

In the
Supreme Court of the United States

October Term, ~~1957~~ 1958

No. 11
12, ORIGINAL

COMMONWEALTH OF VIRGINIA

Complainant

v.

STATE OF MARYLAND

Defendant

MOTION FOR LEAVE TO FILE BILL OF
COMPLAINT AND BILL OF COMPLAINT

J. LINDSAY ALMOND, JR.
Attorney General of Virginia

✓ KENNETH C. PATTY
Asst. Atty. General of Virginia

C. F. HICKS
Asst. Atty. General of Virginia

no McC. G. FINNIGAN
Of Counsel

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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Now comes the Commonwealth of Virginia, by its Attorney General, and moves the Court for leave to file the Bill of Complaint submitted herewith. The Commonwealth of Virginia seeks to bring this suit under the authority of Article III, Section 2, Clause 2 of the Constitution of the United States.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia

STATEMENT IN SUPPORT OF MOTION

The purpose of this litigation is to resolve the controversy between the Complainant, The Commonwealth of Virginia, and the Defendant, the State of Maryland, growing out of the actions of the State of Maryland in attempting to unilaterally abrogate the Compact of 1785 between the Commonwealth of Virginia and the State of Maryland, and in attempting to amend the concurrent laws governing fishing, oystering and crabbing in the Potomac River and to

enforce said amendments to the law without the same having been first concurred to by the Commonwealth of Virginia.

Complainant seeks to restrain the State of Maryland from violating the provisions of the Compact of 1785 between the Commonwealth of Virginia and the State of Maryland, and Complainant further seeks to restrain the State of Maryland from attempting to enforce any laws on the tidal portion of the Potomac River regulating fishing, oystering and crabbing which have not been concurred in by the Commonwealth of Virginia as provided for in the Compact of 1785, and to further restrain the State of Maryland from violating or interfering with any rights secured to the Commonwealth of Virginia or any of its citizens by the Compact of 1785.

Since the ratification of the Compact of 1785 by the Commonwealth of Virginia and the State of Maryland, fishing, oystering and crabbing in and on the Potomac River have been jointly regulated by the officials of the Commonwealth of Virginia and the State of Maryland acting under authority conferred by and in conformity with concurrent laws enacted by and concurred to by legislatures of both States. The session of the General Assembly of the State of Maryland begun and held in the City of Annapolis on the 2nd day of January, 1957, and ending on April 1, 1957, enacted an Act, designated as Chapter 766 of the Acts of the General Assembly of Maryland of 1957, approved by the Governor of Maryland on April 15, 1957, to become effective on June 1, 1957, repealing Chapter 1 of the Acts of Assembly of Maryland of 1785, said Act was the ratification by the State of Maryland of the Compact of 1785, which enactment of Chapter 766 of the Acts of Assembly of Maryland of 1957 constitutes an attempt by the State of Maryland to unilaterally abrogate the Compact of 1785 and an attempt to deny to the Commonwealth of Virginia and

its citizens the fishing, oystering, crabbing and property rights vested in the Commonwealth of Virginia and its citizens by the Compact of 1785. Accordingly, it is believed that the rights of the Commonwealth of Virginia and its citizens can be protected only by a decree of this Court granting the relief prayed for in the Complaint.

It is respectfully submitted that the motion for leave to file the Bill of Complaint should be granted.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia

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STATE OF MARYLAND

Defendant

BILL OF COMPLAINT

The Commonwealth of Virginia, by its Attorney General, brings this suit against the defendant, the State of Maryland, and for its cause states:

I.

The jurisdiction of this Honorable Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II.

The tidal portion of the Potomac River flows along the boundary between Virginia and Maryland from the District of Columbia to the Chesapeake Bay, a distance of one hundred and three (103) miles. All of the property along the southern shore of the Potomac River is located in Virginia and citizens of Virginia owning this property are

vested with full riparian and other rights in the Potomac River under the provisions of the Compact of 1785 between the Commonwealth of Virginia and the State of Maryland. (See Exhibit "A," Map of Potomac River)

III.

The origin of the State of Virginia was through three several charters granted by James I of England to the Virginia Company. Those charters bore respective dates of 1606, 1609 and 1613. They were granted to two colonies designated therein as the London (the First) Colony and The Plymouth or Bristol (the Second) Colony.

By the grant of 1609, the First Colony received the territory in Virginia and America, between 34° and 41° of north latitude; the second extended between north latitude 38° and 45° .

It is thus apparent that the granted territory overlapped between the 38th and 41st degrees.

By the grant of 1609, the "First" Colony, the present Virginia, was fixed at 200 miles, in each direction north and south from Point, or Cape, Comfort, and 100 miles along the coast of both seas; said territory extending from "sea to sea."

By the grant of 1612, this territory was enlarged to include that within said seas for a distance of 300 leagues into each sea.

IV.

Charles I in 1632 granted to Caecilius Calvert, the second Lord Baltimore by described point-to-point boundaries, and not by degrees of latitude, the territory (in extent about 120 x 130 miles) comprising the present state of Maryland. The grant was, in fact and upon its face, without warrant in fact or in law, a part of the territory then be-

longing to the Virginia Company by virtue of the Crown grants aforesaid. The first Lord Baltimore, George Calvert, was a staunch supporter of Charles I, along with Wentworth, Earl of Strafford. The circumstances of the grant were that George Calvert, theretofore granted "Avalon," in the far North, found the climate too rigorous, visited Jamestown, was entranced with its hospitality; and begged Charles I for a part of the Virginia Territory. This, to the extent set out in the above charter, his son, the Second Baron was granted, George Calvert having died.

Virginia, from the nature of her grant, became a Crown Colony; Maryland a Palatinate.

Later diminution of Virginia Territory—not necessary to be gone into here—occurred through the British-French Treaty of 1783, and the Northwest Grant by Virginia—1787-8.

V.

In the year 1776 the Declaration of Independence was signed by the respective States. They thereupon became vested with the rights and powers theretofore exercised by England, and impressed with her duties.

In 1778, the Articles of Confederation between the thirteen states became in process of adoption. Virginia was one of the first signers. Maryland signed in the year 1781.

Prior to the Compact here involved, disputes had arisen, and continued, regarding the respective rights of Virginia and Maryland. Virginia insisted, in some of these, that Maryland had no title to any territory under the 1632 grant, because the granted territory belonged already, and then, to Virginia. In others, that, in any event, the Yarbrough-Calvert line of 1668, was inaccurate, and deprivatory of Virginia rights. In others, that the grant to Calvert was upon false premises, in that at least a part thereof was

already under Virginia colonization; in still others, that, as to the Potomac, the rights of Virginia extended to the north, or Maryland shore. These claims were controverted by Maryland.

By her constitution of 1776, Virginia, apparently gratuitously, abandoned her claims to the territory of the Calvert grant of 1632, except insofar as she had rights of complaint regarding boundaries between the states.

So much of that constitution as relates thereto is brief; and is quoted below:

“The territories, contained within the charters, erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomac and Pokomoke, with the property of the Virginia shores and strands, bordering on either of said river and all improvements, which have been, or shall be made thereon.”

VI.

Disputes as to boundaries continued down to the time of the so-called Black-Jenkins arbitration of 1877. That arbitration was confirmed by Virginia (Acts 1877-78, Chapter 246, approved March 14, 1873); and by Maryland (Acts 1878, Chapter 374, approved April 1, 1878). It was consented to by the 45th Congress, by Public Law No. 99, approved March 3, 1879.

The Black-Jenkins Award is set forth in extenso herewith, as exhibit “D” with this Bill.

The question of Potomac boundary has engaged the attention of this Court, since adoption of the Black-Jenkins

Award, in several cases; notably *Morris v. U. S.*, 174 U. S. 196, and *Maryland v. Virginia*, 217 U. S. at P. 45-46: *idem*, P. 577. The Culpeper Grant of 1673 (afterwards reaffirmed by James II in 1688 as an obligation of his brother Charles I) is referred to in *Morris v. U. S.*, *supra*. It may be referred to here. It does not, however, pertain to Maryland, being a grant of land entirely outside that territory, granted her in 1632; and embracing that land known as the Northern Neck in Virginia, lying between the Potomac and Rappahannock Rivers thereof.

It appears, in conformity with Black-Jenkins and the above authorities, that the rights of Virginia are immutably fixed, and territorily, extend to the low water mark along the Virginia, or south shore of the Potomac River.

VII.

The sovereign states of Virginia and Maryland became members of the United States, as signatories to the Constitution of the United States, which became effective upon March 4, 1789. Prior to the adoption of the Constitution, and while, as aforesaid, sovereign members of the Confederation, the said states, upon mutual consideration and for impelling reasons, entered into the Compact here designated "The Compact of 1785."

That Compact was formally adopted by the high contracting parties, as will appear from the copies of same hereto appended as exhibits "B" and "C."

To be noted is the fact the said Compact, in its original form, embraced thirteen articles or sections. Of these, Sections 1-6 inclusive, 9 and 12, were superseded by the adoption of the Federal Constitution, as coming within jurisdiction of the government of the United States.

Section 7-11, inclusive, and Section 13, those under consideration here, relate to rights of fishery, to fishery laws, and to the inviolability of the Compact.

A particular note is the language of Section 13, and of the respective enacting clauses designated by Roman Numeral II in the respective copy of the Compact appended as exhibits "B" and "C." They, for facility reference, are set forth below. (That, in the laws of Virginia, appears in Hening's Stat. at L. V. 12 P. 50, et seq; those of Maryland at Page B2, V.2, Laws of Md., 1799).

Section 13, *supra*:

"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."

"II. And whereas the General Assembly are of the opinion that the said Compact is made on just and mutual principles for the true interest of both governments, and the same having been confirmed by the General Assembly of the State of Maryland; *be it therefore enacted*, That the said Compact is hereby approved, confirmed, and ratified by the General Assembly of Virginia, and that every article, clause, matter and thing wherein contained, shall be obligatory on this date and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this government and all its citizens, according to the true intent and meaning of the said Compact; and the faith and honor of this state is hereby solemnly pledged and engaged to the General Assembly of the State of Maryland, and the government and citizens thereof, that this law shall never be repealed or altered by the Legislature of this Commonwealth, without the consent of the State of Maryland."

Inspection of the Compact as carried in the Maryland Code, *supra*, will disclose identity of language, except in the names of the respective states in concurrence.

VIII.

The Compact has been concurred in, and mutually observed, for a period of 172 years. It was entered into with mutual expression of goodwill, faith and honor, pursuant to meeting of Commissioners duly appointed by the State, at Mt. Vernon, home of the first President of the United States subsequently formed. The Compact having provided that it should never be repealed or altered without mutual consent, there have, over the long period of years, been many mutually concurring laws enacted under it. This has been the considered policy of the respective states, until enactment by Maryland of the purported laws here complained of, that any enactment, by one of the sovereign parties to the Compact, without concurring legislature by the other, was void and ineffective, either wholly or to the extent of such non-concurrence.

IX.

Concurrent legislation began at an early date, it being the usual provision of enactments by both states. Among others are:

Maryland, C. 32, Acts of 1820: Virginia, C. 40, A. of 1820.

Maryland, C. 134, A. of 1832: Virginia, C. 80, A. of 1831.

Maryland, Code, 1861, Art. 41, S. 12-21: Virginia (in part) C. 280, A. of 1859-60.

Maryland, C. 247, A. 1874: Virginia, C. 135, A. 1874.

Maryland, C. 76, A. 1884: Virginia, C. 405, A. of 1883-4.

Maryland, Code 1939, Art. 72, S. 8; Art. 39, S. 65-74: Virginia, Code 1942, S. 3299-3305C.

There have, however, been instances in which the enactments have not been, upon all points, identical. As to such

instances, it is the contention of the State of Virginia that they are valid laws, where identical; invalid and ineffectual where divergent.

X.

In 1945 the Legislature of the State of Maryland adopted a joint resolution of the two bodies thereof, which was approved on April 23, 1945, and appears in Laws of Maryland, 1945, Page 1962. That resolution is strongly indicative of the view then held by Maryland upon the Compact, 160 years after its adoption. So much thereof as is pertinent appears below :

"Be it further resolved, That in fitting commemoration of the one hundred and sixtieth anniversary of the signing of the original Compact at Mount Vernon the organization meeting of the herein established joint interstate Commission be held at Mount Vernon, Virginia, on the 28th day of March, 1945, and that the Governors of Maryland and Virginia be invited to acclaim this occasion by proclamation and to arrange for the proper participation of their states in this initial meeting of the joint Commission and in any other ceremonies marking the 160th anniversary of the signing of the Compact of 1785 between Maryland and the Commonwealth of Virginia." Approved April 23, 1945.

In the year 1952, Acts 1952, Chapter 52, in an endeavor to reach complete accord with Maryland, Virginia enacted a comprehensive law, providing for joint, concurring appointment of a full commission: and for full control of mutual problems upon the Potomac by said Commission.

This enactment is, because of refusal of concurrence by Maryland, of no legal effect, though it remains unrepealed to this hour. A copy thereof is appended as exhibit "F."

XI.

The State of Maryland, in the present year, has enacted two laws bearing upon the Compact. One, Chapter 766, Acts 1957, is a repealatory act, attempting complete abrogation of the Compact, by unilateral rescission upon her part, through purported repeal of Chapter 1, Acts of 1785, whereby Maryland had formally entered into, approved and confirmed the Compact.

By Chapter 770, Acts of 1957, she repeals portions of her existing "Concurrent Law on the Potomac River" as codified in the Code of Maryland of 1951, and attempts though not in expressed language abrogation and destruction of the Compact, through the oblique means of transferring to Maryland sole jurisdiction over rights of fishery in the Potomac, and over all prosecutions or violations thereof.

Copies of said Acts of 1957 are attached hereto as exhibits "G" and "H."

XII.

There are approximately eight hundred (800) Virginia fishermen and five hundred fifty-four (554) Virginia boats operating on the Potomac River. Of the total of 800 fishermen, four hundred fifty-nine (459) fishermen fish primarily for finfish, one hundred eighty (180) for crabs and one hundred sixty-one (161) for oysters. Of the total of four hundred and fifty-nine (459) boats, two hundred fifty-four (254) engage primarily in fishing for finfish, one hundred eighty (180) in crabbing, and one hundred twenty (120) in oystering.

