

Minutes  
**CHESAPEAKE BAY COMMISSION**  
**Montross, Virginia**  
**September 6-7, 2012**

**Thursday, September 6**

The Chesapeake Bay Commission held its third quarterly meeting on Thursday and Friday, September 6-7, 2012 at Stratford Hall, Montross, Virginia.

The following Commission members and staff were in attendance:

Admiral Tim Alexander  
Patricia Buckley, PA DEP  
Delegate John Cosgrove  
MD DNR Assistant Secretary Frank Dawson  
PA Citizen Representative Warren Elliott  
Representative Garth Everett  
MD Citizen Representative Bernie Fowler  
Senator Emmett W. Hanger, Jr.  
Delegate James Hubbard  
Delegate Lynwood Lewis  
Representative Ronald Miller  
Assistant Secretary Anthony Moore  
VA Citizen Representative John Reynolds  
Senator Frank W. Wagner  
Senator Mike Waugh  
Delegate John F. Wood, Jr.

**Staff:**

Ann Pesiri Swanson  
Bevin Buchheister  
Jack Frye  
Marel Raub  
Paula Hose

**Members not in attendance:**

Senator Michael W. Brubaker  
Senator Brian Frosh  
Delegate Scott Lingamfelter  
Delegate Maggie McIntosh  
Senator Thomas "Mac" Middleton  
Representative Mike Sturla

**Thursday, September 6, 2012**

**FIELD STUDY TOUR:**      *Living Resources on the Rebound: Reinvigorating Ecology, Economy & Culture*

Members assembled at Stratford Hall and boarded a bus to travel down the Northern Neck of Virginia to tour businesses engaged in crab and oyster harvesting and processing and oyster aquaculture.

While underway, the meeting was called to order by Chairman Hanger who provided an overview of the day and expressed his thanks to the various scientists and fisheries managers that would be accompanying

the Commission and providing specifics throughout the day. He acknowledged Delegate Margaret Ransone who represents the surrounding counties and thanked her for her assistance with the planning for today's tour. Jack Frye, Virginia Director for the Commission shared that while significant effort is underway throughout the Bay watershed to reduce nutrient and sediment loading that the overall goal of the Bay Program Partnership is the restoration of the living resources. Executive Director, Ann Swanson welcomed everyone and outlined the topics and speakers for the day and our expectation for discovering actionable policy options in support of fisheries management and living resource restoration and protection. She introduced Lynn Fegley, Assistant Director for Estuarine and Marine Fisheries, Maryland Department of Natural Resources and Rob O'Reilly, Chief, Fisheries Management, Virginia Marine Resource Commission and they described the improved status of the blue crab stock and the positive impact of the recent management actions taken by Maryland and Virginia.

Ann Swanson then introduced the fisheries managers for Maryland, Virginia and the Potomac River. Tom O'Connell, Director of Fisheries Service, Maryland Department of Natural Resources, Jack Travelstead, Commissioner of the Virginia Marine Resources Commission and A. C. Carpenter, Executive Secretary of the Potomac River Fisheries Commission spoke about the hard choices the jurisdictions had made that helped result in the significant recovery of the blue crab stock over the past 5 years. Crab sanctuaries, season limits and winter dredging moratoria supported by strong recruitment have driven the rebound of blue crabs within the Bay. Most importantly, better information about male to female ratios and size distribution is leading scientists and managers to suggest additional management measures aimed at reducing the large annual shifts in recruitment and stock levels in order to enable a more consistent, reliable fishery.

At Bevans Oyster Company in Kinsale, Virginia, Senator Hanger introduced Delegate Ransone who led members on a tour of her family's oyster shucking and packing facility. She introduced Ronnie Bevans, owner of Bevans Oyster Company and A. J. Erskine, Aquaculture Manager and Field Scientist for Bevans Oyster Company and Cowart Seafood Corporation and President, Virginia Seafood Council. They provided an overview of the Bevans' operation and history and explained how the industry was managing private and public oyster grounds to minimize the negative impacts of oyster disease and predation. Delegate Ransone then introduced Doug Jenkins, Vice President of the Twin Rivers Watermen's Group who shared his lifelong experiences as a waterman and the importance of good water quality to the industry.

Due to strong winds the planned boat tour with the Virginia Marine Resources Commission was cancelled so members boarded the bus and headed to Cowart's Seafood Corporation, Lottsburg, Virginia, where A. J. Erskine explained the differences between growing oysters on reefs using "spat on shell" versus "individual oyster" production using floats and cages, and the importance of good water quality to the hatchery operation. While oyster aquaculture is expanding oyster availability in Virginia and Maryland waters, a significant quantity of oysters are still imported for the shucked oyster market and to keep the remaining shucking houses operating. Chairman Hanger thanked Mr. Erskine for his presentation and assistance in organizing this tour.

The meeting then moved outside where members heard from Mr. Travelstead, Mr. O'Connell and Mr. Carpenter about the characteristics of the oyster fishery from the viewpoint of the fisheries managers. It was clear that the oyster industry is still struggling and that oyster aquaculture is critical to support continued growth. Everyone expressed concerns about the "oyster shell budget" and about the ongoing problem of availability of clean shell to restore reefs and for setting spat. Since oysters generally are not able to live more than 3-4 years in the Bay waters before succumbing to disease, oyster shells are thin and relatively small and stocks of shells are slowly diminishing.

Dr. Roger Mann, Ph.D., Professor of Marine Science and Director of Research and Advisory Services at the Virginia Institute of Marine Science, provided an overview of the science behind the oyster recovery and management and continuing challenges resulting from oyster diseases. He emphasized that while natural selection may eventually result in oysters that are less susceptible to disease, that the overall

oyster population in the Bay and tributaries is only about 1% of historic abundance and recovery would be a lengthy process. The loss of natural “hard bottom” to sedimentation and the flattened nature of the relatively few manmade reefs created additional uncertainty for any naturally produced oyster larvae to find hard surfaces on which to set.

Next, Peyton Robertson, Director of the National Oceanographic and Atmospheric Administration’s Chesapeake Bay Program Office and Chair of the Bay Program Sustainable Fisheries Goal Implementation Team (GIT) explained the work of the GIT to develop metrics for determining the success of native oyster reef restoration. These metrics are critical because the President’s Executive Order established a goal of restoring oyster populations in 20 tributaries of Chesapeake Bay by 2025. With metrics now developed, restoration activities can be more consistently judged and evaluated. Restoration of multiple reefs in a single tributary will be expensive with estimates for one tributary in Maryland approaching \$27 million dollars.

Chairman Hanger then recognized Mr. Thomas Kellum of W. E. Kellum Seafood who expressed appreciation for the interest of the Commission and noted the need for continued funding and research. His family has been in the seafood business in Virginia for multiple generations. Chairman Hanger recognized Mr. Luke Cowart, Owner of Cowart’s Seafood and thanked him for his hospitality and for allowing the Commission to visit his operation.

The members and attendees concluded the day with a discussion about possible policy actions needed to better support and strengthen the restoration and protection of the crabs, oysters and fisheries in general. Multiple ideas were put forth including: increased penalties for unauthorized introduction of non-native species; broader authority for fisheries management agencies to manage by regulation; increasing the period of maximum license revocation for illegal fishing and poaching; and funding needs to support needed research and restoration efforts. Members then boarded the bus to return to Stratford Hall.

While en-route, members heard from Robert Beal, Director of Interstate Fisheries, Atlantic State Marine Fisheries Commission (ASMFC). Mr. Beal spoke about the recent listing of the Atlantic sturgeon as an “endangered” species and that the ASMFC was petitioning the National Marine Fisheries Service to request a delisting based on flawed scientific information. He also addressed the current status of the Menhaden fishery and possible management actions up for approval in December 2012 to implement the catch limits set in November 2011.

Peyton Robertson then gave an update on the Blue catfish which is an invasive species and also recognized as a growing sport fishery. Mr. Robertson shared concerns that the rapid population increase and continuing expansion of the range could threaten other managed fish species since the catfish are high level predators of other fish and are also cannibalistic. Improved management options are under consideration to help control the population and limit further range expansion.

Chairman Hanger thanked everyone again for their presentations and participation during the tour and expressed his appreciation for those that helped organize the tour and speakers. Upon arriving at Stratford Hall members debarked to prepare for the reception, with appetizers provided by Kim Huskey, Executive Director of the Virginia Seafood Council, followed by dinner at Stratford Hall.

### **Friday, September 7**

#### **BREAKFAST DELEGATION MEETINGS**

Chairman Hanger welcomed everyone and introduced Congressman Robert Wittman, representing the 1<sup>st</sup> District of the House of Representatives. Congressman Wittman, who lives nearby on the Northern Neck, spoke briefly about the federal budget impasse and the 2012 Farm Bill. Each state then held delegation meetings over breakfast.

#### **CHAIRMAN’S WELCOME & UPDATES**

Chairman Hanger formally welcomed our newest member, Sen. Frank W. Wagner, from the 7<sup>th</sup> Senatorial district in Virginia Beach.

The Chairman then asked for approval of the minutes of the May 3-4, 2012 Commission meeting. The minutes were approved.

The Chesapeake Bay Commission annual audit has been completed with no negative findings and approved by the Executive Committee. Members voted to accept the audit results. Members will be provided a copy upon request.

### **Chesapeake Bay Executive Council Meeting**

Chairman Hanger reported on highlights from the Executive Council Meeting held on July 9, 2012 at Gunston Hall in Virginia where the EPA reported that all the jurisdictions were on-track with their efforts to reduce nutrient and sediment pollution under the Bay TMDL. There was significant discussion during both the public meeting and private luncheon concerning the 2012 Federal Farm Bill activity and the Chesapeake Rivers Landscape Collaborative Project under the Land and Water Conservation Fund. The CBC was recognized several times during the meeting for the valuable information provided by our Economics of Trading Report published in May, 2012.

### **Federal Farm Bill**

Pennsylvania Director, Marel Raub summarized activities and concerns related to the developing 2012 Farm Bill. Core programs extended by the “continuing resolution” do not include funds for the Chesapeake Bay Watershed Initiative (CBWI). The Senate passed a five year Farm bill in June and the House Committee on Agriculture passed its version in July but it has not come to the House floor for a vote.

### **Chesapeake Rivers Landscape Collaborative**

Virginia Director, Jack Frye explained the project which seeks additional funding for land conservation in federal FY 2014 under the Land and Water Conservation Fund. The project is titled, “Chesapeake Rivers Landscape Collaborative” and was submitted by the National Park Service with 30 support letters from various organizations including three Bay states. Mr. Reynolds added some specifics concerning the proposal, noting that the sites under consideration were in Virginia, Maryland and Delaware and could be expanded to sites in Pennsylvania. Pat Buckley expressed her interest and support for the project to be expanded into Pennsylvania.

### **Factoring Land Conservation into the TMDL**

Executive Director, Ann Swanson provided an update on the Commission’s project investigating how land conservation might contribute to meeting the water quality requirements of the Chesapeake Bay TMDL. This effort is the next step building upon past CBC land conservation work and has four stages. The first stage to determine support for the concept within the Clean Water Act has been completed. A small workgroup of land conservation professionals was then selected and will meet on September 20 to develop options. Stage three will involve refining available options that will then be shared in stage four with EPA and all the jurisdictions. If options are considered viable, then the jurisdictions and EPA could adopt those appropriate into implementation plans.

Frank Dawson mentioned that the jurisdictions are currently working on their draft offset policies which are due to EPA in November and will be finalized in 2013. This land conservation information may be an important contribution to those policies and the timing should allow incorporation.

### **Manure to Energy**

Maryland Director Bevin Buchheister updated the Commission on the continuing efforts to implement manure to energy projects. She is on the advisory board of the Farm Manure To Energy Initiative which is focusing on implementing small, on-farm energy projects that use excess poultry litter in Virginia,

Maryland, Pennsylvania and Delaware. Chairman Hanger spoke about the recent trip of Commission representatives to Ireland to learn about on farm technologies for poultry litter heating systems. Presentations during the trip also included water monitoring technology, turning plastics into diesel fuel, special floor mats for dairy cows, better dairy forage management and the use of windmills.

Ms. Buchheister described staff efforts to clarify EPA's commercial and industrial solid waste incineration rules and the boiler maximum available control technology rules that will classify poultry litter, when burned for energy production, as a waste or a fuel. This is important because if the litter is classified as a waste the emissions monitoring and operational requirements will make this too costly for on farm use. Delegate Ron Miller expressed a hope that the rule would allow for producers to join together to collectively provide their litter to a single generator and still have the litter qualify as fuel.

## **LIVING RESOURCES: Linkages between land use and fisheries habitat**

### **Findings in Maryland**

Chairman Hanger introduced Dr. James H. Uphoff, Jr., Program Manager for Fisheries, Habitat and Ecosystems at the Maryland Department of Natural Resources. Dr. Uphoff spoke about levels of development within small watersheds and the direct impact on local fisheries. His many years of research showed that positive impacts resulted from the application of high levels of agricultural best management practices and negative impacts resulted from increasing development and impervious surfaces. His research is showing a clear link between land treatment and larval fish survival. He expressed a concern that while the striped bass fishery is a national fishery with the stock coming from the nursery areas of the Chesapeake Bay, land development is controlled locally and, therefore, local management will ultimately decide the fate of this fishery. He made it clear that planning and zoning is fisheries management.

Additional comments were made concerning the fairly recent employment of higher levels of low impact development practices as well as expanding riparian buffers and other activities as we "green" urban landscapes. Dr. Uphoff explained that these efforts were too recent for their impacts to be recognizable as yet within the research. Senator Wagner expressed his concern that while localities were now charging stormwater utility fees to better manage their stormwater runoff and provide more controls that he was concerned these funding streams were merely being used to offset previously existing funding streams rather than provide additional resources for stormwater management. Senator Waugh mentioned the importance of continued funding for the agricultural BMP's but also raised concerns over the application of lawn fertilizers and the management of road salt in winter. It was noted that the Commission has already been working on the lawn fertilizer issue and both Maryland and Virginia have passed laws reducing nitrogen and phosphorus applications. Chairman Hanger asked staff to look into the road salt policies and determine if additional policy action was necessary to protect the resources.

### **Findings on the Susquehanna**

John Arway, Executive Director of the Pennsylvania Fish and Boat Commission, presented information about the decline of the smallmouth bass fishery in the Susquehanna River. This historically significant smallmouth bass fishery has in recent years seen significant disease outbreaks and fish kills. Studies have shown there are numerous stressors involved including higher bacteria levels in the water, low dissolved oxygen, problems with the pH, conductivity and temperature and new evidence of contamination by endocrine disruptors. Arway noted that the economic benefits of fishing and boating in Pa., with 3.4 billion spent on fishing and boating per year, should compel the state to take action to protect and restore this fishery. The Fisheries Commission has requested the Pennsylvania Department of Environmental Protection to list the water as impaired which would then lead toward a TMDL for the river and specific actions help protect the smallmouth bass fishery.

### **De-brief of Thursday's Field Study Tour:**

Chairman Hanger summarized several policy options for potential fisheries legislative actions that emerged from the previous day's field tour on the Northern neck of Virginia. Ideas presented included the

needs of both Virginia and Maryland and the jointly managed Potomac River. He expressed his desire that the Virginia and Maryland delegations would meet between now and the November Commission meeting to identify specific legislative actions to address these fisheries concerns. The Chairman suggested that MD and VA coordinate on the Potomac specific legislation and if possible prepare an update for the November CBC meeting.

## **NUTRIENT TRADING**

### **Review and Status of Trading Programs in Maryland, Pennsylvania and Virginia**

Evan Branosky, Water Quality Associate with the World Resources Institute, gave a summary of the Maryland, Virginia, and Pennsylvania trading programs. He explained that purpose of trading was to reduce costs and accommodate growth. He noted that the Commission's Economics of Trading Report supported the likelihood that trading could reduce costs. Mr. Branosky raised two policy issues that are not yet resolved which are: how to demonstrate permanence of offsets, and how to determine the trading ratio to factor in uncertainty in agricultural BMP performance. He explained that EPA's is developing technical memoranda addressing specific trading topics and that, depending on how the state program was developed (i.e., legislation, regulation, policy, guidance), legislative action could be required for state programs to align. He noted that trading could deliver the greatest cost savings by including MS4s (Municipal Separate Storm Sewer Systems) with assigned loading caps. Senator Waugh said that he likes the idea of trading but expressed concern that it was too complicated for farmer participation in Pennsylvania. Chairman Hanger commented that third party aggregators could make it less complicated for individual farmers.

Chairman Hanger thanked Mr. Branosky and asked Commissioners to review the comparison tables and RTI report.

## **NEW BUSINESS**

No new business was brought before the Commission.

## **ADJOURN**

The meeting adjourned at 12:15 P.M. The next meeting of the Chesapeake Bay Commission will be held at the Chesapeake Hyatt in Cambridge, Maryland on November 8-9, 2012.