen's irresponsibility to address the issue. Mr. Mayo thought there may be a solution under Reg. IV, Sec. 2(c) which prohibits them from renewing any licenses pending any outstanding balances and appear before the Commission. Mr. Gary agreed with Mr. Mayo and stated that would be staff's recommendation.

***A motion was made by Commissioner Erskine, seconded by Commissioner Kellum and unanimously passed to accept Mr. Mayo's recommendation to not renew any licenses until all balances and reports have been paid and accurately filed and he appears before the Commission.***

George W. Fish – Present - Mrs. Cosby stated Mr. Fish has an oyster report that he sent in for December that did not match what the buyers reported. He stated he must have kept a few bushels and forgot to pay the tax. Mr. Fish owed \$6 for 3 bushels of oyster. He paid that on March 7<sup>th</sup> which was 3 months late. If interest is applied, an additional \$2.12 needs to be paid. His report was corrected and resolved. He might want to explain what happened.

Mr. Fish stated he probably didn't call in the days he didn't work. He tried to keep up on the call in's as best he could and was not aware that he had to call in everyday even if he didn't work on Cedar Point.

Chairman Fleming questioned how the communication was between staff and the oystermen who purchased licenses. Becky Butler advised there was no information sheet provided and they were told that a mandatory call in was to be done if they were working on Lower Cedar Point. Mrs. Cosby stated they received a copy of the Order that stated a daily call in was mandatory.

Mr. Gary advised staff's recommendation would be one year of probation. We're not looking to punish people but to educate them on how this process needs to work.

***A motion was made by Commissioner Blazer, seconded by Commissioner Erskine and unanimously passed to place Mr. Fish on probation for one year.***

Edward F. Nolan, III – Present - Mrs. Cosby noted that Mr. Nolan sent reports in for the weeks of December 17<sup>th</sup> and the 31<sup>st</sup> two months late. His reports were incomplete and staff is not sure what oyster bar he was working on. He reported selling his oysters to Chesapeake Sea Fruit and they say they did not buy oysters from Mr. Nolan on week ending 12/17. She feels the reports he turned in two months late is inaccurate, incomplete and not true. Mr. Nolan stated he believes he sold to Maryland Seafood in December. Mrs. Cosby advised Mr. Nolan that he needs to be on time with his reports because waiting so long to turn them in is how incorrect information gets reported. Mr. Nolan stated he is dyslexic and is not good with paperwork. Mrs. Cosby stated she would help him with his reports if he wanted to come into the office. She stated the tax money he owes for both weeks is \$23.64 with late fees and interest. He felt the oysters were sold to Maryland Seafood. He said if he owes the money, he can pay it today to clear up the mistake.

Chairman Fleming asked for staff's recommendation. Mr. Gary stated he's disappointed in what he's hearing. He stated staff is willing to work with Mr. Nolan, but he doesn't seem very compliant. He understands he has a learning disability but for him to be able to participate in the fishery, Mr. Nolan has to report accurate information and it needs to be on time. Staff's recommendation is probation for one year, but Mr. Gary hopes that Mr. Nolan understands what is involved with probation; otherwise we will have the same situation again.

***A motion was made by Commissioner Kellum, seconded by Commissioner Hall and unanimously passed to place Mr. Nolan on probation for one year.***

Commissioner Bull explained to Mr. Nolan that it was his responsibility. That he has to find a way to make it work and he has to make sure the office has the reports on time and that they are accurate. Staff is willing to help, but it's up to Mr. Nolan to make sure he gets this done, especially while he is on probation.

James R. Messick – Present - Mrs. Cosby reported Mr. Messick came into the office on March 16 to correct his reports. There were two days that were reported incorrectly; he has corrected them and paid the oyster tax that was owed. An additional \$2.45 is due for late fees and interest. He was cooperative when he came in to fix things. Mr. Messick stated it was his mistake. He misplaced two oyster tickets and later found them. As soon as he found them, he corrected the situation with Mrs. Cosby.

Mr. Gary stated that since Mr. Messick was cooperative, staff's recommendation would be to waive probation and there would be no penalty for Mr. Messick.

***A motion was made by Commissioner Erskine, seconded by Commissioner Kellum and unanimously passed to accept staff's recommendation of no penalty.***

Robert L. Raley – Absent – Mrs. Cosby advised that Mr. Raley did not pick up his certified letter calling him to today's hearing. He works for Lance Lumpkins and is also his designated worker for gill nets and crab pots. There were issues with Mr. Raley not calling in daily, inaccurate reports and late reports. Basically his reports are a mess. Mrs. Cosby stated her staff recommendation would be to suspend until he appears, but she's not sure what the Commission wants to do with him being a designated worker for a company.

Chairman Fleming stated Mr. Mayo's recommendation under the Regulations was unable to renew any licenses, not suspension. Mrs. Cosby noted the only licenses in his name are the oyster licenses; the other licenses he works are under Chesapeake Sea Fruit Company, owned by Lance Lumpkins. Chairman Fleming explained the situation to Mr. Mayo who was out of the room. The concern is how to deal with Mr. Raley being a designated worker. Ms. Butler explained that this is a unique situation and instead of suspending the license, the Commission would have to suspend Mr. Raley.

Mrs. Cosby stated problems with his reports are worse than any of the other people that appeared today. She stated she could send him another letter requesting him to appear at the June Commission meeting. Chairman Fleming stated until then, staff's recommendation is not to allow him to renew any licenses until he pays his taxes, files accurate reports and appears before the Commission. There is discussion of suspending him from doing work for other licenses as a personal entity. Mr. Mayo was unsure if the Commission could suspend him personally without going through the Regulation Book.

Commissioner Bull stated what is being asked is to suspend his fishing privileges so he has no access to fish commercially in the Potomac River. Ms. Butler stated that is correct and until he resolves everything he needs to. Chairman Fleming stated the Commission is not sure they have the authority to do so. In the interest of time, he asked for a motion.

***A motion was made by Commissioner Erskine, seconded by Commissioner Langley and unanimously passed to not renew Mr. Raley's licenses until all taxes and reports are reconciled. He needs to appear at the next Commission meeting.***

Chairman Fleming stated that Mrs. Cosby was right and everything she said would happen, did happen. He feels they got the better end of the Commission because we were unprepared as to how to deal with them. This was torturous and cumbersome. We are going to need to do better with some type of guidelines where this just comes off automatically.

Norman D. Conley – Present - Mr. Gary advised Mr. Conley was called to the December Commission meeting for failure to file his seafood catch reports for his crab pot license. This was Mr. Conley's first offense and his reports were not filed prior to the December hearing. At that time his licenses were suspended until he appeared before the Commission. Staff's recommendation is a one week suspension on all licenses and one year of probation.

Mr. Conley stated that he normally renews his license and puts it on inactive status. His wife came to the office and renewed the license and he was unaware that she placed it on active status where reports would need to be sent in. He works out of town and normally places the license on inactive status. Mrs. Friend advised everything has been corrected and he is up to date on his reports.

***A motion was made by Commissioner Erskine, seconded by Commissioner Kellum and unanimously passed to place Mr. Conley on probation for one year.***

Derrick L. Dent – Present - Mr. Gary advised that Mr. Dent was called to the December Commission meeting for failure to file his seafood catch reports for his crab pot license. This was Mr. Dent's first offense and his reports were filed prior to the December hearing. At that time because he was absent, his licenses were suspended until he appeared before the Commission. Staff's recommendation is one year of probation.

Mr. Dent explained that he was not familiar with doing the reports because his grandfather use to do them. He got them confused with Virginia and has since corrected the situation.

***A motion was made by Commissioner Erskine, seconded by Commissioner Bull and unanimously passed to place Mr. Dent on one year of probation.***

Carlos N. Culbertson, Sr. – Present - Mr. Gary advised that Mr. Culbertson was called to the December Commission meeting for failure to file his seafood catch reports for his hook and line license. This was Mr. Culbertson's first offense and his reports were filed prior to the December hearing. At that time because he was absent, his licenses were suspended until he appeared before the Commission. Staff's recommendation is one year of probation.

Mr. Culbertson apologized for missing the December meeting. He wrote it down wrong on his calendar and showed up at the office on the 9<sup>th</sup> instead of the 10<sup>th</sup>.

***A motion was made by Commissioner Erskine, seconded by Commissioner Kellum and unanimously passed to place Mr. Culbertson on probation for one year.***

**Date and Place of the Next Meeting**

The next Commission meeting is scheduled for Thursday, June 1, 2017 at 9:00 a.m. in the John Thomas Parran hearing room in Colonial Beach, Virginia.

**Adjourn**

The meeting adjourned at 3:50 p.m.

Respectfully submitted,

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Dennis C. Fleming, Chairman

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Phil L. Langley, Secretary