

MINUTES

August 24, 1999
Newport News, VA 23607

The regular montly meeting of the Marine Resources Commission was held in Newport News on the above date with the following present:

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon A. Birkett)	
Sheppard H. C. Davis)	Associate Members
Laura Belle Gordy)	
Henry Lane Hull)	
John W. White, Sr.)	
Frederick S. Fisher		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance and Administration
Linda Hancock		Human Resources Manager
Steven G. Bowman		Chief-Law Enforcement Division
Lewis Jones		Assistant Chief-Law Enforcement Division
Kenny Oliver		Southern Area Supervisor
Randy Widgeon		Eastern Shore Supervisor
Dana H. Mise, Jr.		Middle Area Supervisor
Ray Jewell		Northern Area Supervisor
Lisa Gruber		Marine Patrol Officer
James Vanlandingham		Marine Patrol Officer
Dr. Eugene Burreson		Virginia Institute of Marine Science
Walter Priest		Virginia Institute of Marine Science
Dr. Jim Wesson		Chief-Conservation and Replenishment
Rob O'Reilly		Assistant Chief-Fisheries Management
Ellen Cosby		Fisheries Management Specialist
Jim Peters		Fisheries Management Specialist

Commission Meeting

Michael Meier

Fisheries Management Specialist

Tony Watkinson

Assistant Chief-Habitat Management

Chip Neikirk

Environmental Engineer

Jay Woodward

Environmental Engineer

Randy Owen

Environmental Engineer

Ben Stagg

Environmental Engineer

Traycie West

Environmental Engineer

Heather Wood

Environmental Engineer

Gerald Showalter

Head/Engineering Surveying

Others present:

Robert D. Jones

Kelly Price

Mike Wuercinski

Chris Clifford

Vern Michael

Myles Pocta

C. Stanton

Charles & Teresa Tull

R. Nicholas Hahn

Brandon Tauey

Frank Mason

Joy Penny

Daryl DePrenger

John Pitts

George Cornwell

Christie & Sam Greenleaf

A. H. Galvani

Phillip E. Brown

Hugh

Freeland Mason

Joy Perry

Captain Bob Jensen

Tom Powers

Dr. William J. Hargis, Jr.

Helen Woods

Bob Richter

John W. Ridley

Douglas Jenkins

D. Chatham

Charles H. Williams

Kelly V. Place

And others.

The meeting was called to order by Commissioner Pruitt. Members present: C. Chadwick Ballard, Gordon M. Birkett, Jr., Sheppard H. C. Davis, Laura Bell Gordy, Henry Lane Hull,

Commission Meeting

and John W. White. Associate Members Cowart and Williams were not present.

Gerald Showalter gave the invocation.

Associate Member Gordy led the Pledge of Allegiance to the American Flag.

Commissioner Pruitt established that there was a quorum.

Copies of the Minutes of the meeting held July 22, 1999, had been sent to the Associate Members prior to this meeting. Associate Member Gordy moved to approve the Minutes as distributed. Associate Member White seconded the motion. Motion carried.

Associate Member White presented a Resolution for Frederick S. Fisher, Assistant Attorney General for the Commonwealth, for his distinguished service to the Virginia Marine Resources Commission from December 1, 1981 until May 1999. Mr. White read the Resolution from the Commission, which was made a part of the verbatim record. A copy of the Resolution would also be given to the Attorney General of the Commonwealth of Virginia.

Mr. Fisher gave comments of appreciation for assisting the Virginia Marine Resources Commission in their legal encounters. Comments are a part of the verbatim record.

Commissioner Pruitt commented that the Commission passed the Resolution for Mr. Fisher at their last meeting.

Approval of the agenda. Associate Member Davis requested a discussion of the Crab Subcommittee at the beginning of the afternoon session, which would be Item 6A. Associate Member White informed the Commission that the Chairman of that committee was not present today. After a discussion between Commission members regarding the makeup and substance of the committee, the members agreed to discuss the imbalance of the subcommittee. Comments are a part of the verbatim record. Associate Member Davis moved that the agenda be approved as amended. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

Tony Watkinson, Assistant Chief-Habitat Management, briefed the Commission on the nine page two items. Mr. Watkinson explained that those projects involved permit applications for projects over \$50,000 in cost, for which a public interest review had been conducted and there were no protests, and staff found them acceptable.

ALLEGHANY COUNTY, #99-0304, requests authorization to install 234 linear feet of pier-supported 18-inch outfall pipe in Karnes Creek under Interstate 64 to transport wastewater effluent from the Low Moore Wastewater Treatment Plant to the Jackson River in Allegheny County. Recommend standard instream construction conditions.

Permit Fee.....\$ 100.00

VERN MICHAEL, #99-0487, requests authorization to construct a 120-foot long by 30-foot wide roadway bridge across Black's Run, a tributary to Cooks Creek, in the City of Harrisonburg. Recommend a royalty of \$1,800.00 for the encroachment over 3,600 square feet of State-owned subaqueous bottom at a rate of 50¢ per square foot.

Encroachment over 3,600 sq. ft of State-owned subaqueous bottom @ \$0.50 per sq. ft.....	\$ 1,800.00
Permit fee.....	<u>100.00</u>
Total	\$ 1,900.00

EDWARD S. LOCKE, ET AL, #99-0711, requests authorization to hydraulically dredge approximately 3,838 cubic yards of intertidal and subaqueous bottom material to provide maximum project depths of minus five (-5) at mean low water with a six-inch overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at property situated along an unnamed cove in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$1,543.95 for the dredging of 3,431 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Dredging of 3,431 cu. yds of State-owned subaqueous bottom material @ \$0.45 per cu. yd.....	\$ 1,543.95
Permit fee.....	<u>100.00</u>
Total	\$ 1,643.95

Commission Meeting

OLD DONATION CREEK PROJECT, #99-0712, requests authorization to hydraulically dredge approximately 14,866 cubic yards of intertidal and subaqueous bottom material to provide maximum project depths of minus four and one-half feet (-4.5) at mean low water with a six-inch overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at property situated along Old Donation Creek in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$4,752.90 for the dredging of 10,562 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Dredging of 10,562 cu. yds of State-owned subaqueous bottom material @ \$0.45 per cu. yd.	\$ 4,752.90
Permit fee.....	<u>100.00</u>
Total	\$ 4,852.00

SUSSEX SERVICE AUTHORITY, #99-1187, requests authorization to install, by open-cut excavation, a 54 linear foot submerged sewer line crossing under Coppahaunk Swamp within a VDOT right-of-way adjacent to the westbound lane of U.S. Route 460 two (2) miles east of Waverly. Recommend standard instream construction conditions.

Permit fee.....	\$ 100.00
-----------------	-----------

NAVAL MEDICAL CENTER, #98-1415, requests authorization to construct a 190 linear foot partially fixed and floating community pier with 15 wetslips, a 92-foot long by 16-foot wide community boatramp, a 45 linear foot timber groin and two (2) mooring dolphins adjacent to their facility situated along the Elizabeth River and Scotts Creek in the City of Portsmouth.

Permit fee.....	\$ 100.00
-----------------	-----------

LEHIGH PORTLAND CEMENT CO., #99-0856, requests authorization to install a concrete mooring dolphin and two (2) timber pile clusters adjacent to a barge unloading area at their facility situated along Hampton Roads in the City of Norfolk. Recommend a royalty of \$165.00 for encroachment over 165 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Encroachment over 165 sq. ft. of State owned subaqueous bottom @ \$1.00 per sq. ft.....	\$ 165.00
Permit fee.....	<u>100.00</u>
Total	\$ 265.00

Commission Meeting

CITY OF HARRISONBURG, #98-1672, requests authorization to modify their existing permit to allow the relocation of a 170-foot raw water intake line to a point approximately 1,200 feet downstream from the Harrisonburg Hydroelectric Dam in the South Fork of the Shenandoah River in Rockingham County.

MODIFICATION - FEE NOT APPLICABLE

TOWN OF SAXIS, #99-1124, requests authorization to construct a 190-foot long by 8-foot wide open-pile community fishing pier with a 100-foot long by 10-foot wide T-head that will extend into additional Public Ground in Pocomoke Sound, adjacent to the wharf area in the Town of Saxis.

Permit fee..... \$ 100.00

Associate Member Ballard questioned the differences in the dredge depth for Items 2C and 2D, Edward S. Locke, Et. Al., #99-0711 and Old Donation Creek Project, #99-0712. Mr. Owen responded that when the City received authorization for the Western Branch project, the Commission authorized a foot shallower project depth into Old Donation Creek and than in the Western Branch property. He said Mr. Locke would tie into the deeper channel that the City dug, and Old Donation Creek would tie into the channel that was dug one foot less.

Associate Member Davis asked staff if they were comfortable going with the 5.5 depth because they had tried to keep it under 5 feet in the past. Mr. Owen responded that the City had been authorized for a 5 feet depth in the main channel, plus a 12 inch tolerance. e. Comments are a part of the verbatim record.

Commissioner Pruitt asked if there was any opposition to Item 2F, Naval Medical Center, #98-1415? Ms. Wood responded that the project had received approval from the Portsmouth Wetlands Board and she had not received any protests. She said they were constructing a pier to be used by the Naval Medical Center residents that lived at that facility.

Commissioner Pruitt asked what was the difference between this project and the community piers in the Northern Neck and the Middle Peninsula. A brief discussion followed. There being no comments, pro or con, on the page two items, Commissioner Pruitt placed the matter before the Commission. Associate Member Davis moved to approve all of the page two items. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Commissioner Pruitt stated that the Mayor of Saxis was present to provide comments on their pier project and to request funding.

Commission Meeting

Mr. O'Reilly briefed the Commission on the project. He said the project, a T-pier, was approved by the Recreational Fishing Advisory Board for \$148,141. A public hearing was held and the project had a peer review, and the money already had been reserved for the pier.

Mr. Tull, Mayor for the Town of Saxis, addressed the Commission. He said the project would be used for recreational purposes. He said the stipulation would be that the fishermen would have to possess a State fishing license and meet the State requirements. He said the Eastern Shore Anglers Club, other committees, and organizations would make it accessible to the handicapped people. Mr. Tull said they had drawn up a temporary ordinance for the use of the pier pending passage of all the regulations.

Associate Member Gordy moved to approve the funding of the pier. Motion was seconded by Associate Member White.

Associate Member Davis requested an amendment that 90 per cent of the use of the pier be for recreational fishermen. Associate Member Gordy said she had been to the site and most of the watermen were in business for themselves and had their own docks. Therefore, she did not think that would be a problem, and the amendment was not necessary. She said she was told that a Town Ordinance would state it was for recreational use. Associate Member Davis said he did not feel that was fair to the recreational fishermen.

Commissioner Pruitt placed the matter before the Commission for a vote. Motion carried unanimously.

COUNTY OF MATHEWS, #95-1208, requests after-the-fact authorization for the construction of a 16-foot long by 6-foot wide extension on an existing public pier situated on Milford Haven in Mathews County. The applicant has agreed to pay a civil charge of \$600.00 in lieu of further enforcement action.

Tony Watkinson, Assistant Chief-Habitat Management, briefed the Commission and gave background information on the project. He said they had conducted a public interest review and there was no opposition. He said the applicant had agreed to pay a civil charge of \$600.00 in lieu of further enforcement action. As a result, staff requested the Commission's approval of the project with the stipulation of the civil charge.

There being no comments from the Commission, Commissioner Pruitt placed the matter before the Commission for action.

Associate Member White moved to accept the \$600 civil charge. Motion was seconded by Associate Member Hull. Motion carried unanimously.

FAIRFAX COUNTY PARK AUTHORITY, #96-1816, requests authorization to construct a 40 linear foot bottomless box culvert pedestrian trail crossing of Accotink Creek. The project is protested by several area residents.

Heather Wood, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Ms. Wood gave the following background information on the proposed project: The project was located in the Accotink Stream Valley Park in Fairfax County, and was part of a 2,247-foot trail extension that would link an existing trail to the recreational facilities maintained by the County, the City, and the Northern Virginia Regional Park Authority. The project was approved by the Fairfax County Board of Supervisors in 1994. The project was designed to accommodate pedestrian and bicycle traffic and would allow maintenance and emergency vehicles access to the proposed trail extension. In addition, the project was designed to accommodate a two-year storm flow should two of the five culverts become blocked. The project was protested by several residents of the Mantua Community located south of the proposed trail extension. The Mantua Community was concerned that the crossing would interrupt the stream flow and possibly exacerbate flooding in the area should the culverts become blocked. The community would prefer that a bridge be constructed at the proposed site or that the trail be extended along the north side of the creek. The Fairfax County Park Authority did consider spanning the creek with a bridge, however, FEMA regulations required that the bridge crossing be constructed 19 feet above ordinary high water to withstand a 100-year storm event. The applicant also stated that should a bridge be constructed there would be an increase in the cost, tree clearing, and non-tidal wetland fill would be necessary.

Ms. Wood stated that the Department of Game and Inland Fisheries had recommended spanning the stream to reduce aquatic impacts. If spanning the stream was not possible, the Department of Game and Inland Fisheries recommended that the applicant conduct instream activity during low-flow conditions, countersink one of the culverts to maintain the low flow channel and allow fish passage, use non-erodible cofferdams to isolate the construction area, block no more than 50% of the stream flow during construction, restore the original streambed contours, and revegetate any barren areas along the bank.

Ms. Wood said the Department of Conservation and Recreation, Division of Soil and Water Conservation commented that the project design would allow water to overtop the crossing

Commission Meeting

during a two-year storm event and would cause no more than a one-foot rise in the area base flood elevations. The Department of Environmental Quality indicated that the water quality impacts from the proposed project were likely to be minimal and temporary in nature. No other State agencies had commented on the project.

Ms. Wood said that while the Mantua community had concerns regarding flooding, the Department of Conservation and Recreation had indicated that the project was designed to accommodate the flow for a two-year storm and should have little impact on flooding in the area. The applicant agreed to use bottomless culverts. Therefore, staff recommended approval of the project as proposed with standard instream construction conditions as outlined by the Department of Game and Inland Fisheries.

Associate Member Davis asked what was the rationale for not constructing the bridge as recommended. Ms. Wood responded that it was the expense involved in building the bridge crossing to a height of 19 feet. She said the cost submitted by the Park Authority in November 1998 indicated that the bridge crossing would cost \$263,000, whereas the culvert crossing was estimated at \$156,000.

Associate Member Ballard asked if the protestants were upstream or downstream. Ms. Wood said they were both upstream and downstream.

John Pitts, engineer with the Fairfax County Park Authority, addressed the Commission. He said he had worked with staff and they felt this was the most economical and this method would work best given the situation in the creek. He said in this particular case, they did not want to be in the streambed, so they proposed the bottomless culvert. The proposal would accommodate the two-year storm event, which was typical for a standard design criteria. He said the overtopping would allow the least impact on the base flood elevation. He said they had tried to address the concerns of the Mantau community in regards to the alignment of the trail and the impacts that it would cause.

Associate Member Ballard asked if they had done a study that would show various scenarios on how a storm event would get the adjacent property owners in trouble from a flooding standpoint. Mr. Pitts responded that the plan was based on 100-year flood elevation. He said the open channel culvert with all the cells open would result in a decrease of the water elevation upstream of the structure, and with 50% clogging, it would be within the normal one-foot water surface increase that FEMA would allow.

Commissioner Pruitt asked how were they planning to keep that culvert clear during the flooding. Mr. Pitts responded that they had a lot of situations like that and they made sure that the trail could be wide enough so that maintenance vehicle could go down the trails in order to

Commission Meeting

remove any debris. He said it would make sense that in the larger flood events the water surface would be above the structure and no debris would be caught. However, he said there would be blockage, but they would do their best to maintain the streambed and keep it clear of debris.

Commissioner Pruitt placed the matter before the public. There being no comments, pro or con, the matter was placed before the Commission.

Associate Member Davis commented about an article he had read regarding flooding by the storm, Camile, and the affect it had on the mountains some 30 years ago. He said the biggest problem was that anything in the streambeds became a dam and numerous people were killed. He said based on those facts, he was very uncomfortable with the proposal regarding the 50% clogging of the stream, the maintenance of the culvert, and how often the culverts would be cleaned. He said if a bridge 19 feet high was used, the stream would be clear and any flooding would go under the bridge and people would not be in danger. Therefore, he could not vote for the proposed project because he felt it was dangerous, and \$90,000 was a small amount of dollars to make the proposal safe and free from floods.

Associate Member Gordy commented that it looked like a small stream and yet if a bridge was placed over the stream, it would have to be 19 feet high.

A discussion between Commission members regarding the proposal for a bridge versus using box culverts followed. Comments are a part of the verbatim record.

Mr. Pitts then addressed the concerns by Associate Member Davis regarding the clogging of the stream with culverts versus the bridge construction. He said the floodplain extended well beyond the bed and banks, and if the bridge was installed, they would have to span the whole floodplain, plus be a couple of feet above the base flood elevation. He said the proposed culvert structure would cause less impact than a bridge structure.

Associate Member Gordy asked Mr. Pitts if he felt the proposal would flood the property owners nearby. Mr. Pitts responded that anytime you crossed a channel, you would have to demonstrate that you were not impacting any adjacent property owners. He said they had done a study and demonstrated that there was no impact. If the structure was not clogged, it would decrease the base flood elevation of the 100-year water surface upstream.

Associate Member Hull asked how close was the residential community to the project. Mr. Pitts responded that he would have to defer that question to another staff member. The staff member responded and said from the culvert crossing to the nearest residence was 500 feet. Mr. Hull asked if that was higher ground. Mr. Pitts responded yes.

Commission Meeting

Daryl DePrenger, representing the Fairfax County Park Authority and the project manager, addressed the Commission. Mr. DePrenger responded to Mr. Hull's question regarding the distance from the proposed project to the residential area. Mr. DePrenger said the distances varied. He said the property that was adjacent to the stream valley part had characteristics of higher ground, he said that was approximately 4 feet. Mr. Hull asked if those houses had basements. Mr. DePrenger said he did not know if all the houses had basements. He said because of the slope, the residents could have full or partial basements.

Mr. Pitts responded that any houses in that area would be required to have the finished floor at least two feet above the 100-year flood elevation, and there be no openings to the basement or part of the structure below that elevation.

Commissioner Pruitt asked how many trees would have to be cut down, and how many acres of non-tidal wetlands would have to be filled to build the bridge? Mr. Pitts responded that there would have to be four to six trees of significant size and some small samplings. He said to his estimation it would be less than a half acre of additional fill on wetlands for the approaches on both ends of the bridge.

Additional discussions followed between Commission members and the Park Authority regarding dimensions of the culverts, the bridge construction, and the flooding of the streambed. Comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Birkett moved to accept staff's recommendation. Associate Member White seconded the motion. Motion carried 5 to 1, with Associate Member Davis voting no.

JOHN W. GIBBS, JR., requests authorization to construct a 75-foot by 20-foot riprap breakwater and place 500 cubic yards of sandy material landward of the breakwater, as beach nourishment, adjacent to his property along the Rappahannock River in Middlesex County. The project is protested by two downdrift property owners and one property owner upstream.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. He said Scott Hardaway of VIMS put together some aerial photos from 1937 through this year. He also presented a fax to the Commission members that was in opposition to the proposal. Mr. Neikirk then gave background information on the proposed project. Comments are a part of verbatim record. He said the property had a steep 20-30 foot high bank that was eroding at the toe. He said Mr. Gibbs planned to grade the bank to a 2:1 slope and construct 130 linear feet of riprap revetment on

Commission Meeting

the downriver side of the breakwater. Mr. Neikirk said because the grading and riprap were landward of mean low water, VMRC's authorization was not required. He said two lots immediately upstream of Mr. Gibbs' property had been graded and two breakwaters similar to the breakwater proposed by Mr. Gibbs were constructed in front of the lots last year. In addition, a separate application for a fourth breakwater had been proposed for construction upriver of the two recently constructed breakwaters.

Mr. Neikirk further stated that the protestants, Mr. Bradley Talley and Mr. Charles Perry, properties were located two lots downriver of Mr. Gibbs' property. The protestants were concerned that the breakwater may exacerbate erosion along their shoreline. The protestants also noted that the erosion appeared to have increased downriver of the two recently constructed breakwaters. Mr. Neikirk said that Mr. Talley was currently installing a riprap revetment along his shoreline and he had applied to construct three timber groins along his property. Mr. Perry also had a number of timber groins along his property, which assisted in maintaining a 50-foot wide sandy beach along his property. He said the third protestant, an upstream property owner, Mr. Prichard, was also opposed to the proposal.

Mr. Neikirk said that the Virginia Institute of Marine Science (VIMS) and the Department of Conservation and Recreation, Shoreline Erosion Advisory Service (SEAS) both found the project acceptable. He said VIMS anticipated that there may be short term impacts to the marine environment resulting from the project, but VIMS did not anticipate any long term impacts. Mr. Neikirk said that SEAS recommended that the breakwater have a side slope of 2:1, the channelward side of the structure include a buried toe, and that the breakwater be constructed on filter cloth. SEAS also recommended moving the breakwater further offshore to allow for a wider beach, extending the riprap further upriver, and utilizing the stockpiled topsoil from the bank grading to assist in revegetating of the bank.

Mr. Neikirk said that since some protests had been received on this proposal, staff contacted Mr. Scott Hardaway, a VIMS coastal geologist specializing in shoreline processes, for any specific recommendations that could possibly minimize the impact of the breakwater on the littoral transport of sand downdrift from the project. Mr. Hardaway confirmed that the predominant littoral drift of sand along the shoreline was downriver in an easterly direction. However, Mr. Hardaway also noted that the groin field adjacent to the Perry property was full of sand and the Talley property was currently being armored with a riprap revetment. Mr. Hardaway reported that the proposed breakwater would temporarily disrupt the drift of sand, but said since the shoreline immediately downdrift of the breakwater was protected with a riprap revetment and the property beyond that was protected by a wide beach maintained by a groin field, the effect should be minimal. Mr. Hardaway also suggested that to minimize the downdrift impacts, Mr. Gibbs could add an additional 100 to 200 cubic yards of beach quality sand downdrift of the breakwater to help fill the groins.

Mr. Neikirk said that the breakwater proposed by Mr. Gibbs would likely have some impacts on the downdrift properties, but the impacts should be similar to downdrift impacts associated with Mr. Perry's existing groins and the groins proposed by Mr. Talley. Accordingly, staff recommended approval of the proposed breakwater with a condition that Mr. Gibbs be required to add an additional 150 cubic yards of beach quality sand downdrift of the proposed breakwater. Staff, also recommended a royalty of \$45.00 for the encroachment of the beach nourishment of approximately 900 square feet of State-owned submerged land located behind the breakwater, at a rate of \$0.05 per square foot.

Chris Clifford addressed the Commission. He said he ran Riverworks and he had been in business for 20 years. Mr. Clifford said his company built the two existing breakwaters. He said it was their contention to continue the breakwater system in either direction from the two current breakwaters. He said he agreed with Mr. Hardaway's and Mr. Martin's thoughts, and they were willing to put extra sand on the downstream end of the proposed project so that the Perry and Talley properties would have enough sand to nourish their groin fields.

Commissioner Pruitt asked Mr. Clifford if he was prepared to do what Mr. Hardaway recommended. Mr. Clifford responded that there were a variety of recommendations. He said he was agreeable with Mr. Hardaway and Mr. Neikirk that an extra 150 to 200 extra yards of sand placed downstream of the proposed breakwater would help the neighbors.

Robert Montaque, attorney for Mr. Perry and Mr. Talley, addressed the Commission. He said he would prefer their expert, Mr. Basco, speak at this time.

Mr. Pruitt requested that Mr. Basco be sworn in at this time.

Mr. Montaque said his primary purpose was to introduce Mr. Basco, the expert, and to relate their good faith effort to resolve their differences with the applicant, but the applicant had refused to meet with them on this matter. Mr. Montaque then offered the Curriculum Vitae of Mr. Basco and established his credentials as an expert. Comments are a part of the verbatim record.

Mr. Basco addressed the Commission. He said he visited the site and made a field survey in June, and obtained aerial photographs from VIMS. He said he downloaded from the internet, the USGS aerial photographs of the project site for 1937, 1959, and 1968. In addition, they had taken their own aerial photographs in June. He said he had prepared a schematic of how the systems worked. He said the two existing breakwaters that were constructed in 1998 and the sand bridge used to place the rocks was left in place as the tombolo.

Commissioner Pruitt asked if the sand moved from the west to the east on the entire lower

Commission Meeting

river. Mr. Basco responded no, the sand moved just between the stretch in the two creeks due to the fact that the storm waves came mostly to the north and dragged the sand offshore. He said the longest fetch was down the Rappahannock River that pushed the sand to the east so that the net sediment transport direction was from west to east. He said this was confirmed by the fillets on the west side of the groin and also confirmed in Mr. Hardaway's report. He said the two breakwaters were too close to shore and were not the right width and spacing according to Mr. Hardaway's 1991 study of 15 years of breakwaters around the State.

Mr. Basco said their recommended solution was to remove the partial sand trap and put some sand on the starved downdrift beach. He said it could be done another way by changing the tombolo and making it more of a salient feature by taking sand directly behind the breakwaters and leaving a gap between the breakwaters and the beach. This would let some sand naturally move past the system on the inside. In addition, the elevation of the berm could be lowered and the sand could be placed downdrift. He said the large upstream fillet and the two breakwaters had trapped a lot of sand to the west at the detriment of the beach to the east. He said this action would open up the beach to permit some natural sand transport to continue from west to east. He said instead of installing a third breakwater that six groins could be built. He said the sand blockage by the two breakwaters was far more serious than the conclusion drawn by Mr. Hardaway and VIMS for downdrift property. He said the same condition on the permit application could be placed to allow the natural sand transport to the east. He said the sand could come from behind the two breakwaters that were trapping all the sand. Mr. Basco said he agreed with VIMS and Scott Hardaway that modification and a system's approach was needed to find a solution for all the property owners in the development.

Brad Talley addressed the Commission. He said he purchased lot 2B. He then presented a photo of before and after the groins were installed.

Commissioner Pruitt asked how long the existing groins had been on the adjacent property.

Charles Perry responded to the Commissioner's question. He said he had four groins. He said the first two groins were installed in the early 80s and the second two were installed in the late 80s. He said his immediate neighbor downstream had 12 groins which were installed in the late 80s. Mr. Pruitt asked how he felt about Mr. Basco's suggestion about the whole community work out a long term plan. Mr. Perry responded that he fully agreed with the suggestion. He said he felt a system-wide approach made excellent sense. Mr. Perry said they had attempted to have several meetings with the applicant to try and have a discussion on the system-wide approach.

Mr. Talley explained to the Commission that his main interest in the property was that he liked the beach, the trees, view, and that his son liked the play at the beach, and it was an ideal

Commission Meeting

condition for children. He said the breakwaters, the wind, and waves were a learning experience for him. He said all the oysters were on his property and downriver, and you could hardly walk on the beach because of the oyster shells and erosion. He said he wanted his beach.

Commissioner Pruitt asked if he concurred with a system-wide approach. Mr. Talley responded yes. He said he put the riprap toe in and that was protecting the shore, but it was not conserving the beach.

Mr. Montague said he thought from the testimony given that when the original breakwaters were installed, they were too close to shore and improperly positioned, and the tombolo along the shore was a mistake. He said he didn't know if it was too much to ask, that the structures in place now should be removed, which should be done to correct the problem that had ensued since it was built. He said he felt that was within the Commission's purview to order the removal because the Commission was the source of the permit. He said the Commission could direct that the tombolos be removed, and should also adopt the recommendation of Mr. Basco.

John Diggs addressed the Commission and requested Mr. Neikirk bring up certain slides for clarification. Commissioner Pruitt was agreeable and asked which ones he would like to see.

Mr. Diggs used the slides to explain the difference between using groins and breakwaters and how they would accomplish the same purpose. Comments are a part of the verbatim record. Mr. Diggs said they would be happy to move the new breakwaters offshore, and push some sand in the direction of the Perry and Talley properties, but they were not interested in considering a groin field. He said he thought Mr. Hardaway and Mr. Neikirk agreed with him.

Mr. Perry corrected Mr. Diggs in reference to the property shown as his property and not a neighbor.

Commissioner Pruitt placed the matter before the Commission for discussion.

Associate Member Ballard said he was impressed by the presentation of both the applicant and the protestants. He also felt there was a solution that perhaps everyone would not be happy with, but it would probably be the best solution.

Commissioner Pruitt concurred with Mr. Ballard. However, Mr. Pruitt was concerned that the parties had not met, and he offered the parties, with the Commission's concurrence, the opportunity to meet today in the conference room to work out a solution. Mr. Pruitt also suggested that if more time was needed, they could come back after lunch or request a postponement for one month. Otherwise, the Commission would act on the matter today.

Commission Meeting

**10936
August 24, 1999**

Mr. Diggs said all the other meetings were scheduled offsite, and he felt it would be more productive to schedule the meeting onsite.

Mr. Pruitt said it was his personal opinion that because of all the material presented today, he felt more could be accomplished in the conference room, than on the beach.

Associate Member Hull commented that since serving on the Commission, he felt the protestants had gone to the greatest extent to get expert advice. He said they had material from the other side to study and Dr. Basco's presentation was new to the Commission. However, he did feel that the two parties should get together and try to produce a unified system. He also felt that it was too much for the Commission to digest today and to make a split second decision that could have an adverse effect either way.

Associate Member Davis commented that he felt the two parties should also get together. He said Dr. Basco had made an impressive presentation.

A brief discussion followed between Commission members.

Mr. Diggs informed the Commission that Mr. Gibbs was not present today, and he wanted to know if they were prepared to make a decision regarding the issue. Mr. Montague said they would like to discuss the issue and try to understand what their solution would be.

Associate Member Gordy commented that she was under the impression that they wanted to move the two breakwaters already in place, and she wanted clarification as to whether the Commission had that authority. Commissioner Pruitt responded that what they wanted was a system-wide plan.

Associate Member Ballard asked if concurrence of both parties was necessary to postpone the matter. Commissioner Pruitt responded that the Commission had the authority to postpone the matter. Mr. Fisher concurred.

Associate Member Ballard then moved that the matter be postponed until the September meeting in order to give the parties time to get together and work out a solution. Motion was seconded by Associate Member White. Motion carried unanimously.

COMMISSION CONSIDERATION of a report from the Hearing Officer appointed by the Virginia Supreme Court regarding the ownership of two (2) abandoned Navy deck barges on

Commission Meeting

State-owned submerged land in the Eastern Branch of the Elizabeth River in the City of Norfolk.

Mr. Watkinson addressed the Commission. He said he thought it best that Randy give an overview of the findings of the Hearing Officer in this case, and then get the Commission's concurrence to proceed to work with the Navy as a result of the findings.

Randy Owen, Environmental Engineer, said he was prepared to brief the Commission in full on the Hearing Officer's and staff's reports. However, if the Commission only wanted a summary and recommendation, he was prepared to do either.

The Commission agreed to go directly to the summary and recommendation.

Mr. Owen briefed the Commission on the background information regarding the history of the barges and the Hearing Officer's report. He said he observed the barges in the fall of 1996 as a part of the Elizabeth River project when they were surveying the river for derelict vessels. He said pursuant to Section 28.2.1210 of the Code of Virginia they endeavored to locate the owners of all the vessels. Information was received from a marine salvager that Mrs. Christine Greenleaf had purchased the two barges at a government scrap auction. Mr. Ed Clifton, Marine Patrol Officer, received this information and this was later corroborated by a memo from the Defense Reutilization and Marketing Office with the St. Julian Creek Annex in the Norfolk Naval Shipyard.

Mr. Owen said Ms. Wanda Allen, the Hearing Officer, was appointed by the Executive Secretary of the Virginia Supreme Court. A hearing was held on June 16 and 17, 1999. However, during the hearing it was learned that the memo to staff was erroneous by their own testimony. Ms. Allen concluded that the title to the barges never passed from the government to the Greenleafs. Mr. Owen then asked that the Commission adopt Ms. Allen's findings and conclusions, and direct staff to pursue the removal of the barges with the appropriate authority, the Defense Utilization and Marketing Services and the Norfolk Naval Shipyard.

Associate Member White placed the matter before the Commission.

Associate Member Davis complimented Mr. Owen for all the hard work he had done on this project.

Mr. Owen indicated that Mr. and Mrs. Greenleaf and their attorney were present. He said, however, Mr. Fisher, the assistant attorney general, may have some comments regarding accepting any additional testimony because there were two days of testimony at the hearing.

Mr. Fisher commented that there was an opportunity to give testimony before the Hearing

Commission Meeting

Officer for proposed findings and conclusions, and arguments were provided before the Hearing Officer. Therefore, the Commission did not have to hear any oral argument. If there were exceptions to the Hearing Officer's report, then the Commission should consider those exceptions. Mr. Fisher said he had not heard that any exceptions had been filed.

Acting Chairman White asked if there were any exceptions to be filed.

Mr. Genzler responded that he would like to address the Commission regarding the Hearing Officer's findings. He said if the Commission wanted to characterize the comments as exceptions, he would be glad to address them as exceptions.

Mr. Fisher commented that Mr. Genzler wanted to make some comments on the Hearing Officer's findings and Mr. Fisher felt that would be an exception.

Patrick Genzler, counsel for the Greenleafs, addressed the Commission. He said he was not contesting the Hearing Officer's findings, and he thought the Commission should adopt the Hearing Officer's report because they were correct and they supported staff's recommendation.

Mr. Fisher established, at this point, that Mr. Genzler's comments were not an exception. Mr. Fisher said that Mr. Genzler might offer some observations as to how the investigation was conducted and he felt that was proper, but he did not think it was a part of considering the Hearing Officer's report.

After a brief discussion between Mr. Fisher and the Commission, Mr. Fisher stated that there were two issues. The case before the Commission dealing with the two barges, which was referred to a Hearing Officer was one.. The Hearing Officer found that the Greenleafs did not own the barges, and the Hearing Officer further concluded that the barges never left the ownership of the United States. In conclusion, staff recommended that the Commission adopt the findings of the Hearing Officer and that issue would be concluded. The second issue was that Mr. Genzler on behalf of his clients had some objection to the way this matter had been handled in the past two or three years. Mr. Fisher then stated that Mr. Genzler should have the opportunity to express concerns to the Commission. However, Mr. Fisher did not think it was a part of dealing with the Hearing Officer's report. Mr. Fisher also stated that when Mr. Genzler said that he supported the conclusions by the Hearing Officer and staff, there were no exceptions. Mr. Fisher then recommended that the Commission act on the Hearing Officer's report first. The Commission could then consider whether to hear Mr. Genzler's today or some other time.

Acting Chairman White then asked if any Commission members had any questions or comments to make before the vote. There being none, the matter was placed before the

Commission Meeting

Commission.

Associate Member Davis moved to approve the recommendations of Ms. Allen, the Hearing Officer. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Acting Chairman White then placed the matter of hearing from the counsel, Mr. Genzler, before the Commission.

Associate Member Ballard commented that he thought Mr. Genzler should have the opportunity to address the Commission at this time, rather than have him wait for the public comment session. The Commission members were agreeable to Mr. Ballard's suggestion.

Mr. Genzler addressed the Commission. He said on behalf of his clients, they were thankful for the Commission's approval of the Hearing Officer's recommendation. However, the Hearing Officer's report did not tell the whole story of what had happened to the Greenleafs. He said since March 1997, he felt a serious injustice had been done to the Greenleafs based on accusations that were not true. He felt that the Commission's actions were based on a letter received from a governmental employee at the Defense Utilization and Marketing Services, who under oath, admitted that she had no evidence to substantiate the accusation she made, and that she had no authority to issue that letter. Mr. Genzler also gave concerns regarding criminal charges, the threat of penalties amounting to \$100,000 day, and the \$25,000 in legal fees the Greenleafs had incurred. Mr. Genzler said he felt the Commission owed the Greenleafs an apology, and asked where could the Greenleafs go to get justice when they told the truth. He said the matter he wanted to lay before the Commission was what was done to the Greenleafs was a terrible injustice by the Commission because they were completely exonerated by the Hearing officer's report.

Assistant Attorney General Fisher commented that the Greenleafs had been put to an immense expense and worry by this investigation. However, it was unfortunate that they had incurred some problems, but that was part of the legal system. If you are accused, you have to defend yourself. Mr. Fisher said the issue was whether the staff should have discovered on its own that the Greenleafs did not own the barges. He said it was a complicated factual situation and the situation was further complicated by the passage of time. Also, the matter was further complicated by the Greenleafs' practice of not providing more information to the Federal government personnel than they were required to do. Mr. Fisher then provided detailed information on the bid made by the Greenleafs regarding the barges. Comments are a part of the verbatim record.

Mr. Fisher said after the Greenleafs purchased the two barges, they never told the selling arm, The Defense Reutilization and Supply Service that they had satisfied the contract with the first

Commission Meeting

two barges, and that they would not take the last four barges. Mr. Fisher then explained how one of the Greenleafs contractors removed the barges to determine if he wanted to purchase the barges. Comments are a part of the verbatim record. The evidence presented during the hearing did not indicate that the Greenleafs had given the contractor authority to remove the barges. Mr. Fisher further stated that the Federal government offered for sale six barges, the six barges are gone, and three years later somebody comes back and said what happened to the six barges. In the meantime, after a three-year period, the Federal government had discarded most of their records, because of the government requirement to get rid of the records. Therefore, the Federal government looked in their records and found that the Greenleafs had won the bid and determined that the Greenleafs signed off and had received the barges. Mr. Fisher said based on the testimony before the the Hearing Officer, the contractor removed the barges without presenting any authority to the Navy, and the Navy let the barges go through without the required paperwork. Therefore, in his opinion, it was impossible for staff to unravel all this before the hearing. Mr. Fisher said the Greenleafs, through their counsel, attempted to bring this situation to the attention of the United States and have them agree that they still owned the barges or that the Greenleafs did not own them. The United States was not in a position to do that because they did not have the records that could substantiate their ownership.

Mr. Fisher said he thought that if the Greenleafs had reported to the government what they were doing as they went along, there would have been a better record. In addition, there was a discrepancy regarding the number on the barges. Officer Clifton went to the Defense Reutilization and Marketing Service and received a list of six numbers and one number did not match. The numbers were not compared for several years and was discovered when Mr. Owen made a site inspection just before the case. Mr. Fisher said it was difficult for him to recommend how the investigation could have been done differently with the facts staff had.

CRAB SUBCOMMITTEE DISCUSSION

Commissioner Pruitt passed to the Commission members an excerpt from the May 4 meeting regarding comments made by Associate Member Davis on the makeup and substance of the Crab Subcommittee. Mr. Pruitt explained that after much discussion at that meeting, he suggested each Commission member submit two or three names to get the process established. However, no one on the Commission submitted any names. The CCA submitted two names and they were placed on the Crab Subcommittee.

Associate Member Davis commented that Mr. Hatch, from Hampton, had expressed an interest on being on that Committee. Commissioner Pruitt commented that he had not heard from him.

A discussion followed between the Commission members and staff regarding the history of the

Commission Meeting

10941
August 24, 1999

committee. Comments are a part of the verbatim record.

Associate Member Davis commented that the subcommittees should be balanced. He said the Blue Crab Advisory Committee had 18 members, excluding the two Commission members. He said there were 13 of 18 businessmen and a few members that represented the conservationists, recreational fishermen, or scientists. He then suggested that perhaps the committee could better be represented by having an 8, 10 or 12 members, and four from industry, watermen etc., two from recreational, 2 from scientists and 2 from conservationists in order to have a relative balance.

Associate Member Ballard commented that he had attended one of the meetings in June. He said the meeting with the watermen, industry, and the processors was a good forum. He said he thought Mr. Davis made a valid point regarding having proper recreational representation, but he was not in agreement that the Committee should be made smaller.

Associate Member Davis commented that the Commission was charged with protecting the resources of Virginia for everyone in the State. He felt the unbalance representation caused the recreational people to have a difficult time in Committee Meetings because of the lack of a balanced recreational representation.

Commissioner Pruitt commented that the unpleasant situations did not happen in the meetings, they took place in the hallways and the parking lots, which the Commission had no control. Mr. Pruitt further commented that according to Mr. Cowart and Mr. Travelstead the unpleasantness during the meetings were always "nipped in the bud." Mr. Pruitt commented that Mr. Richard Welton was very complimentary of the two recent appointees last week, Mr. Miller and Mr. Powers.

Associate Member Gordy commented that she served on the Finfish Committee and it was well-attended. There were pro and con discussions, and if the other people would leave the recreational watermen alone, she felt they could settle the situations among themselves. Mrs. Gordy said she felt it was the outsiders causing the problems.

Associate Member Birkett agreed with the statements made by Mrs. Gordy.

Associate Member Davis asked how many served on the Finfish Committee. Mr. O'Reilly responded that there were approximately 18 to 20 members.

Mr. O'Reilly, Assistant Chief-Fisheries Management, addressed the Commission. He said two years ago the Commissioner had directed him to contact recreational crabbers to serve on the committee. He said he contacted approximately 20 to 25 persons from different locations, but

Commission Meeting

unfortunately, they did not want to travel and some did not want to attend night meetings, etc. Mr. O'Reilly said only Mr. Scarborough agreed to be on the Committee. Mr. O'Reilly also indicated that when they had the meetings, they evaluated commercial data and everything they knew about the fishery was commercial. However, Mr. O'Reilly said that he agreed that the resource was open and should be used by all, but it was difficult because there was no recreational data to give it the right context. He said in time, and based on the preliminary work done by VIMS and others on the recreational surveys, they should have the recreational data. He said the substance of the Committee meetings, pro and con, were passed on to the Commission. Mr. O'Reilly said he did not think anyone could say there had been a rubber stamp effect from the Committee votes to the Commission votes.

After a discussion between Commission members regarding the makeup and balance of the committee, Associate Member Hull suggested that since the Chairman of the Committee was not present, he thought further discussion should wait until the Chairman returned.

Commissioner Pruitt commented that Mr. Cowart had an eye operation and he should return to the next Commission meeting. Mr. Pruitt then continued the discussion until the next meeting. In addition, the Commission agreed to discuss the membership of all the committees at the next meeting.

DISCUSSION: 1999-2000 Public Oyster Harvest Season - Request for Public Hearing

Jim Wesson, Chief-Conservation and Replenishment, briefed the Commission on the request to go to public hearing for the upcoming oyster harvest season. Comments are a part of the verbatim record. Dr. Wesson said they were recommending keeping everything the same, with four changes:

Seaside - Three-month season and the same regulations in place.

Chesapeake Bay and its tributaries (including the Potomac Tributaries) - Four changes were recommended:

- Hand scrape season in the Waterview Ridge area of the Rappahannock with the regulations remaining the same for the rest of the rivers.
- Adding the Little Wicomico River to open season with the other Potomac Tributaries.

- Opening two areas in Tangier, Johnson's and Thorofare Rocks.

James River - all regulations would remain the same, with a 15,000 bushel market quota and 80,000 bushel seed quota. All management areas remain the same with 2 clean cull areas and the rest as seed harvest areas. In addition, an October to April season was recommended; however, staff recommended that a sentence be added allowing the Commissioner to extend the season to as late as June 30, if the quotas had not been met.

A brief discussion followed regarding openings in the tributaries. Comments are a part of the verbatim record.

Associate Member Hull requested a briefing on the mortality of the oysters in the Great Wicomico River. Dr. Wesson responded that there was a briefing on that subject in the Commission packets on the trips he had done in the Great Wicomico. He said they saw a hot spot for mortality in the Great Wicomico, especially in May and June, the disease appeared to be MSX. He said they took samples in July and August and the MSX was not as high as in the earlier months. He said this was new MSX infection and it would depend upon this year's winter rain and temperatures as to how the disease would progress next year. He said they were unsure about Dermo which would take the rest of the year to determine Dermo's mortality.

Associate Member Hull asked what was the projection for the lower Rappahannock and when the River could be worked. Dr. Wesson responded that they were entering into a very large partnership agreement with DEQ, NOAA, the Bay Program, the Corps of Engineers, and possibly some direct appropriations from Congress and private partners to do a big restoration for the mouth of the Rappahannock. He said for the past four or five years that area had been closed. Dr. Wesson said they could now see oysters coming back on their own in the Rappahannock. However, they were limited to a small area because they only had shells in a small area. Dr. Wesson also said this project called for a combination of reefs being built, and 200 acres reconditioned with much thicker shellbeds than they normally could afford around the reefs. He said during the winter, they would hire watermen to clean the shellbeds and reefs before reselling the areas. He said this would create work for some watermen that would be comparable to a fishery bigger than they had seen in a number of years. Associate Member Hull asked how many men would get employment from the project. Dr. Wesson said it was hard to judge in this type of situation, but it would depend upon the response received from the watermen. Associate Member Hull asked when staff would know about the grants. Dr. Wesson responded that there was enough money now to start this winter on some of the sites. He said he anticipated approximately one million to a million and a half funding this year.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis moved to have a public hearing in September. Associate Member White second the motion.

Associate Member Hull asked if the watermen could speak on the Lower Rappahannock at the public hearing in September. A discussion followed.

Assistant Attorney General Fisher responded that it would be a public hearing and they could address the issue, and the Commission could make the decision to change the regulations for that area if necessary.

Commissioner Pruitt placed the matter before the Commission for a vote. The motion carried unanimously.

**FAILURE TO REPORT AS REQUIRED BY REGULATION 4VAC 20-610-110 ET. SEQ
"PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST
REPORTING"**

James Peters, Fishery Management Specialist, briefed the Commission on Phillip E. Brown:

Mr. Brown was identified as having harvested from the waters of the Commonwealth during the month of April 1999. The status of his harvest reports are:

Mr. Brown had brought all his 1999 reports up-to-date today.

Mr. Brown was notified in the following years for failure to report:

1993 - corrected deficiency

1995 - corrected deficiency

1996 - corrected deficiency

1997 Forms incorrect - corrected deficiency

Mr. Brown held a Commercial Registration license and a crab pot license for 300 pots or less.

Staff recommended one year's probation because all reports were up-to-date at this time. In addition, he had been counselled by Ms. Iverson and Mr. Peters regarding the importance of completing the mandatory reporting in a timely manner.

Commission Meeting

**10945
August 24, 1999**

Mr. Brown said he agreed to keep up with the reports monthly.

Acting Chairman White placed the matter before the Commission.

Association Member Ballard asked if the probation applied to all offenses. Mr. Peters responded that the probation only related to mandatory reporting. Associate Member Ballard requested clarification on how staff would manage Mr. Brown's mandatory reporting. Mr. Peters responded that he would look on a monthly basis and check the notifications that came from the buyers which would indicate Mr. Brown had harvested. If Mr. Brown had not reported his harvest, staff would request immediate suspension of his licenses.

Associate Member Davis asked why the probation did not extend to all offenses. Mr. Peters responded that in 1993 that was set in the probation policy, and the Commission changed the policy that applied only to mandatory reporting. He said this Commission could modify the regulation if they desired.

Associate Member Gordy moved to place Mr. Brown on a probation for one year. Motion seconded by Associate Member Birkett.

Associate Member Davis asked to amend the motion to include all offenses. Mrs. Gordy responded that she preferred that the probation applied to the present mandatory reporting violation, and to discuss the amendment separately.

Associate Member White called for the vote. Motion carried unanimously.

Associate Member Davis indicated that for any person placed on probation, the probation should apply to any violation of the law. Mr. Davis then offered a motion that the policy be changed to indicate that when a person was on probation, they were on probation for any violation.

Acting Chairman White said to be fair to the other cases, the motion should wait until all the mandatory reporting cases were heard.

Mr. Peters briefed the Commission on Mr. Kelly D. Price:

Mr. Price was harvesting from the waters during the months of May and July of 1999. No reports have been received.

1997 - Mr. Price was notified concerning his failure to report. Mr. Price corrected the reports.

His multiple licenses are: Commercial registration, crab dredge power, crab pot 150 or less,

Commission Meeting

fish/eel pot 300 or less, crab peeler pot and crab shed tank over 20.

Mr. Price was notified by certified mail and was present today. Mr. Price brought his reports in for 1998 and 1999. Mr. Price informed Mr. Peters of some family matters that caused the delinquency, but the delinquency was not intentional.

Mr. Peters said staff checked the reports and found them to be correct. Therefore, staff modified the recommendation for a one year's probation.

Acting Chairman White asked how frequently mandatory reporting was delinquent for two years, because this could change the quota allotment. Mr. Peters responded that it was a matter of identification, and until staff had the actual documentation, the violators could not appear before the Commission. The buyer's audit revealed Mr. Price's violation.

Mr. Price addressed the Commission. He apologized to the Commission. He said he had a lot of family things going on, but it was no excuse. He was guilty as charged. He had been a waterman for 19 years. He supported his family 100 per cent as a waterman. He said this had taught him a lesson, and he did not think the Commission would see him again, and requested the Commission to give him a second chance.

Acting Chairman White placed the matter before the Commission.

Associate Member Gordy moved to accept staff's recommendation for one year's probation. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Mr. Peters said Mr. Steve Sanford was not present. He said a certified letter and a first class letter were sent on August 10, respectively. Staff had not received the letters back. Mr. Peters said the Commission, in the past, had suspended licenses until the violators appeared before the Commission.

Acting Chairman White placed the matter before the Commission.

Associate Member Davis moved to suspend Mr. Sanford's licenses until he appeared before the Commission. Motion seconded by Associate Member Gordy. Motion carried unanimously.

Associate Member Davis returned to his earlier motion requesting persons placed on probation be put on probation for all violations of the Marine Resources.

Commission Meeting

Assistant Attorney General Fisher indicated that if the Commission wanted to do that, they could.

Colonel Bowman addressed the Commission. He requested clarification regarding those considered under the repeat offender violation, and those considered under the Marine Resources violations.

After a discussion between the Commission members and staff regarding the merging of all offenses, Acting Chairman White said that would become a part of the motion.

Associate Member Ballard suggested that the Assistant Attorney General and staff draft the motion. Mr. Ballard also requested information on why the policy was changed in 1994. A discussion followed between the Commission members, staff, and the Assistant Attorney General regarding the change in 1994. Comments are a part of the verbatim record.

Colonel Steven Bowman responded that a committee established by Commission members Rowe and Leggett and himself formulated the policy. The Committee established that under the repeat offender policy, that violation would be considered separately than those violations related directly to the Marine Resources, such as, licensing and buoy violation.

Acting Chairman White suggested that counsel work on the motion and a draft be brought to the next meeting. Colonel Bowman said that would give him an opportunity to work on the matter and provide him an opportunity to work out the verbiage. The Commission agreed with the suggestion.

DR. WILLIAM HARGIS, former Director, Virginia Institute of Marine Science, and Dean, School of Marine Science, College of William and Mary gave a presentation on Oyster Reefs of the James River.

Dr. Hargis presented slides on historical information regarding the oyster resource and industry in 1871-1872. He presented handouts to the Commission members on the Bathymetry of the James River Oyster System 1871-72, the James River Oyster Reef System 1871-73, and Burwell's Bay. Dr. Hargis gave statistics on the fresh waters that came into the Bay. He also presented slides that explained information on the best growing areas in Bay. He said that his presentation was to help Dr. Wesson's efforts in rebuilding oyster reefs. Comments are a part of the verbatim record.

Assistant Attorney General Fisher asked how the reefs survived until the 1940s. Dr. Hargis

Commission Meeting

responded that there were no oysters in the Chesapeake before 6,000 years ago. He said oyster reefs at sea level encroached on the James River Basin and the Susquehanna Drainage area and the oysters came in from the ocean. The oysters kept setting, growing and dying, and the cycle continued repeatedly. The oysters could keep pace with the rising sea level, since no significant removal of oysters occurred. The harvesting levels were not enough to destroy the oysters before 1871.

A question answer session followed regarding the oyster reef system. Comments are a part of the verbatim record.

Commissioner Pruitt thanked Dr. Hargis for his magnificent presentation. Commissioner Pruitt opened the hearing for Public Comments.

Douglas Jenkins, representing the Twin Rivers Watermen's Association from Northern Neck, addressed the Commission. He said the private oyster beds in the Great Wicomico and Coan Rivers, and other places had experienced a 95% mortality of the oysters within the past month. Mr. Jenkins questioned whether there had been a recent survey done on the oyster grounds where the public bottom had been closed, and what was the survival rate of the oysters presently.

Dr. Hargis responded to the seven questions presented by Captain Bob Jensen. Comments are a part of the verbatim record.

Associate Member Davis asked what percentage of the funding effort went towards rebuilding the reefs to get the oyster population to where it was 50 years ago, with meaningful reefs throughout the Bay. Dr. Wesson responded that it was approximately 50/50.

Meeting adjourned at 2:05 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary