

MINUTES

February 1, 2000
Newport News, VA 23607

The regular monthly meeting of the Marine Resources Commission was scheduled for January 25, 2000 but was cancelled because of bad weather; the rescheduled January meeting was held on February 1, 2000 in Newport News with the following present:

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| William A. Pruitt |) | Commissioner |
| C. Chadwick Ballard |) | |
| Gordon M. Birkett |) | |
| Lake Cowart, Jr. |) | Associate Members |
| Laura Belle Gordy |) | |
| Henry Lane Hull |) | |
| John W. White |) | |
| | | |
| Carl Josephson | | Assistant Attorney General |
| | | |
| Wilford Kale | | Sr. Staff Adviser |
| Erik Barth | | MIS Director |
| Kevin Curling | | |
| LaVerne Lewis | | Commission Secretary |
| | | |
| Bob Craft | | Chief-Finance and Administration |
| Jane McCroskey | | Assistant Chief-Finance and Administration |
| | | |
| Steven G. Bowman | | Chief-Law Enforcement |
| Lewis Jones | | Assistant Chief-Law Enforcement |
| Randy Widgeon | | Eastern Shore Area Supervisor |
| Warner Rhodes | | Middle Area Supervisor |
| Kenny Oliver | | Southern Area Supervisor |
| Ray Jewell | | Northern Area supervisor |
| Howard Goode, Jr. | | Marine Patrol Officer |
| Charles E. Clifton, Jr. | | Marine Patrol Officer |
| | | |
| Dr. Gene Burreson | | Virginia Institute of Marine Science |
| Tom Barnard | | Virginia Institute of Marine Science |
| Lyle Varnell | | Marine Scientist, Sr. |

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Dr. Jim Wesson Head-Conservation and Replenishment

Jack Travelstead Chief-Fisheries Management

Stephanie Iverson Fisheries Management Specialist, Sr.
Lewis Gillingham Fisheries Management Specialist, Sr.
Ellen Cosby Fisheries Management Specialist

Jim Peters Fisheries Management Specialist
Tiny Hutcheson Fisheries Management Specialist
Mike Meir Fisheries Management Specialist

Roy Insley Head-Plans and Statistics

Bob Grabb Chief-Habitat Management
Chip Neikirk Environmental Engineer
Jay Woodward Environmental Engineer
Randy Owen Environmental Engineer
Tracy West Environmental Engineer
Heather Wood Environmental Engineer
David Bower Environmental Engineer
Bennie Stagg Environmental Engineer

Gerry Showalter Head-Engineering and Surveying
Rob Butler Surveyor

others present:

Terry Hill Douglas Garcia
Ken Thompson Russell P. Davis
Russell B. Davis Maruna Liacouras Phillips
Robert Kellum Robert Bragg
V. Rawleigh Simmons Mark L. Bragg
Severn F. Kellam Pat Clark
Thomas Finderson Lee Anderson

C. Frye Stephen Williams

Karen Duhring John Cobbs

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Bryan Bradish
A. R. Nick Sabino
Robert G. Bragg
Paul W. Gouldrup
Warren Veazey
Joe Blanchard
Bob Hutchinson
Douglas F. Jenkins, Sr.
Robert W. Jensen
Jeff Cain
Jeannie Bush
R. Welton
Scott Bloxom
Daniel D. Gibbs

Tom walters
Michael Espejo
Darin P. Gouldrup
S. E. Veazey
B. G. Espejo
Tom Powers
Steve Powell
Roger Hill
Lee R. Smith
Kelly Place
Frances W. Porter
Pete Nixon
Larry Snider
Chuck Roadley

and others.

Commissioner Pruitt opened the meeting at 9:30 a.m. Associate Member Davis was absent due

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to illness and Associate Member Williams was absent due to a meeting conflict; all other Associate Members were present. Associate Member Gordy gave the invocation. Associate Member Cowart led the Pledge of Allegiance.

1. MINUTES of previous meeting.

Mr. Pruitt asked for corrections to the draft minutes. There being none, Associate Member White moved to adopt the minutes as distributed; the motion was seconded by Associate Member Hull and was adopted unanimously.

** APPROVAL OF AGENDA

Associate Member Hull moved to approve the agenda as submitted. The motion was seconded by Associate Member Cowart and adopted unanimously.

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

Mr. Bob Grabb, Chief-Habitat Management Division, briefed the Commission on the following twelve Page 2 items (projects over \$50,000 that are uncontested).

2A. YORK COUNTY DEPARTMENT OF GENERAL SERVICES, #99-1897, requests authorization to install 640 linear feet of riprap, relocate two (2) stormwater outfall pipes, construct two (2) 115-foot long by 27-foot wide breakwaters, one (1) 180-foot long by 32-foot wide breakwater and a 100-foot long by 32-foot wide extension on an existing breakwater, and to place 9,000 cubic yards of beach nourishment material behind the breakwaters adjacent to their property situated along the York River in York County.

Permit fee.....\$100.00

2B. VIRGINIA GAS COMPANY, INC., #99-2203, requests authorization to cross the New River in Pulaski County; Den Creek, the South Fork Roanoke River and Brake Branch in Montgomery County; Back Creek in three (3) locations in Roanoke County; and Maggodee Creek and the Blackwater River in Franklin County with a buried gas pipeline which will be installed a minimum of three (3) feet below the existing creek beds using the trench method and two (2) feet below the river beds using the directional drilling method in association with a proposed 57 mile pipeline running section from Radford to Rocky Mount, North Carolina. Recommend inclusion of our

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standard in stream construction conditions and a royalty in the amount of \$636.00 for the crossing of a total of 636 feet of State-owned subaqueous bottom at a rate of \$1.00 per linear foot.

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| Royalty for the crossing of 636 ft. of State-owned subaqueous bottom @ \$1.00 per ln. ft..... | \$ 636.00 |
| Permit fee..... | <u>100.00</u> |
| Total | \$ 736.00 |

2C. COUNTY OF ACCOMACK, #99-1692, requests authorization to construct and backfill 122 linear feet of steel bulkhead, install three (3) 7- pile mooring dolphins to upgrade an existing barge loading site situated along Pungoteague Creek in the Town of Harborton.

Permit fee..... \$ 100.00

2D. COUNTY OF ACCOMACK, #99-1693, requests authorization to construct and backfill 188 linear feet of steel bulkhead, install three (3) 7-pile mooring dolphins and to dredge by clamshell method approximately 1,000 cubic yards of subaqueous bottom material to upgrade an existing barge loading site situated along North Channel on Tangier Island.

Permit fee.....\$ 100.00

2E. COUNTY OF ACCOMACK, #99-1862, requests authorization to construct a 32-foot by 21-foot commercial crab shed, an 8-foot by 8-foot pump house, and install 90 (4-foot by 8-foot) crab floats on top of an open-pile elevated 56.5-foot by 141-foot platform situated in Additional Public Oyster Ground set aside by '28.2-645 of the Code, along Pocomoke Sound adjacent to the wharf area in the Town of Saxis.

Permit fee.....\$ 100.00

2F. COUNTY OF ACCOMACK, #99-1900, requests authorization to construct a 20-foot by 16-foot commercial crab shed on top of a 50-foot by 100-foot open-pile elevated crab shedding platform situated in Additional Public Oyster Ground set aside by '28.2-645 of the Code, along Pocomoke Sound adjacent to the wharf area in the Town of Saxis.

Permit fee.....\$ 100.00

2G. ST. CHARLES WATER AND SEWER AUTHORITY, #99-2128, requests authorization to install a submerged, concrete-encased, 8-inch diameter, ductile iron sewer line within 3,300 linear feet of Straight Creek to facilitate replacement of a deteriorated interceptor line situated between the existing sewage treatment plant and the intersection of State Routes 636 and 637 in the Town of St. Charles in Lee County. Recommend approval with our standard instream permit conditions.

Permit fee.....\$ 100.00

2H. SIL CLEAR WATER, LLC, #99-1441, request authorization to modify a previously approved permit to add an additional subaqueous stream crossing with a 12-inch irrigation water force main under the North Fork of the Shenandoah River in Rockingham County.

Royalty for encroachment under 100 feet of State-owned bottom @ \$1.00 per ln. ft.....\$ 100.00
Permit fee N/A (modification)

WINCHESTER AND WESTERN RAILROAD, #99-1172, requests authorization to reconstruct an existing railroad bridge over Back Creek, a tributary to the Potomac River, in Frederick County. Recommend a royalty of \$5,434.00 for the encroachment over 5,434 square feet at a rate of \$1.00 per square foot.

Royalty for encroachment over 5,434 sq. ft. @ a rate of \$1.00 per sq. ft.....\$5,434.00
Permit fee..... 100.00
Total \$ 6,534.00

2J. CITY OF NEWPORT NEWS DEPARTMENT OF PUBLIC WORKS, #99-2264, requests authorization to install, by directional drill method, 950 linear feet of 8-inch diameter waterline crossing under Deep Creek between the Menchville Marina and Deep Creek Road.

Permit fee..... \$ 100.00

2K. NEABSCO LANDING, LLC, #99-0559, requests authorization to expand its current marina facility to increase the total number of wetslips from 90 to 139, of which 44

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will be covered under canvas canopy, and to construct a marginal walkway and triangular deck adjacent to an existing bulkhead and tending pier.

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| Annual royalty for encroachment over 32,062 sq. ft. @ \$0.05 sq. ft..... | \$ 1603.10 |
| Permit fee..... | <u>100.00</u> |
| Total | \$ 1703.10 |

NEWPORT NEWS, #98-0411, requests authorization to modify a previously issued Commission permit to include the construction and backfilling of 330 linear feet concrete and steel bulkhead in lieu 620 linear feet of steel bulkhead adjacent to their property situated along the James River in Newport News. Recommend the City be required to purchase and plant of 558 market size clams as (1.33:1) mitigation for the filling of 2,650 square feet of submerged land.

MODIFICATION - PERMIT FEE N/A

Commissioner Pruitt asked if there was any public comment on the Page two items. There being none, Associate Member Hull made a motion to adopt all items as submitted. The motion was seconded by Associate Member Gordy and was adopted unanimously.

3. CONSENT ORDERS: (Commission approval of consent agreement).

Mr. Bob Grabb, Chief-Habitat Management Division, briefed the Commission on the following consent order agreement (projects that have exceeded permit authority where the applicant has agreed to a civil charge in lieu of further enforcement action).

3A. HAMPTON'S LANDING, #95-1690, requests after-the-fact authorization to retain two (2) previously constructed 14-foot extensions of an existing "T" head pier used for fueling, and to retain a previously constructed 10-foot by 10-foot open-sided, covered storage area that were built in excess of their previously authorized marina expansion permit. The applicant has agreed to a civil charge in the amount of \$1,200.00 in lieu of further enforcement actions.

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| Civil charge..... | \$ 1,200.00 |
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Mr. Grabb stated that the unauthorized modifications had been discovered during a routine compliance check. He said that staff had concluded that the modifications represented minimal environmental impact and a moderate level of non-compliance. Mr. Grabb said the permit modifications had been subjected to a public interest review and no opposition had been

received.

Associate Member Ballard made a motion to approve the consent agreement. Associate Member White seconded the motion. The motion was adopted unanimously.

4. EXECUTIVE SESSION (if necessary).

An executive session was not held.

- 5. ESPEJO FAMILY LIMITED PARTNERSHIP, #98-0971**, requests authorization to hydraulically dredge 10,989 cubic yards of subaqueous bottom, to construct 780 linear feet of timber replacement bulkhead, and to construct three (3) commercial piers creating 143 wet slips at their marina facility situated along Little Creek in Norfolk. The project is protested by area property owners.

Ms. Heather Wood, Environmental Engineer, briefed the Commission. Ms. Wood presented slides showing the project area, the existing structures at the project site, and the planned changes for a marina development. Comments are part of the verbatim record.

Associate Member Ballard asked about the location of the existing mooring piles and the width of the channel in relation to the proposed pier. Comments are part of the verbatim record.

Associate Member White asked where the 33' extension would be on the existing pier. Comments are part of the verbatim record.

Ms. Wood commented that about 2500 cubic yards of the dewatered dredged material would be used to backfill the proposed bulkhead and the remainder was to be transported to the Craney Island rehandling facility. She said the applicant did not have approval yet from the Corps of Engineers to place the spoil material in Craney Island.

Ms. Wood said there was opposition to the project from Cobbs Marina, Taylors Landing Marine Center, Mr. Garcia, the adjacent landowner, and Mr. Thompson, agent for Mr. Garcia. She described their concerns relative to boat traffic congestion and potential navigation problems. She mentioned that the planned Shore Drive Bridge removal and reconstruction was expected to significantly increase recreational boat traffic. Ms. Wood also stated Mr. Garcia's concerns that the proposed project would adversely impact on his ability to develop his own property. Comments are part of the verbatim record.

Ms. Wood reviewed the comments provided by the other agencies. She said staff was recommending an alignment of the replacement bulkhead within 2' of the existing failing

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bulkhead, the removal of three of the channelward proposed wet slips (approximately 40' of pier) from the channelward side of all three proposed piers to aid navigation, the relocation of all three proposed piers 25' downstream to reduce impacts and improve access to Mr. Garcia's property, and that a final dredge material handling plan be submitted. Comments are part of the verbatim record.

Associate Member Ballard asked about the resulting distances across the channel after the staff recommendation. Ms. Wood responded that with the original proposal the distances would be about 115'-120' and with the staff recommendation they would be about 150'-155'. Comments are part of the verbatim record.

Associate Member Hull asked why the new bulkhead could not be put in the footprint of the existing bulkhead. Comments are part of the verbatim record.

Commissioner Pruitt swore in the individuals who wanted to speak on behalf of the applicants. Mr. Ballard stated that he was represented by the same legal firm that was representing the applicants, but that he did not know the attorney and felt he could offer an objective decision on the case. This was concurred with by Carl Josephson.

Maruna Liacouras Phillips, attorney from Kaufman and Canoles, spoke on behalf of the applicants. She submitted pictures of the proposed project and indicated that their project was consistent with the City of Norfolk's plan to enhance the Little Creek and Pretty Lake areas. Ms. Phillips provided the applicant's response to the staff recommendations. She said that they needed to be able to place the replacement bulkhead within 3', not 2', of the existing bulkhead for construction reasons (she indicated that the applicant's engineer, Mr. Ken Thompson, was available to answer technical questions). She said that they thought they agreed with the shifting of the pier structures 25' downstream, but they were not exactly clear on that point. Ms. Phillips also covered information on the width of the existing channel; she indicated that they felt the channel would not be any narrower with the structures placed as originally proposed than it currently was, and therefore they did not want to see the channelward wet slips eliminated as recommended by staff. Comments are part of the verbatim record.

Mr. Bob Kellam, agent for Mr. Garcia, spoke in opposition to the project. He stated that he was a retired civil engineer who had helped develop seven marinas in the Little Creek/Fisherman's Cove area. He also discussed historical information from a Corp of Engineers dredging plan and other City of Norfolk planning documents on the channel width and location in that area. He said he felt that the proposed pier location would encroach on the channel intended for the area. Comments are part of the verbatim record.

Mr. Garcia, adjacent landowner, spoke against the project. He said he thought the dredging in

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front of his property was inappropriate. He also said he did not agree with a comment made earlier in the meeting by the applicant's attorney concerning an offer to buy his property; he said the applicant had not offered to buy his property. Comments are part of the verbatim record.

Commissioner Pruitt commented that land deals between Mr. Garcia and the applicant were not relevant to the Commission's discussion or decision. Comments are part of the verbatim record.

Mr. Thompson, the applicant's engineer, stated that his client had purchased the rights to the "paper streets" in the area. He also reiterated that the bulkhead could not be efficiently built within 2' of the existing bulkhead. Comments are part of the verbatim record.

Mr. Pruitt commented that in cases such as this a compromise plan was ideal, but not always possible. He indicated that the staff recommendations were a good start. Comments are part of the verbatim record.

There was additional discussion among the Commissioners concerning the actual width of the channel in the area, the potential for future channel dredging in the area, the bulkhead condition, and the location of Mr. Garcia's hypothetical property line where it extended into the waterway. Comments are part of the verbatim record.

Associate Member Cowart moved to adopt the staff recommendations: and (1) require the new bulkheading to be within 2' of existing bulkhead, (2) to remove three slips (9 slips total) on each pier at the channelward end, (3) shift the project downstream 25', and (4) require an approved dredging plan and assess appropriate royalties. The motion was seconded by Mr. White. Mr. Ballard commented that he thought the bulkhead construction tolerance should be increased to 3'; Mr. Cowart and Mr. White agreed and modified the motion accordingly. The motion carried unanimously.

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| Encroachment 10,562 cu. yds @ \$0.50 cu. yd. subaqueous bottom..... | \$ | 5281.00 |
| Dredge 2,500 cu. yd. @ \$0.60..... | | 1500.00 |
| Dredge 8,498 cu. yd. @ \$0.45..... | | 3824.10 |
| Fill 1,309.44 cu. ft. @ \$2.00..... | | <u>2618.88</u> |
| Total | \$ | 13,223.98 |

- BOB BRAGG, #99-0374**, requests authorization to construct four (4) open-pile community piers with associated finger piers and mooring piles to create 24 wet slips

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to serve a planned residential development along Pitmans Cove near the Town of Kilmarnock in Lancaster County.

Mr. Jay Woodward briefed the Commission. He showed slides of the former Chesapeake Corporation loading site that had been cleaned up by the applicant in preparation for a cluster home development. Mr. Woodward also showed slides of the community piers being proposed for the development. He mentioned that the shoreline was held in common and that the proposed cluster homes would not qualify for single family pier exemptions. He also said that there were some shellfish leases in the area, but they were in the process of being transferred to the applicant.

Mr. Woodward reviewed comments by other agencies. He discussed the history of shellfish condemnations in the area and said that VDH would require a 34 acre seasonal closure around the facility if that area of Pitmans Creek was opened to shellfishing in the future. He then commented that the Commission's policy on community piers specifically said it did not guarantee that a development would be allowed the same number of slips as housing units. He said it was the staff recommendation that the proposed project be restricted to 12 slips located at the existing wharf facility; and that the other three pier facilities with four slips each not be approved. Comments are part of the verbatim record.

Commissioner Pruitt swore in those speaking on behalf of the applicant. Mr. Bob Bragg, applicant, spoke in support of his project. He said that the proposed development was on a 19 acre site with 1300' of shoreline, with 15 units on the water and 9 units off the water. He said he had made improvements to the site in preparation for the development, including cleaning up the former industrial site, removing pavement, stabilizing the shoreline, and planting marsh grass. Mr. Bragg said he needed the three pier structures opposed by staff to spread out recreational access to the water for the development. Comments are part of the verbatim record.

Mr. Rawleigh Simmons, attorney for the applicant, spoke in favor of the project. Comments are part of the verbatim record.

Associate Member Hull asked about the condition of the property when it was used by the Chesapeake Corporation. Mr. Bragg indicated that there were three wharves with tugs and barges. Comments are part of the verbatim record.

Mr. Ballard asked Mr. Bragg about the potential to install a boat ramp at the site. Mr. Bragg responded that they had thought about it, but had decided that a ramp was not needed. Comments are part of the verbatim record.

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Mr. Birkett commented that he thought it was a well done proposal and that it could have had a larger impact if it had been a single family development. He moved to accept the application as proposed by the applicant. The motion was seconded by Mrs. Gordy. Mr. Hull said the applicant had a good track record on environmental controls and project management, but that he had a concern about setting any precedents. Mr. Ballard said he believed in the policy of not guaranteeing a 1:1 ratio of slips to housing units, but he thought this project looked good and he was struck by the applicant's comments on the need for the extra piers for recreational access. Mr. Cowart commented that he thought there should be better guidelines developed concerning the maximum density that would be permitted for shoreline developments. Comments are part of the verbatim record.

The motion was approved 4-2, with Mr. Ballard and Mr. Cowart voting no.

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| Encroachment over 3,820 sq. ft | |
| @ \$0.50 sq. ft..... | \$ 1910.00 |
| Permit fee..... | <u>100.00</u> |
| Total | \$ 2010.00 |

- 7. **FRANCES HALEY, #99-0273**, requests authorization to replace an existing wooden bulkhead with 144 feet of concrete bulkhead, including return walls, install two (2) 50-foot "T" wall concrete groins, three (3) 9-foot by 5.5-foot breakwater boxes under the channelward end of a proposed private pier adjacent to her property situated along the Potomac River in Westmoreland County.

Mr. Ben Stagg, Environmental Engineer, briefed the Commission and showed slides of the proposed project. He said the applicant was requesting permission to replace a failing bulkhead with a prefabricated concrete bulkhead structure with associated concrete groins, and to install a T-head pier with concrete breakwater boxes underneath. He said the construction as originally proposed would require a 5'-6' encroachment beyond the existing bulkhead. After further discussion, however, the applicant had agreed to place the new bulkhead in the footprint of the existing structure. He said staff had also recommended that the number of groins be reduced from 3 to 2; he said the applicant also agreed to that condition. Mr. Stagg mentioned that DCR felt that a lack of sand in the area was a problem and that VIMS felt the breakwater boxes were situated too far offshore to do any good. He said that staff could not support the breakwater boxes. He indicated the applicant still preferred to put in the breakwater boxes. Comments are part of the verbatim record.

Mr. Ed Veazy, agent for the applicant, spoke in favor of the project. He said that a riprap

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project would require a 2:1 slope or about 12' of encroachment. He said this was the third wooden bulkhead at the site since the 1970s; and that every time they replaced them they encroached two more feet. He said the proposed bulkhead structure was precast concrete that should last at least 100 years. Mr. Veazy spoke in favor of allowing the breakwater boxes, allowing construction of the bulkhead in front of the existing structure, and in general on the benefits of his concrete structures. Comments are part of the verbatim record.

Mr. Ballard asked what the differences were between the applicant's proposal and the staff recommendation. Mr. Stagg indicated that the only difference between the applicant and the staff recommendations were the breakwater boxes. Mr. Hull asked Mr. Veazy about the breakwater boxes. He indicated that he thought they would enhance beach nourishment and that perhaps they could be placed closer to shore. Comments are part of the verbatim record.

Mr. Hull commented that this area of the Potomac was known for its wind fetch and erosion problems, and that he had seen several of Mr. Veazy's projects and thought they had been successful. Mr. Hull made a motion to approve the permit as discussed, follow the staff recommendation (reduce groins to two, require bulkhead to be placed in the footprint of the existing bulkhead), but also allow the placement of the breakwater boxes closer inshore. The motion was seconded by Mr. Ballard and carried unanimously.

Permit fee.....\$ 100.00

- 8. **IVY HOME ROAD GROUP, #99-1946**, requests authorization to install two (2) 90-foot long by 26-foot wide stone breakwaters and place 1,200 cubic yards of beach nourishment adjacent to their property situated along Hampton Roads in the City of Hampton. Subaqueous and coastal primary sand dune permits are required.

Ms. Traycie West, Environmental Engineer, briefed the Commission. She stated that the project was consistent with the shoreline BMPs and that staff recommended approval as long as the nourishment project used sand with a grain size equal to or larger than the native sand. Comments are part of the verbatim record.

Associate Member Gordy moved to approve the project. The motion was seconded by Associate Member Birkett and adopted unanimously.

Permit Fee (subaqueous).....\$ 100.00

Permit fee (CDS)..... N/C

9. **LEE ANDERSON, #99-2156**, requests authorization to install 106 linear feet of bulkhead at his property situated along the Chesapeake Bay in the City of Hampton. A coastal primary sand dune permit is required.

Ms. Tracy West, Environmental Engineer, briefed the Commission. She showed slides of the project area depicting the project. She indicated that the applicant wanted to place an L-shaped bulkhead between his house and garage, connecting with an adjacent, existing bulkhead. She stated that VIMS had suggested placing the proposed bulkhead as close as possible to the garage. Ms. West said that DCR had commented that a better design should be considered. Ms. West said that the proposed bulkhead conflicted with the standards for use of coastal primary sand dunes and beaches. As a result, staff was recommending denial of the permit. As an alternative, staff suggested moving the garage or nourishing the beach under the house and in front of the garage. Comments are part of the verbatim record.

The agent for the applicant, Mr. Warren Gouldrup, was sworn in. Mr. Gouldrup said that he had not been aware of the Dune Act when he designed the project. He said he did not think placing sand in front of the garage would work; he felt it would just wash away again. He mentioned that utilities to the property were getting exposed by washouts. Comments are part of the verbatim record.

Mr. Lee Anderson, applicant, spoke in support of the project. He testified that he and his wife had struggled with the decision to request a bulkhead. He said they preferred to use grass or sand to protect his property, but that they had tried both and they had not worked. He said he had researched, and decided that a bulkhead was the answer. Comments are part of the verbatim record.

Associate Member Ballard asked if any of the nearby landowners were protecting their garages with bulkheads. Mr. Anderson responded that two or three did. He also mentioned that all of his neighbors were in support of the project.

Mr. Cowart asked staff what had gone on in the past in similar situations. Mr. Grabb responded that prior to the Dune Act in 1980, that bulkheading was the preferred method to protect areas like this. He said that since 1980 the Commission had, in other similar situations, authorized replacement bulkheads and even new bulkheads when in line with existing bulkheads. Mr. Grabb commented that in this case staff felt that when considering the guidelines it would be better to move the garage structure. Comments are part of the verbatim record. Mr. Ballard said that the Dune Act was designed to prevent "despoliation and destruction of beaches and dunes." He asked Mr. Grabb if the area in question had already had this happen. Mr. Grabb

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said that there was no dune system, but that there was a beach that could be impacted. Comments are part of the verbatim record.

Mr. Gouldrup commented that there were other new bulkheads going in nearby at the Salt Ponds development and he could not understand why they would consider denying this one. Mr. Ballard stated that he agreed with staff that the proposed project did not meet the standards of use for coastal primary sand dunes and beaches. Mr. Ballard made a motion to deny the permit. The motion was seconded by Associate Member Hull. The motion carried 3-2, with Associate Members Gordy and Birkett voting no.

Permit Denied

10. FISHERIES MANAGEMENT DIVISION, #99-1993, #99-1994, #99-1995. Conservation and Replenishment Department requests authorization to construct three (3) intertidal oyster shell reefs in the lower Rappahannock River upriver of the Norris Bridge on Public Ground #1 in Lancaster County and Public Ground #1 in Middlesex County. The reefs are opposed by the Rappahannock Preservation Society.

Mr. Chip Neikirk, Environmental Engineer, briefed the Commission and showed slides indicating the proposed reef construction and their locations. He said that all of the reefs would be intertidal and composed entirely of oyster shells. He said that Mr. Robert Jensen had sent a letter to the Commission on July 27, 1999 generally protesting any future reefs in the Rappahannock River. Comments are part of the verbatim record.

Mr. Neikirk said that VIMS, DCR, and DEQ had indicated that impacts would be minimal. He said that the Coast Guard said the reefs would be acceptable with appropriate signage. Mr. Neikirk said that the proposed reefs were part of the DEQ Oyster Heritage Project and that the proposed locations were recommended by a panel of experts convened in January 1999. Mr. Neikirk said that staff recommended approval of the permits. Comments are part of the verbatim record.

Mr. Bob Jensen, Rappahannock Preservation Society, spoke opposing the reef projects. He said he had concerns that less disease resistant hatchery stock oysters could be placed on the shell piles. He complained that the core material of the proposed reefs had changed from concrete to oyster shells without public notification. He said he thought the reefs could act as breakwaters and have a negative impact on the shore. Comments are part of the verbatim record.

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Associate Member Ballard asked staff about the notification problem referenced by Mr. Jensen. Mr. Neikirk responded that staff did not think public notice of the core material change was necessary, since the reefs would have the same overall structure and would be more easily removed if necessary. Comments are part of the verbatim record.

Mr. Ballard moved to approve the permits as submitted. The motion was seconded by Associate Member Hull and adopted unanimously.

Permit fee not applicable

11. **OYSTER GROUND APPLICATIONS:** Three applications for oyster planting ground in the Pagan River and Cypress Creek, Isle of Wight County, have been submitted by members of the Davis family listed below. The applications are protested by Ronald Pack, President of Smithfield Station, The Isle of Wight Citizens Association, The Isle of Wight Board of Supervisors, and the Town of Smithfield.

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|----------------------|--------------------|-----------|
| Russell Patton Davis | Application 99-043 | 125 Acres |
| Russell B. Davis | Application 99-044 | 220 Acres |
| Eileen Boush Davis | Application 99-045 | 220 Acres |

Mr. Gerry Showalter, Chief Engineer, briefed the Commission and presented slides depicting the area and leases applied for by the Davis family. He explained that the applicants wanted to enhance oyster growth in the Pagan River by changing the water chemistry by depositing marl on large areas of mud bottom. He said that they had received letters and resolutions of opposition from Mr. Ron Pack, The Isle of Wight Board of Supervisors, The Isle of Wight Citizen Association, and the Town of Smithfield. He said that the matter had been discussed last year and that others in opposition may have not been aware of the hearing today. Mr. Showalter recommended that the Commission consider leasing a much smaller area (around 10-20 acres) in an embayed area of the Pagan River. He suggested the area around the mouth of Tormenter Creek. Comments are part of the verbatim record.

Mr. Russell P. Davis, T/A Sweetwater Oysters, spoke in support of approving the applications of their proposed oyster leases. He said they were considering a whole river husbandry approach that would curtail a major private investment. Mr. Davis distributed copies of a report on experiments he had done that showed increased oyster survival where marl was used as a substrate. Mr. Davis made a detailed presentation on the conditions and support he was looking for in order to encourage him to pursue the project. Comments are part of the verbatim record.

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Associate Member Ballard asked why he needed all the bottom he had applied for. Mr. Davis replied that the bottom mud had iron sulfide in it and that they had to cover it with shell to keep it from getting kicked up by boats. Mr. Cowart asked if he intended to put marl on large parts of the Pagan River. Mr. Davis responded that today's request did not ask for that. He indicated he was looking for some support from the Commission to continue with the experiment at a larger scale. Comments are part of the verbatim record.

A resident of Smithfield, spoke opposing the project. She said she felt that 565 acres was too much of a monopoly. Comments are part of the verbatim record.

Mr. Thomas Walters, Isle of Wight Citizen's Association, spoke opposing the project. He asked the Commission to not encourage the experiment based on one man's opinion from a couple of tanks and 48 oysters. Comments are part of the verbatim record.

Mr. Thomas Henderson, spoke opposing the project. He said that this area of the Pagan River was a large area where population increases were forecast which could lead to conflicts with oyster growers. Comments are part of the verbatim record.

Dr. Gene Burreson, VIMS, said that there were many unexplained factors in Mr. Davis' small experiment. He said he did not know of any hypothesis or reason why marl would affect oyster survival. Comments are part of the verbatim record.

Mr. Davis reiterated that he was looking for some encouragement of his project and that perhaps he could work with Old Dominion University. Comments are part of the verbatim record.

Associate Member Ballard stated that they wanted to encourage scientific experimentation and that sometimes different ideas worked out. He said in this case, they were looking at the narrow issue of allowing the leasing of 565 acres of oyster ground. He said they could only grant the leases if they were in the public interest. He said he felt that they were faced with unproved science and great public concern, therefore, he moved to deny the applications for the oyster ground. He urged Mr. Davis to continue his experimentation. Mr. Hull seconded the motion. The motion carried unanimously.

12. REPEAT OFFENDERS.

Colonel Steven Bowman, Chief-Law Enforcement Division, said that the repeat offenders were

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scheduled to be at the January 25, Commission Meeting, however, the meeting was postponed because of a snow storm. He said that the Code of Virginia requires that anyone whose licenses were under review be afforded 10 days notice before the proceeding would be held. Colonel Bowman said there were several calls received from individuals that wanted to appear today. Colonel Bowman said those that were here today could be heard, and those that were not present were not violating the Code of Virginia. He then requested that the individuals that were present be heard today.

JEFF CARINO - present.

Colonel Bowman indicated that Mr. Carino had four violations as follows:

June 30, 1998, possession of untagged striped bass, found guilty and fined \$75.00
July 4, 1998, possession of untagged striped bass, found guilty and fined \$75.00
July 17, 1998, possession of untagged striped bass, found guilty and fined \$75.00
November 23, 1998, possession of untagged striped bass, found guilty and fined \$75.00.

Colonel Bowman said these violations were the results of the undercover operations, which were conducted by the Virginia Marine Resources. He further stated that Mr. Carino was a seafood dealer and he believed the violations occurred out of the sale of untagged striped bass. He said Mr. Carino had never been before the Commission as a repeat offender.

Associate Member Cowart asked where did the striped bass come from and why did Mr. Carino get caught four times with untagged striped bass. Mr. Carino responded that they were bought and resold. Mr. Cowart asked Mr. Carino if he had bought the striped bass. Mr. Carino responded that he did not personally buy them, but they were bought and resold through his company.

Commissioner Pruitt asked what type of license did Mr. Carino hold. Colonel Bowman responded that he held a seafood buyer's license, crab and peeler pot licenses. A discussion followed regarding the seafood buyer's license. Comments are a part of the verbatim record.

Commissioner Pruitt asked what was the Commission's option. Colonel Bowman responded that options varied from probation to suspending his license up to two years.

Associate Member Ballard said the guidelines indicated that in appropriate cases, 12 months probation was suitable for a first time repeat offender. Motion was seconded by Associate Member Gordy.

Associate Member Hull asked why Mr. Carino was here because his offenses were over a year

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since the last violation. Colonel Bowman responded that the undercover operation took that period of time to come to fruition and he did not want to compromise the identity of the undercover officer.

The question was called and the motion carried. Colonel Bowman advised Mr. Carino that his probation would start today.

Clarence Elbourn - Absent

Thomas N. Freeman - Absent

Eric Jones - Absent

Payton Jones, Jr. - Absent

Colonel Bowman commented that Mr. Payton Jones had a lengthy record of convictions, and they had intended to bring Mr. Jones before the Commission. However, Mr. Jones was currently serving a 12-month sentence for some of the violations.

Payton Wayne Jones - Absent

Stephen Powell - present.

Colonel Bowman said that Mr. Powell's violations ran from October 28, 1998 to January 13, 1999 pertaining to the possession of undersized striped bass, possession of untagged striped bass for sale, possession and sale of sturgeon, numerous others counts for the striped bass violations and three additional counts involving sturgeon, which was a total of 20 violations.

Commissioner Pruitt asked Mr. Powell if he had a striped bass license. Mr. Powell responded no. Mr. Pruitt asked if he was buying. Mr. Powell said he caught them and he sold them. Mr. Pruitt asked if he was a recreational fisherman. Mr. Powell responded no sir. Mr. Powell said he had a gill net license. Mr. Pruitt commented that he thought this was a cut and dry situation, but he was unsure of what the guidelines said, and he thought all of Mr. Powell's licenses should be taken pertaining to fishing.

Mr. Powell responded that he went to court and pled no contest on all the charges and was found guilty. He said he had paid over \$3,000 in fines and served some time in jail. He said he never gave anybody any problems. He said he did wrong and he admit it.

Commissioner Pruitt asked Mr. Powell what he planned to do in the future. Mr. Powell said as

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far as striped bass, I'll stay away from them. He said he did not like the fines and he did not like the jail. A discussion followed regarding the penalty and the number of violations. Comments are a part of the verbatim record.

Associate Member Ballard cited the Code Section, 28.2-232 which provides the guidance for the Commission's decision. He said 28.2. 232 gave the Commission the ability to revoke the gentlemen's license up to a maximum of two years.

Associate Member Birkett asked if the undercover officer noticed any additional fish when he purchased his 3 or 4. Colonel Bowman responded that he did not have that information. Mr. Birkett said he thought it would be important if the number of fish bought could be determined. A discussion followed. Comments are a part of the verbatim record.

Associate Member Ballard moved that Mr. Powell's license be revoked for one year followed by two years probation. Motion was seconded Mrs. Gordy. Motion carried.

Commissioner Pruitt noted for the record that Messers. Elbourn, Freeman, and Eric Jones and Payton Wayne Jones cases would be heard at the next meeting.

Colonel Bowman commented that he felt it was important for the violators to know that being involved in illegal sale and illegal trafficking of seafood was an ongoing process and this was a fair warning to others involved.

Commissioner Pruitt also commented that the undercover work was also an ongoing process for the recreational community and the commercial industry.

ITEM 14: PUBLIC HEARING: Consideration of amendments to Regulation 4 VAC 20-890-10 et. seq., "Pertaining to Channeled Whelk."

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on how the channel whelk fishery was changed from an experimental permitted fishery to a licensed and regulated fishery. He said there were three measures that were inadvertently left out of the regulation and that an emergency regulation was created last month. Therefore, staff was requesting to correct the problem and to make those changes permanent as follows:

It shall be unlawful for any person licensed under the provisions of 4 VAC 20-891-10 et. seq., as a commercial conch-pot fisherman to do any of the following unless otherwise specified.

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- A. Place, set or fish any conch pot in Virginia waters, other than the mainstem of Chesapeake Bay or in the Territorial Sea (up to the 3-mile Limit Line).
- B. Place, set or fish any conch pot within any channel.
- C. Fail to inscribe each conch-pot buoy with the letter "W," followed by the last 4 numbers of the licensee's Commercial Registration License.

Mr. Travelstead said no written comments or phone calls had been received on this matter.

Commissioner Pruitt asked if there were any public comments. There being none, the public hearing was closed and the matter placed before the Commission for action.

Associate Member Ballard moved to adopt the provisions for the emergency regulation 4 VAC 20-891-10 et. seq., as part of the final regulation 4 VAC 20-891-10 et. seq. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

ITEM 14. DISCUSSION: Request for public hearing to consider amendments to regulations pertaining to recreational summer flounder size, season, and possession limits, recreational eel possession limits, and commercial scup trip limits to comply with the interstate fishery management plans for these fisheries.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the number of regulations that must be changed by the end of next month to comply with the various ASMFC Interstate Fishery Management Plans. The regulations involved the recreational fisheries for the summer flounder, eel, and sea bass fishing; commercial sea bass fishing, and scup recreational and commercial fishing.

A brief discussion followed between staff and the Commission regarding the required time limit for the Notice. Comments are a part of the verbatim record.

Mr. Travelstead indicated that the detailed information on the regulations was a part of the packages. Mr. Pruitt indicated that the Commission would hear the details at the public hearing.

Commissioner Pruitt asked if there were any comments. There being none, the matter was placed before the Commission.

Associate Member Ballard moved to advertise for public hearing the measures on the summer

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flounder, eel, black sea bass and scup. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

ITEM 15. DISCUSSION: Request for public hearing to consider amendments to regulation 4 VAC 20-252-10 et. seq., "Pertaining to the Taking of Striped Bass" to improve enforcement of the regulation.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission regarding Law Enforcement's concern about the Striped Bass Regulation, 4 VAC 20-252-10 et. seq. He said Law Enforcement requested that the language be added to that regulation to ensure that the provisions requiring the tagging of striped bass for the purpose of sale were enforceable. "All striped bass in excess of the maximum number allowed for a licensed recreational fisherman as described in Section 4 VAC 20-60 through 4 VAC 20-110, inclusive, in possession of any person, shall be deemed to be possessed for the purpose of sale; all striped bass in possession of a licensed commercial waterman shall be deemed to be possessed for purpose of sale; and, all striped bass in possession of a licensed seafood buyer shall be deemed to be possessed for purpose of sale or resale. The possession, by any person, of untagged striped bass in excess of the minimum number allowed a licensed recreational fisherman shall be prima facia evidence of a violation of this regulation." Staff then requested that a public hearing be held to add the above language to the regulation.

Commissioner Pruitt placed the matter before the Commission. Associate Member Gordy moved to go to public hearing. Motion was seconded by Associate Member Hull. Motion carried unanimously.

ITEM 16. RECOMMENDATION of the Recreational Fishing Advisory Board and the Commercial Fishing Advisory Board.

Mr. Travelstead said the Commercial Fishing Advisory Board had not met. The Recreational Fishing Advisory Board was in the middle of their review for a number of projects. The initial meeting was held in January. During this meeting, the recreational community recommended to the Board immediate funding for the project, "Support vessel charter and diving services for the artificial Reef Program" in the amount of \$30,000. The Board recommended approval of the funding for the project on an emergency basis.

Commissioner Pruitt then opened the meeting for public comments. There being no comments,

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pro or con, the matter was placed before the Commission.

Associate Member Ballard asked if there were monies available in the fund. Mr. Travelstead responded yes.

Associate Member Cowart then moved that the money be appropriated from the Recreational Fund. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Commissioner Pruitt commented that new appointments had been made to the Recreational Fishery Advisory Board. They were Messrs. Parks Roundtree from Richmond, and Charles Randolph from Hampton, replacing Dr. Wright and Dr. Lovell.

Mr. Travelstead then briefed the Commission on the Accomac County Project for the construction of a ramp facility and fishing pier at Harborton that was approved approximately two years ago. He said after the approval of the pier, the County determined that a fishing pier would not work there because of the water depth. Therefore, the County determined that they would not build the fishing pier. Mr. Travelstead then gave information on the initial bid. He said the County was now requesting that the \$80,000 that was approved for the fishing pier be reallocated to ensure that the contract bid could be met and the ramp facility could be constructed. Mr. Travelstead indicated that the Recreational Fishery Advisory Board was reluctant to provide the full \$80,000 at the January meeting. However, the Board did agree to grant an additional \$20,000. (He said it was important to note that the bids were still sealed at that time and no one knew how much the bids would be). Mr. Travelstead also said the project was strongly supported by the recreational fishermen and it was a good project. Mr. Travelstead then recommended that the full \$80,000 be funded for the project so that it could be completed. Mr. Travelstead stated that he had a memorandum describing a telephone call he received yesterday from Phil Lyons of the Game Department indicating that his agency would provide an additional \$10,000 for the project. Mr. Travelstead then suggested that public comments be accepted.

Associate Member Gordy commented that Mr. Jack Adams, Assistant to the Accomac County Administrator, was present and requested that he be given the opportunity to address the Commission on the subject.

Jack Adams addressed the Commission. He said the County had originally asked for \$285,000 to build the proposed recreational facility. He said when he opened the bids over a week ago, they ended up approximately \$65,207 short of funds. Mr. Adams explained that he then went back to the Recreational Advisory Board and asked if he could keep the original \$80,000 until the bids were opened, and they would return any money that was not used for the pier. He said with the Game and Inland Fisheries \$10,000, they would have a couple of thousand dollars

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left over. Mr. Adams commented that this project would be the finest recreational boating facility on the Eastern Shore of Virginia.

Richard Welton representing the Coastal Conservation Association addressed the Commission. Mr. Welton said when they first found out that the bid would go over approximately \$30,000, they recommended that the Board give them \$20,000 and that The Game and Inland Fisheries Department could come up with \$10,000. Mr. Welton said a discussion took place later, and it was decided that if the \$30,000 was not enough, they would come before the Commission and the recreational community would support them. He also commented that he thought it was a really good and much needed project. He also indicated that the bid came in higher, but the County went and did some cost cutting to reduce the cost of the project. Mr. Welton then suggested that the project be funded for the other \$60,000.

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

Associate Member Gordy moved that the requested amount be funded for the project. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

ITEM 17: DISCUSSION: Request for public hearing to consider amendments to Regulations 4 VAC 20-430-10 et. seq., "Pertaining to the Marking and Minimum Mesh Size of Gill Nets."

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the regulation that required gill nets to be marked with buoys on both ends. He also explained the provision in the regulation that stated if both ends were not marked, the gill net would be seized immediately by a Marine Patrol Officer. Mr. Travelstead indicated that this provision had caused some situations in the Lower Bay. He said Mr. Pete Nixon, President, of the Lower Chesapeake Bay Watermen's Association had expressed some concern to staff and the Finfish Management Advisory Committee. Mr. Travelstead said a meeting was held in October 1999 with the FMAC, VMRC Law Enforcement, and fisheries personnel to try and resolve the issue. As a result of that meeting, they proposed modifications of Regulation 4 VAC 20-430-10 et. seq. that buoys at both ends of the gill net be inscribed with the last four digits of the watermen's commercial fisherman license number. This would allow the Marine Patrol officer to make immediate identification as to who the net belonged to and they would get in touch with the watermen as soon as possible.

Pete Nixon, President, Lower Bay Watermen's Association, addressed the Commission. He commented that the way the regulation was currently written, it was in opposition to a Section of the Code, because the regulation said there was an option of giving the watermen a 24 hour

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notice to mark the net correctly. Mr. Nixon said at the lower end of the Bay they lost a lot of buoys because of the recreational traffic. Other comments are a part of the verbatim record.

Associate Member Hull moved to go to public hearing next month. Motion seconded by Associate Member Ballard. Motion carried unanimously.

ITEM 18: PUBLIC HEARING: Open Deep Water Shoal Replenishment Seed Area to Public Oyster Harvest for 1999-2000.

Jim Wesson, Head-Conservation and Replenishment, briefed the Commission. He said the Deep Water Shoal area was a seed area and it was always polluted, but now the area could have a seed and direct harvest.

Commissioner Pruitt opened the public hearing.

Mr. Douglas Jenkins, Twin Rivers Waterman's Association recommended that the area be opened.

Associate Member Birkett moved to adopt staff recommendation to open Deep Water Shoals. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

ITEM 19: DISCUSSION: Request approval of procurement procedures for the cleaning by dredge of harvest areas in the Rappahannock River for the 2000 Oyster Heritage Program.

Jim Wesson, Head-Conservation and Replenishment, informed the Commission that the weather had been so bad that he was not sure he needed the request now. He said they had not been able to start the broodstock program because the temperature had been too cold to move the stock. Dr. Wesson said he wanted to keep some of the men working on the Oyster Heritage Program to clean some ground before the shells were placed on the reefs.

Associate Member Gordy asked if this was the same program as in the past. Dr. Wesson responded that they had not used this procedure before. He said this program involved cleaning the area first before putting the shells down.

Associate Member Gordy moved to approve the following procurement program. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

Approval of Procurement Activity for the Cleaning by dredge of harvest areas in the Rappahannock river for the 2000 Oyster Heritage Program.

GENERAL:

Certain aspects of the procurement of replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising the option available under Section 28.2-550 of the Code of Virginia.

Item C of Section 28.2-550 of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

This project envisions contracting with dredgers to clean harvest areas in the Rappahannock River and the oysters harvested to be transported by the harvesters to areas selected and marked by VMRC in the Rappahannock River.

The Commission will post a public notice to contract for dredgers. All individuals interested in participating in the project will notify the MRC Conservation and Replenishment office. All interested dredgers will be allowed to work. The Commission and/or the Conservation and Replenishment Officer will set the per bushel price for the oysters harvested, transported, and offloaded.

If unanticipated problems occur or the anticipated amount of work not materialize making the project not feasible then work may be stopped earlier at the discretion of the Conservation and Replenishment Department Head; or, if the Conservation and Replenishment Department Head Encounters unanticipated/unscheduled situations with this program, planned procurement activities may be changed, to facilitate the completion of the project.

APPROVAL, BY THE COMMISSION, OF THIS REPLENISHMENT PROJECT WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

ITEM 20. VIRGINIA SEAFOOD COUNCIL

Jack Travelstead, Chief-Fisheries Management, informed the Commission of a letter received from Ms. Frances Porter, Executive Director, of the Seafood Council, that was sent last week requesting permission for the Seafood Council to be involved in the study of the non-native oyster in Virginia waters. He said the experiment would involve the placement overboard of a number of Crassostrea ariakensis in five locations in different water types around the Bay. Mr. Travelstead said the procedure the Commission normally used to approve or disapprove projects of this sort involved a decision by the full Commission after a public hearing had been held. Mr. Travelstead indicated that he had conferred with Dr. Burreson, of VIMS, and he had suggested that the public hearing be held in March, which would give all the proponents and opponents an opportunity to discuss the experiment and what benefits it might bring to Virginia's industry. Mr. Travelstead further stated that staff supported the issue and March would be suitable for the public hearing.

Commissioner Pruitt asked Ms. Porter if she was acceptable to the March public hearing. Ms. Porter was acceptable to that date.

Commissioner Pruitt then placed the matter before the Commission. Associate Member Hull so moved. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

21. PUBLIC COMMENTS:

E. T. Firth, Jr., owner of a seafood business in Poquoson and a member of the Clam Committee, addressed the Commission. Mr. Firth requested that fishermen be allowed a couple of hours extension on the existing management area in the James River area. Mr. Firth said there had been a lot of difficulty with the weather and the catch did not seem to be a problem.

Commissioner Pruitt asked staff if there was any problem with that request.

Mr. Roy Insley briefed the Commission. He said he knew the clammers had been hurt by

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weather or weather conditions. However, he said a Clam Committee Meeting was scheduled for February 9 and he thought they could come up with something at that meeting. Mr. Insley indicated that if any changes would be made, it would have to be an emergency regulation. He said staff did not view this as an emergency. A discussion followed regarding extending the time limit. Comments are a part of the verbatim record.

Associate Member Ballard asked if staff had an estimate of how much less the catch had been this year than last year. Mr. Insley responded that at the same time the regulation was adopted on the time limit, a 1 3/8 inch cull size was also adopted. He said in considering that hours had been taken off their time, he felt the catch per unit effort was at least as good as in the previous year, or may be a little better. A discussion between Commission members and staff followed regarding conservation and trip limit. Comments are a part of the verbatim record.

Mr. Firth suggested that perhaps they could just do it for this season, under the extenuating circumstances.

Assistant Attorney General Carl Josephson commented that there was a regulation which says you shall not go clamming or clam beyond 1:00 p.m. He said the regulation would have to be changed. However, the change could be done by an emergency procedure.

Commissioner Pruitt commented that the Clam Committee would meet on February 9 and the full Commission would meet on February 22. Mr. Firth commented that the season would be over before the meeting took place. Mr. Insley said the season could be extended. Other comments are a part of the verbatim record.

Associate Member Cowart asked if the request was from the clam industry, or just one person. Mr. Firth responded that everyone he talked to was disgruntled over the whole thing.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to extend the time to 2:00 p.m. until the next Commission meeting. Motion was seconded by Associate Member Birkett. Motion carried 4 to 1.

Commissioner Pruitt requested staff to have the Clam Meeting and look at the recommendations and bring a report to the next Commission meeting.

Ernie Bowden presented information on the Marine Mammals Protection Act. Comments are a part of the verbatim record. He said the National Marine Fisheries had set up a "take reduction

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team" to eliminate incidental take of marine mammals. Mr. Bowden said he was a member of the Virginia State's Reduction Team and the membership was made up of commercial fishermen, all the universities on the coast, VIMS, staff from the different fishing agencies, David Bower and Lewis Gillingham. There were two environmental groups, Coalition for the Marine Conservation and the Humane Society that were also involved. He said over the past two and half years they had worked out a plan to reduce the incidental taking of harbor porpoises. He said he had never seen and there had never been a take of porpoises in Virginia waters by vessels. He said they had concentrated on two areas that were of great concern which was the monk and dog fisheries, other fisheries were exempted from this plan. He said the National Marine Fishery Service changed the plan this year which involved any net of a particular size. He said they were concerned that the plan would affect their shad fishery and striped bass fishery. Mr. Bowden then talked about the different types of nets that would be used to fish and how the recent change could affect other fisheries. Mr. Bowden indicated that industry had drafted a letter to the National Marine Fishery Services addressing those concerns. He also felt that perhaps the Secretary of Natural Resources and the Governor should get involved in this issue.

Commissioner Pruitt said he agreed with Mr. Bowden.

Mr. Travelstead verified everything Mr. Bowden said. He said that David Bower attended those meetings when he was on the fishery staff. Since he left, Lewis Gillingham had been attending the meetings. He then stated that Congress had placed a tremendous amount of pressure on the National Marine Fishery Service, the Marine Mammal Division to put in whatever regulations that were necessary to reduce the take of those animals. In addition, there was a tremendous amount of pressure coming from the non-fishing community to protect those animals. He said that was the reason for those types of regulations. Mr. Bowden said the next Take Reduction Team would be considering the bottlenose dolphin that did appear in Virginia waters and could result in significant change in regulations that would directly affect our fisheries. Mr. Bowden commented that the committee was planning to convene on the bottlenose dolphins and the sea turtles and it would probably go at least 50 miles upriver, maybe 100 miles. He said it would affect everybody in Virginia that had a boat, such as the commercial and recreational fisheries, and anyone that used a boat.

Mr. Travelstead then read the draft letter into the record regarding the recently enacted Mid-Atlantic take measures that would become effective on February 1, 2000. He said the measures included time, area closures, float line length, net caps and reduction, twine size and mesh stretch size limits to the National Marine Fishery Service. He said those measures had the unintended affect of closing the two fisheries. The added restrictions on the State fishermen were unwarranted in light of the imminent closure of the dog fish fishery and the severe curtailment of the monk fishery with few Virginia boats qualifying for limited entry permits. In

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closing, the letter stated that any measures with that magnitude should, at least require notification of the state fishery managers well in advance of any action taken. He said the shad fishery was under a mandated five year phase, and nets of 5 1/2 inch or less should be removed from the small mesh category. A two-year postponement and the effective date on regulations regarding the striped bass fishery was needed to allow time for gear modifications. He said compliance with those regulations could not be achieved in such a short time. He said the effect of those regulations was like closing the fisheries even though the State of Virginia had never had a confirmed harbor porpoise take in the numerous fishing trips in which federal observers were present on Virginia vessels. Comments are a part of the verbatim record.

Mr. Travelstead indicated that he would like to add to the letter that the general public should also be notified.

Associate Member Ballard asked who was the letter addressed to. Mr. Bowden responded to the National Marine Fisheries Service. Mr. Travelstead responded that it should be addressed to the Assistant Administrator for the National Marine Fisheries Service, the agency head. After a brief discussion, Commissioner Pruitt requested a motion to take the necessary steps to look into the matter.

Associate Member Ballard moved that after hearing the discussion today regarding the regulations, and the preparation of a draft letter by industry, that the letter be sent to the National Marine Fisheries Service, with appropriate copies to both State and Federal elected officials, as well as other regulatory agencies. He further moved that Mr. Travelstead and staff be responsible for appropriately editing the letter with changes that Mr. Travelstead suggested and any other necessary changes. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Joe Blanchard from the Eastern Shore addressed the Commission. He was concerned about his crab dredge license. He said he received a letter July 2, 1998, that stated he would not be eligible for the 1998/1999 crab dredge season. He said the letter was based on his mandatory reports received for the 1997/1998 season. He said he assumed that he would be ineligible for the 1998/1999 season. However, he assumed he would be eligible for 1999/2000 season.

Mr. Peters briefed the Commission on Mr. Blanchard's status. He said Mr. Blanchard was eligible for the 1996 and 1997 season and the 1997 and 1998 season. He said Mr. Blanchard was notified that he was ineligible on July 2, because after a review of the records his reports had not been received. He received the reports on August 11 relating to the crab dredge season. On September 18, they sent him a crab dredge application and that application was never received back in the office.

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Commissioner Pruitt asked Mr. Blanchard if he had sent that application back. Mr. Blanchard responded that he had never received the application. Mr. Blanchard said he also had copies that he filed his reports in April. Mr. Pruitt asked when did he last crab dredge. Mr. Blanchard responded in 1998. Commissioner Pruitt then suggested that he should get together with staff and bring everything up-to-date. Mr. Blanchard said there may have been some conflict with his reporting because he was fishing in the ocean. He said instead of his wife putting that he fished offshore, she put not fishing and sent the reports in.

Mr. Peters again briefed the Commission on Mr. Blanchard. He said prior to October 4, he mailed him a letter requesting that he fill out the crab dredge exception request and forward the application to the office and that he should be at the meeting to be heard. Mr. Peters said he sent a letter back notifying Mr. Blanchard of the date and time of the meeting. On October 14, the Crab Dredge Exception Committee met and Mr. Blanchard did not appear. So his non-appearance, automatically denied him a permit according to the procedure. On October 20, a certified letter was mailed to Mr. Blanchard informing him of the Exception Committee's decision and the method of appeal to the full Commission. He said the Commission met on November 24, and no request for an appeal was filed. However, an appeal was received from Mr. Blanchard on January 24, by fax for this Commission Meeting.

Commissioner Pruitt asked if he agreed with all that information. Mr. Blanchard said he was not sure about all the dates. He said he had not dredged this year and requested that his license be reinstated so that he could dredge crabs the rest of the season.

Commissioner Pruitt asked Mr. Peters if Mr. Blanchard had been present at the meeting, would his license have been approved. Mr. Peters responded that he could not speak for the Board, but he thought they would have approved him for a license. Commissioner Pruitt commented that the two things involved concerning Mr. Blanchard were his failure to report properly and the mail.

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

Associate Member Cowart asked if he dredged in December 1998 or Jan, Feb or March of 1999. Mr. Blanchard said he did not dredge any after the 1998 season. A discussion followed. Mr. Cowart asked how many exceptions were granted this year for people that didn't work that year and came back and requested to keep their crab dredge license. Mr. Peters responded that if he remembered correctly, they only granted exceptions to 6 or 7 individuals that showed up at the meeting, and one was denied. Mr. Peters said seventeen people were listed and only seven showed up. A discussion followed about the number of boats working. Comments are a part of

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the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to issue Mr. Blanchard his license. Motion was seconded by Mr. Birkett. Motion carried 3 to 2. Commissioner Pruitt advised Mr. Blanchard that he had been reinstated. Mr. Blanchard thanked the Commission.

There being no further business to come before the Commission, the meeting was adjourned at 4:05 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary