

MINUTES

JULY 11, 2002
NEWPORT NEWS, VA 23607

A special meeting of the Marine Resources Commission was held on July 11, 2002 with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
S. Lake Cowart, Jr.)	
Henry Lane Hull)	Members of the Commission
F. Wayne McLeskey)	
John W. White)	
Kenneth W. Williams)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
Robert Craft	Chief-Administration and Finance
Col. Steve Bowman	Chief-Law Enforcement
Capt. Randy Widgeon	Eastern Shore Area Supervisor
Capt. Warner Rhodes	Middle Area Supervisor
Capt. Kenny Oliver	Southern Area Supervisor
1 st Sgt. Dan Eskridge	Northern Area
M.P.O. Robert Berryman	Marine Police Officer
M.P.O. Carl Dize	Marine Police Officer
Virginia Institute of Marine Science:	
Dr. Eugene Burreson	Dr. Rom Lipcius
Marcel Montane	Lyle Varnell
Dr. Jacques van Montfrans	
Jack Travelstead	Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics
Chad Boyce	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist

Tony Watkinson
Gerry Showalter
Royce Bridger
Kevin Curling
Mark Eversole
Chip Neikirk
Tracy West

Acting Chief-Habitat Management
Head-Engineering/Surveying
Engineering Technician
Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.

others present included:

Roy Headley
Dale Taylor
Harry Marshall
Richard Hall
Ronald Parks
George Pew
Cindy Smith
Orrie Smith

Susan Dameron
Carl Lawson
G. C. Boyer
Russell Gaskins
Beverlee Peters, Esq.
George Sutton, Esq.
Douglas Jenkins
George Washington

Commissioner Pruitt called the July 11, 2002 meeting to order at 1:30 p.m. Associate Members present were: Ballard, Birkett, Cowart, Hull, McLeskey, White and Williams. Commissioner Pruitt noted the presence of a quorum.

Associate Member Hull gave the Invocation; Colonel Bowman led the Pledge of Allegiance. Commissioner Pruitt swore in the staff and those representatives of the Virginia Institute of Marine Science (VIMS) who were expected to testify at the meeting.

**** APPROVAL OF AGENDA**

Associate Member Hull moved to approve the Agenda as distributed. Associate Member White seconded the motion; motion carried unanimously, 7-0.

- 1. DAVID L. STEARNS. #99-0234-15.** Consideration of a request by the Stearns' attorney that the Commission continue the review of the decision of the Norfolk Wetland Board Staff to approve the substitution of vinyl sheeting in place of wood sheeting for a bulkhead previously approved by the Board. The request for review is the result of an appeal filed by 25 or more freeholders. The appeal has been scheduled for consideration by the Commission at the July 23, 2002 meeting. The

Stearns' attorney has requested the matter be continued pending a judicial determination.

Ms. Tracye West, Environmental Engineer Sr., stated that the appeal of David L. Stearns was slated to be heard by the Commission on July 23, 2002. On July 8, 2002, staff received a *Motion for Continuance* from Mr. Stearns' attorney, Ms. Beverlee Peters, as well as correspondence from Attorney John C. Lynch, representing Castle Craddock, and Deputy City Attorney Cynthia B. Hall, City of Norfolk, copies of which are filed with the permanent record of this meeting. Ms. West stated that Ms. Peters has filed a *Motion to Stay* and a *Motion to Quash* in this matter. Additionally, the attorneys for Castle Craddock have requested a continuance date in August or September rather than an indefinite continuance. The City of Norfolk has stated that they support Ms. Peters' request for an indefinite continuance in order to obtain Judge Marc Jacobson's ruling on the *Motions*. Ms. West stated that the question before the Commission is whether or not to grant the *Motion for Continuance* as submitted by Ms. Peters. Ms. West noted that there is a jurisdiction issue to be determined by Judge Jacobson.

Commissioner Pruitt called for questions from the Commission. Counselor Josephson noted that the appellant is entitled to make a *Motion for Continuance* and it is up to the Commission to determine if such a motion is appropriate; currently there are no objections to a continuance from any of the parties concerned. Mr. Josephson also noted that the Commission should not determine the matter of jurisdiction for Judge Marc Jacobson as named in the *Motion for Continuance*.

Beverlee R. Peters, Esquire of Pender & Coward, P.C., attorney for Mr. Stearns, addressed the Commission, stating that on this date she has filed a *Motion to Reinstate* and a *Motion to Quash* or have VMRC stay its review pending Judge Jacobson's determination. Ms. Peters will argue the *Motion to Reinstate* at a hearing scheduled for July 19, 2002. She noted that it is not possible to say when the *Motion to Quash* will be heard, thus the request for an indefinite continuance.

Commissioner Pruitt stated his respect for the Court and the need to provide Judge Jacobson the opportunity to make his ruling in this matter. **Associate Member Williams moved for approval of the *Motion for Continuance* submitted by counsel for David L. Stearns, pending review by the Court. Associate Member Hull seconded the motion. When put to a vote, the motion carried unanimously, 7-0.**

2. **PROPOSED AMENDMENTS TO REGULATION 4 VAC 20-752-10 ET SEQ.** to provide for technical changes to the expanded blue crab sanctuary in the Chesapeake Bay.

Commissioner Pruitt stated that amendments to Regulation 4 VAC 20-752-10 et seq. were adopted at the May 28, 2002 Commission Meeting. Since that time, staff has received requests from waterman groups and individual watermen to examine the boundary line in the Smith Point area. Commissioner Pruitt noted that he spoke with Mrs. Cynthia Smith in this regard and he called upon her to reiterate her comments to the Commission.

Commissioner Pruitt swore in **Mrs. Cynthia Smith**, whose remarks are recorded verbatim on the permanent record of this meeting. Mrs. Smith stated that she and her husband, Orrie Lee Smith, a waterman, live in the Reedville area of the Chesapeake Bay. She noted that on June 1, 2002, the watermen fishing off the Smith Point jetties were informed that they must take their crab pots up in water less than 18 feet. It has been determined that the red flashing light off the Smith Point jetties was assigned as the imaginary boundary line for navigational purposes for the Virginia Marine Police to patrol by air. The light is located in six feet of water, thereby cutting off the shoals for summer time crabbing in the area. Mrs. Smith stated that the watermen of the Smith Point area are requesting immediate re-establishment of the watermen's rights to crab within 30 feet off the Virginia Coast and for VMRC to designate boundaries of the Bay sanctuary in a fair and just manner. She noted the need for VMRC to establish all regulations for the year prior to the watermen purchasing licenses in February and March. Mrs. Smith provided original copies of the petitions circulated and signed in this regard, and which are filed with the permanent record of this meeting.

Mr. Roy Headley, waterman, illustrated for the Commission the area that has been affected by the regulation amendments. He stated that returning to a 30-foot contour would help the watermen restore their crabbing areas as in the past.

Mr. Jack Travelstead, Chief-Fisheries Management, reviewed the sanctuary boundaries adopted by the Commission on May 28, 2002, noting that during the Public Hearings held in March, April and May, the 30-foot contour option, "Option 1," was proposed to the public. He stated that the boundary line does not correspond exactly to the 30-foot contour in every location. Mr. Travelstead stated that there were two reasons for drawing the sanctuary in this fashion: 1) to create straight lines that are more easily enforced; and, in as many cases as possible, to make use of buoys or other structures that can be spotted in the water; 2) to protect as many sponge crabs as possible which are reported by VIMS to be in heavy concentration in this part of the sanctuary. Mr. Travelstead stated that the sanctuary in the Smith Point area is very close to shore and encompasses a lot of shallow water. He presented a graph illustrating the locations of crab pot floats in the area as of July 8, 2002, noting that many of the pots would be legal if a revision of the sanctuary boundary was to occur.

Associate Member Cowart stated that his motion made on May 28, 2002 was not intended to take in the shallow waters as far as it has. Additionally, the motion was intended to send a message to the Bi-State Commission that Virginia has satisfied the 15% reduction in crab harvesting and that regulations have been revised to provide for the future crab population.

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Dr. Rom Lipcius noted that VIMS is sympathetic to the concerns of the crabbers in the Smith

Point area. He stated that the intent of the sanctuary was not to eliminate most of the shallow water for crabbing. Dr. Lipcius stated that VIMS is in support of returning a part of the 30-foot contour to the crabbers while, at the same time, providing for the spawning crab population.

Mr. George Washington, Virginia Watermen's Association, stated his concern for the loss of income the watermen have experienced while VMRC and VIMS have pursued protection of the sponge/female crab population.

Mr. Dale Taylor, Virginia Watermen's Association, noted that the biggest crabbers are in the Chesapeake Bay. If those crabbers move, they are going to bring their pots into the rivers and creeks, causing a conflict with the sport fishermen.

In an effort to reach a compromise for the benefit of the watermen and to maintain the intent of the crab sanctuary, Commissioner Pruitt appointed an ad hoc committee consisting of Associate Members Birkett and Cowart, and representatives of VIMS, Fisheries Management, Law Enforcement and the watermen. The Commission recessed at 2:15 p.m.

The Commission reconvened at 2:45 p.m. Mr. Travelstead presented the recommendation of the ad hoc committee. A discussion ensued as to the exact boundaries being drawn, beginning at the green can at the top of the channel, coming down due east of Great Wicomico Light to a point along Blue Point. Colonel Steven Bowman, Chief-Law Enforcement, noted the need to establish longitude and latitude for the regulation in order to properly enforce the boundary.

There being no further comments in this regard, Commissioner Pruitt placed the matter before the Commission for action. **Associate Member Cowart moved to adopt Emergency Regulation 4 VAC 20-752-10 et seq. providing for a revision of the bay-wide sanctuary as adopted May 28, 2002. The new boundary would include an additional area within the 30-foot contour, starting at the north end of the green can buoy, running south to the tip end of the shallow water area at Reedville, and turning at an angle running down to a point at the Fleet Point Lighthouse. Associate Member Birkett seconded the motion; the motion carried unanimously, 7-0.** Associate Williams noted that he voted in opposition to the 30-foot contour as proposed on May 28, 2002; he has voted in favor of today's revision of the boundary.

Mr. Travelstead stated that the amended Regulation will be advertised and considered for permanent adoption at the August 27, 2002 Commission Meeting.

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3. PUBLIC COMMENTS

Commissioner Pruitt opened the floor for public comments.

Dr. Jacques van Montfrans, VIMS, presented members of the Commission and staff with copies of an interactive CD, "The Blue Crab in the Chesapeake Bay."

**** DATE OF NEXT COMMISSION MEETING: JULY 23, 2002**

**** ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 3:05 p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary