

MINUTES

SEPTEMBER 26, 2000
NEWPORT NEWS, VA 23607

The regular monthly meeting of the Marine Resources Commission was held on September 26, 2000.

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon M. Birkett)	
Lake Cowart, Jr.)	
Laura Belle Gordy)	Members of the Commission
Henry Lane Hull)	
F. Wayne McLeskey)	
John W. White)	
Kenneth W. Williams)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		Head-MIS
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance & Administration
Debbie Brooks		Executive Secretary
Steven Bowman		Chief-Law Enforcement
Lewis Jones		Deputy Chief-Law Enforcement
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Randy Widgeon		Eastern Shore Supervisor
Ray Jewell		Northern Area Supervisor
James Todd		Marine Patrol Officer
Ed Guy		Marine Patrol Officer

VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF

Dr. Eugene Burreson
 Tom Barnard
 Lyle Varnell

COMMISSION MEETING**SEPTEMBER 26, 2000**

Jack Travelstead
Rob O'Reilly

Chief-Fisheries Management
Assistant-Chief Fisheries Management

Dr. Jim Wesson

Head-Conservation & Replenishment

Roy Insley
Lewis Gillingham
Ellen Cosby
Tina Hutcheson

Head-Plans & Statistics
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist

Bob Grabb
Tony Watkinson
Chip Neikirk
Randy Owen
Tracy West
Heather Wood
Ben Stagg
Hank Badger
Jeff Madden
Mark Eversole
Jay Woodward

Chief-Habitat Management
Assistant Chief-Habitat Management
Environmental Engineer
Environmental Engineer

Gerry Showalter
Debra Jenkins

Head-Engineering & Surveying
Program Support Specialist

others present:

Bert Parolari
Sheri Kattan
Bill Cash
Thomas J. Boswell
John C. Hult, Jr.
Archie Doughty
Rudolph Powell
Janet Vorhauer
Peter Castanzo
Adam Frisch
Craig Palubinski
Anna Drake

Leann Moran
Debra Trent
David Gallagher
C. Jett
Warren A. Bell
William Mills
Roy Vorhauer
Joan Matthews
Dave Watts
Kenny Annis
Page Ayres

COMMISSION MEETING**SEPTEMBER 26, 2000**

Tyla Matteson
Charles Rice, Jr.
Betty Grey Waring
Paul Vitchel
Larry King
Hal Goodman
Robert Murphy
Jill Bieri
Stanley Mlodynia
Virginia Morgan
Michelle Walters
David Hayslett
Bob Hutchinson
Frances Porter
Douglas F. Jenkins, Sr.
Terry Scanlin
Tom Powers
Bob Merten

Donna Rice
Ray Faircloth
Aileen C. Smith
Jason Dusley
Thomas Walker
Jeannie Butler
James Fishman
John Pellegrino
George King
Rob Brumbaugh
J. F. Haydon
Chris Ludford
H. J. Deibler
Marshall B. Cox, Sr.
Donnie Thrift
Charles Williams
R. Welton
Kelly V. Place

and others.

COMMISSION MEETING

SEPTEMBER 26, 2000

Commissioner Pruitt opened the September meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams. Associate Member Gordy gave the invocation and Associate Member Hull led the Pledge of Allegiance. Commissioner Pruitt established that there was quorum.

****APPROVAL OF agenda.**

Associate Member Ballard requested that an additional item be added to the agenda as 26.a: Discussion: Commercial Flounder industry's request for modification to the fourth quarter and first quarter quotas and trip limits. Request for public hearing.

Mr. Grabb stated that he wished to add requests from the Chesapeake Bay Foundation and Alliance, item 13.b, for a discussion of the applications they had submitted for SAV transplantation projects.

Mr. Grabb also requested that Item 10 be removed from the agenda and deferred to the October 24 meeting since Mr. McDonough had requested such.

Associate Member Hull moved for approval of the agenda as amended. Motion was seconded by Associate Member White. Motion carried unanimously.

1. MINUTES of previous meeting.

Associate Member White moved to approve the Minutes as distributed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

2. PERMITS (projects over \$50,000 with no objections and with staff recommendation for approval).

Mr. Grabb, Chief-Habitat Division, briefed the Commission on the following eleven page two items for projects that were over \$50,000 and not contested.

2A. RICHARD LOMBART, ET AL, #00-1336, requests authorization to hydraulically dredge approximately 15,851 cubic yards of intertidal and subaqueous bottom material to provide maximum project depths of minus five feet (-5.0') at mean low water with a six-inch

COMMISSION MEETING

SEPTEMBER 26, 2000

overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at properties situated along Keeling Cove in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$6,063.75 for the dredging of 13,475 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Dredging of 13,475 cu. yds. of State-owned subaqueous bottom matererial @ \$0.45 per cu. yd.....	\$ 6063.75	
Permit fee.....		<u>100.00</u>
Total	\$ 7063.75	

2B. BUCHANNAN CREEK PROJECT, #00-0743, requests a modification to their previously issued dredge permit to allow for the additional dredging of approximately 3,411 cubic yards of State-owned subaqueous bottom material to allow for minor alignment shifts to their navigation channel which will connect to the Western Branch Lynnhaven River municipal channel in Virginia Beach. Recommend an additional royalty in the amount of \$1,534.95 for the dredging of 3,411 cubic yards of new material at a rate of \$0.45 per cubic yard.

Dredging of 3,411 cu. yds. of new material @ \$0.45 per cu. yd.....	\$ 1534.95	
Permit fee N/A (modification)		

2C. NEWPORT NEWS DEPARTMENT OF PUBLIC UTILITIES, #00-1621, requests authorization to install a 75-foot long by 71-foot wide riprap spillway and a 32-foot long bulkhead at the Skiffes Creek Dam in Newport News.

Permit fee.....	\$ 100.00	
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2D. NEWPORT NEWS SHIPBUILDING AND DRY DOCK CO., #00-1517, requests authorization to install a 20-foot by 60-foot extension to an existing spud barge adjacent to their property situated along the James River in the City of Newport News. Recommend a royalty of \$1,200.00 for the encroachment over 1,200 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty for encroachment over 1,200 sq. ft. of State-owned subaqueous bottom @ \$1.00 sq. ft.....	\$ 1200.00	
Permit fee.....		<u>100.00</u>

COMMISSION MEETING

SEPTEMBER 26, 2000

Total \$ 1300.00

2E. U.S. ARMY CORPS OF ENGINEERS, #95-0110, requests a one-time extension through January 31, 2001, of their previously issued permit for the material generated during the hydraulic maintenance dredging of the two (2) Federal Project Channels at Tangier Island. The material will be deposited along the western shore of the island, south of the existing seawall.

Permit fee not applicable

2F. GLEBE HARBOR- CABIN POINT PROPERTY OWNERS ASSOCIATION, #00-1042, request authorization to dredge approximately 5,500 cubic yards of State-owned subaqueous bottom material to be used for beach nourishment and fill of proposed Geo-tubes. Additionally proposed are two (2) 166-foot and one (1) 220-foot armor stone breakwaters with sand-filled Geo-tube cores and one (1) 210-foot armor stone spur with a sand-filled Geo-tube in Cabin Point Creek Inlet, Lower Machodoc Creek and Weatherall Creek in Westmoreland County. Recommend that the applicant be required to complete the project within 12 months of commencement. Recommended a royalty of \$420.02 for the use of 1400 cubic yards of State-owned material to fill the geotubes @ \$0.30 cubic yard, and a royalty of \$3,012.00 for the filling of 10,040 sq. ft of State-owned bottom in conjunction with beach nourishment at \$0.05 per sq. ft.

Filling of 10,040 sq. ft of State-owned bottom in conjunction with the Beach nourishment of \$0.05 sq. ft.....	\$ 3012.00
Dredge/Fill Geo-tubes 1400 cu yds. @ \$0.30 per cu. yd.....	420.02
Total	\$ 3432.02

2G. FAIRFAX COUNTY WATER AUTHORITY, #00-0329, requests authorization to construct 25 feet of submerged crossings of a 42-inch water pipeline of Giles Run and South Run, tributaries to the Potomac River in Fairfax County. Recommend approval with standard instream construction condition.

Permit fee.....\$ 100.00

2H. NORFOLK SOUTHERN CORP., #00-1154, requests authorization to maintenance dredge, on an annual basis, 35,000 cubic yards of subaqueous bottom material from the Elizabeth River to maintain maximum depths ranging between -38 feet and -53 feet at mean low

COMMISSION MEETING

SEPTEMBER 26, 2000

water adjacent to Piers #5 and #6 at their Lamberts Point facility in the City of Norfolk. All dredged material will be transported directly to Craney Island for disposal.

Permit fee.....\$ 100.00

2I. ATLANTIC ENERGY, INC., #00-1216, requests authorization to maintenance dredge 20,000 cubic yards of subaqueous bottom material from St. Julian Creek and the Southern Branch of the Elizabeth River to maintain depths of -37 feet at mean low water adjacent to the ship berthing area at their facility in the City of Chesapeake. All dredged material will be transported directly to Craney Island for disposal.

Permit fee.....\$ 100.00

2J. QWEST COMMUNICATIONS CORPORATION, #00-0989, requests authorization to install, by directional bore method, a 294 linear foot fiber optic cable crossing under Wayne Creek adjacent to Tidewater Drive in the City of Norfolk and a 1,277 linear foot fiber optic cable crossing under the Eastern Branch of the Elizabeth River adjacent to the Norfolk Southern Railway Bridge in the Cities of Norfolk and Chesapeake. Recommend a royalty of \$1,571.00 for the crossing under 1,571 linear feet of State-owned subaqueous bottom at a rate of \$1.00 per linear foot.

Royalty for crossing under 1,371 ln. ft. of State-owned subaqueous bottom @ \$1.00 per ln. ft.....	\$ 1571.00	
Permit Fee.....		<u>100.00</u>
Total	\$ 1671.00	

2K. RICHARD PHILLIPS, et al, #93-1306, requests authorization to modify an existing permit to construct 420 additional feet of breakwater with five (f) 35-foot low profile groins at the channelward end of a previously permitted and constructed 900 feet of breakwater. Recommend approval with all previous permit conditions and to include the following additional conditions:

- a. All pilings be a minimum of ten feet in length;
- b. All sheet piles be a minimum of ten feet in length;
- c. All stringers be 4" by 8" minimum;
- d. Permit for three years with no additional extensions.

Recommend an additional royalty of \$178.50 for 595 linear feet of encroachment at \$0.30 per

COMMISSION MEETING

SEPTEMBER 26, 2000

linear foot.

Encroachment (breakwater/jetty) 595 ln. ft.	
@ \$0.30 per ln. ft.....	\$178.50

There being no comments, pro or con, Commissioner Pruitt placed the page two items before the Commission.

Associate Member Ballard moved to approve the page two items as presented. Associate Member Gordy seconded the motion. Motion carried unanimously.

3. EXECUTIVE SESSION.

Associate Member Ballard moved that the meeting be recessed and that the Commission immediately reconvene in executive closed meeting for the purpose of consultation with legal counsel and briefings by staff pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by subsection (A), Paragraph (7) of Section 2.1-344 of the Code of Virginia, pertaining to a request from the Virginia Seafood Council for legal fees from the Commercial Improvement Fund; and secondly, a presentation concerning Mrs. Fryar's case regarding the civil charge assessed therein. Motion was seconded by Associate Member Birkett.

The Commission returned from executive session: Associate Member Ballard then moved that:

WHEREAS, the Virginia Marine Resources has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, §2.1-344.1 of the Code of Virginia requires a certification by this Commission that such executive meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved that the Commission hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Commission. Motion was seconded by Associate Member Williams. Motion carried unanimously.

COMMISSION MEETING

SEPTEMBER 26, 2000

4. **KENNETH D. WILKINS, #00-0650.** Commission review on appeal of the August 21, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct and backfill 1,050 linear feet of steel sheetpile bulkheading involving a coastal primary sand dune and beach in Virginia Beach.

Bob Grabb, Chief-Habitat Management, informed the Commission that this item was a Commission review on appeal of the August 21, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct and backfill 1,050 linear feet of steel sheetpile bulkheading involving a coastal primary sand dune in the Sandbridge section of Virginia Beach. He said in a letter dated September 7, and received on September 11, counsel for the appellant, Mr. Glen Croshaw, had requested a continuance due to a court conflict. That request had been concurred with by the City Attorney. Section 28.2-1411 (B) of the Code of Virginia stipulates that a continuance may be granted on the motion of the applicant. Mr. Grabb recommended that the Commission grant the continuance.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Gordy moved to grant the continuance. Motion seconded by Associate Member Cowart. Motion carried unanimously.

5. **MR. AND MRS. GARLAND F. KARNES, #00-0512,** request authorization to construct a 14-foot by 10-foot open-sided covered deck at the channelward end of a proposed pier adjacent to their property along Rowes Creek in Gloucester County. Tabled from the August 29, 2000, meeting.

Chip Neikirk, Environmental Engineer, indicated that this case had been tabled last month because the applicants were not present. Mr. Neikirk said although they were notified by mail, he still had not heard from them. However, the certified receipt was returned indicating they had received the notification. The Commission indicated that a briefing was not necessary this month because the members had read the file and the slides were shown last month.

The applicant still was not present. There being no other comments, pro or con, the Commissioner placed the matter before the Commission.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Associate Member Ballard moved to adopt staff's recommendation to deny the permit to construct the 14 ft. by 10 ft. open-sided covered deck. Motion was seconded by Associate Member Williams. Motion carried unanimously.

6. JANET VORHAUER, #97-1883. Commission's review on appeal by 25 freeholders of the August 16, 2000, decision by the Poquoson Wetlands Board to reissue a permit to install 125 linear feet of bulkhead and 200 linear feet of riprap at her property situated along Roberts Creek.

Tracy West, Environmental Engineer, briefed the Commission and presented slides of the two project locations. She also provided information on the description of the project. Ms. West indicated that Mr. Vorhauer was granted a permit in January 1998 for both portions. Ms. Vorhauer requested an extension in 1999 and it was granted. She again requested an extension in 2000, but since it had been two years, the Poquoson Wetlands Board felt uncomfortable granting another extension without a re-evaluation of the properties. The Board subsequently reviewed both projects on August 16, and approved both projects.

Ms. West stated that on August 28, 2000, staff received a petition for review from Ms. Tyla Matteson on behalf of 31 freeholders of property in Poquoson. Although the petition was not received within the 10-day appeal period specified in §28.2-1311 of the Code of Virginia, the Commissioner was asked to consider the petition timely since the deadline occurred on a Saturday. After receiving advice from the Assistant Attorney General and in consideration of Section 1-13.31 of the Code of Virginia, the appeal was accepted.

Ms. West then explained that during the Wetlands Board hearing, the Board discussed and voted on each parcel separately even though they were on the same application. The petitioners', however, protest appeared to be centered around the construction of the bulkhead proposed for lot 22. The petitioners allege that the Board did not fully consider the impact of the proposed bulkhead on egrets that are utilizing the property. Ms. West stated that Mr. Taylor addressed the Board and stated that the American Egrets used the site for roosting. Chairman Clark then informed Mr. Taylor that he believed protection of the birds was beyond the authority of the Wetlands Board.

Ms. West stated that the VIMS report indicated that the bulkhead would have minimal adverse impact on the marine environment. Ms. West further stated that there did not appear to be any evidence in the record to indicate that the egrets would be affected by the bulkhead. Based on staff's review of the record of the Wetlands Board, staff believed that the decision to approved

COMMISSION MEETING**SEPTEMBER 26, 2000**

the bulkhead in the proposed location was consistent with the Wetland Guidelines set forth in §28.2-1302(9) and §28.2.1302(10) of the Code of Virginia. Accordingly, staff recommended that the August 16, 2000, decision of the Poquoson Wetlands Board be upheld.

Associate Member Ballard commented that he thought the Chairman's statement that consideration of the birds was beyond the purview of the Wetlands Board jurisdiction was incorrect. Ms. West responded that she tended to agree with the Board Chairman.

Don Taylor, 98 Sandy Bay Drive, Poquoson, VA, spoke on behalf of the 25 freeholders.

Commissioner Pruitt asked Mr. Taylor if he had anything to submit that was not submitted to the local wetlands board. Mr. Taylor responded that he had several pieces correspondence from the Department of Conservation and Recreation, dated September 25, 2000. Mr. Pruitt then placed the question of opening the record before the Commission. Mr. Ballard commented that he ordinarily was not in favor of opening the record, but in his opinion, the transcript from the Wetlands Board hearing was very brief and he could not gain a feel for what went on at the meeting. He also did not agree that consideration of the birds was outside the purview of the wetlands board based on his reading of the Code. Mr. Ballard then moved to open the record. The Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Mr. Taylor then presented a letter to the Commission members for their review. He stated that he was an adjacent property owner of Lot 22 in Rivercrest. He said he was the spokesperson for the petitioners appealing the Poquoson Wetlands Board decision to reissue permit #97-1883. Mr. Taylor informed the Commission that there were between 150 to 200 American egrets that roosted on this property. He felt that was grounds for a reversal in accordance with Virginia Code 28.13.2(E) as unsupported by evidence on the record considered as a whole.

He stated his reasons were as follows: 150 citizens signed petitions supporting habitat protection of the birds; also the Hampton Roads Bird Club and Sierra Clubs and others had expressed concern about the egrets. Mr. Taylor also stated that they recently had been in contact with a variety of organizations and agencies, which included the U.S. Fish and Wildlife Service, the Game and Inland Fisheries Department, Division of Natural Heritage, Dr. Mitchell Byrd Center for Conservatory Biology, Chesapeake Bay Foundation, and the Nature Conservancy. With their help they were continuing to compile information and assistance concerning this matter: (2) The Army Corps of Engineers did not coordinate with the Wildlife Department to determine what effect the project would have on wildlife as required by law when projects threaten species of special concern; (4) wildlife should be protected according to the Virginia Code 28.2-1301 Powers and Duties of the Commission; (5) he also indicated that a citizen had said the public notice was not posted in a timely manner (posted Friday for a Public Hearing the following Wednesday); (6) no building site plans for building homes on this

COMMISSION MEETING**SEPTEMBER 26, 2000**

lot. Site elevation for this lot had not been obtained. However, he had observed the area and noticed numerous trees close to the waters edge. He felt also that building a bulkhead prematurely would disrupt the egrets habitat as trees were cut down, and the human presence would spook the birds. If a building permit was issued, he felt time-of-year restrictions should be put in place so that the egrets were minimally disturbed. He then requested that the matter be remanded back to the Poquoson Wetlands Board.

Tyla Matteson said her recent conversations with the scientists from the U. S. Fish and Wildlife Service and Department of Conservation and Recreation's Division of Natural Heritage (DCR), Virginia Game and Inland Fisheries Center for Conservation Biology Scientist were asked and planned to visit the egret site for an evaluation. In addition, the Federal Migratory Bird Treaty would also be researched by the U. S. Fish and Wildlife Service. Ms. Matteson also indicated that the birds would become distressed if their habitat was gone. Other comments are a part of the verbatim record.

Dr. H. L. Jones, Jr, 94 Sandy Bay Drive, Poquoson, Virginia, said he had lived at this address for 35 years. He commented that he did not think it was necessary to build a bulkhead because there were other methods to stabilize the shoreline. Comments are a part of the verbatim record.

Jack Roy Vorhauer, applicant, said he was the co-owner of the lots and he lived in Hampton, Virginia. Mr. Vorhauer indicated that he was not trying to build a house on the property, but wanted to stabilize the shoreline because it was washing out on one side. Mr. Vorhauer indicated that there were 100 to 200 egrets that roost in that general area, but he felt his lot had been singled out and he probably had less birds on his lot than any other lot in the area. He said he had walked to the lot on three different occasions and had never seen a bird on his particular lot.

Commissioner Pruitt requested that the slide showing the lot be put back up for review of the lot. Mr. Vorhauer described the dimensions of his lot and acknowledged that he had seen some feathers in the area. He said his neighbor came out and pointed out that the birds were actually roosting on Bay Avenue, not his lot. A discussion followed.

Mr. Vorhauer further commented that 60% of home owners in that area did not sign the petition, and that a number of people on Bay Avenue did not sign the petition. Mr. Vorhauer stated that he was not interested in harming the birds. In his opinion, the birds were only roosting, not nesting there.

Commissioner Pruitt commented that what was before the Commission today was a review of

COMMISSION MEETING**SEPTEMBER 26, 2000**

the Wetlands Board's action. He said some of the issues brought up today pertained to the Chesapeake Bay Preservation Act, local zoning matters. The Commission was trying to determine if the local wetlands board had adequate information. Mr. Pruitt also indicated that he felt the Board did not have enough information before them to make the decision, because they did not have the letters from the Game Department and DCR that had been submitted. In addition, the transcript did not indicate what both sides had to say in enough detail to make a determination as to what was said. Mr. Pruitt then placed the matter before the Commission.

Associate Member Ballard stated that because the lack of information of what actually took place at the Local Wetlands Board, it was difficult to determine what was said between both sides, and based on the additional evidence that was heard today regarding the birds; Mr. Ballard moved that the matter be remanded back to the Local Wetlands Board. Motion was seconded by Associate Member Hull. Motion carried unanimously.

7. RON KITCHEN, #00-0867. Commission review on appeal of the July 27, 2000, decision by the Richmond County Wetlands Board to deny authorization to construct a proposed 32-foot long, low-profile timber groin with associated timber spur adjacent to his property situated at the confluence of Farnham Creek and the Rappahannock River.

Jeff Madden, Environmental Engineer, informed the Commission that he would like to present some aerial slides of the project. In the past, the AG's representative had indicated that this sort of familiarization did not constitute an opening of the record. The decision, however, rested with the Commission

Commissioner Pruitt asked the Commission if they wanted to view the slides. Associate Member Birkett commented that while he was familiar with the area, he thought it would benefit the other Commission to see the photographs. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

Mr. Madden then briefed the Commission on the description and location of the property. Comments are a part of the verbatim record.

Paul Kitchen, son of Ron and Anita Kitchen, the property owners, addressed the Commission. Commissioner Pruitt asked Mr. Kitchen if he had any information that was not presented at the Richmond County Wetlands Board meeting that he wished to present to the Commission. Mr. Kitchen responded that he would like to return to the first slide that showed a clear erosion problem.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Mr. Kitchen then pointed out the area on the slide that showed a clear wash through, which caused flooding of the yard. Mr. Kitchen said the navigation issue and the SEAS report recommendation was fully followed.

Commissioner Pruitt requested counsel address the navigation issue. Mr. Josephson said the issue of navigation was not within purview of the Game and Inland Fisheries Department. The Corps of Engineers is the Federal agency that deals with navigational issues.

Robert Grey Spencer then addressed the Commission. He pointed out where he lived in relation to the property, and how the erosion had occurred largely due to natural causes. Mr. Spencer also explained his concern regarding the southwest wind moving the sand and causing the water to erode on the side. He said if a large berm was installed and the tide came in on certain winds, it would cause more erosion.

Charles R. Rice, Jr., a landowner on the creek, addressed the Commission. He said the sand flow would tend to move in and out. Mr. Rice stated that his main concern was navigation. He explained how difficult it was for boats to go in and out of the channel, and in rough weather the jetty was a hazard. Also, the jet skis and the sand flow might cause the channel to be better or it might end up with no channel. Other comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull commented that from what had been said today, and from reading the record, he did not see any evidence that the Richmond County Wetlands Board had erred procedurally or that the rights of the applicant had been prejudiced by their decision. As a result, he felt the Commission should uphold their decision. Motion was seconded by Associate Member Cowart. Motion to uphold the Wetlands Board's decision was unanimous.

WETLANDS BOARD'S DECISION UPHELD

9. TRAIL'S END SUBDIVISION, #00-1308, requests after-the-fact authorization to retain a 12-foot wide concrete, community boat ramp which extends 36 feet channelward of mean low water into Tabbs Creek in Lancaster County.

Jay Woodward, Environmental Engineer, briefed the Commission and presented slides depicting the project description and location of the property. Comments are a part of the verbatim

COMMISSION MEETING**SEPTEMBER 26, 2000**

record. Mr. Woodward indicated that Mr. Larry King, the individual in charge of roadway maintenance in the Trails End subdivision had been contacted by telephone and was subsequently served with a Notice to Comply on June 14, 2000 regarding the unauthorized construction of the ramp. Mr. King was directed in the Notice to submit an after-the-fact permit application for review, in lieu of removal of the unauthorized structure. A letter of explanation, dated June 26, 2000, was received which stated that Mr. King had been acting on behalf of the residents of the two subdivisions that used the ramp, Trail's End and the adjacent Bayfield Beach.

In Mr. King's letter of explanation, he pointed out that there had been a 35-foot wide "launch" consisting of cinder blocks, bricks, stone and other debris that extended approximately 14 feet channelward of mean low water at the end of Pine Trail since the 1950's. Mr. King indicated that he had contacted all of the property owners in the two communities seeking their approval to improve the ramp. He said he contacted several persons, including a county official, Mr. John Hill, who indicated that they did not believe the repair work required a permit. Mr. Hill then informed Mr. King that he should contact a woman in Norfolk who handled this type of thing. Mr. King said he called Norfolk, to what he thought was the Marine Resource Commission, but he never received a response. Mr. King, believing that a permit was not necessary, contacted Mr. Mal Ransone of Ransone Nursery and Maintenance, who also believed a repair permit was not necessary. Mr. Ransone constructed the ramp. It was completed on or about April 1, 2000. The newly built structure extended 30 feet farther channelward, but was 20 feet narrower than the original ramp.

Mr. Woodward said that staff had sent Mr. Ransone a letter on August 10, 2000, directing him to submit a letter explaining his involvement with the unauthorized construction. To date, staff had not received a response from Mr. Ransone. Mr. Woodward said a completed Joint Permit Application was received on July 13, 2000.

Mr. Woodward stated that the Virginia Institute of Marine Science had indicated that, had they reviewed the project prior to construction, they would likely have expressed no objection to it. The Virginia Department of Environmental Quality indicated that the water quality impacts of the project should be minimal and temporary and therefore the project would not require a Virginia Water Protection permit. The Virginia Department of Health and Virginia Department of Conservation and Recreation advised that the project did not have any adverse impacts on their programs. However, DCR did recommend coordination with the U. S. Fish and Wildlife Service and the Department of Game and Inland Fisheries (DGIF) due to a Bald Eagle nest in the area. DGIF had not commented to date.

Mr. Woodward indicated that the Lancaster County Wetlands Board granted an after-the-fact

COMMISSION MEETING**SEPTEMBER 26, 2000**

permit for the filling of 180 square feet of Type XII Brackish Water Mixed wetlands on August 14, 2000. However, because of the contractor's familiarity with shoreline construction requirements, the Board found the contractor at fault for not obtaining the permit in advance. The contractor agreed to a civil charge in the amount of \$500 in lieu of further enforcement actions. The Board did not impose a civil charge against the applicant because a local official had apparently led the applicant to believe that a permit was not required for the repair work.

In Mr. Woodward's summary, he indicated that staff was at a loss as to who Mr. King contacted about a permit in Norfolk. In addition, staff could not speak for the local official who indicated that he believed that repair work didn't require a tidal wetlands permit. Mr. Woodward said the environmental impacts of the new ramp appeared to be minimal and staff appreciated Mr. Kings' cooperation on behalf of the two communities had in an effort to resolve this matter. However, staff was disturbed that the applicant and contractor extended the new ramp an additional 30 feet channelward of the existing structure and then considered that "repair." Mr. Woodward also stated that staff believed that the contractor should have known that the local jurisdiction in this matter ended at the low water line and that the Commission had to authorize any additional encroachments over subaqueous bottoms. As such, staff recommended approval of the after-the-fact authorization for the new ramp with the assessment of triple permit fees and royalties for the unauthorized encroachment over 432 square feet of State-owned subaqueous bottom. Staff further recommended that an appropriate civil charge be considered for the responsible party or parties in lieu of any further enforcement action.

Associate Member Hull asked staff if Mr. King had provided any pictures of the previous ramp or the condition of the ramp before the construction. Mr. Woodward responded no.

Mal Ransone, contractor, addressed the Commission. Mr. Ransone stated that Mr. King and Mr. Hill did all the research on this project. He said there was a 2 1/2 year time lapse since the project was started. He said he just got around to doing it in February. In the meantime, Mr. Hill had retired and someone else was now in charge. Mr. Ransone said the people would dump their debris, building debris, concrete, and trucks would wash their left over concrete in the area, which was approximately 20 to 25 feet wide. He said after the research was done, he went in and cleaned out approximately three tandem truck loads of debris, iron rebar and bricks, narrowed the ramp, and put it back like it was. There was no disturbance as far as the bottom was located.

Associate Member Gordy asked Mr. Ransone if he was aware that he was going out further than the original footprint. Mr. Ransone responded they went out approximately 12 to 15 feet further. A discussion followed.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Associate Member Hull asked Mr. King if there were any photographs of what the original ramp was like. Mr. King responded no because he did not know a permit was necessary. Mr. Hull requested that Mr. King describe what the previous ramp was like. Mr. King responded that the existing ramp was nothing visible but cinder blocks, bricks, pieces of stone and basically any debris that could be thrown back there. He said they narrowed the present ramp from 40 feet to 20 and extended it out. Mr. King stated that he understood the Board's concern about the situation, and they were willing to do whatever the Board deemed should be done. He also stated that he had done the research and that he made one attempt to call, what he thought was the Commission, based on a referral that John Hill had given him. He said he could not remember the name of the person he spoke with. He contacted Mal and they both agreed that it was a repair job and probably did not need a permit.

Associate Member Ballard asked Mr. Ransone if he generally built piers and boatramps? Mr. Ransone responded that he did not build piers, he just did riprap and sometimes a few boat ramps.

Mr. King readdressed the Commission. He said when staff made its presentation they said the ramp was paid for with private donations from tenants, but it had nothing to do with road funds.

It was a separate issue and voted on by everyone there. Mr. King also stated that he was concerned about the Egrets nest. He said they agreed that there were some Egrets there, and he understood that whatever was necessary, the board had not responded yet. He did not understand the impact of an Egrets nest, if the ramp was there first and being used, and they were not providing anymore people to use the site, in fact, they were doing less because they were restricting the usage to homeowners only. He did not understand what the Egret's nest situation would have to do with the ramp, and requested that someone explain it to him.

Associate Member Cowart asked if the resulting ramp footprint was larger in the water than the previous ramp. Mr. King responded that it was longer and more narrower. He said it took approximately 200 more square feet of what was existing there and much deeper into the water.

The site was more clearer and pleasant to look at. The project was much narrower and much cleaner.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull commented that he was familiar the area. He said this subdivision was put in approximately 50 years ago, and at that time, they were very lax with the regulation of projects of this type. He said the pre-existing ramp was basically an eyesore and it was a dump.

Mr. Hull said he did not approve of the after-the-fact, but there was less surface of concrete now, than before. He said he felt it was a difficult call for the Commission, because what they had done was an improvement to water quality in Lancaster County by removing the rubble and

COMMISSION MEETING

SEPTEMBER 26, 2000

trash from the water.

Associate Member Birkett commented that they took something that was detrimental to the environment and community and made it better, and he did not think they should be totally condemned for their efforts. Mr. Birkett said he thought they should have requested a permit prior to the installation of the ramp because a marine contractor should know about the permit process. Mr. Birkett then moved to adopt staff's recommendation. Associate Member Gordy seconded the motion.

Associate Member Ballard asked if the motion contemplated any civil charge. Staff responded that they did not specify an amount or whom any civil charge should be assessed.

Associate Member Hull commented that he did not think it was appropriate to impose a civil charge, and that the triple permit fees should be the penalty, if Mr. Birkett was acceptable to that suggestion.

Commissioner Pruitt clarified the motion and stated that it contained the triple royalty and triple fees. Mr. Grabb said that the fees were specified in Code and did not require the concurrence of the parties.

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

Fill 432 sq. ft @ \$0.90	
per sq. ft.....	\$388.80
Permit fee.....	<u>75.00</u>
Total	\$463.80

8. GEORGE INSLEY, #00-1244. Commission review on appeal by 25 freeholders of the August 9, 2000, decision by the York County Wetlands Board to approve a request to install 161 linear feet of bulkhead at his property situated along Chisman Creek.

Tracy West, Environmental Engineer, informed the Commission that she was handing out an important piece of correspondence that had been inadvertently omitted from the record that was transmitted by York County. Ms. West indicated that this was not considered to be opening the record because this correspondence was discussed during the wetlands hearing. It was just not included in the Commission's package. Ms. West then briefed the Commission and presented slides on the location and a description of the project. Comments are a part of the

COMMISSION MEETING**SEPTEMBER 26, 2000**

verbatim record.

Associate Member Ballard requested that the slide with the fill washing that the Corps of Engineers mentioned in their letter be shown for review, because all the slides he saw showed vegetated land. Ms. West responded that the filling had been going on for several years and it was mostly upland fill. Ms. West indicated that the staff person from the York County Wetlands Board could probably give a more adequate history of what was going on at the site.

She said it was also her understanding that the upland property had been filled several times. In addition, Ms. West mentioned that Mr. Insley had several fill violations over a six-year span.

Ms. West indicated that on August 18, 2000, staff received a letter and petition for review from Mr. John Matthews on behalf of 31 freeholders of property in York County. She said the appeal was considered timely under the provisions of the Code of Virginia. Ms. West stated that the petitioners alleged that there were several inconsistencies in the Board's consideration of the application. Namely, the petitioners felt the application was incomplete, because the application did not accurately reflect the scope of impacts to the wetlands; the applicant stated to the Board himself that the structure was not for erosion control; and that the wetlands impact could have been avoided entirely by Mr. Insley pulling the bulkhead back one foot landward of the current location. Ms. West further indicated that three citizens addressed the Wetlands Board during the hearing. Dr. Iris Anderson, a neighbor, expressed concerns about wave energy being reflected off the bulkhead into the marsh. Dr. Anderson also questioned why a bulkhead was needed, if according to CBPA standards, the lot was not buildable. Mrs. Christine Matthews, who lived across the water, addressed the Board and discussed the illegal activities that had occurred at the property and stated that allowing the bulkhead could be interpreted as condoning the illegal fill activities. Mr. John Matthews also addressed the Board. He stated that he did not believe that the application was complete and that the Board needed more information. Mr. Matthews further stated that there was no shoreline erosion, and that all the erosion was upland, as a result of unstabilized upland fill.

Ms. West said that Mr. George Insley addressed the Wetlands Board and stated that the purpose of the bulkhead was to hold the fill, not to protect the wetlands. Also, the Board Chairman asked for guidance from VMRC staff regarding the completeness of the application. Staff advised the Board that completeness of the application was a determination for the Wetlands Board. The Wetlands Board also discussed the February 19, 1999, letter from the Corps of Engineers to Mr. Insley. The Corps of Engineers requested that Mr. Insley, "install a permanent method of shoreline stabilization that would control the ongoing encroachment problem." The letter further stated that the structure should be placed at the toe of the existing fill.

The VIMS report stated that the individual and cumulative adverse impacts resulting from the

COMMISSION MEETING**SEPTEMBER 26, 2000**

project would be minimal.

Ms. West indicated that after the Wetlands Board had considered the public testimony, discussions among Board members, and the VIMS report, a motion was made and seconded to approve the project subject to the following conditions:

- The approved wetlands permit was contingent upon the approval of the Board of Appeals to the request for a variance to Section 24.1-373(5)d of the County Code for construction of a residence;
- The revised drawing showing benchmarks and return walls which was submitted to the County on August 3, 2000, would supersede the previously submitted drawings and be incorporated into the permit application;
- The revised drawing title "Plan and Cross Sectional View" prepared by Cundiff Simmons and the revised sheet 5 of the application, both of which were received by the County on July 12, 2000, will supersede the previously submitted drawings and sheet 5;
- A surety in the amount of \$16,000 must be posted with the County prior to beginning work.

Ms. West gave a summary of staff's review of the record that was transmitted by the Wetlands' Board: (1) staff believes that the decision to approve the bulkhead in its proposed location is not consistent with the recommendations contained in the Shoreline Development Best Management Practices Handbook. The BMP's for bulkheads states that structures should ordinarily be placed landward of marsh vegetation; (2) the wetlands Guidelines state alterations of the shoreline are ordinarily not justified for purposes or activities that can be conducted on the existing fastlands and which have no inherent requirement for access to water resources, and (3) the Guidelines also state that where the viable alternatives can achieve the given purpose without adversely affecting marshes, oyster grounds, or other natural resources, alternations to shorelines are not justified. Ms. West said the applicant specifically stated that the purpose of the structure was to retain upland fill, not to prevent shoreline erosion.

Ms. West further indicated that it appeared the Wetlands Board may have been overly influenced by the Corps' February 19, 1999, letter and the proposal for a residence on the lot for which the final location had not been set. Ms. West stated that in consideration of the Wetlands Guidelines and evidence that suggest the erosion at the site is due largely to upland runoff. Accordingly, staff recommended that the application be denied and that the August 9, 2000, decision of the York County Wetlands Board be overturned. Ms. West mentioned that if Mr.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Insley still desired to construct a bulkhead, he had the option of realigning the bulkhead landward of the current location, which should eliminate wetlands impacts and still meet the purpose and need of the proposed project.

George Thomas Insley, Jr., applicant and resident of York County, addressed the Commission. Mr. Insley pointed out a few things on the slide that he felt had been misinterpreted since 1998 by the Corps of Engineers, VMRC, and the York County Wetlands Board. He said he felt the Wetlands Board did its job. (Comments are a part of the verbatim record). He also stated that when Mrs. Drake came to view the property she understood that the fill was placed in 1998 when the sewage and water project came into the area. Mr. Insley gave other comments about the sewer and water project and his fill project. Comments are a part of the verbatim record. Mr. Insley indicated that the reason he wanted a bulkhead was to protect the wetlands. Other comments are a part of the verbatim record.

Anne Drake, an engineer for York County, who also serves as the staff liaison for the York County Wetlands Board, addressed the Commission. Ms. Drake commented that she was here to answer any questions the Commission might have concerning the project. She said she was also acting on behalf of the Vice Chairman that made the motion to approve this application. Ms. Drake said staff did a great job presenting the project. She agreed that the Wetlands Board weighed heavily the Corps of Engineers' opinion in their letter stating specifically, that... "a shoreline stabilizing structure should be placed at the toe of the existing fill and the silt fence. There seemed to be some confusion over where the structure would be placed. The structure would be placed landward of the silt fence. She said the Board also considered the VIMS report which stated that the bulkhead would have minimal environmental impact. The Board also considered the VMRC BMP Handbook, which states specifically that the bulkhead is placed landward of the marsh vegetation. Ms. Drake also said the guidelines also stated that a bulkhead should be designed to retain upland soil. Ms. Drake said based on those reports, the Wetlands Board decided to vote positively on this application. She then requested that the Commission uphold the Wetlands Board's decision.

John Mathews, 210 Anchor Drive, Yorktown, representing the 31 freeholders who signed the petition appealing the Wetlands Board decision then spoke. Mr. Mathews mentioned York County's letter dated February 17, 1999, revoking a permit issued to Mr. Insley. This was issued the day before the Army Corps of Engineers letter. Also, the letter from York County dated November 9, 1998, regarding a "Stop Work Order/Notice to Comply. Mr. Mathews said there had been no one to say, "it wasn't necessary to control erosion on that property," the freeholders were saying that procedurally the York County Wetlands Board erred when it allowed an impact of tidal wetlands for a project that clearly had no relationship with waterfront shoreline protection. Mr. Mathews pointed out that, according to the letters of November 9,

COMMISSION MEETING

SEPTEMBER 26, 2000

1998 and February 17, 1999 from the County of York, there were no corrections to the activity upon which the applicant received a notice of violation. Mr. Insley failed to comply with a lawful order of York County.

Commissioner Pruitt asked Mrs. Drake if the letters of November 9, 1998, and February 17, 1999, were complied with. Mrs. Drake responded that she and the Corps of Engineers visited the site and she believed what they saw at that time was that no additional fill had been brought on the site. She said within seven days Mr. Insley moved the stockpiled fill material, installed the silt fence and cut back the slopes and placed temporary seeding. Mr. Insley had not replaced the trees or submitted a buffer restoration plan for review. Mrs. Drake said those were the actions that they filed a bill of complaints and received the agreed consent order. A discussion followed.

Commission Pruitt placed the matter before the Commission.

Associate Member Ballard commented that he had heard differing opinions today, and he felt Mr. Mathews had raised some good points that perhaps the York County Wetlands Board did not spend sufficient time considering the issues, and they had a large amount of information to go through and he felt the best thing was to send it back to the York County Wetlands Board for further consideration. Motion was seconded by Associate Member Hull.

FOR THE RECORD: Associate Member White said he was abstaining because he did not hear the testimony having only returned at 1203 p.m.

Motion to remand the project back to the York County Wetlands Board was unanimously approved.

REMANDED BACK TO WETLANDS BOARD

- 10. WILLIAM McDONOUGH, #00-1107**, requests after-the fact authorization to retain 128 linear feet of vinyl bulkhead constructed two (2) feet channelward of an existing deteriorated bulkhead at his property situated along Chincoteague Channel in the Town of Chincoteague.

Item withdrawn

COMMISSION MEETING

SEPTEMBER 26, 2000

11. **KENNETH ANNIS, #00-0443**, requests authorization to construct a 16-foot by 10-foot, open-sided, crab shedding shelter, install four (4) mooring piles, and change the use of his existing private 127-foot long open-pile pier to a commercial pier for the shedding of crabs adjacent to his property situated along Occohannock Creek in Northampton County.

Hank Badger, Environmental Engineer, briefed the Commission and presented slides on the location and description of the project. Comments are a part of the verbatim record.

Mr. Badger said that Mr. Annis had all the required licenses from VMRC including a special use permit from the County to operate a crab shedding operation on his highland. Mr. Badger indicated that Mr. Annis applied to construct a 16-foot by 10 foot, open-sided crab shedding shelter over his private, noncommercial, pier and to install four mooring piles for his sailboat. Mr. Annis was informed by staff that changing the use from a private pier to a commercial pier required authorization from the Commission. Mr. Annis gave comments on his proposed operation and shelter. He stated that the structure would be used after the primary crab run was over. He said during that period only two or three tanks were needed for the balance of the season. This would reduce the electricity and cost of smaller circulating pumps. Mr. Annis also stated that the proposed roof would help eliminate crab mortality due to exposure to the elements and predators.

Mr. Badger stated that the Virginia Institute of Marine Science (VIMS) indicated that the cumulative and adverse impacts resulting from the proposed structure should be minimal. Mr. Badger also mentioned that the project was not protested.

Mr. Badger said that when reviewing proposals to build over State-owned submerged land, the Commission's Subaqueous Guidelines directs staff to consider, the water dependency and the necessity for the proposed structure and activity. He said although the project was unprotested and the environmental impacts associated with the proposal were minimal, the structure itself was not considered to be water dependent. Mr. Badger said that since Mr. Annis already had the County's approval for the crab shedding operation on his upland, he could easily upgrade that facility or construct a smaller facility on the available upland. As such, staff was compelled to recommend denial of the permit to construct these facilities over State-owned bottom as proposed.

Associate Member Cowart commented that he had seen some systems that operate on docks, especially in the Northern Area. Mr. Badger responded that when there was available upland, and Mr. Annis already had a crab shedding operation, it didn't seem like there was sufficient

COMMISSION MEETING

SEPTEMBER 26, 2000

modification to build it over the water. Mr. Badger acknowledged that Tangier did not have any upland, and it was a way of life for them to build over state bottom.

Kenneth Annis, applicant from Concord Wharf, VA, addressed the Commission. Mr. Annis commented that he had planted lots of grass. He said he did not believe that shedding crabs would pollute the bay or the shoreline. He said the roof was 10 foot by 16 foot, the platform was 16 foot by 10 foot and it would not shade any larger area.

There being no one in opposition wishing to speak, Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams commented that he did not feel this was anything new, because there were this types of operations up and down the Bay. He then moved to approve the proposal. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Royalties.....	\$	171.60
Permit fee.....		<u>25.00</u>
	Total	\$196.60

- 12. **PRINCE WILLIAM MARINE, INC., #00-1344**, requests authorization to remove 600 linear feet of an old stone dike from within the Occoquan River. VMRC is acting as the Wetlands Board.

Ben Stagg, Environmental Engineer, briefed the Commission and presented slides depicting the location and description of the project. Comments are a part of the verbatim record. Mr. Stagg reminded the Commission that they would be acting as the Wetlands Board in this case. Mr. Stagg stated that the applicant wanted to removed an old dike because it posed a navigation hazard to boaters in the area. He said the applicant had previously received a permit to stabilize the inshore portion of a continuation of the stone dike to the north of the area of this request. Mr. Stagg said the stone that was removed from the dike would be used to further stabilize the channelward side of the larger northern section of the dike. He said because there was a small amount of vegetation along portions of the dike due to sedimentation accumulation, the project required both a wetlands and subaqueous permit.

Mr. Stagg indicated that because the dike formed a small island on State-owned subaqueous bottom, and there was no private owner of record in Prince William County, the island was

COMMISSION MEETING

SEPTEMBER 26, 2000

considered the property of the Commonwealth. He said staff held a public hearing at the Prince William County Department of Public Works on September 14, 2000, to accept comments on this project. The hearing was attended by Carlton Phillips of Prince William Marine, Inc. and Mark Colwell of Prince William Department of Public Works. Mr. Stagg said the Department of Environmental Quality (DEQ) had indicated that since the project would likely meet the Army Corps requirements for its Nationwide Permit (NWP), no additional permit was required from DEQ. The Department of Health indicated that there were no impacts on their programs. Also, the Department of Conservation and Recreation found the project acceptable. The Virginia Institute of Marine Science (VIMS) also found the project would have minimal individual and cumulative impacts with a recommendation of a time of year restriction from mid-March through October. However, Mr. Stagg said he spoke in detail about this project and the Game and Inland Fisheries recommended a time of year restriction only from February 15 through June 30 to protect spawning andromous fish. No other agencies commented on the project.

Mr. Stagg said that due to the continued hazard that this stone dike presented to boaters and the minimal environmental impacts associated with this project, staff recommended approval with a time of year restriction from February 15 through June 30. Staff did not recommend a royalty since there would be no additional encroachment because the applicant would be picking the material up from one area and placing it in another area.

Associate Member Hull questioned if the bulkhead had been built that was authorized two years ago by the Commission. Mr. Stagg said they were finishing the bulkhead up when he took the pictures on the 15th of September, and that the project should be completed within a week.

The applicant Kenneth Ennis was present, but had no additional comments unless there were questions.

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

Associate Member Hull moved to approved the project because it was in the best interest of people using the river and a good project. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Permit Fee.....\$25.00

COMMISSION MEETING**SEPTEMBER 26, 2000****13. DISCUSSION: REQUEST FOR PUBLIC HEARING** on proposed Submerged Aquatic Vegetation (SAV) Transplantation Guidance Criteria.

Jay Woodward, Environmental Engineer, reminded the Commission that staff had presented a draft of the proposal in July. They had directed that the Habitat Management Advisory Committee be asked to review, evaluate, and provide any comments. Mr. Woodward said the Committee met on September 14, 2000, and discussed the document in detail. Mr. Woodward also stated that several policy issues emerged at that meeting, along with other comments, which were incorporated into the guidance document that was before the Commission today. The Habitat Management Advisory Committee also requested that the Commission consider whether the Committee should further evaluate some of the policy issues that arose at the meeting, which included: (1) a possible need to distinguish between enhancement efforts for SAV restoration (as undertaken by several groups, e.g. Chesapeake Bay Foundation, and the Alliance for the Chesapeake Bay), and compensatory mitigation projects e.g. (VDOT project that is currently reviewing) and (2) the potential of developing an SAV Transplantation General Permit for some of the enhancement groups. After Mr. Woodward pointed out several editing corrections, he requested that the Commission approve taking the matter to public hearing.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to go to public hearing. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Mr. Woodward also requested guidance on whether the Commission wanted HMAC to further evaluate the policy issues related to the SAV transplantation for mitigation and other enhancement projects. Associate Member Ballard, Chairman of the Committee, reminded everyone that the Committee only worked on matters that the Commission referred. He said although the Commission did not request that they work on policy issues, the issues did arise during their discussion. Mr. Ballard said there were several members of the Committee that wanted to address the General Permit issue for educational environmental groups.

Commissioner Pruitt then referred those issues to the Habitat Committee.

13. b. Tony Watkinson, Deputy Chief-Habitat Division, then commented on the ongoing SAV restoration projects underway as proposed in the Virginia and the tributaries. (e.g. Chesapeake Bay Foundation, the Alliance for the Chesapeake Bay). Mr. Watkinson said that the Commission had also indicated that no transplantation requests should be acted on until the guidelines were completed. However, he said the Chesapeake Bay Foundation and the Alliance for the Chesapeake Bay, along with the Department of Defense had planned some

COMMISSION MEETING**SEPTEMBER 26, 2000**

transplantation restoration projects this October. Mr. Watkinson said that the guidance document would not be completed until the end of October, and they wanted to come forward and ask for Commission consideration of their request in order to move forward this month or early next month. Mr. Watkinson also indicated that he had received a letter from Bill Matuszeski, Director of the Chesapeake Bay Program Office Annapolis and the Chair of the Federal Agencies Committee supporting the Alliance and Department of Defense efforts asking for the Commission's consideration of allowing them to go forward this year.

Rob Brumbaugh, Fishery Scientist and Manager of the Chesapeake Bay Foundation Hampton Roads Office, addressed the Commission. He said he was here to make a specific request that the Commission grant permission to undertake three underwater grass restoration test plots this month in advance of the public hearing. Dr. Brumbaugh said this work was funded through the Chesapeake Bay Restoration Fund. He said the restoration plan was consistent with the Guidance documents that were going to public hearing and they also had the concurrence of VIMS' scientists as meeting the criteria for these permits.

Jill Bieri addressed the Commission. She said all the money from the license plate fund had been earmarked for both years to do an education and restoration effort in the lower Bay. Ms. Bieri said that in 1999 they involved over 50 volunteers in their projects in the Back River, Lynnhaven and Lafayette Rivers. She indicated that they had used the SAV draft document to plan their fall plantings. Ms. Bieri indicated that she had been collaborating with the scientists from VIMS for a long time about the projects and they saw themselves as partners. Other comments are a part of the verbatim record. Ms. Bieri indicated that they were willing to comply with the document and they were represented on the HMAC committee. They would like to continue their education and restoration effort this fall because it was a large part of their overall program. Ms. Bieri then requested that the Commission allow staff to entertain a permit application from CBF to complete the grant obligations and to shorten the public advertisement period from 15 to 7 days to allow ample time for them do the work.

Bob Murphy, Alliance for the Chesapeake Bay, addressed the Commission. Mr. Murphy said they were requesting the same expedition as CBF of the JPA. He said the Alliance had been working with the Department of Defense throughout the Bay's watershed, monitoring water quality and to determine suitability for SAV restoration. He said this partnership started in 1997 and they had added significantly to the Bay data base for water quality. He said they plan to conduct two transplants this year, one at Langley Air Force Base in Back River and one at Little Creek Naval Amphibious Base. He said in 1998 they planted 1000 plants at Langley as test plots and they had an extremely high success rate. In fact, the survival was 100 per cent with some expansion. They built upon that success last year and planted about 4,000 plants again with extremely high success rate. He said the survival was less at Little Creek, but very

COMMISSION MEETING**SEPTEMBER 26, 2000**

encouraging with an overall success of SAV planting. Mr. Murphy said they had followed the recommendations from VIMS and the Guidance document and the information contained in the document was very true about the SAV community.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Ballard asked staff if a permit could be issued with 7 days public notice. Mr. Grabb commented that the first thing that should be considered was if the Commission was willing to entertain applications for the two environmental operations in advance of the public hearing and adoption of the criteria. Mr. Grabb said there was a provision in regulation that provided some latitude for the Commission to set the length of an adequate public notice. The Commission could abbreviate the time to 7 days. He also stated that the advertisement would have to appear in the Daily Press, Virginia Pilot and a paper serving the Rappahannock area. If no objections were received during that abbreviated comment period, and the permittee were willing to abide by all of the criteria in the draft guidance document, staff, however, could issue the permit. If there was an objection, it would have to be brought back to the Commission, as a protested project at the October meeting at the earliest.

Associate Member Ballard moved to authorize staff to issue the permits, with a 7-day public notice period, and under the condition that no objections arose to the projects. Motion was seconded by Associate Member Williams. Motion carried unanimously.

NOT AN AGENDA ITEM:

Associate Member Hull commented that on September 1, Mr. John William Ryland, one of Colonel Bowman's predecessor's head of the Marine Patrol died at the age 93. He then moved that the Commission authorize a resolution in his memory and to adjourn the meeting today in his memory. Associate Member White seconded the motion. Motion carried unanimously.

14. DISCUSSION: Consideration of Mr. Roger McKinley's failure to remit the civil charges agreed to by the Commission in November 1999.

Bob Grabb, Chief-Habitat Management, indicated that Mr. McKinley had again failed to remit the civil charge and the Commission had deferred the matter for 30 days from last month.

COMMISSION MEETING

SEPTEMBER 26, 2000

Associate Member Ballard moved to defer this matter for another 30 days and to have a full hearing on the matter when there were less items on the agenda. The Commission agreed to defer the matter for 30 days.

- 15. OYSTER GROUND APPLICATION #00-010:** John D. Watts, Jr., has applied for 50 acres of Oyster Planting Ground in the Chesapeake Bay near the mouth of Hungars Creek in Northampton County. The application is protested by two individuals and by Stanley Miodynia, who presented a letter and petition with 23 signatures.

FOR THE RECORD: Associate Member Ballard stated that he would not participate in the discussion or vote on this matter.

Gerry Showalter, Head-Engineering and Surveying, briefed the Commission on Mr. Watts request for 50 acres of Oyster Planting Ground in Chesapeake Bay. Mr. Showalter stated that the application was protested by several people. He pointed out on the map the 50 acres of oyster planting ground that Mr. Watts made application for. He said the application was located offshore in the Bay, and on a bar that partially ebbs bare on low water. He said the ground was surveyed and was located in an area that should not pose a problem to fishing or submerged aquatic vegetation or navigation. Mr. Showalter said the area would provide an additional aquaculture area that was not in the creek or would add to a congested area. He said some aquaculture activities required that nets be placed over the beds, and there was usually some effort made to keep boats from cutting through the nets. Accordingly, Staff recommended that the application be granted as surveyed.

Associate Member Birkett asked what was the depth of the water on that bar? Mr. Showalter responded that it varies from one end to the other, and requested that Mr. Badger, who was on the bar, provide an answer. Mr. Badger said at the north end it was probably three to four inches above low water, at the southern end was deeper to 2 feet at low tide. He said the SAV seemed to be on the inside of the bar, and the bar itself seemed to be completely free of SAV. Associate Member Birkett also asked if the clams that would be placed there be on the bottom or placed in trays. Mr. Showalter indicated that Mr. Watts could better speak to that.

John D. Watts, Jr. responded that the clams would be bottom planted, covered with plastic netting, and held down by gravel bags. Mr. Watts explained how he staked his

COMMISSION MEETING**SEPTEMBER 26, 2000**

beds so that they were clearly marked. He said when he first heard of the protesters he made himself available to them to answer any questions. Mr. Watts mentioned that his company was involved in the aquaculture business and provided the use of their bottom leases to VIMS and other agencies that were doing experiment with SAV and cultured oysters.

Stanley Mlodynia, protestant, addressed the Commission. He said he had been fishing those grounds for the past twelve years and the pictures shown in the slides were taken at low tide. He said if the 50 acres were leased, they could not fish there any more because of the PVC pipes. Mr. Mlodynia said he received a map from Mr. Showalter today, and the Watts family owned lots of leases on Hungers Creek. He said he and his wife were avid fishermen and if this application was granted, he could no longer fish in Hungers Creek.

Virginia Morgan and Debbie Belote, protestants addressed the Commission. Ms. Morgan stated that she brought a petition with 17 property owners from the Vacluse Shores area against the application. Ms. Morgan said she supported aquaculture, but was opposed to an excessive amount that infringe on the rights of people to do some recreational swimming, fishing, crabbing, and clamming. Ms. Morgan also said that if the application was approved, there would only be a small channel between the two areas that would be available for fishing or any other recreational activities. Other comments are a part of the verbatim record.

Ms. Belote commented that they both belonged to the Nature Conservancy with the Chesapeake Bay Foundation and anything to do with the Bay, they were willing to chip in and help. Ms. Belote said she thought aquaculture was a good thing, but felt some limits should be placed when it starts to affect where other people do their recreational activities, particularly on the weekends. Ms. Belote said because of the growth on the Eastern Shore, there were fewer and fewer places people could go to enjoy the water and the beach. Ms. Belote then requested that the Commission deny Mr. Watts application because the Watts had already leased a great deal in Hungers Creek.

Mr. Watts addressed the Commission in rebuttal. He said he agreed with the protestants that it was a good fishing area. He said there were a lot of changes going on in Hungers Creek and Vacluse Shores. Mr. Watts said there were a lot of Watts leases, but his grandfather had them in the 1940's and his father maintained them. He said some of them were old oyster bars, and there was not much activity going on, but they hoped the experiments through VIMS with the oyster seed and the disease

COMMISSION MEETING**SEPTEMBER 26, 2000**

resistant strains they might be able to use the ground again. Mr. Watts indicated that he did not see that many people on the bar.

Ms. Belote said she lived on the side that faced the sand bar and there were lots of people that came and used that sand bar.

Associate Member Cowart moved to adopt staff's recommendation and grant the permit. Mr. Cowart said his reasons for that was that they had approximately 2 million subaqueous acres in the State that was under VMRC's jurisdiction and only a small portion was suitable for clam and oyster reproduction. It was obvious that this was a good area for clam reproduction and clam growth. He said one of the fastest growing industries on the Eastern Shore was the hard shell clam industry which brought a lot of clean industry and employed a lot people. He said he felt that if an area was good for clam reproduction and growth, it should be in the purview of the Commission to grant that permit. Mr. Cowart then moved to grant the permit. Motion was seconded by Associate Member Birkett. Motion carried, with Associate Member Ballard abstaining.

- 16. OYSTER GROUND APPLICATION #00-039:** J. C. Walker Brothers, Inc., have applied for 30 acres of Oyster Planting Ground in Revel Island Bay near Public Ground 60 at Walkers Tump in Northampton County. The application is protested by Wayne A. Bell, who presented a petition with 101 signatures.
- 17. OYSTER GROUND APPLICATION #00-013:** J. C. Walker Brothers, Inc., have applied for 50 acres of Oyster Planting Ground in Revel Island Bay near Public Ground 59 East of Walkers Tump in Northampton County. The application is protested by Wayne A. Bell, who presented a petition with 101 signatures.

Gerry Showalter, Head-Engineering and Survey, indicated that he would like to present both items 16 and 17 together because they adjoined each other.

Acting Chairman White placed the matter before the Board to act on the application separately or together. It was determined that staff could present and the Commission could vote on both applications together or separately because the applications contained the same set of circumstances.

Mr. Showalter then presented slides that demonstrate the location and description of

COMMISSION MEETING**SEPTEMBER 26, 2000**

the oyster grounds applied for in the applications. Comments are a part of the verbatim record. Mr. Showalter said the first application was for 30 acres and the second application was for 50 acres. He said in the whole Bay area there was approximately 1100 acres. There were two public grounds there were set aside and could not be leased, which was approximately 844 acres. This would leave 268 acres in the Bay that could be leased. He said staff made surveys and the Walker Brothers had agreed to a smaller area. The Walker Brothers had cut their request on one application to 7.79 acres and cut the other application to 9.79 acres. Mr. Showalter indicated that the oyster ground on the east that had an oyster rock within the area was not a part of the application. Mr. Showalter said staff was recommending that the application be granted as surveyed for 7.79 and 9.79 acres. Mr. Showalter then presented maps that the Commission could review the whole picture and not the individual plats.

Mr. Walker said he would like to respond after the petitioner had given their testimony, if this was agreeable with the Commission. The Commission agreed.

Acting Chairman White opened the meeting for public comments.

Wayne Bell from Quinby, VA represented the petitioners that signed against those application by the Walker Brothers. Mr. Bell stated that both of the areas were in the same vicinity. He said those areas were considered the last prime clamming grounds that ebbed out low tides in that area which the independent watermen, local residents, and the public could use for clamming. In addition, Mr. Bell said there were several small rocks that could be used within the areas. Mr. Bell said this ground was high on low tide and had a hard bottom. He then presented the Commission a map showing the rocks pertaining to the area. He said most of the persons that signed that petition had used this particular ground at one time or another to catch clams or to use as bait for fishing. Mr. Bell indicated that this ground was very important because their forefathers had used this ground for years, and now the grandchildren could use the ground. He indicated that there was a great deal of Baylor survey in that area, but a lot of ground had become hard. Mr. Bell said in the Walker Brothers revision they only found that 17.58 acres of the 80 acres originally requested were good for growing clams. Mr. Bell requested that the Commission consider how much good usable ground the public and the independent watermen had left, and to secure their rights to continue to harvest seafood. Mr. Bell then requested the Commission to deny both applications and set aside the aforementioned grounds as permanent, public planting grounds.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Associate Member Williams requested explanation of the map presented showing the areas circled in red. Mr. Bell responded that the two areas circled in red were the applications applied for by the Walker Brothers. The black areas were the oyster rocks within the area. He said once the areas were leased, the public could no longer work in those areas. Other comments are a part of the verbatim record.

A discussion followed between Commission members and Mr. Bell regarding the rocks and the use of the rocks in the area. Comments are a part of the verbatim record.

Thomas Walker, representing J. C. Walker Brothers from Willis Wharf, presented a color-coded map that showed the Baylor survey in Revel Island Bay that was set aside for public use only. He said next to each application, there was large area above mean low water that provided for public clamming. In addition, in their application next to PG 58 was an area of oyster rocks that was not included in their application. He said they had excluded any area in their application which contained any oyster rocks. Mr. Walker stated that in the 810 acres of Baylor survey, only five acres was marsh area. Mr. Walker explained that the area in their application near PG 60 did not ebb out at mean low water, and the maximum there was two feet at mean low water and a minimal of one foot. Mr. Walker also stated that the Walker Brothers had a policy for the past 15 years to let the public work on all unstaked ground that they leased. He said small leases were vital to clam aquaculture companies expanded.

Associate Member Williams asked why Mr. Walker would want more area, if there were areas he was letting the public use, they were not already using. Mr. Bell responded that he had areas that because of the change in the seaside inlet where there was massive amounts of sand, he would use as a nursery operation where they would place clams down for a 12 week period and it was vital to their growing technique and it helped to supply 20 million clams to working watermen this year. Mr. Walker indicated that at the present time, the Nature Conservancy leased and it was privately owned land.

Associate Member Cowart asked what type of bottom was there. Mr. Walker responded that adjacent to PG60 was soft with sandy mud, with a minimum of one foot of water at mean low tide. The area, PG 58, was a high sandy area that the Walker Brother were looking forward to having sea clam production business. Mr. Cowart asked why he reduced his acreage from 80 to 17 acres. Mr. Bell responded that he had originally approached staff and discussed with the commercial watermen in Quinby the two existing Baylor lines (eastern line down PG 50, western line down

COMMISSION MEETING**SEPTEMBER 26, 2000**

PG 58) and that the lines had not been stuck up for approximately 30 years, and no one knew where they were. He said his company offered to have the Baylor lines surveyed and they would pay for the survey. If there were no clam grounds worth pursuing in the survey, they would drop their application.

Associate Member Williams commented that he was confused. He said one gentlemen gave him a map showing rocks in the area, another one gave him map that he admitted were no rocks in the area. Mr. Walker explained the location of the rocks. Comments are a part of the verbatim record.

Acting Chairman White placed the matter before the Commission.

Associate Member Cowart moved that the applications be approved as surveyed by staff. Mr. Cowart indicated that his reason for supporting the applications was the tremendous amount of public ground in that area. Mr. Cowart further commented that it appeared this ground would be highly utilized in private hands, and he thought it would be in the best interest of the Commonwealth. Motion was seconded by Associate Member Ballard. Motion carried 4 to 2.

18. REPEAT OFFENDERS.

William J. Matelyan - not present.

Colonel Bowman indicated that Mr. Matelyan had someone call the office this morning and say he could not attend the meeting today because he was incarcerated in the Gloucester County jail, serving time on the offenses before the Commission today. Colonel Bowman said he then had Captain Rhodes call to verify that information. Captain Rhodes spoke with Lt. Hogge of the Gloucester County Jail and was told that Mr. Matelyan was on a liberal work release program, and if Mr. Matelyan had wanted to attend the meeting today, he could have provided the necessary document to him, and been able to attend the meeting. Colonel Bowman then explained that the violations before the Commission today had occurred prior to the last hearing, however, due to Mr. Matelyan record it was necessary to have his current status reviewed and determined that he was a repeat offender on April 25, 2000. Mr. Matelyan was placed on a one year's probation by the Commission, and he was not to have any further violations. However, Colonel Bowman said there were no further violations since that time, but Mr. Matelyan was convicted by the Circuit Court for violations discovered undercover for processing crab meat without certificate of inspection, found guilty, fined \$500, given 12

COMMISSION MEETING**SEPTEMBER 26, 2000**

months in jail, with 9 months suspended and 3 years probation; possession of undersized black drum, found guilty, fined \$100; possession of undersized soft crabs, found guilty, fined \$500; and possession and selling striped bass without a permit, found guilty, fined \$250. Colonel Bowman said these were additional charges, and if these charges were cumulative with the charges on April 25, 2000, would the Commission's recommendation have been the same, and that was the issue before the Commission today. Colonel Bowman said the difference in time lapse was that Mr. Matelyan was found guilty in District Court and appealed to the Circuit Court and he pled guilty.

A discussion followed between Commission members and staff regarding Mr. Matelyan's convictions and the adjudicated offenses. Comments are a part of the verbatim record.

Acting Chairman White placed the matter before the Commission.

Associate Member Cowart asked what were the guidelines. Colonel Bowman responded that the guidelines did not address the situation. However, the guidelines did address the issue, if he had violated his probation, and that the guidelines required that the totality of the record involved be considered.

Associate Member Hull moved for two years suspension of licenses. Motion seconded by Associate Member Birkett.

FOR THE RECORD: Associate Member Williams abstained.

Motion carried with one abstention.

Payton Wayne Jones - not present.

Colonel Bowman indicated that Mr. Jones was convicted on numerous violations in Isle of Wight, 11 counts of selling and possessing sturgeon, no commercial waterman's registration, no shucking license. Colonel Bowman also indicated that Mr. Jones had numerous convictions in Suffolk for possessing and selling sturgeon, selling of untagged rockfish. Colonel Bowman explained the plea agreement that Mr. Jones made and agreed on in the City of Suffolk before Judge Gillette, "the defendant shall not apply and receive any State fishing licenses for a period of five years. The defendant shall not engage in any commercial fishing activity or any type of activity for a period of five years on Virginia waters, and he shall surrender all licenses to VMRC." Colonel Bowman then requested that the Commission reaffirm by the Code, Judge Gillette's Order, and he would come before the Commission again in two years to affirm order

COMMISSION MEETING**SEPTEMBER 26, 2000**

that Mr. Jones agreed to in the District Court in the City of Suffolk. Colonel Bowman also presented photographs of Mr. Jones selling sturgeon to the undercover agent. A discussion followed regarding what Mr. Jones agreed to relating to his licenses. Comments are a part of the verbatim record.

Associate Member Ballard moved to suspend Mr. Jones licenses for two years, with the understanding that staff bring the matter back before the Commission in two years. Motion seconded by Associate Member Hull. Motion carried unanimously.

19. PUBLIC HEARING: To consider amending Regulation 4 VAC 20-754-10 et. seq. "Pertaining to Importation of Fish, Shellfish, or Crustacea, to make changes to the procedures for the importation of shellfish for introduction into Virginia waters.

Jim Wesson, Head-Conservation and Replenishment, briefed the Commission on the comments received and a change to sentence "E" in chapter 3, which added Delaware Bay to Maryland for exempted States. He indicated that there were no other changes since the last meeting and the public hearing could be held without further explanation from staff.

Acting Chairman White opened the public hearing.

There being no comments from the public, he closed the public hearing and placed the matter before the Commission.

Associate Member Cowart asked what was involved in bringing peeler crabs into the State from other states, (Georgia and South Carolina). Staff commented that if they were going to be placed overboard in Virginia waters they must comply with the regulation. If the crabs were shedded in a closed system, the crabs would be exempt from the regulation.

Associate Member Ballard then moved to adopt Regulation 4 VAC 20-754-10 et. seq., as presented with the corrections. Motion was seconded by Associate Member Hull. Motion carried unanimously.

20. PUBLIC HEARING: 2000-2001 Public Oyster Harvest Season

Jim Wesson, Head-Conservation and Replenishment, briefed the Commission on the proposed 2000-2001 season as follows:

COMMISSION MEETING**SEPTEMBER 26, 2000**

1) Open hand tong area on Public Grounds 102 and 104 in the Yeocomico River and above the Rte 3 Bridge in the Piankatank River from November through January.

2) Open Tangier Sound and the hand tong area in Tangier from December 1 through December 31. (Dr. Wesson indicated that staff had originally recommended opening Hurley's area, but after surveying all the rocks, it was determined that all the rocks were equally poor, and staff felt it best to open the entire Tangier Sound area for just the month of December. The watermen were supportive because they wanted to come and work for the Commission starting in January.)

3) Expand the hand scrape area in the Rappahannock River to include the Morattico Bar Area.

Dr. Wesson then indicated that the Shellfish Advisory Committee Meeting was held on September 11, 2000 but there not enough Committee members present for a quorum. However, the watermen suggested several recommendations be brought before the Commission as follows:

1) Extend the hand scrape area downriver to the Rt. 3 Bridge. Dr. Wesson indicated that he did not think that was a wise thing to do because that would extend into the Oyster Heritage Virginia area. Dr. Wesson said he was concerned that hand scrapes would be too efficient in removing the broodstock to assure a spatset next year.

2) Changing the season (except for the James River) from November 1 to January 31, to October 1 through December 31. Dr. Wesson said changing the season for one month would have no impact on the resource.

3) Consider the possibility of beginning some of the restoration in the Fall, rather than waiting until January. (Dr. Wesson commented most of the grants required monitoring in order to decide on replenishment in the Spring. Therefore, the monitoring should be done in the Fall, and they did not have the staff to run the restoration activities and stock assessment at the same time.

Associate Member Williams asked what type of programs were planned for January. Dr. Wesson responded that last year they cleaned approximately 50 acres and hired 25 persons for the Oyster Heritage Program. However, this year they had 150 acres to be cleaned, and there was seed in both the Piankatank and Great Wicomico. There was also the possibility there was a need for some broodstock, but a survey would have to be done to determine which area to replenish.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Associate Member Cowart asked how much did it cost last year to do the cleaning. Dr. Wesson said he could only base it on what they paid last year, which was approximately \$1000 per acre. The funding came partially from the Oyster Heritage Fund and the VMRC match program. A brief the discussion following regarding the funding. Comments are a part of the verbatim record.

Acting Chairman White opened the public hearing.

Douglas Jenkins, representing the Twin Rivers Watermen's Association, asked if there would be two bars open from November 1 or October 1? Dr. Wesson said the public hearing would determine which date the season would be opened. Mr. Jenkins said they would like for the bars to be opened on October 1. A brief discussion followed. There being no other comments from the public, Acting Chairman White closed the public hearing.

Associate Member Cowart moved to adopt staff's recommendation and that the harvest season would run from October 1 through December 31, except in Tangier Sound, which would run from December 1 through December 31. Mr. Cowart further moved that the hand scrape area be extended upriver to include the Morattico Bar in the Rappahannock. Motion was seconded by Associate Member Birkett.

Associate member Williams commented that he had a concern about cleaning the oyster bars in January because there were a great deal of little oysters that would freeze and die during the transport. Dr. Wesson responded that they set a temperature limit and they did not work when there was a danger of freezing. In addition, during the cleaning process the oysters were only exposed for approximately two hours..

Acting Chairman White then called for the vote. Motion carried unanimously.

21. PUBLIC HEARING: Consideration of Proposed Amendments to Regulation 4 VAC 20-490-10 et. seq., "Pertaining to Sharks," to establish a closure of the commercial harvest, landing and possession of spiny dogfish when it is announced that the federal quota has been taken.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the recently adopted National Marine Fishery Service Management Plan on the spiny dogfish. Mr. Travelstead said the Management Plan contained a very small quota, which essentially eliminated the directed

COMMISSION MEETING**SEPTEMBER 26, 2000**

spiny dogfish fishery, and only established a bycatch fishery. The Plan contained trip limits of 600 pound during part of the year and 300 pounds during the remainder of the year which applied to Federal waters only. Mr. Travelstead some States continued to harvest dogfish after the Federal waters were closed, which circumvented the quotas that were established in the Plan. Mr. Travelstead indicated that to address the problem, the Atlantic States Marine Fishery Commission adopted an emergency rule last month for the spiny dogfish for State water fisheries, which required that States along the Atlantic coast close their waters to the taking of dogfish, after the Federal waters were closed. Mr. Travelstead said that this was a compliance issue that made it illegal to harvest, land, or possess spiny dogfish in Virginia waters upon notification of the Federal waters being closed for the spiny dogfish. He indicated that the quotas went over, and the dogfish fishery would not open until the middle of next year. Mr. Travelstead also stated that the Federal law required compliance and the emergency regulation must be adopted. Therefore, staff recommended adoption of the draft amended Regulation, 4 VAC 20-490-10, et. seq., and adoption of the regulation would close State waters as of October 15, 2000.

Acting Chairman White opened the public hearing.

There being no comments from the public, the public hearing was closed. Acting Chairman White placed the matter before the Commission.

Associate Member Cowart moved to adopt Regulation 4 VAC 20-490-10 et. seq. along with the language that closed the spiny dogfish fishery on October 15, 2000. Motion was seconded by Associate Member Birkett. Motion carried, with Associate Member Williams voting no. Mr. Williams commented that he attended the meeting in August and he did not feel the ASMFC had the scientific data necessary to close the fishery, and that was why he did not support the motion.

22. PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to adjust trip limits.

Rob O'Reilly, Deputy Chief-Fisheries Management, indicated that this was similar to the previous regulation, because this, too, was a joint Federal and ASMFC interstate plan for the Black Sea Bass that required an emergency rule to lower the trip limits and install triggers. Mr. O'Reilly indicated that the initial possession limit in the fourth quarter 2000 would be 2000 pounds. However, when the 50 percent of the 2000 pounds was reached and the adjustment would be a new trip limit of a 1000 pounds. In quarter one of 2001 there would be no changes

COMMISSION MEETING**SEPTEMBER 26, 2000**

to the 9,000 pounds, but when 75 percent of the quota was taken, a trigger would halve the allotted trip limit to 4,500 pounds. Quarter two would go from 3000 to 1500 pounds for the initial possession, quarter three went from 2,000 to 1,000. Mr. O'Reilly said the only public comment received was letter from Harry Doernte, a commercial hook and line fishermen who also used hook and line for the sea bass. He supports these measures. Mr. O'Reilly indicated that the main purpose for the emergency rule by the Federal requirement was to prevent quota overage and to extend the fishing opportunity to many, as opposed to few. He said the third quarter this year started July 1 and closed July 25. Mr. O'Reilly said the changes to the regulation would afford more opportunity to more fishermen and that was important because Virginia had approximately 25 per cent of the coastwide take of commercial black sea bass.

Acting Chairman White opened the public hearing. There being no comments from the public, the public hearing was closed. Mr. White placed the matter before the Commission.

Associate Member Birkett moved to adopt the changes in Regulation 4 VAC 20-950-10 et. seq., Pertaining to Black Sea Bass. Motion was seconded by Associate Member Hull. Motion carried unanimously.

23. PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-910 et seq., "Pertaining to Scup (Porgy)," to adjust trip limits.

Rob O'Reilly, Deputy Chief- Fishery Management, indicated that this was a joint Federal and Interstate Plan. He said ASMFC came forward and requested the States to accept the Emergency Rule requirements that were established by the Federal Plan. Mr. O'Reilly indicated that on page 2 of the regulation, section 45 contained the only change. He said the possession limit during the November 1 through December 31, which was called the winter II period, would drop from 8,000 to 500 pounds, and once there was a 50 percent of coastwide quota reached, that would be a trigger so that the vessel landing or possession limits would be reduced to 200 pounds. Mr. O'Reilly said this did not have great affect on Virginia because in the last two years Virginia only had a take roughly 1 to 3 percent of the statewide take of scup. Mr. O'Reilly said staff was recommending the adoption date as November 1, 2000.

There being no public comments, Acting Chairman White placed the matter before the Commission.

Associate Member Birkett moved to adopt the changes to Regulation 4 VAC -20-910-10 et. seq., "Pertaining to Scup (Porgy)", with an effective date of November 1, 2000. Motion was

COMMISSION MEETING**SEPTEMBER 26, 2000**

seconded by Associate Member Hull. Motion carried unanimously.

24. DISCUSSION: Compliance with the ASMFC Lobster Fishery Management Plan; request for public hearing.

Jack Travelstead, Chief-Fisheries Management, indicated that the ASMFC had a Lobster Management Board and Virginia was not a part of that because there were not that many lobster landings in Virginia. However, Virginia was required to have certain regulations on the books to prevent loopholes from forming and to prevent fishermen from landing illegal products. Mr. Travelstead then explained the provisions all States were required to have to be in compliance. He said Virginia currently had three of the seven requirements: the prohibitions against the possession of lobsters that still have the eggs attached, prohibitions on the possession of parts of lobsters, lobster meat on board boats, and the minimal size limit of 3 1/4 inches. Mr. Travelstead indicated that Virginia lacks the following requirements in their regulation: (1) a prohibition on the spearing of lobsters; (2) prohibition on the v-notched female lobsters; (3) a requirement that pots contained a ghost panel that over time deteriorates if the pot is lost so that the lobster can escape, (4) trip limit or landings by fishermen using gear other than traps, limiting them to no more than a 100 lobsters per day. Mr. Travelstead stated that Virginia must add those provisions to be in compliance with the Interstate Regulation, and requested that those provisions be added to the current regulation and a public hearing be held next month.

Acting Chairman White placed the matter before the Commission.

Associate Member Cowart moved that an advertisement for public hearing be held to comply with ASMFC Lobster Plan. Motion was seconded by Associate Member Williams. Motion carried unanimously.

25. REPORT of the Commercial Hook and Line Task Force.

Jack Travelstead, Chief-Fishery Management, provided information on the Commercial Hook and Line fishery near the Chesapeake Bay and the amount of time that commercial hook and Line fishermen could fish for striped bass around the Chesapeake Bay Bridge Tunnel. Comments are a part of the verbatim record.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Mr. Travelstead further indicated that a Commercial Hook and Line Task Force provided a report that addressed 11 concerns and were discussed over a period of four meetings. He also stated that all the recommendations in the task force report received the consensus of the Committee and all the concerns were agreed to unanimously by all the members, with the exception of one issue, the striped bass Chesapeake Bay Tunnel issue, which had a recommendation of 4 to 2 from the Committee members.

Mr. Travelstead recommended that a public hearings be held on all of the following issues next month: (1) Commercial hook and line was a desirable gear and produced a high quality product and had minimal impact on species not being target; (2) the sale of commercial hook-and-line licenses were limited at 200 by regulation; (3) crew-size (limited to using 3 crew members); (4) marking commercial hook-and-line vessels (a commercial hook-and-line vessel should display two plates, one colored plate with CHL marked on each side of the vessel and the size of plate should be 18 inches square; (5) commercial hook-and-line fishermen some times fished as recreational fisherman, catch recreational bag limit, and then go commercial fishing and add to their catch; (6) artificial reefs funded with recreational dollars be off limits to commercial fishing. (7) policing of illegal sale and purchase of seafood. (8) registration of crew members; (9) allowing commercial hook-and-line fishermen more access to the CBBT; (10) and a discussion on a regulations pertaining to a variety of fish species. (There was no change on the flounder regulation recommended. A recommendation on black drum fishery around the Chesapeake Bay Bridge Tunnel (CBBT) should remain as recreational only.)

The spade fish tautog were discussed, but agreed by the committee to be left alone.

Richard Welton, with the Coastal Conservation Association said he was a member of the Task Force and attended three out of the four meeting, and sent a representative to the fourth meeting. Mr. Welton referred to a letter dated March 16, 2000 sent to the Marine Resources regarding commercial hook-and-line fishing at the Bridge tunnel during the four months of the recreational striped bass season. Mr. Welton said they sent out a letter to their members and they had received over 100 responses and approximately 80 plus percent did not want any commercial hook-and-line fishing at the CBBT during the four months of the recreational striped-bass season. He said the hook-and-line fisherman had 11 months to use their striped bass tags. Mr. Welton also stated that 90 percent of the responses did not want an increase in the amount time for the commercial hook-and-line fishermen at the CBBT. He also indicated that the majority of the recreational fishermen did not want the existing commercial hook-and-line fishing at the CBBT. Mr. Welton indicated that if the Commission advertised for a public hearing to increase the hours of the commercial hook-and-line fishermen, he would also like the letter to be treated as a request to advertise for the possibility of decreasing or eliminating the commercial hook-and-line hours against the CBBT during the striped bass season. Mr. Welton further commented that the recreational fishermen would prefer that the Commission not make

COMMISSION MEETING**SEPTEMBER 26, 2000**

any changes to the current regulations. He felt this would be a good compromise.

Bill Reynolds addressed the Commission. He said he was the one that brought the commercial hook-and-line issue before the fishery committee in March for the extra 30 hours. He said he was appointed to the Task Force by the Commission. Mr. Reynolds said a lot of hard work and a lot of hours had been put into the issues and requested that the Commission take them to a public hearing. Mr. Reynolds mentioned that the issue of closing the CBBT was not discussed in the Task Force because it was not an agenda item nor was it talked about in committee. Mr. Reynolds felt this issue was just a CCA agenda issue. Mr. Reynolds also indicated that to be fair, the Commission should only put out for public hearing the issues discussed by the Task Force and presented to the Commission.

Acting Chairman White placed the matter before the Commission.

Associate Member Birkett asked staff if Mr. Welton's concerns regarding the commercial hook-and-line regulations that pertained to the striped-bass season be advertised requesting more than what was currently in the regulation. Mr. Travelstead explained that Mr. Welton was requesting "no fishing" around the CBBT, and the Task Force was recommending an additional 30 hours. Mr. Travelstead said he did think the advertisement could just add 30 hours, and then come back and do away with the commercial hook-and-line fishing along the CBBT. Associate Member Birkett said based on staff's comments, he thought the CCA's request for "no fishing" at the CBBT should be another issue, because it was not discussed at the Task Force meeting. However, if the CCA wanted to pursue the issue, Mr. Birkett said he had no objection to the CCA bringing it up as a separate issue, but not in conjunction with the issues discussed in the Task Force meeting.

There being no other comments, pro or con, Acting Chairman White placed the matter before the Commission.

Associate Member Birkett moved to go to public hearing to consider the proposed recommendations of the Commercial Hook-and-line Task Force regarding changes in time limit for fishing CBBT during the striped-bass season. In addition, the CCA's request be taken up at a later date.

Mr. Travelstead requested clarification of the motion because it seemed to apply only to the striped-bass fishing issue along the CBBT. He indicated that there were 10 or 11 other issues for changes to other regulations the Task Force had recommended.

Associate Member Birkett restated the motion to go to public hearing to consider all the

COMMISSION MEETING**SEPTEMBER 26, 2000**

proposed recommendations of the Commercial Hook-and-Line Task Force. Motion was seconded by Associate Member Hull. Motion carried unanimously.

26. RECOMMENDATION of the Commercial Fishing Advisory Board.

Jack Travelstead, Chief-Fisheries Management, asked if this item would be carried over.

26.5 REQUEST FOR PUBLIC HEARING: Commercial Flounder industry request for modification to the Fourth and First Quarter quotas and trip limits.

Jack Travelstead, Chief-Fisheries Management, reminded the Commission that Mr. Ballard had requested the Commercial Summer Flounder Fourth (2000) and First quarter (2001) quotas be discussed, concerning possible adjustments quarterly.

Mr. Travelstead indicated that the Commission had dealt with these issues since its implementation to modify the trip limits and starting dates of the fourth quarter of the commercial summer flounder fishery. He said staff always receive calls from industry around this time of year to modify the regulation. The current regulation opens the Fourth Quarter on November 1, with a trip limit of 5,000 pounds per vessel. He said after staff received several calls, they decided on two options and contacted industry to let them know what they were hearing and suggested that industry give staff a call and let them know what option they preferred. Mr. Travelstead indicated that the two options were: (1) delay the opening of the Fourth Quarter until December 1, but increase the trip limit to 10,000 pounds (with current fuel prices higher, a lot of watermen would not take a trip for 5,000 pounds of flounder, but if the limit was doubled it was worth the time to go fishing); (2) not to fish the Fourth Quarter (this year a change in the Federal regulation to carry quota over from one year to another was passed). Mr. Travelstead said there was approximately 500,000 left on the quota this year and some of the watermen had suggested carrying that quota over until January and increase the trip limit to 10,000 in that first quarter of 2001, to make it more worthwhile to take trips. Mr. Travelstead said that information was sent to industry, and there was no consensus and no clear majority. Mr. Travelstead said it did not matter to staff what option was used as long as the quota was not exceeded. However, he felt the fair thing to do was to hold the public hearing next month and advertise all the options; then have industry members come in and the Commission could make a decision.

COMMISSION MEETING**SEPTEMBER 26, 2000**

Acting Chairman White indicated that one of the members had to leave and in order to have a quorum the Commission should vote on the issue now. Mr. White then placed the matter before the Commission.

Associate Member Cowart moved to go to public hearing on the commercial summer flounder issues presented by staff. Motion was seconded by Associate Member Hull. Motion carried unanimously.

27. PUBLIC COMMENTS.

Douglas Jenkins, President of the Twin Rivers Association, requested letters of support for degradation of water quality in the tributaries of the Potomac River. Mr. Jenkins said VMRC had planted seed oysters in the tributaries and they were being threatened by unsuitable water quality, which was caused by nine point pollution and slug on wet fields saturated with water. Mr. Jenkins indicated that Westmoreland County had the biggest red tides in May that occurred from Colonial Beach to the mouth of the Yeocomico. He then requested each member of the Commission to review pictures he presented. Mr. Jenkins mentioned that in the Code of Virginia it was a State requirement that application of sludge not be applied on the lands. He said they were having a difficult time convincing the regulators at DEQ and the Health Department, in fact, they would not return his phone calls. He said water samples were taken in July and they had not received the information on the water quality on the samples that were taken.

Chris Ludford, Lower Chesapeake Bay Watermen's Association, addressed the Commission. Mr. Ludford said with the dogfish closure, many people were taking a big hit, because that fishery was getting a lot of people through the winter. He also requested that staff speed up the trout situation and determine if the trout had recovered.

Bob Merten, licensed charter boat captain from Virginia Beach, addressed the Commission in support of the CCA's proposal for the public hearing to include the possibility of taking commercial hook-and-line time away during the striped-bass season. He said in order to be fair, if you take something away, something should be given back, it should go both ways.

COMMISSION MEETING

SEPTEMBER 26, 2000

There being no further business before the Commission, it was motioned by Associate Member Cowart and seconded by Associate Member Hull to adjourn the meeting at 4:20 p.m. Motion carried.

Commissioner

William A. Pruitt,

LaVerne Lewis, Commission Secretary