The year 1950 is the latest year for which there are reasonably accurate figures available for the quantity and value of finfish, oysters and crabs taken by Virginia fishermen from the Potomac River. In 1950 Virginia fishermen caught approximately twenty-five million, six hundred

eighty-five thousand (25,685,000) pounds of finfish in the Potomac River, worth approximately one million, two hundred forty thousand dollars (\$1,240,000). In that year Virginia fishermen tonged approximately one million four hundred twenty-six thousand (1,426,000) pounds of oysters in the Potomac River—worth approximately five hundred thirteen thousand four hundred sixty dollars (\$513,460.00). In 1950 Virginia fishermen caught approximately eight million one hundred and fifty-one thousand (8,151,000) pounds of crab in the Potomac River—worth three hundred and sixty-two thousand dollars (\$362,000). The poundage of finfish, oysters, and crabs taken by Virginia fishermen in the Potomac River in the seven years since 1950 has only slightly increased; however, the value of the fish, oysters and crabs taken has increased to a much greater degree.

In the license year ending June 30, 1957, the Commonwealth of Virginia issued two hundred sixteen crab pot licenses for the Potomac River, each license covering at least fifty crab pots and in some instances many more; therefore, over ten thousand (10,000) crab pots belonging to Virginia fishermen were utilized in the Potomac River during the preceding license year.

XIII.

The Commission of Fisheries of the Commonwealth of Virginia maintains at least two patrol boats, with five enforcement officers, on the Potomac River at all times. During the oyster season Virginia maintains at least four, and frequently more, patrol boats, with ten enforcement officers, on the Potomac River. During the past four years these Virginia enforcement officers have arrested or had warrants issued for one hundred (100) residents of Virginia for violations of the concurrent laws regulating the taking of fish, oysters and crabs in the Potomac River.

The Commonwealth of Virginia since the year 1952 has kept patrol boats and crafts, the value of which is over sixty thousand dollars (\$60,000) on the Potomac River. Each year the Commonwealth of Virginia, from its public treasury, expends a sum in excess of sixty thousand dollars (\$60,000) for the maintenance of these patrol boats and law enforcement officers on the Potomac River.

The annual oyster season on and in the Potomac River commences on the fifteenth day of September, 1957, and that to permit the State of Maryland to enforce or attempt to enforce Chapter 770 of the Acts of Assembly of Maryland of 1957 would result in untold hardship on approximately two hundred citizens of Virginia who annually engage in tonging for oysters in the Potomac River as a means of livelihood. Moreover that the enforcement of said enactment of the State of Maryland would interfere with and prohibit officials of the Commonwealth of Virginia from carrying out the duties imposed upon them to enforce the concurrent laws relating to the fish and shellfish industry on the Potomac River so as to preserve and protect the rights and interests of the citizens of both Virginia and Maryland in the Potomac River as secured for them by the Compact of 1785 between the states in question.

XIV.

Unless the rights of the Commonwealth of Virginia and its citizens under the Compact of 1785 are enforced and protected by this Court, the defendant State of Maryland will continue to assert power to impair, diminish, and totally to destroy, long-exercised vested rights secured to the Commonwealth under the Compact; and to divert to herself vitally rights and powers of Virginia, and the citizens thereof, guaranteed under said Compact.

Wherefore, complainant, the Commonwealth of Virginia, prays:

1.

That the Compact of 1785, between the Commonwealth of Virginia and the State of Maryland may be adjudicated and decreed to be in accordance with the terms thereof (except as to Sections 1-6 inclusive, and 9 and 12), forever binding upon the said Commonwealth of Virginia and State of Maryland, subject only to modification, alteration, or repeal thereof, by the said States, acting in concurrence.

2.

That the said State of Maryland may be found, and adjudicated by proper decree, without legal right or power, by her ~~sole~~^{self} act, to modify, alter, amend, or abrogate, in whole or in part the said Compact.

3.

That it be determined, adjudicated and decreed, that the said Acts of Maryland, Chapters 776 and 770, Acts of 1957, are void and of no effect, by reason of non-concurrence therein by the Commonwealth of Virginia.

4.

That the said Acts, and each of them may be adjudged and decreed to be invalid as constituting state impairment of a valid contract, and destructive of the vested rights of the Commonwealth of Virginia, in violation of Article 1, Section 10, Clause 1 of the Constitution of the United States, and are repugnant thereto.

5.

That the said Acts and each of them, may be adjudged and decreed to be invalid and void, as depriving complainant, without due process of law of her valid property rights in said Potomac, in contravention of the Fourteenth Amendment to the Constitution of the United States.

6.

That a preliminary injunction issue restraining the State of Maryland, her officials, officers, agents and employees, and any and all of them, from interfering with complainant's rights, and the free exercise thereof, under the said Compact of 1785, as it, with jointly concurrent legislation in accordance therewith, existed prior to June 1, 1957, until final adjudication by the Court.

7.

That all matters that issue between the said states, pertinent to the said Compact, may be heard and determined, in such manner as the Court may direct and that all proper inquiries may be had, and decrees and orders entered.

8.

That, upon final hearing, a permanent injunction may be entered by the Court, perpetually enjoining and restraining the State of Maryland, her officials, officers, agents and employees, and any and all of them, from interfering with complainant's rights, and the exercise thereof under the said Compact of 1785, as it, with jointly concurrent legislation in accordance therewith existed prior to June 1, 1957.

9.

That the Court may retain jurisdiction of this matter, to make such further orders as may be necessary to enforce

its decrees; and that complainant may have such other and further relief as to which in equity and good conscience, it may be entitled.

J. LINDSAY ALMOND, JR.
Attorney General of Virginia

Commonwealth of Virginia
City of Richmond; to wit:

Thomas B. Stanley, being first duly sworn, upon his oath deposes and says, that he is the duly elected, qualified, and acting Governor of the Commonwealth of Virginia; that he has read the foregoing Bill of Complaint and knows the contents thereof; that the facts therein set forth, saving and excepting alone those averred on information and belief, are true; and that as to the facts therein alleged as upon information and belief, he is credibly informed and verily believes that they are true.

THOMAS B. STANLEY
Governor of Virginia

Subscribed and sworn to before me this day of
September, 1957.

NERHEA S. EVANS
Notary Public

My commission expires July 19, 1959.

I, Theodore R. McKeldin, Governor of the State of Maryland, hereby acknowledge service of the foregoing Motion for Leave to File Bill of Complaint and Bill of Complaint which have been served on me this day of September, 1957.

Governor, State of Maryland

I, C. Ferdinand Sybert, Attorney General of the State of Maryland, hereby acknowledge service of the foregoing Motion for Leave to File Bill of Complaint and Bill of Complaint which have been served on me this day of September, 1957.

Attorney General
State of Maryland

EXHIBIT "A"

MAP OF POTOMAC RIVER WITH OYSTER BARS

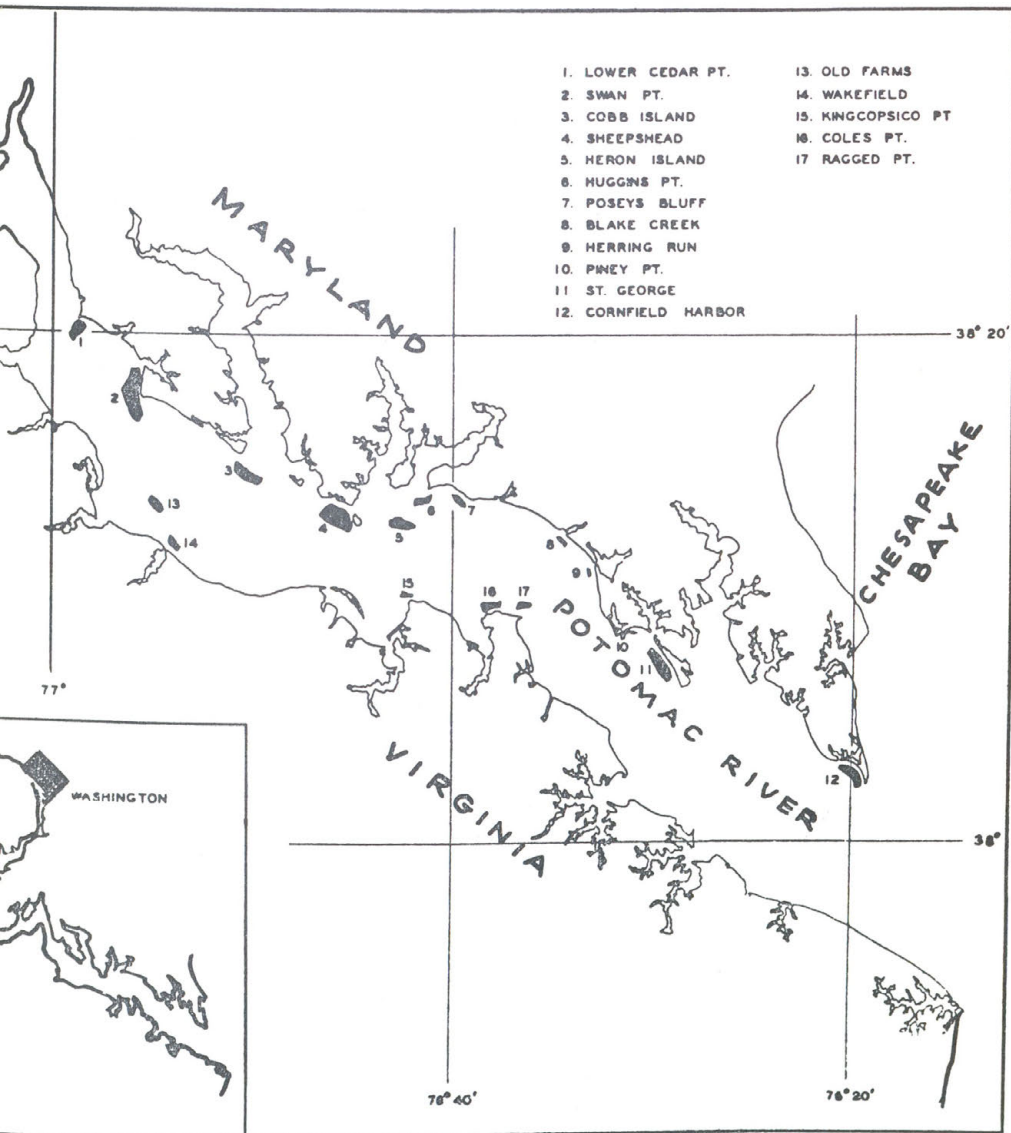


EXHIBIT "B"

At a SESSION of the GENERAL ASSEMBLY of MARYLAND, begun and held at the City of ANNAPOLIS, on Monday, the 7th of November, in the year of our Lord 1785, and ended the 12th day of March, 1786, the following laws were enacted.

William Smallwood, Esquire, Governor.

(Passed 12th of March, 1786.)

C H A P . I.

An ACT to approve, confirm and ratify, the compact made by the commissioners appointed by the general assembly of the commonwealth of Virginia, and the commissioners appointed by this state, to regulate and settle the jurisdiction and navigation of Patowmack and Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia. Lib. TBH. No. A. fol. 584.

(Preamble)

WHEREAS, at a meeting of the commissioners appointed by the general assemblies of the commonwealth of Virginia and the state of Maryland, for forming a compact between the two states, to regulate and settle the jurisdiction and navigation of Patowmack, Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia, to wit: George Mason and Alexander Henderson, Esquires, on the part of the commonwealth of Virginia, and Daniel of Saint Thomas Jenifer, Thomas Stone and Samuel Chase, Esquires, on the part of the state of Maryland, at Mount Vernon, in Virginia, on the twenty-eighth day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said commissioners. First, The commonwealth of Virginia disclaims

all right to impose any toll, duty or charge, prohibition or restraint, on any vessel whatever sailing through the capes of Chesapeake bay to the state of Maryland, or from the said state through the said capes outward bound, and agrees that the waters of Chesapeake bay, and the river Pocomoke, within the limits of Virginia, be for ever considered as a common highway, free for the use and navigation of any vessel belonging to the said state of Maryland, or any of its citizens, or carrying on commerce to or from the said state, or with any of its citizens, and that any such vessel, inward or outward bound, may freely enter any of the rivers within the commonwealth of Virginia as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also that the before-mentioned parts of Chesapeake and Pocomoke river be free for the navigation of vessels from one port of the state of Maryland to another. Second, The state of Maryland agrees, that any vessel belonging to the commonwealth of Virginia, or any of its citizens, or carrying on commerce to or from the said commonwealth, or with any of its citizens, may freely enter any of the rivers of the said state of Maryland as a harbour, or for safety against an enemy, without the payment of any port duty, or any other charge. Third, Vessels of war, the property of either state, shall not be subject to the payment of any port duty, or other charge. Fourth, Vessels not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of Virginia or Maryland, or of citizens of both states, trading from one state to the other only, and having on board only the produce of the said states, may enter and trade in any part of either state, with a permit from the naval-officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges. Fifth, All merchant vessels (except such as are described in the fourth article) navigating the river Patow-

mack, shall enter and clear at some naval-office on the said river in one or both states, according to the laws of the state in which the entry shall be made ; and where any vessel shall make an entry in both states, such vessel shall be subject to tonnage in each state, only in proportion to the commodities carried to or taken from such state. Sixth, The river Patowmack shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with the said states trading to or from Virginia or Maryland. Seventh, The citizens of each state respectively shall have full property in the shores of Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states ; provided, that such common rights be not exercised by the citizens of the one state to the hinderance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seans on the shores of the other. Eighth, All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Potowmack, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states. Ninth, Light-houses, beacons, buoys, or other necessary signals, shall be erected, fixed and maintained, upon Chesapeake bay, between the sea and the mouths of the rivers Patowmack and Pocomoke, and upon the river Patowmack, at

the expence of both states ; if upon Patowmack river, at the joint and equal charge of both states, and if upon the before-mentioned part of Chesapeake bay, Virginia shall defray five parts, and Maryland three parts, of such expence, and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode and plans, for erecting and fixing light-houses, bouys, beacons, and other signals, as aforesaid, both states shall, upon the application of either to the other, appoint an equal number of commissioners, not less than three or more than five from each state, to meet at such times and places as the said commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode and plans, for erecting and fixing such light-houses, beacons, or other signals, and report the same, with an estimate of the expence, to the legislatures of both states, for their approbation. Tenth, All piracies, crimes or offences, committed on that part of Chesapeake bay which lies within the limits of Virginia, or that part of the said bay where the line of division from the south point of Patowmack river (now called Smith's Point) to Watkins's Point, near the mouth of Pocomoke river, may be doubtful, and on that part of Pocomoke river within the limits of Virginia, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of Virginia, against the citizens of Maryland, shall be tried in the court of the state of Maryland which hath legal cognizance of such offences. And all piracies, crimes and offences, committed on the before-mentioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland, against any citizen of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offences. All piracies, crimes and offences, committed on the said parts

of Chesapeake bay, and Pocomoke river, by persons not citizens of either state, against persons not citizens of either state, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offences. And all piracies, crimes and offences, committed on the said parts of Chesapeake bay and Pocomoke river, by any citizen of the commonwealth of Virginia, or of the state of Maryland, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river Patowmack shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake bay and Pocomoke river in every respect, except in the case of piracies, crimes and offences, committed by persons not citizens of either state, upon persons not citizens of either state, in which case the offenders shall be tried by the court of the state to which they shall first be brought; and if the inhabitants of either state shall commit any violence, injury or trespass, to or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate, of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offender shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment properly authenticated being produced to any court or magistrate of the state where such offender

may reside, having jurisdiction within the state or county where the offender may reside in cases of a similar nature, such court or magistrate shall order execution to issue upon such authenticated judgment, in the same manner and to the same extent, as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited. Eleventh, Any vessel entering in any port on the river Patowmack, may be libelled or attached for debt by process from the state in which such vessel entered; and if the commercial regulations of either state shall be violated by any person carrying on commerce in Patowmack or Pocomoke rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized by process from the state where laws are offended, in order for trial; and if any person shall fly from justice in a civil or criminal case, or shall attempt to defraud creditors, by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake bay, or the rivers aforesaid, by process of the state from which such person shall fly, or property be removed; and process from the state of Virginia may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the state of Maryland may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury having been by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court or magistrate having jurisdiction, being served by a proper officer of the county where such citizen shall reside. Twelfth, The citizens of either state having

lands in the other, shall have full liberty to transport to their own state the produce of such lands, or to remove their effects, free from any duty, tax or charge whatsoever, for the liberty to remove such produce or effects. Thirteenth, 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: And whereas this general assembly are of opinion, that the said compact is made on just and mutual principles, for the true interest of both governments, and if executed with good faith, will perpetuate harmony, friendship and good offices, between the two states, so essential to the prosperity and happiness of their people;

(Compact approved, &c.)

II. BE IT ENACTED, *by the General Assembly of Maryland*, That the said compact is hereby approved, confirmed and ratified, and that as soon as the said compact shall be approved, confirmed and ratified, by the general assembly of the commonwealth of Virginia, thereupon, and immediately thereafter, every article, clause, matter and thing, in the same compact contained, shall be obligatory on this state and the citizens thereof, and shall be for ever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the commonwealth of Virginia, and the government and citizens thereof, that this law shall never be repealed or altered by the legislature of this government, without the consent of the government of Virginia.

EXHIBIT "C"

At a General Assembly, begun and held at the Public Buildings in the City of Richmond, on Monday the seventeenth day of October in the year of our Lord one thousand seven hundred and eighty-five and in the tenth year of the Commonwealth.

CHAP. XVII.

An act to approve, confirm, and ratify the compact made by certain commissioners appointed by the general assembly of the State of Maryland and commissioners appointed by this commonwealth.

I. WHEREAS, at a meeting of the commissioners appointed by the general assembly of the state of Maryland and Virginia, to wit: Daniel of St. Thomas Jenifer, Thomas Stone, and Samuel Chase, esquires, on the part of the state of Maryland, and George Mason and Alexander Henderson, esquires, on the part of the state of Virginia, at Mount-Vernon, in Virginia, on the 28th day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said commissioners:

First. The commonwealth of Virginia disclaims all right to impose any toll, duty, or charge, prohibition or restraint, on any vessel whatever sailing through the capes of Chesapeake bay to the state of Maryland, or from the said state through the said capes outward bound; and agrees that the waters of Chesapeake bay, and the river Pocomoke, within the limits of Virginia, be forever considered as a common high-way, free for the use and navigation of any vessel belonging to the said state of Maryland, or any of its citizens, or carrying on any commerce to or from the said state, or with any of its citizens; and that every such vessel inward or outward bound, may freely enter any of the rivers

within the commonwealth of Virginia as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also, that the before mentioned parts of Chesapeake bay, and Pocomoke river, be free for the navigation of vessels from one part of the state of Maryland to another.

Second. The state of Maryland agrees that any vessel belonging to the commonwealth of Virginia, or any of its citizens, or carrying on commerce to or from the said commonwealth, or with any of its citizens, may freely enter any of the rivers of the said state of Maryland as a harbour, or for safety against an enemy, without the payment of any port duty, or other charge.

Third. Vessels of war, the property of either state, shall not be subject to the payment of any port duty or other charge.

Fourth. Vessels not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of Virginia or Maryland, or of citizens of both states, trading from one state to the other only, and having on board only the produce of the said states, may enter and trade in any part of either state, with a permit from the naval-officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges.

Fifth. All merchant vessels (except such as are described in the fourth article) navigating the river Potowmack, shall enter and clear at some naval office on the said river, in one or both states, according to the laws of the state in which the entry shall be made. And where any vessel shall make an entry in both states, such vessel shall be subject to tonnage in each state only in proportion to the commodities carried to, or taken from, such state.

Sixth. The river Potowmack shall be considered as a common highway, for the purpose of navigation and com-

merce to the citizens of Virginia, and Maryland, and of the United States, and to all other persons in amity with the said states, trading to or from Virginia or Maryland.

Seventh. The citizens of each state respectively shall have full propriety in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by the citizens of both states. *Provided,* That such common right be not exercised by the citizens of the one state, to the hindrance or disturbance of the fisheries on the shores of the other state; and that the citizens of neither state shall have a right to fish with nets or seines on the shores of the other.

Eighth. All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Potowmack, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke, within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states.

Ninth. Light houses, beacons, buoys, or other necessary signals, shall be erected, fixed, and maintained upon Chesapeake bay, between the sea and the mouths of the rivers Potowmack and Pocomoke, and upon the river Potowmack, at the expence of both states. If upon Potowmack river, at the joint and equal charge of both states; and if upon the before mentioned part of Chesapeake bay, Virginia shall defray five parts, and Maryland three parts of such expence; and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode, and plans for erecting and fixing light houses,

buoys, beacons and other signals, as aforesaid, both states shall upon the application of either to the other, appoint an equal number of commissioners, not less than three nor more than five from each state, to meet at such times and places as the said commissioners or a major part of them, shall judge fit, to fix upon the proper places, mode, and plans for erecting and fixing such light houses, beacons, or other signals, and report the same, with an estimate of the expence, to the legislatures of both states, for their approbation.

Tenth. All piracies, crimes, or offences committed on that part of Chesapeake bay which lies within the limits of Virginia, or that part of the said bay where the line of division from the south point of Potowmack river (now called Smith's Point) to Watkins's Point, near the mouth of Pocomoke river, may be doubtful; and on that part of Pocomoke river, within the limits of Virginia, or where the line of division between the two states upon the said river, is doubtful, by any persons not citizens of the commonwealth of Virginia, against the citizens of Maryland, shall be tried in the court of the state of Maryland which hath legal cognizance of such offence. And all piracies, crimes, and offences committed on the before mentioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland, against any citizen of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offence. All piracies, crimes, and offences committed on the said parts of Chesapeake bay and Pocomoke river, by persons not citizens of either state, against persons not citizens of either state, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offence: And all piracies, crimes, and offences committed on the said parts of Chesapeake bay and Pocomoke river, by any citizen of the commonwealth of Vir-

ginia, or of the state of Maryland, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river Potowmack, shall be exercised in the same manner as is prescribed for the before mentioned parts of Chesapeake bay and Pocomoke river, in every respect, except in the case of piracies, crimes, and offences committed by persons not citizens of either state, upon persons not citizens of either state, in which case the offenders shall be tried by the court of the state to which they shall first be brought. And if the inhabitants of either state shall commit any violence, injury, or trespass, to or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate of the state where the offence shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment, in the same manner, as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offence shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment, properly authenticated, being produced to any court; or magistrate, of the state where such offender may reside, having jurisdiction within the state, or county where the offender may reside, in cases of a similar nature, such court, or magistrate, shall order execution to issue upon such authenticated judgment in the same manner, and to the same extent, as if the judgment had been given by the court, or magistrate, to which such transcript shall be exhibited.

Eleventh. Any vessel entering into any port on the river Potowmack, may be libelled, or attached for debt, by process from the state in which such vessel entered. And if the commercial regulations of either state shall be violated by any person carrying on commerce in Potowmack or Pocomoke rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized, by process from the state whose laws are offended, in order for trial. And if any person shall fly from justice, in a civil or criminal case, or shall attempt to defraud creditors by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake bay, or the rivers aforesaid, by process of the state from which such person shall fly, or property be removed; and process from the state of Virginia may be served on any part of the said rivers, upon any person, or property of any person not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the state of Maryland may be served on any part of the said rivers, upon any person, or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury by him committed. And in all cases of trial in pursuance of the jurisdiction settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court, or magistrate, having jurisdiction, being served by a proper officer of the county where such citizen shall reside.

Twelfth. The citizens of either state having lands in the other, shall have full liberty to transport to their own state, the produce of such lands, or to remove their effects, free from any duty, tax, or charge whatsoever, for the liberty to remove such produce or effects.

Thirteenth. 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.

II. And whereas this general assembly are of opinion that the said compact is made on just and mutual principles for the true interest of both governments, and the same having been confirmed by the general assembly of the state of Maryland: *Be it therefore enacted*, That the said compact is hereby approved, confirmed, and ratified by the general assembly of Virginia, and that every article, clause, matter and thing therein contained, shall be obligatory on this state and the citizens thereof, and shall be forever faithfully and inviolably observed and kept by this government and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the state of Maryland, and the government and citizens thereof, that this law shall never be repealed, or altered, by the legislature of this commonwealth, without the consent of the state of Maryland.

EXHIBIT "D"

BLACK-JENKINS AWARD

"January sixteenth, Anno Domini, eighteen hundred and seventy-seven, the undersigned, being a majority of the arbitrators to whom the States of Virginia and Maryland, by acts of their respective legislatures, submitted the controversies concerning their territorial limits, with authority to ascertain and determine the true line of boundary between them, having heard the allegations of the said States, and examined the proofs on both sides, do find, declare,

award, ascertain, and determine that the true line of boundary between the said States, so far as they are coterminous with one another, is as follows, to-wit:

“Beginning at the point on the Potomac river where the line between Virginia and West Virginia strikes the said river at low-water mark, and thence, following the meanderings of said river, by the low-water mark, to Smith’s point, at or near the mouth of the Potomac, in the latitude thirty-seven degrees, fifty-three minutes, eight seconds, and longitude seventy-six degrees, thirteen minutes, forty-six seconds; thence crossing the waters of the Chesapeake bay, by a line running north sixty-five degrees, thirty minutes east, about nine and a half nautical miles, to a point on the western shore of Smith’s island, at the north end of Sassafras hammock, in latitude thirty-seven degrees, fifty-seven minutes, thirteen seconds, longitude seventy-six degrees, two minutes, fifty-two seconds; thence across Smith’s island, south, eighty-eight degrees, thirty minutes east, five thousand six hundred and twenty yards to the centre of Horse hammock, on the eastern shore of Smith’s island, in latitude thirty-seven degrees, fifty-seven minutes, eight seconds, longitude seventy-five degrees, fifty-nine minutes, twenty seconds; thence south seventy-nine degrees, thirty minutes east, four thousand, eight hundred and eighty yards, to a point marked ‘A’ on the accompanying map, in the middle of Tangier sound, in latitude thirty-seven degrees, fifty-six minutes, forty-two seconds, longitude seventy-five degrees, fifty-six minutes, twenty-three seconds, said point bearing from Jane’s island light, south, fifty-four degrees west, and distant from that light three thousand five hundred and sixty yards; thence south ten degrees, thirty minutes, west four thousand seven hundred and forty yards, by a line dividing the waters of Tangier sound to a point where it intersects the straight line from Smith’s point to Wat-

kins' point, said point of intersection being in latitude thirty-seven degrees, fifty-four minutes, twenty-one-seconds; longitude seventy-five degrees, fifty-six minutes, fifty-five seconds, bearing from Jane's island light south, twenty-nine degrees west, and from Horse hammock, south, thirty-four degrees, thirty minutes east; this point of intersection is marked 'B' on the accompanying map; thence north eighty-five degrees, fifteen minutes, east, six thousand seven hundred and twenty yards along the line above mentioned, which runs from Smith's point to Watkins' point until it reaches the latter spot, namely, Watkins' point, which is in latitude thirty-seven degrees, fifty-four minutes, thirty-eight seconds; longitude seventy-five degrees, fifty-two minutes, forty-four seconds; from Watkins' point the boundary line runs due east seven thousand eight hundred and eighty yards, to a point where it meets a line running through the middle of Pocomoke sound, which is marked 'C' on the accompanying map, and is in latitude thirty-seven degrees, fifty-four minutes, thirty-eight seconds, longitude seventy-five degrees, forty-seven minutes, fifty seconds, thence by a line dividing the waters of Pocomoke sound, north forty-seven degrees, thirty-minutes, east five thousand two hundred and twenty yards, to a point in said sound marked 'D' on the accompanying map, in latitude thirty-seven degrees, fifty-six minutes, twenty-five seconds, longitude seventy-five degrees, forty-five minutes, twenty-six seconds; thence following the middle of the Pocomoke river by a line of irregular curves, as laid down on the accompanying map, until it intersects the westward protraction of the boundary line marked by Scarborough and Calvert, May twenty-eight, eighteen hundred and sixty-eight, at a point in the middle of Pocomoke river, and in the latitude thirty-seven degrees, fifty-nine minutes, thirty-seven seconds, longitude seventy-five degrees, thirty-seven minutes, four seconds; thence by

the Scarborough and Calvert line, which runs five degrees, fifteen minutes north of east, to the Atlantic ocean; the latitudes, longitudes, courses, and distances here given have been measured upon the Coast Chart, number thirty-three, of the United States coast survey, (sheet number three, Chesapeake bay,) which is herewith filed as part of this award, and explanatory thereof; the original charter line is marked upon the said map and shaded in blue; the present line of boundary, as ascertained and determined, is also marked and shaded in red, while the yellow indicates the line referred to in the compact of seventeen hundred and eighty-five, between Smith's point and Watkins' point; in further explanation of this award, the arbitrators deem it proper to add that:

"First, The measurements being taken and places fixed according to the coast survey, we have come as near to a perfect mathematical accuracy as in the nature of things is possible; but in case of any inaccuracy in the described course or length of a line, or in the latitude or longitude of a place, the natural objects called for must govern:

"Second, The middle thread of Pocomoke river is equidistant as nearly as may be, between the two shores, without considering arms, inlets, creeks, or affluents as parts of the river, but measuring the shore lines from headland to headland;

"Third, The low-water mark on the Potomac, to which Virginia has a right in the soil, is to be measured by the same rule; that is to say, from low-water mark at one headland to low-water at another, without following indentations, bays, creeks, inlets, or affluent rivers;

"Fourth, Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full

enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five: In testimony whereof we have hereunto set our hands the day and year aforesaid.

“J. S. Black, of Pennsylvania

“Charles J. Jenkins, of Georgia.”

EXHIBIT “E”

CODE OF VIRGINIA — TITLE 28

CHAPTER 8

Potomac River Statutes

§ 28-219. Who may take fish, oysters or crabs. — It shall be lawful for any citizen of the state of Maryland or of this State to take fish, oysters or crabs from the Potomac river after complying with the requirements of the laws of the state of which he is a citizen for the taking of fish, oysters or crabs from the waters of such state.

It shall not be lawful for any person to take or catch fish, except by hook and line, or oysters or crabs in any manner whatever in the waters of the Potomac river unless he be a citizen of Maryland or of Virginia, and shall have been a resident of the state of which he is a citizen for twelve months immediately preceding. Any such nonresident violating this section shall be subject to a fine of five hundred dollars; furthermore any vessel, with its equipment and cargo, or any net or other appliances used in violating this section, shall be deemed forfeited to the State. (1930, p. 729; Michie Code 1942, § 3299; 1948, p. 899.)

§ 28-220. Restriction as to time and manner of taking oysters. — It shall not be lawful:

(1) For any citizen of Maryland or of Virginia to take or catch oysters with a scoop, scrape, dredge or any such instrument in the waters of the Potomac river between the fifteenth day of March and the first day of November of each year ;

(2) For any citizen of either state to take oysters with tongs from the waters of the Potomac river between the fifteenth day of April and the fifteenth day of September of each year, except as provided in §28-222;

(3) For any person to have in possession any oysters taken from the waters of the Potomac river between the twentieth day of April and the fifteenth day of September of each year.

Every person found guilty of violating any of the provisions of this section shall be fined not less than fifty dollars nor more than five hundred dollars for each offense, and the vessel, together with its equipment and cargo, used in violating any such provisions, shall be forfeited to the State. (1930, p. 730; Michie Code 1942, §3299; 1948, p. 899.)

§ 28-221. Culling of oysters required; exception; procedure on violation. — All oysters taken from any natural rocks, beds or shoals within the Potomac river shall be culled on their natural rocks, beds or shoals as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, whether attached to a marketable oyster or not, and all shells shall be included in such culling and replaced on such rocks, beds or shoals; provided, that oysters once passed from the culler less than the prohibited size and all shells shall be considered as not having been culled according to the provisions of this section and for the purpose of this section shall be declared to be unmerchantable oysters. When oysters measuring less than three inches are adhering so closely to the shell of a market-

able oyster as to render removal impossible without destroying the small oysters, then such oysters, including the marketable oyster or oysters, shall be returned to the bed or bar from which they were taken. And it shall be unlawful for any person to take, buy or sell the small oysters and shells from the natural rocks, beds and shoals as aforesaid, or to take, buy, sell or have in possession oysters less than three inches in length from hinge to mouth.

Whenever any inspector or other officer shall have reason to believe that this section has been violated with reference to the culling of oysters, such inspector or other officer is hereby authorized to examine the cargo of any boat or vessel, and if upon examination of such cargo, the inspector or other officer shall find that five per centum or more of the cargo shall consist of shells and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, the captain of the boat or other person in charge of the boat shall be deemed to have violated this section, and upon conviction, if of a dredge boat or vendor of oysters, shall be fined not less than one hundred dollars, or confined in jail not less than thirty days nor more than six months, either or both, and in addition to such fine or imprisonment the cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other officer making the arrest, and at the expense of the violator, which expense shall be in addition to the fine imposed and collectible in the same manner, and the boat or vessel on which such oysters are found shall be held as security for the payment of the fine; if of a boat in which only oyster tongs are used, the captain or other person in charge shall be fined not less than fifty dollars or confined in jail not less than fifteen days nor more than three months, either or both, and the cargo shall be confiscated and returned to the natural beds under the supervision of the oyster inspector or other

officer making the arrest. The boat or vessel on which the oysters are found shall be held as security for the payment of such fine, provided, however, that when any person shall be found with oysters in violation of this section, he shall be presumed to be a dredger or vendor of oysters, and if he claims to be a tonger the burden shall be upon such person to show that he is a tonger only.

In case there is an appeal or waiver of trial before a trial justice, in order to provide for the disposition of any oysters that have been declared unmerchantable, the cargo of oysters shall remain in the possession or custody of the deputy commander, inspector or other officer making the arrest until the captain of the boat or vessel or the packer shall have reculled the oysters in question; and the officer under whose supervision the reculling is done, after ascertaining the quantity of unmerchantable oysters and shells so culled out, shall give the captain or other person in charge of the vessel or packing house, a certificate showing the number of bushels of such unmerchantable oysters and the captain or other person shall return the unmerchantable oysters so culled out to the natural beds or bars under the supervision of the officer. The cost of reculling and expenses incident to same shall be borne by the violator.

This section shall not apply to seed oysters or plants taken under other provisions of this chapter from that portion of the Potomac river above a straight line drawn from the north point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar Point, in Charles county, Maryland. (1926, p. 675; 1930, p. 730; Michie Code 1942, § 3299; 1948, p. 899.)

§ 28-222. Taking oysters with tongs above certain line; dredging or scraping with certain boats. — It shall be lawful between the first day of October and the fifteenth

day of April of each year and at no other time, to take marketable oysters with ordinary or patent tongs, and in no other manner, from the natural rocks, beds and shoals in the Potomac river above a straight line drawn from North point at the mouth of Upper Machodoc creek in the county of King George, Virginia, to Lower Cedar Point in Charles county, Maryland. Any citizen of Maryland or of Virginia, who has complied with all the requirements of the oyster laws of his state entitling him to the privilege for a certain period of taking and catching oysters with ordinary or patent tongs in such state, shall have the right without further license tax to take marketable oysters with such tongs above such line during the open season provided for in the waters above the line.

It shall be unlawful to dredge or scrape on the natural rocks, beds and shoals of the Potomac river at any time with any boat propelled other than by sail, or with a power boat from which the shaft and propeller have not been withdrawn, and the penalties otherwise prescribed for unlawful dredging shall be imposed under this section for any violation hereof. (1922, p. 471; 1924, p. 584; 1930, p. 731; Michie Code 1942, § 3299; 1948, p. 901.)

§ 28-223. Permit required for buying or carrying seed oysters. — It shall be lawful for any citizen of Maryland or of Virginia after having obtained a permit as hereinafter provided, to buy and carry out of the Potomac river to be planted in the waters of either Maryland or Virginia, oysters whose shells measure less than two and one-half inches from hinge to mouth taken from natural rocks, beds and shoals in such river above a straight line drawn from the north point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar Point, in Charles county, Maryland, during the period between the first day

of January and the first day of May in any year. The permit shall be obtained from any oyster inspector, or any officer in charge of a Virginia or Maryland oyster police boat, for each boat or vessel to be used in carrying such oysters as aforesaid, and shall state the name and tonnage (if registered in the custom house) of the boat or vessel, the name of the owner and the master thereof, and to what waters in Maryland or Virginia such cargo of oysters is to be carried.

Before such permit shall be granted, the owner or master of such boat or vessel shall take and subscribe to an oath before such officer that the boat or vessel will not be used for carrying the oysters to any state other than Maryland or Virginia, or for any other purpose than for planting the same in the waters of one or the other of the said states, and that he will not sell the oysters to any other person for the purpose of carrying the same to any state other than Maryland or Virginia. The oath so taken and subscribed, together with a memorandum of the permit issued, shall be returned by the officer to the commander of the state fishery force of Maryland, if the officer be a Maryland official, or to the Secretary of the Commission of Fisheries of Virginia, if the officer be a Virginia official, to be filed by him in his office. Blank forms for such oath and permit shall be furnished to the respective oyster inspectors, and the captains of the oyster police boats by the comptroller of Maryland and the Auditor of Public Accounts of Virginia. For administering such oath and issuing the permit, the inspector or officer issuing the same shall be entitled to receive from the applicant a fee of twenty-five cents.

The owner or master of any boat or vessel found carrying or buying such seed oysters without such permit shall be fined not less than twenty dollars nor more than one hundred dollars. And any owner or master of any boat or vessel

violating the provisions of this section by buying or carrying or knowingly selling such seed oysters to be carried elsewhere, or for any other purpose than to be planted in the waters of Maryland or Virginia, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and in addition thereto the boat or vessel so used shall, with its cargo and equipment, be forfeited to the state wherein such offender is convicted.

No permit shall be granted to any person engaged in taking or catching, buying or carrying seed oysters or having in his possession oysters measuring less than two and one-half inches from hinge to mouth, who shall have any scoop, scrape or dredge or any part thereof, on any boat or vessel to be used in taking, buying or carrying seed oysters; and it shall be the duty of the officer who issues such permit to first inspect the boat or vessel and satisfy himself that no such appliance is on such boat or vessel before he issues any permit. Any person who shall have any scoop, scrape or dredge or any part thereof on any boat or vessel engaged in catching, buying or carrying seed oysters or oysters measuring less than two and one-half inches from hinge to mouth, and any owner or master of any boat or vessel violating the provisions of this section by having any scrape, scoop or dredge or any part thereof on any boat or vessel engaged in taking, catching, buying or carrying seed oysters shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and in addition thereto, the boat or vessel so used with its cargo and equipment shall be forfeited to the state wherein such offender is convicted. (1930, p. 732; Michie Code 1942, § 3299; 1948, p. 901.)

§ 28-224. Taking fish and crabs; how licenses procured. — Any citizen of Maryland or Virginia desiring to fish for market or profit with a pound net, fyke net, gill

net, haul seine, sturgeon net, skirt net, weir or other device, in the waters of the Potomac river, shall first apply to the regularly constituted officer as determined by the laws or regulations of the state of which he is a resident and in the district or locality in which the applicant resides, except that the applicant for license to fish with a fixed device shall apply to the officer of the district or locality in which such fixed device is proposed to be located, for a license, and state on oath, the true name or names of the person or persons applying for such license, that they are, and have been for twelve months next preceding, residents of the state in which such application has been made, the place at which the net, seine, fyke, weir or other device is to be fished, and that during the period of the license he will not violate any of the laws of the state in which he resides in relation to the taking and catching of fish; provided nothing in this section shall apply to any person using a net solely for the purpose of supplying his own table. Such oyster inspector or other authorized officer shall thereupon grant a license to use such net, or other device, and state in such license the name or names of the person or persons who shall use the same, the place at which it is to be located or used, the season for which such license is granted, which season shall begin on the first day of February in any year and end on the thirty-first day of January of the year following, and the amount of tax as prescribed by the laws of the state where issued.

Any citizen of either Maryland or Virginia desiring to take or catch crabs from the waters of the Potomac river by any method, or any person desiring to engage in the business of buying crabs for picking or canning or shipping the same shall pay to the oyster inspector or other designated official in the district in which he resides such specific license tax as is prescribed by the state of which he is a resident.

If any person shall use or set, or cause to be used or set,

any such net or seine as aforesaid, or shall take or catch crabs, in the waters of the Potomac river within the jurisdiction of the States of Maryland or Virginia, without having first paid the tax and obtained the license provided for under the laws of the state in which such net is set, or crabs are taken, he shall be deemed guilty of a violation of the provisions of this section, and shall, for each such violation, be fined not less than ten dollars nor more than two hundred dollars, and forfeit to the state such net or other fishing devices used in such violation.

It shall be unlawful for any person to use a haul seine or pound net, head or pocket having a smaller mesh than two inches, stretched measure, for the purpose of catching food fish. Any net having a funnel-mouth, round-mouth, or square-mouth, with head above water, shall be construed as a pound net. Any person or persons using a net in violation of this provision shall be fined not less than ten dollars nor more than one hundred dollars for each offense, and such net or nets shall be forfeited to the state. (1930, p. 733; Michie Code 1942, § 3299; 1948, p. 902.)

§ 28-225. Concurrent jurisdiction for punishment of offenses. — All offenses committed against the provisions of §§ 28-219 through 28-229 by persons not citizens and residents of either state may be punished by any of the magistrates or courts of either state having criminal jurisdiction. (1924, p. 584; 1930, p. 734; Michie Code 1942, § 3299; 1948, p. 903.)

§ 28-226. Right to examine into rights of persons taking fish, etc.; arrest of offenders. — The authorities of either state shall have the right to examine into the rights of any person taking fish, oysters or crabs in the Potomac river, or having the same in his possession; and any person taking fish, oysters or crabs in the Potomac river or having

the same in his possession shall exhibit his authority for so doing, whenever required by the police or other legal authority of either state. The legal authorities of either state shall have the right to arrest any such offender. (1924, p. 585; 1930, p. 734; Michie Code 1942, § 3299; 1948, p. 903; 1956, c. 543.)

§ 28-227. Penalties not otherwise provided. — Any person violating any preceding section of this chapter, where not otherwise provided, shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than three hundred dollars. (1930, p. 734; Michie Code 1942, § 3299; 1948, p. 904.)

§ 28-228. Sale of forfeited boats or equipment. — When forfeiture of boat, vessel, net or other equipment is provided for in any preceding section of this chapter the boat, vessel, net or other equipment shall be sold at public auction by the sheriff of the county for cash after ten days' notice. In case of appeal the appellant shall remain in custody, and the boat, vessel, net or other equipment shall be sold as above provided, unless a recognizance be entered into for double the amount of the fine and double the value of the boat, vessel, net or other equipment, conditioned on the performance of the final judgment of the court. Upon such recognizance being given, the party convicted and the aforesaid property shall be discharged. (1930, p. 734; Michie Code 1942, § 3299; 1948, p. 904.)

§ 28-229. Failure of officer to perform duty; penalty. — If any oyster inspector or other officer empowered with the duties of enforcing the preceding provisions of this chapter knowingly fail to report violations of the same or to perform any of the duties therein required of him, he shall, for every such offense, be liable to a fine of one hundred

dollars, to be applied to the oyster fund of his state. (1930, p. 735; Michie Code 1942, § 3299; 1948, p. 904.)

§ 28-230. Compact with Maryland not affected.— Nothing in the eleven preceding sections shall be construed in any way to impair, alter or abridge any rights which either state or the citizens thereof may be entitled to, either by, through, under or against the compact entered into between the States of Maryland and Virginia on March twenty-eighth, seventeen hundred and eighty-five. (1930, p. 735; Michie Code 1942, § 3299; 1948, p. 904.)

§ 28-231. Statutes not affecting preceding sections; when effective.— Nothing contained in any of the provisions of chapters 4 to 7 of this title shall be construed to repeal, alter, modify or impair the twelve preceding sections, or any part of the same.

The preceding sections of this chapter shall be effective from April second, nineteen hundred forty-eight, provided concurrent legislation has been passed by the General Assembly of Maryland, or if not passed, then immediately upon the passage thereof. Upon the taking effect in the State of Maryland of the provisions prescribed in such sections, the Governor of Virginia shall issue his proclamation declaring such provisions to be effective. (1930, p. 735; Michie Code 1942, § 3299; 1948, pp. 898, 904.)

§ 28-232. Other provisions as to culling oysters.— (1) *Oysters to be culled.*—All oysters taken from any natural rocks, beds or shoals, within the Potomac river shall be culled on their natural rocks, beds or shoals as taken, and oysters whose shells measure less than three inches in length, measuring from hinge to mouth, which are hereby declared to be unmarketable oysters, and all shells, shall be included in such cullings and replaced on such rocks, beds or shoals as taken; provided, that unmarketable oysters once passed

from the culling board to the inside of the boat shall be considered as not having been culled in accordance with the provisions of this section; and provided further, that when unmarketable oysters are adhering so closely to the shell of the marketable oysters as to render removal impossible without destroying the young oyster, then such unmarketable oysters need not be removed and need not be included in the cullings.

(2) *Unlawful to buy, sell or possess unmarketable oysters and shells.* — It shall be a violation of this section for any person to buy, sell or have in his possession on the Potomac river, its tributaries, or any other place, unmarketable oysters and shells taken from the natural rocks, beds or shoals as aforesaid.

(3) *Right of inspection.* — For the purpose of ascertaining whether this section has been violated, any oyster inspector, or other officer authorized by law, shall have the right, at any time, to examine the contents of any boat, including market boats, and the contents of any oyster packing house, or oyster warehouse, or to examine any oysters stored or accumulated in any place, conveyance or thing.

(4) *Amount of unmarketable oysters and shells allowed.* — If, upon such examination, the oyster inspector, or other officer authorized by law, shall find that any cargo, load or collected mass of oysters shall consist of five per cent or more of unmarketable oysters and shells, or of five per cent or more of unmarketable oysters, the owner, captain or person in charge of any boat on which such oysters are found, or the person in charge of any other conveyance, thing or place where such oysters are found, shall be deemed to be in possession of such oysters and in violation of this section.

(5) *Penalties for violations.* — Any owner, captain or person in charge of any boat, except a market boat, who is found guilty of being in possession of or selling, oysters in

violation of this section shall, upon conviction, be fined (a) for the first offense, fifty dollars, (b) for the second offense, one hundred dollars and (c) for each subsequent offense, two hundred dollars. In addition, the oystering license of such boat shall be suspended for not less than two weeks nor more than three months when more than two violations of this section occur thereon, regardless of whether or not the owner, captain or person in charge of such boat at the time of such third or subsequent offense has been found guilty of any prior violation of this section.

Any owner, captain or person in charge of any market boat, or any person in charge of any oyster packing house or oyster warehouse, or any person in charge of any oysters stored or collected in a mass in any conveyance, place or thing, other than a boat as specified in the preceding paragraph, who is found guilty of being in violation of this section shall, upon conviction, be fined (a) for the first offense, one hundred dollars, (b) for the second offense, two hundred dollars and (c) for each subsequent offense, five hundred dollars.

(6) *Market boat defined.*—For the purposes of this section, a market boat is defined as any boat which engages at any time in buying, storing or transporting oysters which have been taken from the water by another boat.

(7) *Imprisonment for failure to pay fine.* — Failure to pay any fine imposed under this section shall result in the convicted person serving one day in jail for each dollar of the fine imposed and not paid, but in no event shall any such person be confined in jail for more than ninety days for any single offense.

(8) *Confiscation of cargo.* — In addition to the above penalties, such cargo, load or collected mass of oysters shall be confiscated and returned to the natural rocks, beds or shoals under the supervision of the inspector or other officer

making the arrest, at the expense of the violator, which expense shall be in addition to the fine, suspension of license or imprisonment, and any boat or other conveyance on which such oysters are found shall be held as security for the payment of the fine and expense.

(9) *Disposition of unmarketable oysters in case of appeal, etc.; reculling.*—In order to provide for the disposition of any oysters that have been declared unmarketable, in case there is an appeal or waiver of trial, the cargo, load or other collected mass of oysters shall remain in the possession or custody of the inspector, or other officer, making the arrest until the owner, captain or person in charge of the boat, or the person in charge of any other conveyance, place or thing where such oysters are found shall have reculled the oysters in question. The inspector or other officer under whose supervision the reculling is done, after ascertaining the quantity of unmarketable oysters and shells so culled and the quantity of marketable oysters remaining, shall give the violator a certificate showing the number of bushels of such unmarketable oysters and shells and the quantity of such marketable oysters remaining, and the unmarketable oysters and shells shall then be returned to the natural rocks, beds or shoals under the supervision of such inspector or other officer. The cost of reculling and returning such unmarketable oysters and shells to the water and expenses incidental thereto shall be borne by the violator.

(10) *Exemption from section.*—This section shall not apply to seed oysters or plants taken under other provisions of this section from that point at the mouth of Upper Machodoc creek, in the county of King George, Virginia, to Lower Cedar point in Charles county, Maryland.

(11) *When Governor to issue proclamation.*—Upon the taking effect in the state of Maryland of the provisions of this section, the Governor of Virginia shall issue his procla-

mation declaring the provisions to be effective, upon which being done, § 28-221 shall become and thereafter be null and void. (1946, p. 459; Michie Suppl. 1946, § 3299a.)

§ 28-233. Fishing season for herring. — The fishing season for herring in the waters of the Potomac river shall begin the first day of March and end the first day of June in each year. (Code 1919, § 3300.)

§ 28-234. Fishing within regularly hauled fishing landing, or on Sunday. — No person shall haul, drift or fish any seine or gill net within the waters, bounds or berth of any regularly hauled fishing landing, or opposite to any part of the shore of the owner or occupier of any fishery, between the first day of March and the first day of June in each year, without the permission of the owner or occupier of such fishing landing; nor shall any such owner or occupier, or any other person or persons, lay out and fish with any seine or net in the Potomac river or its tributaries, between five o'clock on Sunday morning and five o'clock on Monday morning. Any person offending against any provision of this section shall be subject to the penalties and forfeitures prescribed by the next succeeding section and to the other provisions of such section; and the same shall be in force during the existence of a similar law in the state of Maryland. (Code 1919, § 3301.)

§ 28-235. How two preceding sections enforced. — The owners or occupiers of the regularly hauled fishing landings are authorized to render any sheriff or other officer assistance necessary to arrest any person violating the provisions of the two preceding sections; and such officer shall seize all boats, seines, and fixtures in the possession of such person, and carry the person so arrested before some justice of the peace, to be dealt with as herein directed; and the

officer may summon a posse comitatus to aid him in making arrests or seizure authorized by this section, and may, for that purpose, also press, at the expense of the prosecutor, any steamboat or other vessel belonging to any citizen of the State not actually engaged in carrying the United States mail. (Code 1919, § 3302.)

§ 28-236. Restrictions on fishing with gill nets or seines. — No person shall fish in the Potomac river or its tributaries during the months of March, April and May with gill nets or seines of any kind, other than such nets or seines as may be laid out from and hauled to and landed upon the shores of the river and its tributaries; nor shall any person, with gill nets or seines of any kind, fish in such river or its tributaries from the first day of June until the twentieth day of October; and every person offending against either of the aforesaid provisions shall, upon conviction thereof, forfeit to the State all the vessels, boats, seines, ropes, and fixtures used in such fishing, and moreover shall pay a sum of not less than fifty nor more than five hundred dollars, one-half of which sum shall be to the informer and the other half to the State. Nothing in this section shall be construed to prevent bona fide citizens of the counties bordering on the aforesaid waters from fishing the shores they own or occupy as they have hitherto been in the habit of doing. And this section shall be in force during the existence of a similar law in the state of Maryland. (Code 1919, § 3303.)

§ 28-237. Protection and preservation of freshwater fish. — It shall not be lawful for any person to catch or kill any black bass, green bass, rock bass, pike (or pickerel), or walleyed pike (commonly known as salmon), in the Potomac river between the fifteenth day of April and the first day of June each year; nor to catch or kill any of such

species of fish at any other time during the year save only with a rod, hook and line or dip net. Trot lines are forbidden.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be punishable, on conviction, by imprisonment in the county jail not exceeding six months or by a fine not exceeding two hundred dollars, or both; and it shall be the duty of the courts for the counties abutting on the Potomac river above the Little Falls, near Washington, at each session of the grand jury to call its attention to the provisions of this law.

The provisions of this section shall not be applicable below such Little Falls, nor shall the same be effective unless they are in force in the states of West Virginia and Maryland. (Code 1919, § 3305.)

§ 28-238. Process and jurisdiction for enforcing penalties. — If any person shall violate the preceding sections of this chapter relative to fishing in or on the Potomac river, the process and jurisdiction to enforce the penalties or recover damages therefor shall be according to the compact between Virginia and Maryland, so far as therein provided for, and so far as not so provided for, according to the other laws of this State. (Code 1919, § 3304.)

§ 28-239. Beam trawl, trammell net, troll net, etc., prohibited. — It shall be unlawful to use any beam trawl, trammell net, troll net, or any similar device in the waters of the Potomac river or of any of its tributaries.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall forfeit such net or nets or device, together with all boats, vessels and tackle used in the violation of this section or shall be fined not less than fifty nor more than one hundred dollars, or shall be subject to both such

forfeiture and fine; provided, however, that nothing in this section shall be construed in any manner to prohibit the catching of fish through the method of seine hauling and pound net and gill net fishing as heretofore permitted, by license or otherwise, under the laws of the State of Virginia. (1926, p. 78; Michie Code 1942, § 3305a.)

§ 28-240. Catching fish with certain gill nets prohibited. — The use of any sunken anchored gill nets is absolutely prohibited in the waters of the Potomac river at all times; and the use of all gill nets, known as floating or drift nets, other than stake gill nets, is prohibited at all times of the year except during the shad and herring season. The use of all stake gill nets is prohibited at all times of the year except during the months of February through May in each year. Any person, firm or corporation violating the provisions of this section shall on conviction therefor before the trial justice of any county of this State, most accessible, forfeit such net or nets, or device, together with all boats, vessels and tackle used in the violation of this section and be fined a sum of not less than three hundred dollars and not more than one thousand dollars, or be subject to both such fine and forfeiture, in the discretion of the trial justice trying the case.

Nothing in this section shall be construed in any way to impair, alter or abridge any rights which either state, or the citizens thereof, may be entitled to, either by, through, under or against the compact entered into between the States of Virginia and Maryland on March twenty-eighth, seventeen hundred and eighty-five.

The provisions of this section shall not take effect until a similar act becomes effective in the State of Maryland, whereupon the Governor of Virginia shall issue a proclamation declaring the provisions of this section to be effective.

(1930, p. 599; Michie Code 1942, § 3305b; 1952, c. 673.)

§ 28-241. Dredges and scrapes generally. — It shall be unlawful for any person to take or catch oysters from the Potomac river by means of a dredge or scrape, or any instrument other than ordinary shaft or patent tongs, at any season of the year. Any person violating the provisions of this section, upon conviction thereof, shall be confined in the penitentiary for not less than one year nor more than three years, or may be confined in jail not exceeding one year, and fined not less than one hundred dollars, nor more than one thousand dollars, either or both, in the discretion of the court or jury trying the case. In any prosecution for the violation of this section against the master or commander of a vessel, or any of his crew, or any person on board thereof, proof that such vessel was equipped with a crank, dredge or scrape shall be prima facie evidence of such violation. Any vessel, boat or other craft, her tackle, apparel, anchor, cables, sails, rigging and appurtenances, and any dredge, scrape or other instrument used in violation of this section, shall, together with the cargo of such vessel, boat or craft, be condemned as forfeited to the Commonwealth in proceedings as provided for the enforcement of forfeitures. (1930, p. 748; Michie Code 1942, § 3305c.)

§ 28-242. Taking oysters with dredges permitted. — (1) *License required.*—It shall be lawful for any citizen of Virginia or Maryland to take marketable oysters from the Potomac river with dredges operated by power or by hand or by any winding apparatus, using boats propelled by any means; provided that no such citizen shall so take any such oysters from the Potomac river unless and until he shall have first obtained a license for each such boat to be so used, from the proper official of the state of which he is a resident, nor during the time any license so obtained is

suspended. The fee for each such license shall be fifteen dollars, and each such license shall expire on March thirty-first each year.

(2) *When taking permissible.*—Marketable oysters may be so taken under any such license only during the hours between sunrise and sunset on days other than Sundays, and only on and from the first day of October to and including the thirty-first day of March of the following year.

(3) *Restrictions as to crew, etc., of boat.*—Any boat licensed under this section shall not be more than nine net tons and shall not have on it more than three persons, nor more than one set of winders, nor more than one culling board, nor more than one dredge, and such dredge shall not measure more than fifty inches at its widest part, nor weigh more than seventy-five pounds.

(4) *Penalty for violation.*—Any person violating any provision of this section shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense, and in addition to the fine the license of the boat on which such violation was committed may be suspended for not less than three days nor more than six months during the period between October first of one year and March thirty-first of the next following year, in the discretion of the court.

(5) *When section effective.*—Upon the taking effect in the state of Maryland of the provisions of this section, the Governor of Virginia shall issue his proclamation declaring the provisions of this section to be effective.

(6) *Repeal of §28-243.*—Section 28-243 is hereby repealed, provided that such repeal shall not become effective until this section is declared by the Governor to be effective, as above provided. (1946, p. 400; Michie Suppl. 1946, § 3205a.)

§ 28-243. Taking oysters with hand scrapes permitted.

—(1) *When taking permissible.* — It shall be lawful, between the first day of November and the first day of January of each year, and at no other time, for any citizen of Virginia or of Maryland, complying with the provisions of this section, to take or catch, marketable oysters with hand scrapes, not exceeding forty pounds in weight or thirty-six inches in width, from the Potomac river; provided, however, that it shall be unlawful to take or catch oysters by hand scrapes, under the provisions of this section, between the hours of sundown and sunrise.

(2) *License required.*—Any citizen of this State desiring to take or catch oysters with hand scrapes from the Potomac river shall first obtain, by application to the oyster inspector of the district wherein he may reside, or the proper authorities of Maryland, in case of citizens of Maryland, a license for each boat to be so used, the license fee to be ten dollars for each boat.

(3) *Number of persons, scrapes, etc., allowed on boat.*—It shall be unlawful for any boat licensed under the provisions of this section to have on it more than three persons, or more than one scrape, or any winding apparatus or attachment of any kind whatsoever.

(4) *Lawful to use boats.*—It shall be lawful to use boats propelled by power or otherwise in taking oysters by hand scrapes under the provisions of this section.

(5) *Penalty for violation.* — Any person violating the provisions of this section, upon conviction thereof, shall be punished by a fine of twenty-five dollars for the first offense; and for each succeeding offense, seventy-five dollars, or by the confiscation of his boat, equipment and cargo, or both, in the discretion of the court or jury trying the case.

(6) *Possession of scrape as evidence.*—In any prosecu-

tion for the violation of this section, the possession of a hand scrape in a boat on the Potomac river shall be prima facie evidence that the boat was being used for hand scraping purposes.

(7) *When section effective.*—The provisions of this section shall not take effect until a similar act becomes effective in the state of Maryland, whereupon the Governor of Virginia shall issue a proclamation declaring the provisions of this section to be effective. (1934, p. 141; 1936, p. 681; Michie Code 1942, § 3206.)

EXHIBIT "F"

ACTS OF ASSEMBLY OF 1952

CHAPTER 52

An Act to create the Potomac River Oyster Commission; to provide for the appointment, terms, and compensation of the members thereof, and to prescribe their powers and duties; to authorize the Commission to adopt and enforce certain rules and regulations; to provide for certain hearings and appeals; to provide for licensing of the use of certain devices for the taking of oysters in the waters of the Potomac; to limit the use thereof; to authorize the Commission to close certain areas to the taking of oysters; to authorize the reshellings and reseeding of such areas, and to authorize the procedure therefor; to provide a season for the taking of oysters; to characterize certain acts as being in violation of certain laws; to provide for the culling of oysters; to levy and provide for the collection of taxes on certain oysters; to provide how such tax shall be enforced; to provide for the distribution of funds derived from certain taxes, fines, and penalties; to pro-

hibit certain acts; to provide penalties for violations; to repeal certain acts; to provide for the effect of this act under certain conditions; and, to provide when the act shall take effect.

[H 7]

Approved February 18, 1952

Be it enacted by the General Assembly of Virginia:

1. § 1. — (a) The Potomac River Oyster Commission, hereinafter referred to as Commission, is hereby created. The Commission shall be composed of six members, three of whom shall be from Virginia and three of whom shall be from Maryland, all to be appointed as follows:

The three members from Virginia shall be the Commissioner of Fisheries and two other persons appointed by the Governor from the membership of the Commission of Fisheries, all for terms coincident with their terms as members of the Commission of Fisheries.

The three members from Maryland shall be the members of the Department of Tidewater Fisheries of Maryland who shall serve on the Potomac River Oyster Commission for terms coincident with their terms as members of such Department.

(b) The chairmanship of the Commission shall annually alternate between the Commissioner of Fisheries of Virginia and the chairman of the Department of Tidewater Fisheries of Maryland. If the Commission does not agree as to who shall serve first the two commissioners shall draw lots to determine which of them shall first serve as chairman and thereafter the chairmanship shall alternate between the two Commissioners.

(c) No action of the Commission shall be valid or enforceable unless at least two members from each State concur therein.

§ 2. — The Commission shall have complete and exclusive jurisdiction over the waters of the Potomac River in so far as is necessary to administer and enforce the provisions of this act and all other acts that may heretofore or hereafter be enacted by the States of Maryland and Virginia for the conservation of oysters in such river. The Commission shall have the power to adopt and enforce such administrative rules and regulations as may be necessary to carry out the provisions of this act, anything in any other law, either specifically or by implication, to the contrary notwithstanding. A copy of any rule or regulation adopted by the Commission, the violation of which may have the effect of subjecting a person to prosecution, shall be posted by an enforcement officer or deputies in three or more public places in each county or city whose shores adjoin the Potomac River for at least twenty days before such rule or regulation shall have the full force and effect of law; and a certificate of such officer or deputy showing that the same has been posted shall be concusive evidence thereof.

If within such twenty days, subsequent to the posting of any such rule or regulation ten or more persons affected thereby sign a petition, directed to the Commission, requesting a hearing on such rule or regulation, the Commission shall set a time and place in or near the area affected for a hearing thereon. Notice shall be sent the petitioners by mail. At the time and place set for the hearing the Commission shall hear all persons desiring to present any matter bearing on the rule or regulation at issue. If as a result of such hearing the Commission deems it desirable to amend the rule or regulation, whether proposed or adopted, it shall proceed to do so and post the same as in the case of an original rule or regulation or amendment thereto. Copies of all rules and regulations adopted by the Commission, when final, shall be filed in the clerk's office of each county in

Maryland and Virginia bordering on the Potomac River.

Except as otherwise provided in this act, all the provisions of existing laws not in conflict with the provisions of this act shall continue to be in full force and effect.

§ 3. — (a) Any person who is aggrieved by any decision or order resulting from any hearing conducted by the Commission in accordance with law, shall have the right of appeal to any court of record of the county or city in which he resides, provided that such appeal is taken within thirty days from the date of the rendering of such decision or order.

(b) The appeal shall be by petition against the Commission as defendant alleging therein in detail the decision or order complained of, the objections thereto, and specifying the relief asked, and upon filing of the petition for appeal the clerk of the court shall issue a summons returnable in thirty days.

On or before the return date of such summons, the Commission may file its plea, demurrer or answer to the allegations contained therein. Upon filing of its pleadings by the Commission the cause shall be matured for hearing in court without further pleadings, and, upon application of either party, the cause shall be placed on the docket and promptly heard.

(c) The Commission shall, on or before the return day of such summons certify to and file, in the court wherein such appeal is instituted, the record of the proceedings to which the petition refers. Such record shall include a transcript of any testimony taken therein or an agreed statement thereof, the findings of fact of the Commission, a copy of all orders made by the Commission pertaining to the proceedings, and a copy of the order, action or decision of the Commission which the petition calls upon the court to review.

(d) Mere technical irregularities in the procedure of the

Commission shall not be the basis of the decision of the court. In an appeal from an order or decision of the Commission, the case shall be heard upon the record certified to the court by the Commission. Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order. No part of the record, containing verbal or documentary evidence, shall be disregarded by courts because of technical rules of evidence.

(e) Upon the filing of the appeal an order may be entered, summoning the Commission to appear on a day fixed therein to demur, plead or answer to the allegations of the petition, and on the return, day, the cause shall be matured and set for hearing on the docket and promptly heard. Upon the hearing, the court shall determine whether the order appealed is within the discretion vested in the Commission by law, and if so, whether the Commission has exercised a reasonable discretion or the order is unreasonable and capricious. If the Commission is found to be without authority of law to enter the order complained of, or that it was unreasonable and capricious, the court shall enter an order declaring the order of the Commission null and void. Where the appeal is from a finding of fact, the order of the Commission shall be given weight of a jury on a fact found. If the court finds that the findings of fact are not sustained by the evidence, the court may either declare such findings of fact void or remand the cause to the Commission for further proceedings.

(f) An appeal from the decision of the court shall be allowed either party to the highest court in the State in which the court from which the appeal is taken is located and such court shall have authority to assess costs upon either party, or to apportion such costs between the parties.

§ 4. — The Commission is hereby empowered to incur such expenses and to appoint such administrative employees and enforcement officers and at such salaries as may be pro-

vided by either or both States. Neither State shall be compelled to expend on behalf of the Commission more than the maximum amount expended by the other State. Each State shall provide funds or services substantially equal to the funds or services provided by the other State. All such employees and officers for whom provision is made by the State of Maryland, except members of the Commission, shall be chosen according to and be subject to all of the provisions of Article 64A of the Annotated Code of Maryland (1949 Supplement). All such employees and officers for whom provision is made by the State of Virginia, except members of the Commission, shall be chosen and shall hold office under the same provisions of law which apply to employees of the Virginia Commission of Fisheries. The Attorney General of each State shall be the legal advisor for the Commission.

The members of the Commission who are not eligible to serve as chairman shall be paid a per diem of twenty-five dollars, and expenses for each day engaged in the work of the Commission shall be paid all members of the Commission, from funds provided by law. However, the members of the Commission who are eligible to serve as chairman shall receive no extra compensation.

Enforcement officers appointed by the Commission shall have the same authority as enforcement officers of the Maryland Tidewater Fisheries Commission and of the Virginia Fisheries Commission.

§ 5. — The Commission, upon application therefor, shall under such conditions as to the fitness of the applicant as it deems proper issue licenses permitting such handscraping, hand dredging or shaft tonging within the limits of the Potomac River, exclusive of its tributaries to any citizen of Maryland or Virginia upon the production of proof satisfactory to the Commission that the applicant for such

license has actually resided in either State for a period of one year. In the event of denial of such license or licenses to any person applying therefor, such applicant shall be entitled, upon his request, to a hearing thereon before the Commission, from which decision the applicant shall be entitled to an appeal as provided herein for appeals from an order or decision of the Commission. The licenses so issued shall be valid for the duration of only one oyster season and the Commission shall have the authority to fix fees to be charged for such licenses. Provided, that the fee for a license permitting handscraping and hand dredging shall be not less than fifteen dollars and not more than twenty-five dollars and the fee for a license permitting only shaft tonging shall be not less than five dollars and not more than ten dollars. Any person licensed to tong oysters in the water of his State shall be credited with the fee paid thereon as though such fee had been a payment on the fee herein required and upon payment of the difference between fee required by the State and the fee required herein, if the latter be larger, shall be entitled to a license as though he had paid the entire fee to the Commission. It shall be unlawful for any person to take oysters within the limits of the Potomac River, exclusive of its tributaries, with a hand-scrapers, hand dredge or shaft tong or any other type of gear unless such person has been issued a license as set forth herein and unless such license is, at the time of the taking of such oysters, valid and subsisting. Any person found guilty of violating this section shall be subject to the penalties provided by § 14 hereof.

§ 6. Any person who violates any provision of this act or any rule or regulation adopted hereunder shall be considered guilty of violating the laws of the State whose officer arrested him and shall be prosecuted according to such laws in the appropriate court of the State of the arresting officer.

§ 7. A tax of not less than ten cents nor more than twenty cents per standard bushel of oysters as set by the Commission is hereby levied on each such bushel of oysters taken from the Potomac River under a license issued by the Commission. Such tax shall be paid by the licensee, and the buyer of such oysters shall be liable for the collection thereof and the payment to the Commission, but both shall not be liable. The Commission shall provide for the collection of such tax.

§ 8. After due notice and a hearing by the Commission, the license of any person who is liable for the payment of such tax may be revoked for failure or refusal to pay such tax. Each such revocation shall be for a period to be fixed by the Commission. In addition to such revocation, legal action may be instituted by the Commission, through counsel of its own choice or through the attorney charged by law with enforcement of the laws relating to the Fisheries Commission of the State in the place of residence of the defendant, for the collection of any such tax in arrears and no license shall be issued to any person who is in arrears as to such tax. It shall be unlawful to fail or refuse to pay the tax levied hereby and violations shall be subject to the penalties herein provided.

§ 9. The Commission is authorized to adopt such rules and regulations as are necessary to provide for the collection of the tax hereby imposed and all such rules and regulations so adopted shall be reproduced and sent each licensee of the Commission and given such other publicity as the Commission deems proper. The Commission is specifically authorized to prohibit the indiscriminate selling and buying of oysters on the Potomac River and if it so provides it shall specify a minimum of five points at which oysters therefrom may be sold or bought. It shall be unlawful to buy or sell any such oysters at any place other than one designated by the Commission.

§ 10. Each person buying or selling oysters taken from the Potomac River shall keep such reasonable records as the Commission may specify and as will enable the tax due to be ascertained and collected. It shall be unlawful to fail or refuse to keep the records required by the Commission and violations shall be punished as herein provided.

§ 11. The Commission shall have complete authority to reshell and reseed any bar or area within its jurisdiction for the purpose of the propagation, preservation and growth of oysters and to establish reasonable rules and regulations with regard to the taking of oysters from such bars or areas after they have been reshelled or reseeded. The taking of oysters in violation of such rules and regulations shall subject the person so violating to the penalties set forth in § 14 hereof. Likewise, the Commission may, at any time and for such periods as it may determine necessary to carry out such purpose, close any bar or area within its jurisdiction to the use of any particular gear or to any oystering, provided it shall have been determined first, by actual inspection, that continued taking of oysters from such bar or area would unduly deplete the supply of oysters thereon. No bar or area shall be closed by the Commission without due notice thereof being given in at least two newspapers having general circulation in the counties of each state bordering on the Potomac River. Such notices shall specify the bar or area to be closed and set a date for the closing thereof. Upon the signing of a petition by at least twenty oystermen licensed by the Commission and the filing thereof if not more than ten days after such bar or area has been closed, the Commission shall conduct a hearing at which any interested person may appear for the purpose of presenting evidence to prove that the continued taking of oysters from such bar or area would not deplete the supply of oysters thereon. It shall be unlawful to take oysters from any such

bar or area while it is closed by order of the Commission and the taking of oysters in violation of any such order shall subject the person so violating to the penalties set forth in § 14 hereof.

§ 12. The taking of oysters within the limits of the Potomac River, exclusive of its tributaries, over which Maryland and Virginia exercise concurrent fishing rights by virtue of the Compact of March 28, 1785, shall be lawful from and including the first day of November of each year, to but not including the first day of March of the following year, if so licensed by the Commission, if done by the methods generally known as handscraping, hand dredging or shaft tonging or otherwise as herein permitted; provided, that the Commission shall have authority to vary the opening and closing of the season by not to exceed two weeks in either direction; and provided further, that such handscraping, hand dredging or shaft tonging may only be done by and with any device operated by hand, which shall include the optional use of hand winders. The length and spacing of teeth in any such device shall conform to regulations adopted by the Commission within reasonable limits for the taking of oysters. The use of the device generally known as a "diver" is hereby permitted. No device used to take oysters under this act except shaft tongs shall measure more than thirty inches from the outside tooth of the scrape, or dredge, bar to the other outside tooth of such bar. It shall be unlawful for a boat to have more than one handscrape or hand dredge aboard at any time, nor shall there be aboard any boat within the above specified limits of the Potomac River at any time any dredge, or scrape, which exceeds, or does not conform to the requirements of this act or to the regulations of the Commission. It shall be unlawful for any boat, within the limits of the Potomac River, to be equipped for taking oysters therein at any time with a mast, or boom,

or power winders, or patent tongs, or any other tackle or equipment for the operation of a power winder dredge or of patent tongs, except for boats the masters of which have, before such trip, been granted permission by the Commission to take such boats between areas where such equipment is allowed. Such permission shall be evidenced by a permit from the Commission which shall be carried by some person on the boat and produced for inspection upon request. Each person on any boat within the limits of the Potomac River which is equipped in violation of any provision of this act shall be subject to the penalties provided by § 14 hereof.

§ 13. All oysters taken from the waters of the Potomac River exclusive of its tributaries, including planting grounds, shall be culled at the point where taken. All such oysters which measure less than three inches from hinge to mouth, taken from such waters, are hereby declared to be unmarketable oysters and, together with all detached empty shells, shall be returned to the water whence taken. All such oysters and detached empty shells once passed from the cull board shall be considered as having been culled and if it is found that such culled oysters contain more than five per centum (5%) of unmarketable oysters and detached empty shells, so ascertained by a reasonable inspection, the captain, or person in charge of the boat on which such oysters and shells are found, shall be guilty of a violation of this act and shall be subject to the penalties provided in § 14 hereof. Possession of such unmarketable oysters and detached empty shells in a boat on any of the waters specified in this act shall be deemed *prima facie* evidence that such oysters and detached empty shells were taken from such waters.

It shall be a violation of this act for any person to buy, sell or have in his possession oysters taken from the water specified in this act which contain more than five per centum (5%) unmarketable oysters and detached empty shells. Any

person who has in his possession more than five per centum (5%) unmarketable oysters and detached empty shells, shall be deemed prima facie guilty of a violation of this act and the burden shall be upon such person to prove that such oysters were not taken from the waters so specified. Upon conviction of such a violation, such person shall be subject to the penalties provided by § 14 hereof.

It shall be a violation of this act for any captain, or person in charge of any vehicle, boat, or other vessel, to fail or refuse to stop upon a suitable signal being given to that effect by a duly authorized officer, or to fail or refuse to permit inspection of such vehicle, boat, or other vessel, and its contents. Any person violating this provision shall be punished as provided in § 14 hereof.

§ 14. Any person who violates any of the provisions of this act, or rules or regulations adopted hereunder, shall be fined for each such violation not less than one hundred dollars nor more than five hundred dollars for the first offense, and not less than two hundred dollars nor more than one thousand dollars for the second and each subsequent offense. Provided, that no person shall be deemed to be a second or subsequent offender if such person has not been fined within a period of three years for violating any of the laws which the Commission is empowered to enforce. Furthermore, a third conviction within a period of three years shall operate as a revocation of the license of such convicted person and the court shall upon such conviction require the guilty party to forthwith surrender his license and shall notify the Commission of its action. No license thus revoked shall again be issued to such an offender until such a time as may be determined by the Commission.

In addition to the penalties above prescribed the boat, equipment and gear employed in the second violation or subsequent violation in the discretion of the court trying the case shall be subject to confiscation and sale under the laws

of the State in which the violator is tried, provided however in the case of boats, equipment and gear engaged in a violation without a license from the Commission or when the license has been suspended or revoked confiscation shall be applicable as set forth above in the first violation hereof.

All oysters of which more than five (5%) per centum unmarketable oysters or detached empty shells are a part shall be forfeited to the Commission and disposed of as it deems proper.

§ 15. The gross proceeds of the oyster tax and all fines and penalties assessed under this act shall be divided equally between the States of Maryland and Virginia. The share of such proceeds to which the State of Maryland is entitled shall be paid into the State treasury of Maryland and placed to the credit of the Oyster Fund as provided by § 34 of Article 72 of Annotated Code of Maryland (1939 Edition). The share of such proceeds from the oyster tax to which the State of Virginia is entitled shall be paid into the general fund of the State of Virginia, and the proceeds of fines and penalties shall be paid into the Literary Fund.

2. All acts or parts of acts in conflict herewith are repealed to the extent of such conflict. Provided, however, that nothing herein shall be deemed to repeal any of the provisions of the Compact of March 28, 1785, or to change the same except insofar as this act does so directly.

3. If any provision of this act or application thereof be held unconstitutional by a court of last resort, such holding shall not impair the remainder of this act or any other application thereof not specifically held invalid.

4. This act shall become effective in due course provided by or at such time the other State having representation on the Commission has enacted similar legislation, or when it does enact similar legislation, and shall remain effective so long as similar legislation exists in both States.

EXHIBIT "G"

ACTS OF ASSEMBLY OF MARYLAND
OF 1957

CHAPTER 766

AN ACT to repeal Chapter 1 of the Acts of the General Assembly of Maryland of 1785, said Act having given the consent of the State of Maryland to the so-called Compact of 1785.

Whereas, the State of Maryland is the undisputed owner of the entire bed of the Potomac river to the low water mark on the Virginia shore, and

Whereas, in the year 1785, the General Assembly of Maryland, by Chapter 1 of the session laws of that year, confirmed a compact entered into between the states of Maryland and Virginia in the year 1785, and thereafter known as the Compact of 1785, and

Whereas, at the time of the promulgation of this compact there were two main elements of consideration leading to the agreement between the state of Maryland and the state of Virginia; Virginia, on her part, would relinquish any right to charge tolls for vessels going to and from Maryland and passing through the Virginia capes; Maryland, on her part, granted unto the citizens of Virginia certain rights of fishing and navigation in the waters of the Chesapeake bay and in the Potomac and Pocomoke rivers, and

Whereas, by the subsequent adoption and ratification of the Constitution of the United States, important parts of the Compact of 1785 were immediately superseded and were made obsolete, since those articles of the compact having to do with maritime matters and with interstate trade concerned areas of jurisdiction which were given to the Fed-

eral Government and hence forth were beyond the powers of the individual states, and

Whereas, for over one hundred years the state of Virginia has recognized that these parts of the compact have been superseded by the United States Constitution and as far back as the year 1849 the state of Virginia, by the adoption of a code, has only incorporated articles 7, 8, 10 and 11 of the compact, and has regarded all other articles as obsolete and of no further force and effect, and

Whereas, the state of Maryland has recognized the valuable natural resources lying in the Potomac river, and has sought to effectuate a uniform system of preservation and conservation of these natural resources to the mutual benefit of the citizens of both Maryland and Virginia, and

Whereas, the citizens and law enforcement personnel of the state of Virginia have callously and intentionally disregarded, disobeyed and interfered with the enforcement of laws regulating the acquisition, preservation and conservation of natural resources in the Potomac river, and

Whereas, the state of Maryland has requested the state of Virginia to cooperate in the preservation and conservation of these natural resources of the Potomac river which the state of Virginia has effectively refused to do, all of which is to the mutual detriment of the citizens of both states, and

Whereas, the state of Virginia has clearly demonstrated its unwillingness and open refusal to cooperate in the enforcement of existing laws and to adopt new laws for the effective enforcement of the preservation and conservation of these valuable natural resources, and

Whereas, the state of Virginia has clearly demonstrated

its intention to disregard and flout the rights of the state of Maryland as owner of the bed of the Potomac river and to interfere with the lawful rights of the state of Maryland and its citizens, and

Whereas, the state of Maryland has ably, without incident, regulated the various rivers and waters binding on sister states, including the state of Virginia, lying outside the jurisdiction of the Compact of 1785, to the mutual and continued benefit of the citizens of Maryland and the citizens of adjoining states, and

Whereas, the hostility shown by the officials and citizens of the state of Virginia to the law enforcement officers and citizens of the state of Maryland on the Potomac river, by reason of shootings and sabotage of vessels has created a situation which the state of Maryland can no longer tolerate, and

Whereas, the state of Maryland, in the exercise of its right as owner of the bed of the Potomac river, determines that it is necessary for the preservation of the public peace and safety on the Potomac river, and for the protection and preservation of the natural resources lying therein, to take such action as is necessary to maintain the benefits of the Potomac river for the mutual benefit of its citizens and all others who have the right to be on said river ; now, therefore,

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Chapter 1 of the Acts of the General Assembly of Maryland of 1785 be and the same is hereby repealed.

SEC. 2. *And be it further enacted*, That this Act shall take effect June 1, 1957.

EXHIBIT "H"

ACTS OF ASSEMBLY OF MARYLAND
OF 1957

CHAPTER 770

AN ACT to repeal and re-enact, with amendments, Sections 301, 302, 303, 304 and 306 of Article 66C of the Annotated Code of Maryland (1951 Edition), title "Natural Resources", sub-title "Fish and Fisheries", sub-heading "Concurrent Law on the Potomac River"; to repeal Sections 307 and 310 of said Article, sub-title and sub-heading; to repeal and re-enact, with amendments, sub-sections (b), (c), (D), (F) AND (N) of Section 657 of said Article 66C, sub-title "Oysters and Clams", AND TO REPEAL SUB-SECTIONS (G), (H), (I), (J), (K), (L), (M) AND (O) OF SAID SECTION, amending the so-called Concurrent Laws concerning the taking of fish, oysters, crabs and clams from the Potomac River in order to vest all the licensing provisions concerning the Potomac River in the State of Maryland and to give to the State of Maryland and its law-enforcement officers complete control and jurisdiction over such fisheries in the Potomac River, giving to certain residents of the State of Virginia an equal right with citizens of Maryland in the use and enjoyment of such fisheries and relating generally to the taking of fish, oysters, crabs and clams from the waters of the Potomac River.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Sections 301, 302, 303, 304 and 306 of Article 66C of the Annotated Code of Maryland (1951 Edition), title "Natural Resources", sub-title "Fish and Fisheries", sub-heading "Concurrent Law on the Potomac River", be and they are hereby repealed and re-enacted, with

amendments; that Sections 307 and 310 of said Article, sub-title and sub-heading be and they are hereby repealed; and that sub-sections (b), (c), (D), (F) AND (N) of Section 657 of said Article 66C, sub-title "Oysters and Clams", be and they are hereby repealed and re-enacted, with amendments, THAT SUB-SECTIONS (G), (H), (I), (J), (K), (L), (M) AND (O) OF SAID SECTION BE AND THE ARE HEREBY REPEALED and all to read as follows:

[Concurrent] Law on the Potomac River

EXPLANATION: *Italics indicate new matter added to existing law.* [Brackets] indicate matter stricken from existing law.

301. It shall be lawful for any citizen of the State of Maryland or of the State of Virginia to take fish, oysters or crabs from the Potomac River after complying with the requirements of the laws of the State of *Maryland* [which he is a citizen] for the taking of fish, oysters or crabs from the waters [of such State] *thereof*; and any citizen of either State who takes fish, oysters or crabs from the Potomac River without having complied with the requirements of the law of [his] *this* State as to the taking of fish, oysters or crabs in its own waters shall be considered guilty of violating the laws of the State of [which he is a citizen] *Maryland*, and shall be prosecuted according to such laws. It shall not be lawful for any person to take or catch fish, oysters or crabs in any manner whatever in the waters of the Potomac River unless he be a citizen of Maryland or of Virginia, and shall have been a resident of the State of which he is a citizen for twelve months immediately preceding. Any such non-resident violating this section shall be subject to a fine of Five Hundred Dollars; furthermore, any vessel, with its equipment and cargo, or any net or other

appliances used in violating this section shall be deemed forfeited to the State *of Maryland*.

302. Any citizen of Maryland or of Virginia desiring to fish for market or profit with a pound net, fyke net, gill net, haul seine, sturgeon net, skirt net, weir or other device, in the waters of Potomac River, shall first apply to the regularly constituted officer [as determined by the laws or regulations] of the State of [which he is resident, and in the district or locality in which said applicant resides, except that the applicant for license to fish with the fixed device shall apply to the officer of the district or locality in which such fixed device is proposed to be located for a license] *Maryland*, and state on oath the true name or names of the person or persons applying for said license; that they are and have been for twelve months next preceding residents of the State [in] *from* which such application has been made; the place at which the net, seine, fyke, weir or other device is to be fished, and that during the period of the license he will not violate any of the laws of the State [in which he resides in relation to the taking and catching of fish] *of Maryland*; provided, nothing in this section shall apply to any person using a net solely for the purpose of supplying his own table. Such oyster inspector or other authorized officer shall thereupon grant license to use such net or other device, and state in such license the name or names of the person or persons who shall use the same, the place at which it is to be located or used, the season for which said license is granted, which season shall begin on the first day of February in any year and end on the thirty-first day of January of the year following and the amount of tax as prescribed by the laws of the State [where issued] *of Maryland*.

Any citizen of either Maryland or Virginia desiring to

take or catch crabs from the waters of the Potomac River by any method, or any person desiring to engage in the business of buying crabs for picking or canning or shipping the same, shall pay to the oyster inspector or other designated official [in the district in which he resides] *of the State of Maryland* such specific license tax as is prescribed by the State of [which he is a resident] *Maryland*.

If any person shall use or set, or cause to be used or set, any such net or seine as aforesaid, or shall take or catch crabs in the waters of the Potomac River within the jurisdiction of the State of Maryland [or Virginia] without having first paid the tax and obtained the license provided for under the laws of [the] *this* State [in which such net is set or crabs are taken], he shall be deemed guilty of a violation of the provisions of this section, and shall, for each such violation, be fined not less than Ten Dollars nor more than Two Hundred Dollars, and shall forfeit to the State of *Maryland* such net or other fishing devices used in said violations.

It shall be unlawful for any person to use a haul seine or pound net head or pocket having a smaller mesh than two inches, stretched measure, for the purpose of catching food fish. Any net having a funnel mouth, round mouth, or square mouth, with head above water, shall be construed as a pound net. Any person or persons using a net in violation of this provision shall be fined not less than Ten Dollars nor more than One Hundred Dollars for each offense, and such net or nets shall be forfeited to the State of *Maryland*.

303. The use of any beam trawl, trammel net, troll net or any similar device is absolutely prohibited in the waters of the Potomac River or any of its tributaries. Any person, firm or corporation violating the provisions of this section shall on conviction thereof before any Justice of the Peace

of any county of this State most accessible, forfeit said net or nets, or device, together with all boats, vessels and tackle used in the violation of this section and *be* fined a sum of not less than Fifty Dollars and not more than One Hundred Dollars, or to be subject to both fine and forfeiture, in the discretion of the Justice of the Peace trying the case. Provided, however, that nothing in this section shall be construed, in any manner, to prohibit the catching of fish through the method of seine hauling and pound net or gill net fishing as heretofore permitted, by license or otherwise, under the laws of the State of Maryland.

304. All offenses committed against the provisions of Sections 301-302 and 304-306 may be punished by any of the magistrates or courts of [either] *the State of Maryland* having criminal jurisdiction.

The authorities of [either] *this* State shall have the right to examine into the right of any person taking fish, oysters or crabs in the Potomac River, or having same in his possession; and any person taking fish, oysters or crabs in the Potomac River or having same in his possession shall exhibit his authority for so doing whenever required by the police or other legal authority of [either] *this* State. The legal authorities of [either] *this* State shall have the right to arrest any such offender, and, if necessary in order to arrest, shall pursue such offender beyond the boundary line of [either] *this* State upon navigable waters, and arrest such offender whenever found upon such waters.

306. If any oyster inspector or other officer empowered with the duties of enforcing the provisions of Sections 301-302 and 304-307, knowingly fail to report violations of the same or to perform any of the duties herein required of him, he shall, for every such offense, be liable to a fine of One Hundred Dollars, to be applied to the oyster fund of [his] *this* State.

[307. Nothing in Sections 301-302 and 304-307 shall be construed in any way to impair, alter or abridge any rights which either State, or the citizens thereof, may be entitled to, either by, through, under or against the compact entered into between the States of Maryland and Virginia on March 28th, 1785.]

[310. Nothing in Section 308 shall be construed in any way to impair, alter or abridge any rights which either State, or the citizens thereof may be entitled to, either by, through, under or against the compact entered into between the States of Maryland and Virginia on March 28th, 1785.]

657.

(b) Joint Use of the Potomac River Fisheries by Maryland and Virginia. It shall be lawful for any citizen of the State of Maryland or any citizen of the Commonwealth of Virginia who has been a resident of said State or Commonwealth for twelve months immediately preceding, and who has been duly licensed by the State [or Commonwealth of which he is a citizen] *of Maryland*, to take or catch fish, oysters or crabs from the waters of the Potomac River in accordance with the laws and regulations of the State [or Commonwealth of which he is a citizen] *of Maryland*.

(c) Licenses for the Potomac River Fisheries. Any citizen of the State of Maryland or of the Commonwealth of Virginia entitled to take or catch fish, oysters, or crabs from the Potomac River under the provisions of the preceding sub-section shall first procure a license from a regularly constituted officer [determined by the laws and regulations of the State or Commonwealth of which he is a resident] *of the State of Maryland*. No person otherwise entitled to take fish, oysters, or crabs, from the Potomac River shall have such right until he be licensed to take fish, or oysters,

or crabs, as the case may be. The authorities of [either] *this* State shall have the right to examine into the right of any person to take fish, oysters, or crabs from the Potomac River, or to have the same in his possession; and any person taking fish, oysters, or crabs from the Potomac River, or having any of the same in his possession shall exhibit his authority for so doing whenever required by any officer or other authority of [either State] *the State of Maryland*.

[(g) Removal of Seed Oysters from the Upper Potomac River. It shall be lawful between the first day of January and the first day of May in every year for any citizen of the State of Maryland or of the Commonwealth of Virginia who has been granted a permit as hereinafter provided to buy from duly licensed tongers and to carry out of the Potomac River for the purpose of planting in the waters of Maryland or Virginia, seed oysters or oysters whose shells measure less than three inches from hinge to mouth, provided such oysters be caught above or upstream of a line joining North Point at the mouth of Upper Machodoc Creek in the County of King George in Virginia to Lower Cedar Point in Charles County in Maryland.]

[(h) Permits for the Removal of Seed Oysters from the Potomac River. Any citizen of the State of Maryland or of the Commonwealth of Virginia wishing to purchase and carry seed oysters from the Upper Potomac River in accordance with the preceding sub-section shall first obtain a permit for each boat to be used in carrying said oysters. Such person shall apply for such permit to any oyster inspector or other officer of the State or Commonwealth of which the applicant is a citizen. Said applicant shall state the name and tonnage (if registered in the customs house) of the boat for which a permit is sought, the name of the owner and master of said boat, and to what waters in Maryland or Virginia

such cargo of oysters shall be carried. The applicant shall then take and subscribe to an oath before said officer that said boat shall not be used for carrying any cargo of oysters to any other waters than the waters of Maryland or Virginia, or for any other purpose than for planting in the waters of Maryland or Virginia.]

[(j) Issuance of the Permit. After receiving an application, inspecting the boat, and hearing the oath as provided in the three sub-sections immediately preceding, if the boat and the master and owner of said boat conform with the requirements hereinbefore set forth, the officer shall issue a permit to the master or owner of the said boat, for buying and carrying seed oysters from the Potomac River. A memorandum of the permit shall then be sent to the Department of Tidewater Fisheries, if the officer issuing the same be an officer of the State of Maryland, or to the Commission of Fisheries, if the officer issuing the same be an officer of the Commonwealth of Virginia.]

[(k) Fees for Issuance of the Seed Oyster Permit. Every officer of the State of Maryland or of the Commonwealth of Virginia issuing a permit as provided in the preceding sub-sections shall be entitled to a fee of twenty-five cents (25¢) for the issue of each permit.]

[(l) Powers of Maryland and Virginia Officers. It shall be the duty of the officers of the Maryland Department of Tidewater Fisheries and of the Virginia Commission of Fisheries, or either of them, to apprehend and place under arrest any person found violating any of the provisions of this section. In the enforcement of the provisions of this section officers of either State shall be privileged to examine into the right of any person to take or catch fish, oysters, or crabs in the Potomac River, and said officers of either State shall be privileged to pursue, to apprehend, and to

arrest upon the navigable waters beyond the boundary of either State any person deemed guilty of violating any of the provisions of this section.]

[(m) Jurisdiction of Maryland and Virginia Courts. Any person not a citizen of either Maryland or Virginia deemed guilty of violating any of the provisions of this section may be tried and punished in either State by the magistrates or courts having legal cognizance of such offenses.]

(D) *It shall be lawful for any citizen of the State of Maryland or of the Commonwealth of Virginia, duly licensed as provided in the preceding sub-section, to take or catch oysters from the Potomac River with ordinary shaft tongs, and by no other means. It shall be unlawful for the owner, captain or master, or any member of the crew of any boat capable of self-propulsion by any motor, turbine or other engine attached to said boat, to have on board such boat, or in tow, or to permit on board or in tow, any scoop, scrape, dredge or similar instrument used in dredging, or any winch, spool, winder or other tackle used in dredging, unless said boat be licensed to dredge on leased land, or unless said boat be engaged in taking seed oysters under the surveillance and with the permission of the Department of Tidewater Fisheries.*

(F) *All oysters taken from the natural rocks, beds or shoals of the Potomac River shall be culled at the point where taken, and all oysters whose shells measure less than three inches in length, measured from hinge to mouth, whether attached to a larger oyster or not, shall be returned, together with all empty shells, to the natural rock, bed or shoal whence taken. Whenever any oyster measuring less than three inches in length adheres so closely to a larger oyster as to render removal impossible without destroying the smaller oyster, then such oysters, including the larger oyster,*

shall be returned to the rock, bed or shoal when taken. All shells and all oysters measuring less than three inches in length, once passed the culler, shall be considered as not having been culled; and it shall be unlawful for any person to take, buy, sell or have in possession, any shells or oysters taken from the Potomac River measuring less than three inches in length. Whenever any inspector or other officer shall have reason to believe that this sub-section has been violated with respect to culling of oysters, such inspector or other officer is hereby authorized to examine the cargo, hold, bin, or lot of oysters, and if said oysters consist of five per cent (5%) or more of shells and of oysters whose shells measure less than three inches in length, the person in charge of such oysters shall be deemed guilty of violating the provisions of this sub-section.

(n) Penalties. Any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished in the manner herein described, to wit:

1. Any person found guilty of violating Sub-section (a) shall be subject to a fine of Five Hundred Dollars (\$500), and in addition to such fine, any vessel with its equipment and cargo, and any gear or appliance used in such violation shall be forfeited to the State [or Commonwealth wherein the conviction occurred,] *of Maryland* and shall be disposed of in any manner ordered by said State [or Commonwealth].

2. Any person found guilty of violating any of the provisions of Sub-sections (b) and (c) shall be subject to the penalties of [the] *this* State [or Commonwealth of which he is a citizen] for taking or catching fish, oysters, or crabs without a license.

3. Any person found guilty of violating Sub-section (d) of this section shall be confined to the penitentiary for not

less than one year nor more than three years, or fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or both imprisoned and fined, at the discretion of the court or jury trying the case. In any prosecution against the master or commander of a boat or any of his crew, or any person on board thereof, proof that such a boat was equipped with scoop, scrape, dredge, winch, winder, crank, or spool shall be prima facie evidence of the violation of Sub-section (d) of this section. Any boat or vessel, her tackle, apparel, anchor, cables, rigging, appurtenances, and equipment used in such violation shall, together with the cargo of such boat, be condemned and forfeited to the State [or Commonwealth in which the case shall be tried.] *of Maryland.*

4. Any person found guilty of violating the provisions of Sub-section (e) of this section shall be subjected to the penalties of the State [or Commonwealth of which he is a resident] *of Maryland* for taking or catching oysters out of season.

5. Any person found guilty of violating the provisions of Sub-section (f) of this section, if a packer or vendor of oysters, shall be fined One Hundred Dollars (\$100), or confined in jail not less than thirty days nor more than six months, either or both, or if a tonger, shall be fined not less than Fifty Dollars (\$50) or confined in jail not less than fifteen days nor more than three months, either or both. In addition to such fines or imprisonment, any cargo, hold, bin, or lot of oysters found uncultured, or culled in violation of this section, shall be confiscated and returned to some natural rock, bed or shoal of the Potomac River under the supervision of the officer making the arrest. Any boat containing uncultured oysters or oysters culled in violation of this section shall be held as security for the payment of any fine.

In case there is an appeal or a waiver of trial before a magistrate or justice of the peace, the cargo, hold, bin, or lot of oysters shall be held in the custody of the officer making the arrest until the captain of the boat or the vendor or packer of oysters shall have reculled said oysters; and the officer under whose supervision the reculling is done, shall give the offender a certificate showing the number of bushels of such unmarketable oysters and shells culled out and returned to the natural rocks, beds, or shoals of the Potomac River; and the costs of reculling and other expenses incident thereto shall be borne by the offender.

[6. Any person found guilty of violating Sub-sections (g) to (k), inclusive, of this section by carrying seed oysters from the Potomac or for any purpose other than for planting in the waters of Maryland or Virginia shall be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), and in addition to such fine the boat used in such a manner, with her cargo and equipment, shall be condemned and forfeited to the State where such conviction shall occur. Any person found guilty of violating the provisions of Sub-sections (g) to (k), inclusive, of this section by buying and carrying seed oysters from the Potomac River without a permit for each boat so used shall be fined not less than Twenty Dollars (\$20) nor more than One Hundred Dollars (\$100). The owner or master of any boat or vessel violating the provisions of (g) to (k), inclusive, of this section by having any scrape, scoop or dredge, or any part thereof, on any vessel engaged in taking, catching, buying or carrying seed oysters shall be fined not less than Two Hundred and Fifty Dollars (\$250) nor more than Five Hundred Dollars (\$500), and in addition thereto the boat or vessel so used together with its cargo and equipment, shall be forfeited to the State wherein such offender is convicted.]

[(o) Conformance with the Compact of 1785. Nothing in this section shall be constructed in any way to impair, alter, or abridge any right which the State of Maryland or the Commonwealth of Virginia or the citizens of either, may be entitled to by, through or under the Compact entered into between the State of Maryland and the Commonwealth of Virginia on the twenty-eighth day of March, 1785.]

SEC. 2. *And be it further enacted*, That it is the legislative intent in the enactment of this law to vest in the State of Maryland all the licensing provisions concerning the taking of fish, oysters, crabs and clams from the Potomac River, to give to the State of Maryland and its law enforcement officers complete control and jurisdiction over such fisheries in the Potomac River and (except as provided herein) to give to residents of the State of Virginia an equal right with citizens of Maryland in the use and enjoyment of such fisheries to be exercised solely under the laws of the State of Maryland.

SEC. 43. *And be it further enacted*, That this Act shall take effect June 1, 1957.

