

MINUTES

FEBRUARY 22, 2000
NEWPORT NEWS, VA 23607

The regular monthly meeting of the Marine Resources Commission was held on February 22, 2000 with the following present:

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

COMMISSION MEETING

11120
FEBRUARY 22, 2000

Dr. Jim Wesson Head-Conservation and Replenishment

Jack Travelstead Chief-Fisheries Management
Rob O'Reilly Deputy Chief-Fisheries Management
Roy Insley Head-Plans and Statistics
Ellen Cosby Fisheries Management Specialist
Jim Peters Fisheries Management Specialist
Tiny Hutcheson Fisheries Management Specialist

Bob Grabb Chief-Habitat Management
Tony Watkinson Deputy 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
Ben Stagg Environmental Engineer

Gerry Showalter Head-Engineering and Surveying

others present:

Wayne Couch John Register
Robert Hunt Molly Mitchell
Walter Priest Alan S. Nogiec
Romona H. Mapp Alf J. Mapp, Jr.
A. L. Maynard B. K. Wilson
Carol Taylor Stan & Kay Dobson
Chris Frye Jeannie Butler
Carl Ward Dr. C. Holland
Stephen W. Belch Jim Deibler
Jeffrey Crockett W. C. Tice
R. J. Cawley James F. Cross
Tom Powrs Richard Hoyslett
Joe Palmer Rick Robins
Douglas Jenkins Kelly Place
Capt. Louis M. Goodman

Commissioner Pruitt opened the February meeting at 9:30 a.m. Associate Members present

were Ballard, Birkett, Gordy, Hull, White and Williams. Associate Member Davis was absent. Associate Member Hull gave the invocation. Associate Member White led the Pledge of Allegiance.

1. Approval of the Minutes from the previous meeting.

Associate Member White made a motion to adopt the minutes as drafted. The motion was seconded by Mr. Hull and adopted unanimously.

**** APPROVAL OF AGENDA**

Associate Member Hull stated that he expected a representative from the Virginia Charter Boat Association to make comments during the public comment period on navigation concerns related to the submerged target ship in Tangier Sound. Mr. Hull moved to adopt the agenda as drafted. The motion was seconded by Associate Member Gordy and approved 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 four Page 2 items (projects over \$50,000 that were uncontested).

2A. FISHERIES MANAGEMENT DIVISION, #99-2010. Conservation and Replenishment Department requests authorization to construct a 500-foot long by 50-foot wide intertidal oyster shell reef at the confluence of Craney Island Creek and the Elizabeth River in the City of Portsmouth.

Permit Fee.....\$ 100.00

2B. STANLEY KOZUB, ET AL, #99-1413, requests a modification to their previously issued dredge permit to allow for minor alignment shifts and channel deletions within their proposed navigation channel in Hebden Cove in Virginia Beach. Recommend a revised royalty in the amount of \$16,412.85 to reflect the net reduction of subaqueous bottom material to be dredged, from 39,144 cubic yards to 36,473 cubic yards, at a rate of \$0.45 per cubic yard.

Royalty (revised)
Dredge bottom material
from 39,144 cu. yds. to
36,473 cu. yds @ \$0.45 per cu. yd.....\$ 16,412.85

- 2C. **CITY OF VIRGINIA BEACH, #00-0057**, requests authorization to maintenance dredge approximately 20,000 cubic yards of bottom material annually, on an as-needed basis, from the Long Creek municipal channel to restore maximum project depths of minus eight feet (-8') at mean low water with an overdredge tolerance of plus or minus six inches.

Permit Fee..... \$ 100.00

- 2D. **DEPARTMENT OF MINES, MINERALS AND ENERGY, #99-0795**, requests authorization to modify their existing permit to install three additional K-dams within Indian Creek between Cane Branch and Store House Branch to enhance aquatic life in conjunction with the Indian Creek Sedimentation Project, Phase II, in Wise County. Recommend approval with our standard instream permit conditions.

Permit Fee Not Applicable

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

3. EXECUTIVE SESSION (if necessary).

An executive session was not held.

- 4. **REBECCA M. GRAY, ET AL, #99-1606**. Commission review of the January 18, 2000, decision of the Virginia Beach Wetlands Board to approve the excavation of approximately 782 cubic yards of sand from the backface of a coastal primary sand dune situated along the Chesapeake Bay to provide relief from blowing sand.
- 5. **CLARENCE A. HOLLAND, ET AL, #00-0002**. Commission review of the January 18, 2000, decision of the Virginia Beach Wetlands Board to approve the excavation of approximately 293 cubic yards of sand from the backface of a coastal primary sand dune situated along the Chesapeake Bay to provide relief from blowing sand.

Commissioner Pruitt commented that Items 4 & 5 would be considered together. He explained that they were wetland board decisions for which staff had requested Commission reviewed. Comments are part of the verbatim record.

Mr. Randy Owen, Environmental Engineer, briefed the Commission. He said that the two cases

being reviewed were part of a project involving six lots in the Sandy Bay and Bay Lake Pines Beach Subdivision along the southern shore of the Chesapeake Bay south of the Chesapeake Bay Bridge Tunnel. He commented that the dune and beach areas that were part of the project were actually controlled by trustees for the housing area. He said that the homeowners were planning to excavate sand from the back of the dunes in the area in front of their bulkheads; the sand would be removed from a trench ten feet wide and four feet deep. He said the sand would then be moved to the front of the dune. Mr. Owen showed the slides that were seen by the Virginia Beach Wetlands Board at their hearing. He explained that the applicants were looking for relief from wind blown sand. He said the Virginia Beach Planning Department had recommended approval of the project as long as there was revegetation and controlled access over the dunes. Mr. Owen said VIMS had commented that it was ill-advised to destabilize such a large area of dune. He said that the Virginia Beach Wetlands Board had approved the project unanimously with the added conditions that it would be a one-time excavation and that there would be dune grass resprigging and sand fencing. Comments are part of the verbatim record.

Mr. Owen stated that staff had sent a letter to the Board on January 25, 2000 saying that their action was contrary to the guidelines, was not supported by the evidence in the record, and that they had failed to explore less damaging alternatives. Mr. Owen said that staff felt that the loss of vegetation would actually increase the problem of wind blown sand. He said the staff recommendation was to remand the matter to the local board with a request for them to look at other alternatives. Comments are part of the verbatim record.

Associate Member Ballard commented that they must consider the record as a whole; he questioned whether the Virginia Beach Board had considered other alternatives. He asked Mr. Owen if the Board had heard the cases previously. Mr. Owen responded that two similar cases had been heard the previous September (the Holland case was denied and the Gray case was deferred). Mr. Ballard then commented that he thought the actions on these previous cases indicated that the board had considered some alternatives. Mr. Owen commented that the staff considered those different projects from the ones being discussed. Comments are part of the verbatim record.

Ms. Kay Wilson, Assistant City Attorney for the City of Virginia Beach, appeared on behalf of the Virginia Beach Wetlands Board. She stated that Mr. Wayne Couch, the Virginia Beach Coastal Administrator was also available for questions. Ms. Wilson described how the applications for this work had changed between September and January. She characterized the Board's action as a good compromise that kept the dunes in the same location and kept sand out of the homeowner's yards. She mentioned that VIMS' comments said the work was ill-advised, but did not offer alternatives. She said those options were considered by the Board and that the benefits and detriments had been examined. She said the Board felt that with sand fencing and resprigging the project was acceptable. Comments are part of the verbatim record.

Mr. Ballard asked Ms. Wilson if she thought the Board had considered other alternatives. She said that the Board had considered that all six of the applicants were facing the same problem and had considered alternatives.

Dr. Clarence Holland, applicant, spoke in defense of the projects. He testified that he had lived there 35 years, and had protected his dunes by building an access bridge and by respripping and fencing the dunes. He said the sand was already 30 feet into his yard and in another 60 feet would be at his back door. He stated that he wanted the Commission to uphold the Virginia Beach decision. Comments are part of the verbatim record.

Associate Member Cowart asked Dr. Holland how successful he thought the project would be as a one time project. Dr. Holland responded that it had been a 1998 northeaster that had started the problem. Comments are part of the verbatim record.

Mr. Al Maynard, representing the beach and dune trustees, presented a letter written on February 11, 2000. It was determined that the letter had not been a part of the record. Associate Member Birkett made a motion to allow the letter to be presented. The motion was seconded by Associate Member Gordy and was adopted unanimously. The letter was distributed to the Commissioners and read into the record. Comments are part of the verbatim record.

Associate Member Ballard commented that staff had done an excellent job on this case. He said that the verbatim record did not mention the alternatives considered, but beyond the verbatim, these cases had been related to the September decision. Mr. Ballard stated that it was obvious to him that alternatives had been considered; he made a motion to uphold the Virginia Beach Wetland Board's decisions on the Holland and Gray cases. The motion was seconded by Mr. Birkett, who commented that the landowners had a right to protect their property and that in these cases he thought the projects would enhance the environment. Associate Member Williams stated that he agreed with Mr. Birkett. The motion was passed unanimously.

- 6. **WEST BANK GROUP, #99-1422**, requests authorization to install nine (9) 150-foot breakwaters, one (1) 130-foot breakwater, (1) 90-foot breakwater, eight (8) 100-foot breakwaters, a 150-foot revetment and a 150-foot toe armor structure with associated bank grading, beach nourishment and marsh grass plantings along 5,300 linear feet of shoreline adjacent to their property on the James River in Isle of Wight County. The project had been protested by adjacent oyster ground leaseholders.

Beach Fill Nourishment
@ \$0.05 sq. ft.....\$29,403.00

Permit Fee.....	100.00
Total	\$ 29,503.00

See comments following Item #7.

- 7. **ISLE OF WIGHT COUNTY, #99-1423**, requests authorization to install three (3) 150-foot breakwaters and one (1) 100-foot breakwater with associated bank grading, beach nourishment and marsh grass plantings along 1,100 linear feet of shoreline adjacent to the Fort Boykin property on the James River in Isle of Wight County. The project is protested by adjacent oyster lease holders.

Permit Fee.....	\$100.00
-----------------	----------

Mr. David Bower, Environmental Engineer, explained to the Commission that Items 6 & 7 had been protested, but that the protests had been resolved. Therefore, he requested these be considered in the same manner as a Page 2 item. Associate Member Ballard moved to handle Items 6 & 7 as Page 2 items. The motion was seconded by Dr. Hull and was adopted unanimously. Mr. Bower read the items into the record. Associate Member Hull then moved to approve the projects. The motion was seconded by Mr. Birkett and adopted unanimously.

- 8. **JOHN REGISTER, #99-1653**, requests authorization to install up to ten (10) commercial aquaculture floats in two areas over his leased oyster ground situated along Cabin Creek in York County. The project is protested by an adjacent property owner.

Ms. Traycie West, Environmental Engineer, briefed the Commission. She said that the oyster float project was protested by two adjacent property owners. She showed slides of the Cabin Creek area and she stated that Mr. Register leased most of Cabin Creek. Ms. West showed the proposed location of the oyster floats in relation to Mr. Register's leases and stated that one of the protestants, Mr. Flanary, had indicated he would withdraw his protest if the oyster floats were moved to the mouth of the creek. She said Mrs. Taylor, the other protestant, was concerned about over-commercialization of the Creek. Ms. West stated that staff recommended approval of the project. Comments are part of the verbatim record.

Mr. Ballard asked if the project was for ten oyster floats or ten oyster float systems with five floats each. Ms. West indicated that it was the latter, for a total of fifty, 2.5 foot by 4 foot floats.

The applicant was present for questions, but none were asked.

Mrs. Carol B. Taylor, protestant, testified that her family had owned the adjacent property since the 1970s. She said it had been bought for its tranquility, and that she was concerned about the effect the future growth of the project may have on the area. She also said that her family had a prospective buyer that did not favor more than five floats. Comments are part of the verbatim record.

Associate Member Hull reminded the Commission that the last thing an oyster did was taste good. He said he thought this was a good project and could help water quality. He moved to approve the project. The motion was seconded by Mr. Cowart and adopted unanimously. Mr. Ballard commented to the applicant that white floats were intrusive, and that he should seriously consider using grey PVC piping to reduce the visual impact.

Encroachment over 500 sq. ft. of State-owned bottom @ \$0.005 sq. ft.....	\$	2.50
Permit Fee.....		<u>25.00</u>
Total	\$	27.00

9. **BERNARD RUSSELL, #99-2188**, requests authorization to install one (1) 55-foot long low-profile groin adjacent to his property situated along Onancock Creek in the East Point area of Accomack County. A Coastal Primary Sand Dune/Beach permit is required.

Mr. Hank Badger, Environmental Engineer, briefed the Commission. He stated that the applicant had realigned a new bulkhead landward out of the Commission's jurisdiction. As a result, the only item being considered was the proposed 55-foot groin adjacent to the bulkhead. Mr. Badger said that the VIMS comments indicated that there should be a minimal impact. He said staff recommended approval of the project if the applicant agreed to remove all of the existing deteriorated groin remnants. Comments are part of the verbatim record.

Associate Member Gordy made a motion to approve the project. The motion was seconded by Associate Member Hull and was adopted unanimously.

Royalty.....	\$	6.00
Permit Fee.....	\$	<u>50.00</u>
Total	\$	56.00

10. **S. J. DOBSON, #99-1405**, requests authorization to construct a 56-foot long by 22-foot wide boathouse with partial sides adjacent to his property situated along the Western

Branch of the Elizabeth River in the City of Portsmouth. The project is protested by an adjacent property owner.

Ms. Heather Wood, Environmental Engineer, briefed the Commission. She showed slides of the proposed boathouse on the north shore of the western branch of the Elizabeth River. She said the boathouse was designed for a 40-foot boat and was located at 4.5 feet MLW along side a 108 foot pier. Ms. Wood commented that the applicant had originally proposed an enclosed boathouse, but had changed his proposal to make the boathouse partially sided with a canopy on one side. She said the project was opposed by Mr. Alf Mapp, an adjoining property owner. She said staff thought the structure was appropriately sized, and with its low-profile roof, should not impact the Mapp's viewshed. As a result, Ms. Wood said staff recommended approval of the project.

Mr. Cowart asked if staff recommended the partial wall on the west side. Ms. Wood said they did.

Mr. Dobson, applicant, spoke in favor of the project. He said he had been at the property for 10 years and that he did not think the proposed boathouse would obstruct Mr. Mapp's view. Comments are part of the verbatim record.

Mr. Alf J. Mapp, Jr., protestant, handed out a petition with the signatures of 35 households that opposed the project. Mr. Mapp said he could see the applicant's pier and boat from his house, framed through his oak trees. He said he thought the proposed boathouse was a very large structure. He said he thought such a structure would lead to a "contest of conspicuous consumption." Comments are part of the verbatim record.

Mr. Thomas Wright, spoke against the proposed boathouse. He said he lived 300 yards downstream from the applicant. He also said he was a registered commercial fisherman who had been raised on the river and worked the river almost every day. He contended that it had a footprint as large as a 2500 square foot home. Mr. Thomas said he was concerned about the safety of such a large structure in the wind. He also questioned the impact of the shadow of the proposed structure on marine life, and the potential effect of the structure on the character of the river. Comments are part of the verbatim record.

Mr. Wright mentioned that another landowner, Mr. Pappas, had wanted to speak but could not attend; he asked if the Commission could wait to hear Mr. Pappas' comments. Associate Member White indicated that they had an agenda that they had to follow and would not be able to delay the case.

Associate Member Cowart asked Mr. Wright how many boathouses were within one quarter of a mile of the proposed boathouse. Mr. Wright described some of the other structures in the

vicinity. Comments are part of the verbatim record.

Mr. Dobson stated that he had followed the procedures to apply for the boathouse, that the proposed structure would have minimal impact, and that he had a good track record for his other projects. Comments are part of the verbatim record.

Associate Member Hull asked Ms. Wood what was the closest marina with a covered boat facility. It was determined that there was not a facility of this sort in the western branch and that the closest facility would be two or three river miles. Comments are part of the verbatim record.

Associate Member Gordy then made a motion to approve the project. The motion was seconded by Mr. Birkett. Mr. Hull commented that the proposed structure appeared intrusive based on the testimony he had heard and that he would oppose the motion. Mr. Cowart questioned whether this was the best use of the river. Associate Member Williams said he agreed with Mr. Cowart and Mr. Hull. The motion to approve failed 2-4, with Associate Members Gordy and Birkett voting yes, and Associate Members Hull, Cowart, Ballard and Williams voting no.

After the next case (Item 11) had begun, counsel recommended that the Commission actually make a motion to deny the permit, since the previous action had only been a defeated motion to approve the project. Mr. Hull then offered a motion to deny the permit application. The motion was seconded by Mr. Ballard, who cited the protests of the neighbors as part of his rationale for opposing the permit. The motion to deny passed 4-2, with Associate Members Gordy and Birkett voting no.

Permit Fee Not Applicable

- 11. PRESENTATION** of a plan submitted by Mr. Jerome Libassi in response to the Commission's decision on his Application for Reassignment, Lease #12024, that was heard on December 21, 1999.

Mr. Gerry Showalter, Head-Engineering and Surveying, briefed the Commission on Mr. Libassi's Application for Reassignment, Lease #12024. Comments are a part of the verbatim record. He said the Commission at their December 21, 1999 hearing gave Mr. Libassi 90 days to come up with a plan for his oyster lease. Mr. Showalter said Mr. Libassi had contacted him and presented a letter proposing to plant 25 bushels of shell in the Spring of 2001 and 25 bushels of shells in 2008. Mr. Showalter said he suggested to Mr. Libassi that he should probably propose to do the work this Spring, rather than wait another year. Mr. Showalter said Mr. Libassi had contacted Mr. John Vigliotta and made arrangements to have him plant 50 bushels of shells in June 2000. Mr. Showalter then recommended that Mr. Libassi's proposal be approved for his remedial plan for the last ten years and that his lease be renewed.

Acting Chairman White placed the matter before the Commission. Associate Member Cowart moved to accept staff's recommendation and approve the application as a remedial step, and to allow Mr. Libassi to continue to hold the leased ground for 10 more years provided he does something on the bottom. Motion was seconded by Associate Member Williams. Motion carried unanimously.

After a brief discussion, it was determined that the fishery items could not be heard until the afternoon. Therefore, the meeting was adjourned for lunch.

ITEM 12. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-430-10 et. seq., "Pertaining to Marking and Minimum Mesh Size of Gill Nets."

Mr. Rob O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission on the draft regulation. Comments are a part of the verbatim record. He said the proposed regulation was supported by Law Enforcement and the Fishery staff. He said some of the watermen groups had met on this issue in the past and the report was made available to the Commission last month. Mr. O'Reilly asked the Commission to look at pages four and five of the regulation regarding the commercial fishermen using a buoy marked with the last four numbers from their registration licenses to avoid confiscation. He clarified that this did not mean they would not be written up for not having a licensed plate or improper marking. He said staff recommended adoption of the proposed amendments as part of final regulation 4 VAC 20.430-10 et. seq.

Commissioner Pruitt opened the public hearing. There being no comments from the public, the Commissioner placed the matter before the Commission.

Associate Member Williams moved to adopt Regulation 4 VAC 20-430-10 et. seq. pertaining to the markings of gill nets. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

ITEM 13. PUBLIC HEARING: ASMFC required 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.

Mr. Jack Travelstead, Chief-Fisheries Management, briefed the Commission on each of the

regulations and the changes that were mandated by the respective management plans from the Atlantic States Marine Fisheries Commission. Comments are a part of the verbatim record. He then outlined the changes for each fishery:

Summer Flounder - The ASMFC did accept staff's proposal for the reduction in the minimum size from 16 inches to 15 1/2 inches. Mr. Travelstead said they also proposed January 1 through March 28 and July 24 through August 1. The 8-fish bag limit would remain unchanged in the recreational fishery. He said a public meeting was held on the Eastern Shore and the motions were supported. They were also supported by the Finfish Advisory Committee.

Commissioner Pruitt asked if the Eastern Shore News had straightened out the size limit. Mr. Travelstead responded that Mr. Kale had talked with them.

Eel Fishery - A 50 eel fish possession limit for recreational fishermen .

Black Sea Bass Fishery - Currently there was a two-week closure for the recreational fishery, Aug 1 through Aug 15, and that was eliminated. The quarterly commercial black sea bass trip limits were adjusted to 9,000, 3,000, 2,000, 3,000 pounds, respectively.

Scup fishery -Two changes were established: a 50-fish possession limit in the recreational fishery; and in the commercial fishery an adjustment downward of the winter I period trip limit from 12,000 pounds to the 10,000 pounds.

Mr. Travelstead said staff had not received any public comments on any of the issues. He said he felt the summer flounder measures were widely supported based on a previous meeting they had with the anglers.

Commissioner Pruitt opened the public hearing on all the mentioned species.

Jim Diebler, representing the Virginia Charter Boat Association, commented that they had a few questions concerning the summer flounder, but they would support the measures proposed. However, they wanted some way to get rid of the one-week closure. He said that he was told by people on the Eastern Shore that even though they had the pony penning in Chincoteague it was still causing problem. He said they did get a half inch off the fish, but they were hoping they could do something about the days in July. He said they were upset with ASMFC, but they would support the proposal.

A brief discussion followed regarding size limit and the closed season. Comments are a part of the verbatim record.

There being no further comments from the public, pro or con, Commissioner Pruitt closed the public hearing.

Mr. Travelstead commented that ASMFC did approve changes in the flounder rules for the Virginia tributaries to the Potomac River. He said staff had argued that the limits in those tributaries should be identical to the ones in the main stem of the Potomac and ASMFC had agreed. Since PRFC had not enacted the rules for that river they would have to come back in a couple of months with a change in the regulation so that the tributaries would correspond with the rules established by the Commission.

Associate Member Ballard moved to adopt staff recommendations on summer flounder, eel, black sea bass and scup. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

ITEM 14. PUBLIC HEARING: Proposed amendments to regulation 4 VAC 20-252-10 et. seq., "Pertaining to the Taking of Striped Bass," to improve enforcement of the regulation.

Mr. Jack Travelstead, Chief-Fisheries Management, commented that staff was trying to resolve situations where a person was in possession of a quantity of untagged striped bass. He said under the current regulation, unless Law Enforcement could prove the fish were to be sold, a person could claim they were caught recreationally or were the property of someone else, thereby avoiding prosecution. Mr. Travelstead said the language staff was proposing to add to the regulation would make it unlawful for any person to possess untagged rock fish. "If you possess more than the quantity that was allowed a recreational fishermen during that recreational season, then all the fish in your possession would be presumed to be for commercial purposes."

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

Associate Member Ballard moved to adopt the amendments to regulation 4 VAC 20-252-10 et. seq. Motion was seconded by Associate Member White. Motion carried unanimously.

ITEM 15: REPEAT OFFENDERS. Colonel Bowman commented that the cases were set for 1:00 p.m. and the Commission continue with the next agenda item.

16. REPORT on results of recent ASMFC meetings.

Mr. Jack Travelstead, Chief-Fisheries Management, said the staff evaluation was part of the

packages and he did not think a great deal of time should be spent on this particular item.

Striped Bass. He pointed out that the proposal was to reduce the harvest in the striped bass fishery of fish that were over 8 years old. Mr. Travelstead said there were some concerns because it was believed that Massachusetts, New York, and New Hampshire would have to do very little in terms of a percent reduction in the harvest. He said, however, it ended up that those states were exempted entirely from the 14 percent reduction, because the one fish recreational possession limit that they had in place, and the higher size limit that some had in place, were judged to result in more of a reduction in the recreational harvest than the 14 percent proposed. Mr. Travelstead said they were nowhere near the goal of achieving a 14 percent reduction in the older striped bass fishery, and as a result, he thought it was reasonable to assume that they would be back next year with a requirement to implement further reductions in the harvest of the 8-year old and older striped bass. Other comments are a part of the verbatim record.

Spiny Dogfish and coastal sharks. ASMFC was requesting the states to take action; this was not a mandate but a recommendation to complement the federal management plans for those species. Mr. Travelstead said Virginia was well ahead of most of the coastal states in the management of coastal sharks. He said he thought it was advisable to wait and see how the other Atlantic coastal states would react to this recommendation before they progressed any further on regulating the fish in our waters.

Horseshoe crabs. Mr. Travelstead said there was a lengthy Board Meeting that resulted in the adoption of a state-by-state quota system for crab harvest for each year. The quotas that were established represented 25 percent reduction in the average state harvest for the termed reference period for 1996 and 1997. Under that quota system, he said Virginia's quota of 152,000 crabs, would be a significant drop from the present quota. Mr. Travelstead said more information would follow in the months ahead.

Sturgeon - Mr. Travelstead said the Board was interested in amending its management plan to allow for the aquaculture of sturgeon. He said there were companies in Florida that were interested in raising fingerlings up to food size fish for sale in the open market.

Weakfish. Mr. Travelstead said there was good news on the weakfish. He said a copy of the status of the stock document was in the Commissioners evaluations. He said weakfish would be the next species that ASMFC managed that would be declared fully recovered. He said they did not anticipate any regulatory measures for two more years. He said the current level of fishing mortality rates were less than half of the level that defines overfishing. The spawning stock biomass had tripled the level that defined an overfished condition in the stock. He said the only parameter to be met for the stock to be restored was the age structure and the desire to get more larger fish into the population to provide for a trophy fishery.

