

FISH MANAGEMENT SESSION

SUMMARY REPORT OF THE 13th ANNUAL MEETING OF THE SOUTHERN DIVISION OF AFS

The thirteenth annual meeting of the Southern Division of the American Fisheries Society was held in Clearwater, Florida. The meeting, which is held in conjunction with the Southeastern Association of Game and Fish Commissioners, was from October 18-October 21, 1964. Approximately 700 people representing fisheries, game, engineering, enforcement, boating and education-information personnel were registered at the combined conferences.

The business meetings of the Southern Division were held on October 19 and October 20. Approximately 150 persons attended the business sessions with 106 fisheries biologists from 17 states registering their attendance.

Technical fisheries sessions were well attended with an estimated peak attendance of 230. The forty-one papers were divided into seven sessions which stretched over a period of 2.5 days. Papers were presented on a variety of fisheries subjects including marine fisheries, estuarine productivity, impoundments management, aquatic vegetation control, pollutions abatement and farm pond investigations.

The business sessions were presided over by President Edwin Berry of Maryland ably assisted by Robert Martin of Virginia. Six former presidents of the division were in attendance as were Mr. George Eicher and Mr. I. B. Byrd, President and President-elect of the Parent Society.

Outstanding committee reports were submitted. The Reservoir Committee reported plans for evaluation of rotenone sampling techniques in Douglas Reservoir, Tennessee in October, 1965. A reservoir symposium is planned for April, 1967 at the University of Georgia Continuing Education Center. The membership committee reported 141 new members by September 5, 1964.

New officers elected for the Division were Bernard T. Carter, Kentucky, President; Alex B. Montgomery, Georgia, Vice President; and James T. Davis, Louisiana, re-elected Secretary-Treasurer.

Respectfully,
JAMES T. DAVIS
Secretary-Treasurer, Southern Division AFS

1964 POLLUTION COMMITTEE REPORT TO THE PRESIDENT, SOUTHERN DIVISION, AMERICAN FISHERIES SOCIETY

Your 1964 Pollution Committee herewith presents a brief summary of the water pollution control laws of the various member States. This summary was compiled with particular reference to: (1) the legal authority granted a State to assess monetary, or other, damages against a polluter responsible for a fish-kill; and (2) the role played by the State fishery agencies in water pollution control activities.

Two salient facts are immediately apparent from these summaries. The recovery of damages by the State in any way commensurate with the actual loss associated with a fish-kill is not legally possible in most States. Where the laws do so permit, the recovery of adequate

and not a definitive, role in the water pollution control activities of damages seems very much the exception rather than the rule. These summaries also show that the State fishery agencies play a supporting, the Southeastern States.

1964 POLLUTION COMMITTEE
Southern Division, American Fisheries Society

Johnie H. Crance, Alabama	Billy Joe Grantham, Mississippi
James Ray Shell, Arkansas	Otho D. May, South Carolina
Joe E. Burgess, Florida	John M. Stubbs, Tennessee
Herbert N. Wyatt, Georgia	Leo D. Lewis, Texas
James R. Charles, Kentucky	Eugene W. Surber, Virginia
James T. Davis, Louisiana	Leland Roberts, Oklahoma
Albert E. Sanderson, Maryland	Frederic F. Fish, North Carolina (Chairman)

Alabama:

Johnie H. Crance contributed the following brief summary of the pollution control laws of Alabama as they relate to fish protection and the functions of the Department of Conservation:

"1. *The role of the fishery agency (or agencies) in state water pollution abatement activities:* The Alabama Department of Conservation is the only state fishery agency in Alabama. The primary role it plays in pollution abatement is to conduct investigations of fish kills, determine the cause and extent of fish kills, and to determine the adverse effects pollution has on fish and other aquatic life in the waters of the state. Data obtained is used to help point out the loss and potential loss of fish and aquatic organisms caused by pollution and the need for control measures.

"2. *Specific facts of existing legislation enabling the State to recover damages from polluters responsible for fish kills:* There is no such legislation in Alabama. The Alabama Water Improvement Commission is the regulatory agency in the state. The commission has the duty to conduct surveys with respect to pollution, to establish criteria standards for recognized limits of pollution, to issue permits defining the nature and quantity of discharge industries and municipalities must comply with, and to make periodic checks to determine if the discharge is being made in accordance with terms and specifications of the permit. The commission may issue an order to cease and desist from the practices in violation of the permit issued. If any party is found guilty by the court of violating an order of the commission, it shall be guilty of a misdemeanor (maximum penalty \$500 and/or 6 months in jail)."

Arkansas: No reply.

Florida: (Excerpts from Joe Burgess' contributions).

Florida State Board of Health has the "power to adopt, promulgate, repeal and amend rules and regulations regulating sanitary practices relating to drinking water; watersheds used for public water supplies; pollution of lakes, streams and other waters_____." The Board has the "authority to commence and maintain all necessary actions and proceedings to enjoin and abate nuisances dangerous to the health of persons, fish and livestock."

Florida Statutes state that "any person, firm—who shall deposit—in any waters of the lakes, rivers, streams, and ditches in the state, any rubbish, filth or poisonous or deleterious substances, liable to affect the health of persons, fish or livestock—shall be guilty of a misdemeanor, and shall be fined not more than \$500, if found guilty." That

section also provides that the carrying into effect of its provisions shall be under the supervision of the State Board of Health.

"Under Chapter 61-1615, it is unlawful to pollute the Peace River, and, in addition the violator is liable for payment of all reasonable costs and expenses incurred by the State Board of Health in tracing sources of such pollution and the expenses of the Florida Game and Fresh Fish Commission in restoring the river as a suitable habitat for fish and fish food."

Senate Bill 565 states that "whoever shall cause an unlawful discharge of pollution such as to destroy fish or fish food in the Alafia River shall, in addition to all other penalties provided by law, be liable for payment of all reasonable costs and expenses incurred by the Florida State Board of Health in tracing the sources of such pollution and the expenses of the Florida Game and Fresh Water Fish Commission in restoring the river as a suitable habitat for fish and fish food and in restocking the stream with fish.

"It therefore appears that the Florida Game and Fresh Water Fish Commission has general supervisory powers over water pollution which may tend to kill or injure fish in the fresh waters of Florida."

Georgia:

Herb Wyatt writes: "There is no law in Georgia providing for reimbursement to the State for fish killed by a polluter. It is possible that reimbursement for fish killed could be obtained in a civil suit brought against a polluter as payment for damages done by pollution. This suit, of course, could be made by the state but it has never happened.

"The agency in the State of Georgia concerned with wildlife conservation and management is the State Game and Fish Commission. The Game and Fish Commission has no authority concerning water pollution. A certain degree of authority is assumed unofficially by this department in investigating fish kills. If pollution is determined to be the cause of the kill the report of the kill is passed on to the State Health Department which is responsible for investigating cases of water pollution."

Kentucky: (Excerpts from material submitted by James R. Charles).

Under the Kentucky State Department of Health, the Water Pollution Control Commission under very broad and inclusive powers supervises, administers, and enforces laws, and through research and experimentation develops pollution prevention, control, and abatement, making such rules and regulations deemed necessary.

Membership of the Water Pollution Control Commission consists of Commissioners of the State Departments of: Health, Conservation, Mines and Minerals, Fish and Wildlife Resources, Attorney General, the Director of Strip Mining and Reclamation, and three citizens appointed by the Governor, two representing municipalities and one representing industrial management.

The technical, scientific, legal or other services of the Commission are furnished, insofar as practicable, by the State Departments without additional compensation. The Department of Fish and Wildlife Resources is authorized—to make contributions to the Commission for its program (the only Department so designated).

James Charles further comments, "Kentucky laws relating to water pollution do not in any instance *single out* fish kills or the recovery of damages from those responsible for same. However, the Water Pollution Control Commission's attorney believes strongly that a fish kill constitutes a tort against the Commonwealth and, as such, appropriate damages could be assessed and collected. He, and we, are

still waiting for that first air-tight case to be tried, very probably appealed, and ruled on by our highest tribunal, the Court of Appeals. There has been little success in pin-pointing the person responsible for a specific fish kill, and there has never been a cent collected for damages. Naturally, none but an air-tight case which will set a favorable precedent will be considered by the legal force of the WPCC . . . Our role (Department of Fish and Wildlife Resources), in actual practice, is one of a reporting and supporting nature."

Louisiana: No reply.

Maryland:

Albert E. Sanderson, Chief of Water Quality Division of the Department of Water Resources summarized the Maryland water pollution control activities, and the part played by the State fishery agencies as follows:

"1. There is no direct policy, pollution investigation, or pollution control role played by the Maryland Department of Game and Inland Fish or by the Department of Chesapeake Bay Affairs (formerly Department of Tidewater Fisheries). Reports of fish kills are first investigated by the management agency (Department of Game and Inland Fish or Department of Chesapeake Bay Affairs) to determine the most probably suspected cause. If pollution is suspected then the management agency secures appropriate samples of water and fish. There are written distributed instructions for use in the collection and preservation of samples by state agencies concerned. If pollution is suspected, in addition to the above procedure, pollution control biologists and sanitary engineers of the Department of Water Resources are immediately notified so that appropriate action can be taken.

"a. The State of Maryland has an active, well budgeted program to determine causes for fish kills in the Chesapeake Bay. The University of Maryland, Department of Chesapeake Bay Affairs, and the Department of Water Resources (formerly the Water Pollution Control Commission) are cooperating participants. Assistance is also received from the State Department of Health, Public Health Service, and the U. S. Fish and Wildlife Service.

"2. There is no existing legislation enabling the State to recover damages from polluters responsible for fish-kills."

Mississippi:

Billy J. Grantham contributed the following summary of pollution control activities in Mississippi:

"The control of water pollution created by industrial wastes is the responsibility of the Game and Fish Commission and until the 1964 regular session of the Mississippi legislature, municipal wastes were free of any specific regulatory measures that were aimed at an abatement program. The State Board of Health, however had a remarkable amount of success and cooperation from smaller municipalities and a large number of oxidation ponds were built merely by persuasion. This was accomplished primarily by obtaining funds through public law 660. The recent legislation mentioned above names the State Board of Health as the regulatory agency in charge of municipal wastes and further states that a disposal system acceptable to the Sanitary Engineering Division must be in operation for all towns in excess of 5000 population no later than January 1, 1970.

"Industrial wastes remain under the control of the Game and Fish Commission and the degree of treatment depends upon the effect of the effluent on the receiving waters. The one thing that is a deterrent to

an over-all abatement program using the present law is one clause that exempts all industries that were operating prior to the 1944 initial passage of the law.

"The Commission has a pollution control division separate from the Fisheries Division, but fisheries personnel are always called in to assist and gather information when fish kills occur. In addition, the fisheries section has a pollution studies program financed with Dingell-Johnson funds that conducts stream surveys and evaluates the effects of pollution on the stream.

"Under our present law all new industries are required to install necessary treatment facilities that will produce an effluent which will not cause pollution conditions downstream.

"In addition to the recent legislation empowering the Health Department to regulate municipalities, a pollution control commission was created that will serve mainly as a hearing body to air out some of the constant complaints, especially those regarding our older industries. I am of the opinion that this type of an approach rather than the strict regulatory method could accomplish much towards an abatement program.

"In regards to your second point, and the ability of the state to recover damages for pollution caused fish kills. Our law allows a fine of up to \$3,000.00 per day which is rarely commensurate with the damage."

North Carolina:

Your Chairman has this to say about Tar Heelia:

North Carolina, like Kentucky, has a brand new law which has not yet been implemented awaiting that air-tight case for testing constitutionality. Briefly, all responsibility for enforcement of pollution control laws is vested in the State Stream Sanitation Committee, a component of the Department of Water Resources. The new law, passed in 1963, explicitly states, "The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Committee on behalf of the State as owner of the fish or wildlife." The law empowers the State Stream Sanitation Committee to recover from polluters causing a fish kill the replacement costs of the fish killed as well as the full costs of all reasonable investigations into the cause and extent of the kill. The law states that the Wildlife Resources Commission will assist the State Stream Sanitation Committee in determining the replacement costs of fish killed in waters within the jurisdiction of the Commission. By interagency agreement, the Commission also contributes biological consultation to the State Stream Sanitation Committee.

Oklahoma: No reply.

South Carolina:

Otho D. May writes:

"Water pollution in this State is the concern of two agencies—The State Water Pollution Board and the Wildlife Resources Department. The Water Pollution Board is concerned with all aspects of water pollution where the Wildlife Department is concerned only where fish or game is involved.

"Briefly, we have two major laws protecting fish and/or their spawn from injury or death due to water pollution. One law covers salt-water fishes and shellfishes and the other covers those fishes of our inland streams and lakes. The power to enforce these laws is in the hands of the Wildlife Department.

"Persons found guilty of violating the section covering salt-water fish and shellfish can be fined not less than three hundred dollars nor more than one thousand dollars, be imprisoned for not less than three months nor more than one year or be both fined and imprisoned.

"The section covering the fish in the inland streams and lakes provides that persons responsible of causing pollution sufficient to be injurious to fish or their spawn shall, upon conviction, be fined not less than five hundred dollars or be imprisoned not less than six months. This law, since it does not set a maximum fine or term of imprisonment, theoretically would allow the State to collect full damages from polluters responsible for "fish-kills".

"I might add that for various reasons, neither law is vigorously enforced."

Tennessee:

Mike Stubbs writes that "pollution of waters in Tennessee by law is a misdemeanor... each day's violation is a separate offense, and a seven-day's violation is a nuisance. No dye stuffs, coal, tar, refuse from a gas house, cheese factory, creamery, wine, condensory or canning factory, saw dust, shaving slabs, tanbark weed from phosphate or other plants, lime or any deleterious or poisonous substance shall be thrown... or allowed to run into... any waters, either private or public, in quantities injurious to fish life, or which could be injurious to the propagation of fish.

"Any violation of the provisions of this law shall be... punishable by fine of not less than \$25.00 nor more than \$50.00, provided that each day's violation... shall constitute a separate offense, and that 7 day's continuous violation shall also constitute a public nuisance, subject to abatement by permanent injunction."

Mike further comments "the role that our Commission plays with regards to fish kills is that we make the investigations, write the reports and turn our information over to the Stream Pollution Control Board. In some instances where negligence or damages have occurred, we file suit against the responsible party and try to obtain damages. We are now in the process of trying to obtain damages from a large chemical company but are being held up by the required legal action."

Texas:

Comments received from the Lone Star State by Leo D. Lewis, Inland Fisheries Supervisor, Region I, Texas Parks and Wildlife Department:

"Two points are emphasized: (1) the role of the Inland Fisheries Function of the Parks and Wildlife Department in State water pollution abatement activities; and, (2) specific facts of existing legislation enabling the State to recover damages from polluters responsible for fish-kills.

"(1) Prior to 1962 considerably more time was devoted to pollution abatement activities by fisheries field personnel than at present. The scope of this work has been reduced primarily because of the creation of the Texas State Water Pollution Control Board, as well as the growth and increased activities of the Water Pollution Control Division of the State Health Department. These agencies employ specialists who are relatively free from other duties and may devote full time to pollution investigations. Also, State laws provide more effective means of control where public health is a factor. Although the Parks and Wildlife Department is primarily responsible for surveillance of conditions of pollution from the standpoint of the impact on aquatic life, birds and other wildlife, this is principally the responsibility of the department's law enforcement function. Therefore, pollution abatement activities of our inland fisheries personnel are directed primarily towards providing supporting evidence and cooperation to other authorities whose primary function is pollution detection and abatement. For the most part, pollution investigations conducted by inland fisheries personnel in Texas at the present time are conducted in conjunction with other activities.

"Dingell-Johnson projects in all five regions in Texas have continuing pollution study jobs whose objectives are to determine the sources and nature of pollution. When pollution is encountered, attempts are made to trace the source, determine responsibility and evaluate the extent of damage. When necessary, water samples, photographs and other material evidence are collected and submitted to authorities directly responsible for abating each particular type of pollution. Cooperating agencies include the Texas Water Pollution Control Board, State Department of Health, Texas Railroad Commission, Texas Water Commission, River Authorities and the General Land Office.

"In addition to any other reports submitted on pollution investigations, all project leaders and State biologists are required to submit a "Report of Pollution Activity" card for each occurrence. (See attached card.) If no pollution occurs in the biologists's area of responsibility during the month, a card is submitted with the statement "no activity for the month of _____". Upon reaching the regional office, information contained on these report cards is compiled, recorded on the attached "Report of Pollution Activities" form and submitted to the Austin headquarters office for further processing. For each fish kill reported to the regional office, the regional fisheries supervisor completes a "Report of Pollution-Caused Fish Kill" card (a copy of which is attached) and submits it to the Department of Health, Education, and Welfare, Public Health Service, Division of Water Supply and Pollution Control, Washington 25, D. C.

"When pollution cases are tried in court, fisheries biologists are sometimes utilized as "expert witnesses" during the trial.

"(2) An attempt was made to obtain information on specific facts of existing legislation enabling the State to recover damages from polluters responsible for fish kills. This matter was also discussed with the legal council of the Water Pollution Control Board, and there is no specific provision in the Texas Water Pollution Control Act by which the State can recover damages for fish kills. There is a possibility that damages could be recovered under common law, but, so far as we know, no suit of this nature has ever been filed by the State of Texas."

Virginia:

Gene Surber tells the Virginia story in the following words:

"The State Water Control Board in Virginia under the State Water Control Law has primary responsibility for the enforcement of the pollution laws as they affect fish and aquatic life. The Board may recover from the owner, the replacement value of fish destroyed by discharges. The State Water Control Board is deemed the owner of the fish killed ... the proceeds of any recovery by the Board are paid to the Commissioner of Game and Inland Fisheries to replace as promptly as possible the fish killed.

"Work of the Commission of Game and Inland Fisheries is cooperative yet none-the-less important. County wardens investigate reports of fish kills and are required to notify their Supervisor, the District Fish Biologist, and the State Water Control Board if the kill is substantial.

"Replacement values of fish, adopted by the Commission of Game and Inland Fisheries, are fixed values depending upon species and size.

"Under the provisions of Chapter 469, Acts 1962, Section 29-163.1, the judge or Court, upon convicting any person of violation shall assess the value of the fish killed against the person so convicted, which assessment shall be paid by the person so convicted within the time prescribed in the judgment of the judge or court, not exceeding 60 days, and the collecting officer shall pay such moneys representing the approximate replacement values aforesaid into the State Treasury whereupon the same shall be placed to the credit of the game protection fund."