Flounder. The Virginia proposal was approved. There were four or five states that submitted proposals equivalent to Virginia. He said New Jersey's proposal was approved, but the Maryland and the Potomac River proposals were not, and would have to be modified before those jurisdictions could proceed.

17. RECOMMENDATION: Commercial Fishing Advisory Board.

Jack Travelstead, Chief-Fisheries Management, said that the Commercial Board met last Tuesday. The Board reviewed five projects and made decisions on them. Mr. Travelstead said there was money in the fund to cover all of the following recommendations.

- A. Mattaponi Shad Hatchery, Mattaponi Tribal Government: \$32,750.

Project approved unanimously for \$10,000.00 for the purchase of spawning shad for the hatchery.

- C. Evaluating the Use of Otolith Microchemistry to Determine Stock Identity of American Shad, ODU and VIMS; \$78,418.00.

Mr. Travelstead explained that this was a research proposal submitted by ODU and VIMS to look at the stock identity of the American Shad in the ocean fishery. He said this research was requested by Atlantic States Marine Fisheries Commission and it was supported by VMRC staff. He said it was the only research that would tell about the coastal fishery that could potentially be used to prevent the further restriction of the fishery over the next five years. He said the Board recommended full funding of this project.

- D. Wallop-Breaux Matching Funds, VMRC; \$30,000.00.

Mr. Travelstead said that VMRC received about \$900,000.00 in Federal Wallop-Breaux monies and those funds must be matched on a 3 to 1 basis. He said the General Assembly provided some general funds for matching, but not enough to match the entire allotment. Therefore, staff requested \$30,000.00 from the commercial fishing fund and \$60,000.00 from the recreational fishing fund to complete the match requirements. The Board recommended the full \$30,000.00.

- E. Pamunkey Shad Hatchery, Pamunkey Tribal Government; \$34,450.00.

Project approved unanimously for \$10,000.00 for the purchase of spawning shad for the hatchery.

Mr. Travelstead said the money that went into the commercial fishing fund came from the sale of the commercial fisherman registration license. He said that fund was used first and foremost to operate the commercial harvest mandatory reporting system. Mr. Travelstead said that based on the increase in operating costs for the mandatory system, virtually all the monies in the fund will be used for the mandatory reporting system and there would not be money left over to pay for the projects. He said the fund currently contained \$375,000. Mr. Travelstead said that was the reason the Board did not recommend fully funding the shad projects.

Commissioner Pruitt asked if a quorum was present at the Board meeting. Mr. Travelstead responded yes. Mr. Pruitt asked if the Indians would have the opportunity to go for other grants. Mr. Travelstead responded that they had requested money from the Chesapeake Bay Program in the past and he expected that in future.

Associate Member Williams asked what was the status of the regulation publication for the watermen. Mr. Travelstead responded that they had asked the Board to reevaluate that project and the Board decided that because the regulations were so easily accessible over the internet, and copies could be obtained from VMRC by just calling, the publication was not necessary.

Mr. Travelstead stated that motions were needed for the recommendations from the Board.

Commissioner Pruitt asked if the public had any comments on the proposed projects.

Jim Diebler, Virginia Charter Boat Association, said that he was hearing the same thing on the striped bass issue, i.e. the Northern States would not be taking any reductions at all. Mr. Travelstead responded that this was for this year only. Mr. Diebler asked if ASMFC would take into consideration next year that Virginia was only taking the one big fish and if that would put Virginia in the same line with the northern states.

For the record: Commissioner Pruitt asked Mr. Diebler if he was speaking regarding the Commercial Fishing Advisory Board. Mr. Diebler apologized and expressed his concern about the striped bass fishery regarding the ASMFC briefing. Comments are a part of the verbatim record.

A brief discussion following regarding the taking of one large striped bass and a smaller striped bass. Comments are a part of the verbatim record.

Mr. Diebler also asked if ASMFC took into consideration the reduction in the summer fisheries and the geographical position of Virginia compared to the geographical position in the northern states where the fish did not get there until June and July. Mr. Travelstead responded that he did not know if they took that into consideration or not. He also gave comments about New

Jersey and the shad tournaments. He said they were allowed to catch shad all the time and Virginia was not allowed to catch shad. Comments are a part of the verbatim record.

Commissioner Pruitt returned to Item 17, recommendations from the Commercial Fishing Advisory Fishing Board. Associate Member Cowart moved that the recommendations of the Commercial Fishing Advisory Board be accepted as presented to the Commission. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Commissioner Pruitt mentioned that Dale Taylor's Association recommended that Kevin Wade be on the Commercial Fishing Advisory Board. He said Mr. Wade had accepted and had been appointed to the committee.

APPROVAL OF PROCUREMENT PROCEDURES AND NOTICES FOR THE AMERICAN SHAD RESTORATION PROGRAM.

Mr. Travelstead addressed the Commission and said there was a need to approve the procurement procedures that VMRC used for the operations of the State's Shad Hatchery Program. The procurement procedure was to obtain the services of watermen to participate in that program.

The procurement method listed in the Public Notice was as follows:

A total of nine individuals will be selected as permitted project participants, and two individuals will be selected as project alternates. For fishing days during March 16 through May 15, 2000 period, the permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 noon and 12:00 midnight.

Specific evaluation criteria, ranked by order of importance will be used. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to the evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 11 equally qualified respondents, selection for the project will be made through a lottery system.

Associate Member Ballard moved to approve the Procurementas specified in Section 11-35G of the Code of Virginia Procedures for the American Shad Restoration Program. Motion was seconded by Associate Member Williams. Motion carried unanimously.

19. DISCUSSION: Use of fish pots to circumvent the crab fishing season; Request for Emergency Regulation.

Mr. Rob O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission on the issue of fishermen trying to circumvent the crab potting season. He said the fishermen would use a crab pot and get a fish pot license and mark the crab pot appropriately as a fish pot, and then on April 1, they would change it over to a crab pot. He said fishermen would establish a territory they wanted to work for crabs, by putting out fish pots that were then switched to crab pots on April 1. The proposed regulation would prevent this from happening.

Commissioner Pruitt asked what area this was happening in. Mr. O'Reilly responded that the first problem occurred on the Eastern Shore, but recently they heard it was all over. He said Law Enforcement had indicated in a meeting that as much as 60 percent of the fishermen were participating in this type of activity in certain local areas. Mr. O'Reilly said the second part to this situation was that the watermen had a ready-made harvest come April 1, because the pots had been sitting there for anywhere from three days to a week collecting crabs, and on April 1 they would harvest the crabs. He said Law Enforcement said unless they did surveillance on an individual it would be difficult to really do much about the situation. Mr. O'Reilly said Law Enforcement and Fisheries came up with the following regulation:

A. It shall be unlawful for any person to place, set, or fish or knowingly leave any fish pot in any tidal waters during the March 27 through March 31 period, except as provided in two circumstances as follows:

1. A fish pot would be allowed in those waters above the downriver boundary lines which establish the spawning reaches for striped bass.
2. This would not apply to lawful eel pots.

Mr. O'Reilly said that Law Enforcement and Fisheries felt it was necessary at this time and recommended it be established as an emergency regulation. He said the regulation needed to be effective before March 1, and could be discussed for finalization at the next Commission meeting on March 28, 1999.

Commissioner Pruitt asked if Law Enforcement had any comments. Colonel Bowman commented that commercial watermen had called and were complaining about the situation.

Associate Member Ballard asked if there were legitimate fish potters who were not exempted by the boundary lines that could be impacted. Mr. O'Reilly responded that it would be of minimal impact; he indicated that staff had looked up the last two years of harvest during this time period, and discovered that it was mostly catfish from upriver and a minimal amount of sea bass in the lower areas.

Commissioner Pruitt opened the meeting to the public.

Jeff Crockett, President of the Tangier Watermen's Association, addressed the Commission. He said it was stated that it had become a big problem about the fish pots, but it was also the watermen that reported this problem.

Associate Member Ballard commented that the one thing bothering him was the timing. If what the watermen were doing now was not breaking the law, and the word did not get out in time, people would be unfairly ticketed. Mr. Crockett responded that he was in the dark about the fish pot fishery. He said the only fish he ever caught was toadfish and that was a summer fishery. Associate Member Ballard commented that he was also concerned about the crabbers that were doing this legally.

A discussion followed regarding the fish pot fishery, the timing, and the legality of using fish pots. Comments are a part of the verbatim record.

Associate Member Cowart asked if they had the ability to inform the persons buying fish pot licenses that it would be illegal this year. Mr. O'Reilly responded that this would go into effect March 1 and the crab season would not start until April 1, which would be 30 days for the word to get out. He said as far as the licensing agents, there probably would be something that could be done next season. Associate Member Cowart asked if VMRC was required to notify the commercial watermen. Mr. O'Reilly said the Notice would be published in four newspapers, including the Eastern Shore newspaper and it would be posted by Law Enforcement.

Associate Member Ballard moved to adopt the emergency regulation 4 VAC 20-270-10 et. seq. Motion was seconded by Mr. Birkett. Motion carried unanimously.

ITEM 20. DISCUSSION: Requesting approval of 2000 Oyster Replenishment Program and Procurement Procedures.

JIM WESSON, HEAD-CONSERVATION AND REPLENISHMENT, said he could brief the Commission on everything or he could point out some of the differences in the program from last year. Commissioner Pruitt suggested Dr. Wesson point out the differences, and if there were questions he could answer them. The Commission agreed.

Dr. Wesson pointed out that one of the big differences this year was the funding. He said he normally put it at the end, but this year there were much larger programs and he placed it at the front. He commented that the oyster heritage program was funded from a combination of monies from DEQ, private donations, and the Corps of Engineers. He said the Broodstock Program had already been approved and would be finished by tomorrow. He said they had quite a bit of seed in the Piankatank from the broodstock program for the past two years. He

COMMISSION MEETING

said the numbers for the spat in the Piankatank had gone up quite a bit - the count was from 800 to over 1000 throughout the river. He said there were approximately 80,000 to 100,000 bushels of shells that could be moved this year. He said they met with the watermen a couple of weeks ago, along with the Replenishment Committee, and they came up with moving 50,000 bushels of seed and making approximately 30,000 to 40,000 bushels of seed available to private industry. He said the money could be received now, but it would go to the General Fund. He said if there was interest by private industry in getting seed oysters, they would trade a bushel of shells planted back for one bushel of seed. Dr. Wesson also said that there would be watermen working for staff and watermen working for private industry. He said there would be an announcement for seed availability and they would take requests for those that had an interest. Dr. Wesson said they would probably come up with an allotment system to distribute the seed.

Associate Member Cowart noted that his company would probably want to participate in this program, if it was made available, and that he would not take part in the discussion relating to that part of the program, he would not vote on this part of the program, and he would probably not vote on the total program.

Acting Chairman White said that would be a part of the verbatim record.

Dr. Wesson further stated that there was a big effort in the Rappahannock for the Oyster Heritage Program. He said there was a display outside in the hallway that members could review for their information. Dr. Wesson said they would start having the watermen clean some of the beds at the reef sites before the shells would be placed down. He said some of the shells would have to be bought from the C. J. Langenfelder Company which sold dredged shells that came from Maryland.

Dr. Wesson said they would also be working on four reefs that were approved at the previous meeting. He said there would be a couple more reef sites coming before the Heritage Program would get started. In addition, there would be shell planting on the Seaside and the small aquaculture project would continue. Dr. Wesson outlined the Oyster Procurement Program as follows:

2000 Oyster Replenishment Plan Summary:

FUNDING:

Description	Funding Source	Match Required	Award Amount
General Funds	State		\$ 762,000.00
Special Funds	State		\$ 30,400.00

COMMISSION MEETING

Reefs in Mobjack Fisherman's Isl.	EPA-CB Program	\$191,608.00	\$ 166,848.00
VA Oyster Heritage Program	DEQ-NOAA Coastal Program	\$500,000.00	\$ 460,000.00
	Corps of Engineers	\$167,000.00	\$ 340,000.00
	VA Recreational Fishing Fund		\$ 100,000.00
	VA Endowment	\$140,000.00	\$ 70,000.00
	Governor's State IncomeTax CB Fund		\$ 108,000.00
	VA Oyster Reef Heritage Program		\$ 10,000.00
Lafayette River Portsmouth Public School System Reef	Norfolk Rotary Club Chesapeake Bay Restoration Fund		\$ 30,000.00
	National Fish and Wildlife Foundation	\$ 84,000.00	\$ 42,000.00
	Portsmouth Public School System		\$ 8,000.00

GRAND TOTAL FOR FUNDING \$ 2,157,248.00

PROGRAM STRATEGIES:

CHESAPEAKE BAY AND TRIBUTARIES

BROODSTOCK PROGRAM

2,000 bu @\$25.00/bu. clean cull oysters \$ 50,000.00

SEED TRANSFER

COMMISSION MEETING

11140
FEBRUARY 22, 2000

50,000 bushels from the Piankatank River area to be planted in the following areas:

Rappahannock River – Morattico Bar		
13,000 bu. @ \$2.00/bu.		\$ 26,000.00
Coan and Yeocomico Rivers		
15,000 bu. @\$3.00/bu.		\$ 45,000.00
Piankatank River		
5,000 bu. @ \$1.00/bu.		\$ 5,000.00
Nomini River		
10,000 bu. @ \$3.00/bu.		\$ 30,000.00
Lower Machodoc		
5,000 bu. @ \$3.00/bu.		\$ 15,000.00
Poquoson River		
2,000 bu. @ \$2.00/bu.		\$ 4,000.00
30,000 bushels of seed available to the private oyster industry		\$ 125,000.00
Subtotal Seed		\$ 125,000.00
SHELLPLANTING (Except Oyster Heritage Program)		
Coan River 15,000 bu. @ \$0.80/bu of oyster shells		\$ 12,000.00
Yeocomico River		
15,000 bu. @\$0.80/bu. of oyster shells		\$ 2,000.00
Great Wicomico River		
40,000 bu. \$0.70/bu. of clam shells		\$ 28,000.00
Piankatank River		

COMMISSION MEETING

40,000 bu. @ \$0.70/bu. of clams shells	\$	28,000.00
50,000 bu. @ \$1.35/bu. of oyster shells	\$	67,500.00
James River		
30,000 bu. @\$0.70/bu. of clam shells	\$	21,000.00
Elizabeth and Lafayette Rivers		
10,000 bu. @ \$0.70/bu of clam shells	\$	7,000.00
5,000 bu. @\$1.00/bu. of vitreous china	\$	5,000.00
Total Shellplanting (Except Oyster Heritage Program)	\$	180,500.00

BAGLESS DREDGING

Great Wicomico River		
24 work days @ \$250.00/day	\$	6,000.00
Total Bagless Dredging	\$	6,000.00

OYSTER HERITAGE PROGRAM

BED PREPARATION - CLEANING

Bed cleaning @\$1.00/bushel	\$	75,000.00
-----------------------------	----	-----------

SHELLPLANTING AND REEF CONSTRUCTION

House shells from the Northern Neck		
67,800 bu. @\$1.35/bu	\$	91,530.00
House shells from the Rappahannock Area		
140,000 bu. @\$0.85/bu.	\$	119,000.00
Dredge shells from Maryland		
596,470 bushels @ \$1.00/bu.	\$	596,470.00

COMMISSION MEETING

11142
FEBRUARY 22, 2000

Corps of Engineers – Dredge shells from Maryland		
	507,000 bushels @ \$1.00/bu.	
	Corps of Engineers Share	\$ 340,000.00
	VMRC Share	\$ 167,000.00
TOTAL OYSTER HERITAGE PROGRAM Via MRC		\$1,049,000.00
	Via CORPS	\$ 340,000.00
TOTAL OYSTER HERITAGE PROGRAM		\$1,389,000.00
REEF CONSTRUCTION		
	East River	
	15,000 bu. @ \$1.45/bu.	\$ 21,750.00
	Ware River	
	67,584 bu. @ \$1.45/bu.	\$ 97,998.00
	Lafayette River.	
	23,077 bu. @ \$1.35/bu.	\$ 30,000.00
	Elizabeth River	
	61,538 bu. @ \$1.35/bu.	\$ 80,000.00
TOTAL REEF CONSTRUCTION		\$ 229,748.00
TOTAL CHESAPEAKE BAY		\$ 1,980,248.00
SEASIDE EASTERN SHORE		
SHELLPLANTING WITH EXCAVATED SHELLSTOCK		
	South Bay – New Inlet	
	25,000 bu. @ \$1.00/bu. of shells	\$ 25,000.00
	Gargothy Bay - Kegotank	

COMMISSION MEETING

15,000 bu. @\$1.00/bu. of shells	\$	15,000.00
Wachapreague and/or Chincoteague		
50,000 bu. @ \$1.00/bu. of shells	\$	50,000.00
Quinby		
20,000 bu. @ \$1.50/bu. of shells	\$	30,000.00
Fisherman's Island		
Add shells to existing coal ash and Clean shell reefs	\$	45,000.00
Total Shellplanting	\$	165,000.00
AQUACULTURE TRAINING PROJECT	\$	12,000.00
TOTAL SEASIDE	\$	177,000.00
TOTAL 2000 PROGRAM COSTS	\$	2,157,248.00

Approval of Procurement Activity for the 2000 Replenishment Program

General:

Certain aspects of the procurement of seed, shell and 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 this option under Section 28.2-505 of the Code of Virginia.

This section 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 which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award 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.

Part of the available oyster seed in the Piankatank will be made available to the private oyster industry for direct exchange of an equal amount of seed oysters (bushels) for an equal amount of planted oyster shells (bushels). Seed will be offered by lottery in 2000 bushel increments to all interested Virginia participants. Participants may have more than one 2000 bushel lot. Seed will be harvested by watermen and tallied by VMRC personnel. A receipt for seed harvested will be provided to participants and will provide a record of shells that must be replaced. VMRC staff will again tally and direct replanting of shells in the Piankatank in quantities equal to the seed harvest.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the turning and cleaning and dredging of public oyster bottoms, the Commission will set a per hour or per day rate to be paid. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices will be approximately \$0.70 per bushel for clam shells and \$0.80 per bushel of oyster shells, but may vary somewhat by type of activity, transportation costs, and geographic area. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2000 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased by the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

The agency anticipates that all other 2000 oyster replenishment activity will be done using the Invitation for Bid, or Request for Proposal process, in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Division Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2000 Replenishment Program.

APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL

ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

Acting Chairman White asked for comments from the public. There being none, pro or con, the matter was placed before the Commission.

Associate Member Ballard asked if the vitreous china cultch would be used in a small area. Dr. Wesson responded that they had one small project area to test the vitreous china as cultch. He said the vitreous china attracted oysters the same as shells. He said they had approximately a thousand toilets, which was equivalent two or three thousands bushels of shells. Mr. Ballard also asked if there were any measures that could be used in the future to show the return on this two million dollar motion. Dr. Wesson responded that they had constant measurements from monitoring in the field. He said the monitoring would be expanded for the Oyster Heritage Program. Dr. Wesson then explained the different surveys that were done such as the dive survey, dredge survey, patent tong survey with VIMS.

Associate Member Ballard mentioned that a couple of people had brought to his attention the trading of the seed for shells. He said traditionally private planters would have to put a higher proportion of shells than seed back. Dr. Wesson said he had considered that and talked with several of the planters. He said moving seed was a risky proposition. He said if you require too much of the planters, they would probably lose interest in the project.

A discussion followed regarding the cost of shells, the trade back, and private lease beds. Comments are a part of the verbatim record.

Commissioner Pruitt asked if the endowment money went through the Heritage Program to DEQ or did it come directly to VMRC. Dr. Wesson responded that the endowment money must be matched two for one for Jerry McCarthy at the Environmental Defense Fund. Dr. Wesson said he was not sure if they were giving the money to the Oyster Reef Heritage Foundation and then to VMRC, or if they would give it directly to VMRC. Dr. Wesson said VMRC would have to get private donations two to one in order to get those funds.

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

Commissioner Pruitt asked Mr. Craft if he concurred with the figures Dr. Wesson presented. Mr. Craft responded that he did concur with them as a briefing, but not as a financial statement because he had not reviewed them. Mr. Craft also stated that several federal agencies would have to come through with their contributions. He said he recommended the procurement methods wholeheartedly.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to approve the Year 2000 Oyster Replenishment Plan, as well as the procurement procedures. Motion was seconded by Associate Member Williams. Motion carried 5 to 1, with Associate Member Cowart abstaining.

ITEM 15: REPEAT OFFENDERS

Colonel Bowman briefed the Commission on Billy R. Annis' four violations as follows:

July 16, 1998, possession unculled crabs, found guilty and fined.
May 29, 1999, possession of unculled crabs, found guilty and fined.
July 29, 1999, possession of unculled crabs, found guilty and fined.
August 4, 1999, Improper I.D. No. of crab float, found guilty and fined.

Colonel Bowman stated that this was Mr. Annis first appearance before the Commission as a repeat offender.

Commissioner Pruitt asked Mr. Annis if he went to court on the violations. Mr. Annis responded no.

Billy R. Annis, addressed the Commission. He said he wanted to be allowed to crab this year. He said the violation of not being able to read the numbers on the float was an honest mistake. Colonel Bowman said that was the fourth violation and the three other violations would have triggered it anyway.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved for one year's probation in accordance with the guidelines. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Frank Blevins - present.

Colonel Bowman briefed the Commission on Mr. Blevins' three violations as follows:

August 5, 1998, possession of dark sponge crabs, found guilty and fined.
November 12, 1998, blocked escape panels (fish pot), found guilty and fined.
June 23, 1999, no escape panels - eel pots, found guilty and fined.

Colonel Bowman stated that this was Mr. Blevins first appearance before the Commission as a repeat offender.

Commissioner Pruitt asked if he went to court for the violations. Mr. Blevins responded that he just paid them off.

Associate Member Ballard moved for one year's probation. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Clarence Elbourn - not present

Colonel Bowman said this individual was caught in an undercover operation and that was why the dates went back to 1998. He said the total fish involved was approximately ten. He said Mr. Elbourn did have a striped bass permit that was active at the present. Colonel Bowman said there was a regulation pertaining to striped bass that authorized the Commission to use its discretion, if there was a violation involving striped bass.

Commissioner Pruitt placed the matter before the Commission. Associate Member Ballard moved to revoke Mr. Elbourn's license pending appearance before the Commission.

Thomas N. Freeman - Present.

Colonel Bowman briefed the Commission on Mr. Freeman's three violations as follows:

June 23, 1999, obstructed cull rings, found guilty and fined.
August 28, 1999, possession of uncultured crabs, found guilty and fined.
September 19, 1999, obstructed cull rings, found guilty and fined.

Colonel Bowman said that this was Mr. Freeman's first appearance before the Commission as a repeat offender.

Mr. Freeman responded that he was guilty. He said there was no excuse for him to close his cull rings and it was against the law and he knew it was wrong.

Associate Member Ballard moved for one year's probation. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

John H. Giddens - not present.

Colonel Bowman said that Mr. Giddens had contacted Lt. Colonel Jones on Friday and asked for a continuance and was told by Lt. Colonel Jones that he could not authorize a continuance. He said he had a letter from his wife requesting a continuance. Lt. Colonel Jones contacted Mr. Giddens' residence this morning and was told that neither Mr. or Mrs. Giddens were home.

Lt. Colonel Jones left a message for Mr. Giddens to appear at the Commission meeting today at 1:00 p.m. Colonel Bowman said this was Mr. Giddens third time appearing before the Commission while under probation, which would have called for a minimum revocation under the guidelines of 180 days, since Mr. Giddens received a summons while under probation.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved for a 180 day revocation of Mr. Giddens' license. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Richard T. Hayslett - Present.

Colonel Bowman briefed the Commission on Mr. Hayslett's four violations as follows:

June 2, 1998, possession of dark sponge crabs, found guilty and fined.
July 5, 1999, possession of uncultured crabs, found guilty, fined.
September 20, 1999, improper numbers - crab pots, found guilty, fined.
September 20, 1999, no cull rings - crab pots, found guilty, fined.

Colonel Bowman said this was Mr. Hayslett's first appearance before the Commission as a repeat offender.

Commissioner Pruitt asked Mr. Hayslett if he went to court on all the violations. Mr. Hayslett responded yes, all of them.

Mr. Hayslett said he was guilty. His son made a mistake and he was not on the boat at the time.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to approve a 12-month probation. Motion seconded by Associate Member Birkett.

Christopher L. Jackson - not present.

Colonel Bowman said that Mr. Jackson did not possess any licenses issued by the Virginia Marine Resources Commission. He was just a driver for a seafood company. Colonel Bowman said in past situations, the recommendation had normally been to not issue him any licenses during a specific period, which was normally two years.

Associate Member Cowart commented that he thought the responsible person should be the buyer, and not the driver, because the seafood company would just find another driver and the seafood buyer would continue to do the same thing. Mr. Cowart said that VMRC needed to do

what was necessary in order to shift the burden to the individual or company that actually should bear the burden in a case like this, rather than the driver being charged. Mr. Cowart suggested that the Commission direct staff to work on legislation for another year to change the regulation. The Commission was agreeable to Mr. Cowart's suggestion.

Commissioner Pruitt said he would like to talk with the appropriate supervisor along with Law Enforcement at a later time on that particular issue.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Gordy moved that Mr. Jackson not be issued a license for two years. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

Vinson W. Like - not present.

Colonel Bowman said Mr. Like's situation was similar to Mr. Jackson's. Colonel Bowman then briefed the Commission on Mr. Like's violation as follows:

October 19, 1998, possession of undersized crabs, found guilty, and fined.
June 19, 1999, possession of undersized crabs, found guilty, and fined.
June 30, 1999, possession of undersized crabs, found guilty, and fined.
June 30, 1999, possession of dark sponge crabs, found guilty, and fined.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved that Mr. Like not be issued a license for two years. Motion was seconded by Associate Member White. Motion carried.

Teddy R. Marshall, Jr. - present.

Colonel Bowman briefed the Commission on Mr. Marshall's three violation as follows:

August 10, 1998, possession of undersized crabs, found guilty, fined.
April 15, 1999, possession of channel welk, found guilty, and fined.
July 29, 1999, possession of unculled crabs, found guilty, and fined.

Commissioner Pruitt asked Mr. Marshall if he went to court. Mr. Marshall responded no. Commissioner Pruitt asked Mr. Marshall about the channel whelk violation. Mr. Marshall responded that they were undersized.

Colonel Bowman said this was Mr. Marshall's first appearance as a repeat offender.

Mr. Marshall explained that it had been a tradition for years that the hired help on the boat kept the conch money, and he explained that to the officer, but the officer wrote the violation in his name. He said he was innocent, it was the mate's money.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Birkett moved for a 12-month probation. Motion was seconded by Associate Member Gordy. Motion carried.

William J. Matelyan - not present.

Colonel Bowman said Mr. Matelyan did not accept his certified letter so he would be personally served, pursuant to Code, and required to appear before the Commission in March.

Patrick S. Parks - not present.

Colonel Bowman said Mr. Parks did not accept his certified letter so he would be personally served, pursuant to Code, and required to appear before the Commission in March.

Robert S. Pruitt - not present.

Colonel Bowman said he spoke with an individual last week who represented himself as Mr. Pruitt's son. I advised him that he could not discuss his father's case with him due to the privacy act. He indicated that there had been some illness in the family. He explained to him that his father would have to request a continuance by telephone or letter. Colonel Bowman said this was Mr. Pruitt's third appearance before the Commission.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved for revocation of Mr. Pruitt's license for a 180 days. Motion was seconded by Associate Member Birkett. Motion carried.

Timothy J. Pruitt

Colonel Bowman briefed the Commission on Mr. Pruitt's four violations as follows:

July 8, 1998, possession of dark sponge crabs, found guilty and fined.
June 8, 1999, obstructed cull rings - crab pot, found guilty and fined.
June 18, 1999, possession of undersized crabs, found guilty and fined.
July 5, 1999, possession of dark sponge crabs, found guilty and fined.

Colonel Bowman said this was Mr. Pruitt's first appearance before the Commission.

Commissioner Pruitt asked if he went to court on the violations . Mr. Pruitt responded no.

Timothy J. Pruitt addressed the Commission and said the first violation was out when the others were received. He said he had a new person working and he was not used to culling crabs. He said the problem had been corrected now.

Associate Member Gordy Moved for a year's probation, motion was seconded by Associate Member White. Motion carried.

Artemus Z. Wise - not present.

Colonel Bowman briefed the Commission on Mr. Wise's three violations as follows:

October 1, 1998, possession unculled crabs found guilty and fined
October 4, 1998, possession undersized striped bass, found guilty and fined.
May 6, 1999, possession of undersized crabs, found guilty and fined.

Associate Member Gordy moved to revoke Mr. Wise's license until he appeared before the Commission. Motion was seconded by Associate Member Birkett. Motion carried.

ITEM 18: FAILURE TO REPORT

Thomas N. Freeman - present.

Mr. Peters briefed the Commission on Mr. Freeman's failure to report. He said Mr. Freeman was up-to-date now. He said staff recommended a 6 months suspension followed by 6 months probation.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard said that Mr. Freeman received a 12-month probationary period for a previous violation. He said he felt because of his honesty that was sufficient for both the cases. Therefore, no additional action should be taken against the failure to report and that it be coupled with the previous action under the three time repeat offender violation. Motion was seconded by Associate Member Williams. Motion carried.

ITEM 21: DISCUSSIONS: Proposals for Oyster Ground Leaseholder Assistance.

Dr. Wesson, Head-Conservation and Replenishment, said this matter was just for information type briefing on how the grant program was set up for \$50,000 to provide assistance to people for their private leases. He said letters were sent to all leaseholders in the state in August of last year notifying them that from August to January 31, of this year, they could submit a proposal on doing something on their leases. Dr. Wesson said 44 applications were received requesting assistance. The applications were reviewed with Law Enforcement, Gerry Showalter and himself. He said there were 25 applicants that had good proposals, and they were notified that they were highly ranked proposals. Dr. Wesson said the 25 applicants' proposals would amount to \$64,000 in requests, and there was only \$50,000. Dr. Wesson said that they required the applicants to do the work first, and then the State would reimburse them. He said an additional letter was sent to see if they were still interested since they would have to do the work first and then get reimbursed.

Associate Member Cowart asked if this was a one or two year program. Dr. Wesson said it was a two year program.

Dr. Wesson said they would also go out on the private leases and provide assistance to help them find the best part of their lease.

22. PUBLIC COMMENTS:

Associate Member Hull said that Mr. Diebler would now inform the Commission of the hazard to navigation in the Bay.

Jim Diebler, President of the Virginia Charterboat Association, representing the charter boat fishermen from the Northern Neck area, addressed the Commission. He said there was a target ship that was located off of Tangier Island. He said at one time the visibility was good, but since that time the boat had sunk, and the visibility was poor. He said once you get within 35 or 40 yards of the wreck only a couple of poles were visible. He said the area was a restricted area, but the weekend boaters would come into the area at a high speed and he was concerned about something serious happening.

Mr. Diebler also mentioned a site for a reef in his area. He said they were interested in using the area where the Navy had their anchorages, but in the 27 years he had used the area, he had never seen a ship anchor up there. Therefore, they would like to get some of that Bay area back.

Associate Member Hull commented that the Commission should pass a resolution to ask the Commissioner to negotiate with the Coast Guard regarding the status of the target ships, and to

find out if the anchorages were obsolete now. He then moved that the Commission pass the resolution. Motion was seconded by Associate Member Cowart. Motion carried.

Associate Member Hull commented that Mr. Freeland Mason, the former President of the Virginia Watermen's Association, had worked on some enabling legislation for the Commission to look into crab pot rings. Dr. Hull then proposed that the Crab Committee address Mr. Mason's proposals.

Commissioner Pruitt said Mr. Cowart was Chairman of that Committee and he would take care of it.

Mr. Roy Insley, Head-Plans and Statistics, said Mr. Steve Belch would like to address the Commission on the matter of extending the clamming time.

Mr. Stephen Belch addressed the Commission regarding the clam harvest on the James River. He had compiled some statistics from December 1 to February 14, and he presented them to the Commission. He said due to the weather the clammers had missed a lot of time. He said he had compiled the statistics from 47 clammers. He said they had a total of 54 work days between Dec 1 and February 14. Mr. Belch then gave the weather conditions for those days and how it had affected the different rigs. Comments are part of the verbatim record.

Mr. Insley commented that there were 186 licensed patent tong clammers who could potentially work there.

Mr. Pruitt explained that the numbers above 47 would have to be factored in.

Mr. Belch then requested the Commission to let them work through March and leave the 2:00 p.m. time limit in place. He said the clammers had lost more than that already.

Mr. Tom Powers addressed the Commission. He said from the last meeting, the time was extended for an emergency measure and it was supposed to go to the Clam Committee and be reheard this month.

Mr. Belch responded that they did go to the Clam Committee meeting.

Commissioner Pruitt requested Mr. Insley give the Commission a briefing on the issue.

Mr. Insley, Head-Plans and Statistics, said they had the Clam Committee Meeting and only two of the committee members, and 20 or more clammers showed up. He said several ideas were presented and suggestions ranged from closing it down to going to four or five o'clock, or not having a time limit at all. Mr. Insley also indicated that there was a population of rapa whelk in

that area. Dr. Roger Mann was at that meeting and gave a report. He said the clammers had turned in approximately 650 rapa whelks. Mr. Insley said admittedly they did not know that the rapa whelks would have a negative impact, but Dr. Mann speculated that it could be bad. Mr. Insley then explained that when that particular clam ground was set up, they went through a series of hearings and it was decided by the committee and the clammers that they wanted a winter place to work. However, some of the clammers felt there should be more conservation and that the grounds were overworked, the clammers gathered a petition in favor of more conservation. He said staff and the clammers held a meeting and discussions on a 1600 catch limit; a 1:00 p. m. time limit, and a 1 3/8" cull ring size and a season of December 1 to March 15. He said staff felt that the catch per unit effort was not going down significantly, but remaining stable, and that the current regulation should remain in place. Therefore, the clammers would continue to have a winter place to work. Mr. Insley also stated that in addition to the Newport News Management area being open, the rest of the Bay on clean clams was also open and the watermen could finish the day working in those areas. Mr. Insley further stated that staff was trying to build the Newport News Management area up so that the clammers could have a place to work in the winter months, and the clammers would not have to spend so much time trying to make a decent day's work. He said the actual catch per unit effort was up 50 clams per day in December, which might indicate that the regulation they had in place was working. He said if you catch the clams this year, the clams would not be there next year. He said a decision would have to be made whether you would continue to try and manage these areas and carry the management area into the future, or catch the available clams in a few seasons.

Associate Member Gordy asked how much time would it take to travel to Virginia Beach. One of the clammers responded and said if you left at one o'clock and sailed to Ocean View they would get there just in time to turn around and come back before dark. He also said that he was in the meeting with staff and Dr. Mann, and Dr. Mann had said most of the rapa whelk came from the Ocean View area. He said you could not work one or two days a week and make a living.

Associate Member Cowart asked if fishery management staff had projected a number of clams that they thought should be caught this year and not endanger the resource, and look at what resource would be available for next year. Mr. Insley responded that the catch per boat had gone up by 50 clams per day according to the mandatory reporting records. He said there was also the potential that all 186 licensed clammers could harvest from that area, if the day and season was extended, along with the weather breaking. For those reasons, Mr. Insley felt there would be a lot more than the 47 clammers for the rest of the season and thereby putting more pressure on the resource that we are trying to manage.

A discussion followed regarding opening the area, managing the area, and the effect of the rapa whelk. Comments are a part of the verbatim record.

Associate Member Williams asked what was he asking for. Mr. Belch responded that they were asking to continue with the 2:00 p.m. time limit until the end of March.

Commissioner Pruitt commented that Mr. Cowart had brought out a good point. He said this was sent to the Clam Committee and there was not a quorum. Mr. Insley responded that the committee was not showing up for the meetings. Mr. Pruitt said the members should be replaced.

Associate Member Williams commented that he understood that the watermen had not been able to work many days this season, and he did not feel that extending the day by one hour to the end of March would hurt the resource. However, he also understood what staff was trying to do. Mr. Williams then moved that they give the clambers one hour a day until March 15.

Commissioner Pruitt asked if this would call for another emergency regulation. Mr. Travelstead responded yes. He said the emergency regulation that was adopted at the last meeting was for 30 days and that ended today. Mr. Travelstead said without having a public hearing the emergency regulation could not be extended. Commissioner Pruitt then requested the advice of counsel.

Carl Josephson, Assistant Attorney General, responded that he thought an advertisement was necessary. He said this proposal would extend the number of days that clambers could harvest from 15 March through the end of March, which he said was a different regulation.

After a discussion between the Commission and counsel, Associate Member Williams withdrew his original motion. Associate Member Williams then moved to extend the time to 15 days until the end of March. Associate Member Ballard seconded the motion. Mr. Ballard then asked what additional effort would extending the season 16 days compared to the original proposal made earlier. Mr. Travelstead responded that extending the season for two weeks, if all the boats stayed there, would be seven times the effort from the one-hour extension per day.

Colonel Bowman requested clarification on the motion regarding the extension for 15 days or until the end of March. Associate Member Williams said the last day of March instead of the 15 days.

Commissioner Pruitt placed the matter before the Commission. The motion failed.

Jeff Crockett, President of the Tangier Watermen's Association, addressed the Commission. He said he wanted to discuss the cull ring issue that came before the Commission last Fall. He said after doing several years of study and research, there was no new information to change that, other than the low landings data from Maryland. Mr. Crockett then said they had found whole

new beds of crabs now that the water started warming up. He then requested that the Commission reintroduce the cull ring issue and bring it forth for a public hearing at next month's meeting. In addition, he said he would like for one staff member to be sent to four or five of the picking houses, and to do a survey for the watermen. He said they should randomly choose a bushel of crabs out of any picking house pile and using the bigger cull ring and run sooks through the cull ring and count the number of crabs and give the percentage of possible escape.

He said 90 percent of the crabs harvested the first two months of the season would be migrating northward. He said Maryland had no standing mandatory regulation for cull rings. He said the crabs that are saved were going to go into Maryland and be trapped and not migrate southward to spawn. He said he thought the Commission's move last Fall to hear the watermen's presentation in November and to vote in December was a mistake and unfair to the watermen.

Commissioner Pruitt said he agreed that Maryland had to do something in this plan.

Associate Member Ballard commented that he had no problem with the cull ring issue going to public hearing. He said Mr. Crockett was a legitimate leader in the watermen's community and he had indicated legitimate concerns.

Mr. Travelstead commented that there had been a great deal of effort and study put into the cull ring issue. He said the Commission had received a number of presentations as far back as April on the status of the resource. He said VIMS had presented data that showed the spawning stock biomass was down by 70 percent. He said if that was any other species, they would be thinking about moratoriums. In addition, the CBSAC stock assessments say the stock is fully exploited and no more effort should be placed on the fishery.

Commissioner Pruitt asked Mr. Travelstead why Maryland did not have a cull ring regulation. Mr. Travelstead responded that 75 percent of Maryland's catch was big male jimmy crabs and they don't get the female crabs migrating way up the Bay. He said Maryland targeted the high price, big, male crab; Maryland doesn't want female crabs.

Associate Member Ballard further commented that he agreed with Mr. Travelstead that they did hear the science and he thought they did have a good presentation. He said his only point in wanting to talk about this again was that when the Commission took the final vote in December, he did not think the Tangier people could be present that day. He said it was his understanding that they were the most affected by this issue as well as part of the Eastern Shore.

Commissioner Pruitt commented that the crab issue was an ongoing issue and more public hearings would be held as time went on.

Associate Member Ballard then moved to have a public hearing, and to conduct the study that Mr. Crockett suggested. Motion was seconded by Associate Member Birkett. Commissioner

Pruitt commented that he would like VIMS to be a part of that study also.

Peter Nixon, President of the Lower Chesapeake Watermen's Association, addressed the Commission. He said they did not have the crabs at the lower end of the Bay like they did at the upper end of the Bay. He said there had not been any crabs in the ocean in the past few years. He said he felt the cull ring affected different ends of the state in different ways. He said everything that applies to Tangier and the Eastern Shore did not apply to the James River and lower end Bay.

Commissioner Pruitt commented that the Code says, you should do your management plans according to the seven steps.

Jeff Crockett readdressed the Commission and said he disagreed with the information VIMS used on the overall crab population. He said in a conversation with Rom Lipcius from VIMS, Dr. Lipcius had predicted an abundance of crabs this summer due to the weather conditions.

Tom Powers representing the CCA addressed the Commission. He said there was a middle ground that could be taken. He said you could ask staff to come up with a discussion item next month, then go to a public hearing after staff had showed you the current data done in their study.

Doug Jenkins addressed the Commission he said his concern was if the size of the cull ring was changed, let it be uniform over the whole Bay.

FOR THE RECORD: Commissioner Pruitt commented that he would support Mr. Ballard's motion, and he considered the crab issue an ongoing issue because of the fact that they discussed the short life cycle, and input, and the affect of weather and currents had on the resource.

Associate Member White called the question.

Commissioner Pruitt placed the matter before the Commission. Motion carried unanimously.

Associate Member Cowart commented that the Crab subcommittee would have a meeting before the next Commission meeting.

Thomas Judson Wright addressed the Commission. He said in 1996, he got permission from all parties to put some rock down on his bulkhead. He said oysters had struck on the channelward side. He said this was just an example of what one person could do in trying to get the oysters to set.

J. R. Bland representing the Tidewater Oyster Garden Association (TOGA), addressed the

COMMISSION MEETING

11158
FEBRUARY 22, 2000

Commission. He gave comments regarding the purpose of TOGA. He said they would like to get a system in place that would allow TOGA to relay in a nonintrusive and non-cumbersome way from polluted condemned waters to clean waters so that they may "eat the fruits of their labor."

Dr. Wesson said they had done some looking into the matter. He said he had also talked with Law Enforcement and he had worked with Bob Croonenbergh at VDH and they were trying to put something together on the issue.

Colonel Bowman commented that Mr. Kenneth Keith had written a letter to come before the Commission on a contested staked gill net matter. He said staff was prepared to bring the matter before the Commission today. However, he said Mr. Keith was not present, but he had received adequate notice to appear at today's meeting.

There being no further business to come before the Commission, the meeting was adjourned at 2:45 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary