

**MINUTES**

**FEBRUARY 27, 2001  
NEWPORT NEWS, VA 23607**

The regular monthly meeting of the Marine Resources Commission was held on February 27, 2001 with the following present:

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

**VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF**

- Dr. Eugene Burreson
- Tom Barnard
- Lyle Varnell
- Walter Priest

**COMMISSION MEETING****FEBRUARY 27, 2001**

Jack Travelstead	David O'Brien Chief-Fisheries Management
Robert O'Reilly	Deputy Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics
Lewis Gillingham	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Tracy Patton	Fisheries Management Specialist
Mike Meier	Fisheries Management Specialist
Dr. Jim Wesson	Head-Conservation and Replenishment
Bob Grabb	Chief-Habitat Management
Tony Watkinson	Deputy Chief-Habitat Management
Chip Neikirk	Environmental Engineer
Randy Owen	Environmental Engineer
Traycie West	Environmental Engineer
Ben Stagg	Environmental Engineer
Hank Badger	Environmental Engineer
Jeff Madden	Environmental Engineer
Mark Eversole	Environmental Engineer
Jay Woodward	Environmental Engineer
Kevin Curling	Environmental Engineer
Gerry Showalter	Head-Engineering & Surveying
Others present:	
Melanie D. Davenport	Tony Wolpert
Karl Wolpert	Kay Wilson
George Janek	Worthington Freeman
Jeremy Bonnaville	Billly Hall
Marlow J. Stangler	Patricia A. Stangler
Craig Palcbinski	Jim Wordsworth
Alan Nogee	Heather Wood
S. P. Campbeu	Michael Ewing
Steve Bulleigh	Ray Barber
Veremdell Hudnell	William Treakle

**COMMISSION MEETING****FEBRUARY 27, 2001**

Tim Hayes  
Eddie Landen  
Edward F. Landford  
Scott Harper  
Dale Taylor  
Douglas Jenkins  
Richard Welton  
Kevin Farle  
Steve Jones  
Chris Ludford  
Don Lancaster  
William S. Reynolds  
Alan Burgess  
Rob Brumbaugh  
Mark Santord  
Bob Stanley  
Kenneth L. Boggess  
Joe Hicks  
Ryland Hazelwood  
Jim Diebler  
Nate Custer  
Jeannie Butler  
Ernest Bowden, Jr.  
Mark Johnson

Michael Palmer  
Everett Landon  
Boyce Parks  
James E. Ashburn, Sr.  
Malinda Gallegos  
Weston Conley  
Jim Hayes  
Danny Soles  
W. C. Tice  
Frances W. Porter  
James Cross  
Rick Robin  
Lee R. Smith  
Tim Wivell  
Marshall B. Cox, Jr.  
Shawn Boggess  
Tom Powers  
Robert Hazelwood  
Tom Leggett  
Voight Hogge  
Kelly Place  
John Wyatt  
Larry Snider

and others.

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

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

Associate Members Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White, and Williams. Commissioner Pruitt established that there was a quorum. Mr. Williams gave the invocation and Mr. Cowart led the Pledge of Allegiance to the Flag.

**APPROVAL OF MINUTES**

Associate Member White moved that the Minutes be accepted as distributed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

\*\*\*\*\*

**APPROVAL OF AGENDA**

Associate member Williams moved that the agenda be amended to move Item 11 to the afternoon after the Oyster Replenishment Program presentation. Associate Member Ballard indicated that Mr. Travelstead had received several calls from watermen requesting that Item 18, Blue Crab be moved to after Item 20. Associate Member Hull moved to adopt the agenda as amended. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

\*\*\*\*\*

EXECUTIVE SESSION - Not necessary.

\*\*\*\*\*

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

Mr. Bob Grabb, Chief-Habitat Management Division, introduced a new Habitat Management employee, Mr. Kevin Curling, who had transferred from the Management Information Systems Division. He then briefed the Commission on the following eight page two items for projects that were over \$50,000, not contested, and were bearing a staff recommendation for approval

- 2A. **ISLE OF WIGHT COUNTY, #00-1878**, requests authorization to construct a 180-foot long by 8-foot wide marginal fishing wharf and install a 40-foot long floating dock at the end of an existing 48-foot long tending pier at the Jones Creek boat ramp facility in Isle of Wight County.

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

COMMISSION MEETING

FEBRUARY 27, 2001

**2B. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-2103**, requests authorization to dredge approximately 89,050 cubic yards of subaqueous bottom material from the Western Branch of the Elizabeth River to provide maximum depths of minus eight and half (-8.5) feet at mean low water to provide access for a barge-mounted crane to be used to construct a 2,500 foot long by 120-foot wide extension of the West Norfolk Bridge in association with the Route 164/Route 58 Pinners Point Interchange in Portsmouth. All dredged material will be taken to Craney Island for disposal. The project includes the replacement and extension of three (3) storm water outfalls with scour protection which will extend approximately 15 feet below mean low water into Scotts Creek. Recommend approval with standard dredging conditions and a time-of-year restriction from July 1 to September 30 to minimize impacts to oyster resources in the area during their spawning period.

Permit Fee.....\$ 100.00

**2C. VIRGINIA BEACH FISHING PIER, #00-2079**, requests authorization to construct a 200-foot long by 21-foot wide extension at the channelward end of an existing 498-foot long open-pile, commercial fishing pier situated along the oceanfront at 15th Street in Virginia Beach. Recommend an annual royalty of \$447.00 per year for the encroachment over 4,470 square feet of State-owned subaqueous land at a rate of \$0.10 per square foot.

Annual royalty for  
 encroachment on 4470 sq. ft. @ 0.10 sq. ft.....\$ 447.00  
 Permit fee.....100.00  
 Total\$ 547.00

**2D. NORFOLK SHIPBUILDING AND DRYDOCK CORP., #00-1347**, requests a permit modification to maintenance dredge, by mechanical method, approximately 57,777 cubic yards of subaqueous bottom material in order to maintain maximum depths of -60 feet at mean low water beneath their Titan Drydock, -45 feet beneath their Virginian Drydock and depths ranging from -25 to -45 feet in the vicinity of Piers 1 - 6 adjacent to their Berkley Plant situated along the Southern Branch of the Elizabeth River in Norfolk.

Dredge 3722 sq. yds. @ \$0.45 sq. yd.....\$1674.90

COMMISSION MEETING

FEBRUARY 27, 2001

2E. NORFOLK SHIP REPAIR AND DRYDOCK CORP., #00-1858, requests authorization to maintenance dredge, by mechanical method, 31,666 cubic yards of subaqueous bottom material to maintain depths of -30 feet at mean low water adjacent to their Brambleton Plant situated along the Eastern Branch of the Elizabeth River in Norfolk.

Permit fee.....\$ 100.00

2F. ESPEJO FAMILY LP, #00-1451, requests authorization to construct and backfill 75 linear feet of timber bulkheading and relocate two existing 60-foot long travel lift piers at Bay Marine situated along Little Creek in Norfolk. Recommend a royalty in the amount of \$5,860.00 for the encroachment of the bulkhead and fill on 2,690 square feet of State-owned subaqueous bottom at a rate of \$2.00 per square foot and the encroachment of the travel lift piers over 480 square feet at a rate of \$1.00 per square foot.

Encroachment of bulkhead and fill on 2,690 sq. ft. of State-owned subaqueous bottom @ \$2.00 per sq. ft.....	\$5,860.00
Permit Fee.....	<u>100.00</u>
Total	\$ 5960.00

2G. MARINE RESOURCES COMMISSION, #00-1837. The Fisheries Management Division requests authorization to construct an artificial fishing reef centered at 37° 14.40' North Latitude, 76° 13.75 West Longitude, approximately 7.35 nautical miles ENE of Tue Point. The proposed reef will be square with sides measuring 0.7 nautical miles and will be constructed with a variety of materials including tetrahedron igloos, reef balls, and specially prepared steel vessels and construction materials. A minimum mean low water clearance of 15 feet is requested.

Permit fee not applicable

2H. AQUIA BAY MARINA, INC., #00-0572, requests authorization to expand its current marina facility to include the removal of two (2) existing open-pile piers, the extension of one (1) existing 8-foot by 160-foot open-pile pier by an additional 100 feet, and the construction of five (5) floating docks/breakwaters with floating finger piers extending up to 590 feet channelward of the shoreline, which will result in an increase in the number of slips from 82 to 305. Additionally, existing fuel and

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

pumpout piers will be removed and relocated to the channelward end of one of the proposed floating piers. All improvements are located adjacent to the existing marina facility located on Aquia Creek, a tributary to the Potomac River in Stafford County. The project, as modified, will impact an additional 17,620 square feet of State-owned subaqueous bottomland. Based on the foregoing, we recommend an additional annual royalty of \$881.00 assessed at a rate of \$0.05 per square foot of encroachment.

Annual royalty for encroachment on 17,620 sq. ft. of State-owned subaqueous bottomland @ \$0.10 sq. ft.....	\$1,762.00
Permit fee.....	<u>100.00</u>
Total \$	1862.00

Associate Commission Member Hull asked where the Item 2G project was located. Mr. Chip Neikirk, Environmental Engineer, referred Mr. Hull to a map in the briefing materials and stated that the proposed project was off of the mouth of the York River. Associate Commission Member Birkett commented that Items 2C and 2G were both commercial facilities, yet had different royalties. After a short discussion, Mr. Grabb, Chief of Habitat Management indicated that the royalties for both items should both be \$0.10 per square foot. Associate Commission Member Birkett moved to approve all page two items as recommended by staff (with the royalty for Item 2G increased from \$0.05 to \$0.10 as indicated by Mr. Grabb). The motion was seconded by Associate Commission Member Hull and carried unanimously.

\*\*\*\*\*

- 3. **EXECUTIVE SESSION:** No executive session was necessary..

\*\*\*\*\*

- 4. **CRAB CREEK IMPROVEMENTS, L.L.C., #00-2197.** Commission review on appeal by 25 or more freeholders of property within the City of Norfolk of the December 13, 2000, decision by the Norfolk Wetlands Board to approve, in modified form, an application to dredge navigation channels within Crab Creek, a tributary of the Lafayette River.

Mr. Grabb, Chief-Habitat Management, stated that the applicant for this case had retained Senator Stolle as counsel; Mr. Stolle was invoking legislative privilege and requesting that

**COMMISSION MEETING****FEBRUARY 27, 2001**

the matter be continued until the May 22 meeting. Associate Commission Member Gordy made a motion to continue the case until the May meeting. The motion was seconded by Associate Commission Member White and adopted unanimously.

\*\*\*\*\*

5. **KENNETH D. WILKINS, #00-0650.** Commission review on appeal of the December 18, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct and backfill 1,050 linear feet of steel sheetpile bulkheading involving a coastal primary sand dune and beach in Virginia Beach.

Mr. Grabb, Chief-Habitat Management, stated that the applicant's attorney, Mr. Glenn Croshaw, was present and was requesting a continuance. Mr. Croshaw commented that the City of Virginia Beach may not want a continuance, but he felt the parties may be approaching a compromise in what had been a difficult case that had been remanded to the wetlands board. He indicated he would like to give the parties more time to work out a possible agreement. Mrs. Kay Wilson, attorney for City of Virginia Beach, stated that she did not favor a continuance because this was the second request for delay by the applicant. Comments are part of the verbatim record. Associate Commission Member McLesky made a motion to continue the case to the March 20, 2001 meeting. The motion was seconded by Mr. White and approved on a 7-0-1 vote with Associate Commission Member Ballard abstaining.

\*\*\*\*\*

6. **C. RAYMOND BARBER, ET AL, #00-1953.** Commission review of the January 22, 2001, decision of the Westmoreland County Wetland Board to approve the construction of four (4) armor stone breakwaters with beach nourishment by virtue of their failure to act on the application within 30 days of the public hearing as required under the Wetlands Zoning Ordinance.

Mr. Mark Eversole, Environmental Engineer, briefed the Commission. He explained that the case had been heard at the Wetland Board's December meeting where there had been a discussion about potential oyster ground impacts, but the item had been tabled until the January meeting. He said the January Wetlands Board was not scheduled early enough to act within the 30 days required for the Board to take action on the case; consequently the County's attorney had written the applicant a letter stating that the application had been deemed approved because of the Board's failure to act pursuant to § 28.2-1302 (C.7) of the Code of Virginia. Mr. Eversole said that pursuant to § 28.2-1310 and 1311 the



**COMMISSION MEETING****FEBRUARY 27, 2001**

Commissioner had requested a review of the wetlands board decision. He said that staff recommended remanding the case back to the Westmoreland County Wetlands Board. Comments are part of the verbatim record.

Mr. Craig Palubinski, Bayshore Design, agent for the applicant, spoke and asked the Commission to uphold the Wetlands Board decision. He stated that if the case were remanded it would not be heard until the April meeting which brought into question whether the intent of the Code section requiring action within 30 days would be met. Comments are part of the verbatim record.

Mr. Josephson, Assistant Attorney General, stated that the approval letter from the County's lawyer to the applicant constituted a decision by the Wetlands Board and therefore was appealable and reviewable by the Commissioner. Mr. Palubinski asked then, why the 30 day requirement was in law? Mr. Josephson indicated that it forced the process to move. Commissioner Pruitt commented that part of the Commission's job was to make sure Wetland Board did their job. Comments are part of the verbatim record.

Mr. Austin McGill, Chairman of the Westmoreland County Wetlands Board, explained the Board's December decision to table the item; he indicated that the case involved extensive dredging and a taking of subaqueous area for the breakwater islands. He said the Board did not realize that tabling an item was not considered an action under the law. He noted that if the case was remanded back, that much of the potential impact involved subaqueous area under the jurisdiction of the Commission and not the Board. Comments are part of the verbatim record.

Upon questioning by the Commissioner, Mr. Bob Grabb, Chief-Habitat Management, commented that staff would be prepared to brief them on the subaqueous portion of the case at the March meeting. He stated that he supported a remand since it could set a dangerous precedent for wetland boards to pass on difficult cases by not taking action. Comments are part of the verbatim record.

Ms. Anna Campbell, Westmoreland County Wetlands Board staff, clarified some of the events surrounding the case. She indicated that because of Christmas holidays the earliest they could schedule a meeting in January was on 1/22/01 which was two days after the 30 day deadline. After consulting with Mr. Eversole, they felt the only option was to send the applicant a letter approving the project. Ms. Campbell also questioned the value of sending the case back to the Wetlands Board. Comments are part of the verbatim record. Commissioner Pruitt commented that he did not like to usurp the authority of the Wetlands Board, but after hearing the comments, and since he was the one that had requested the

**COMMISSION MEETING****FEBRUARY 27, 2001**

review, his opinion was that the Commission should uphold the County decision to approve the project and allow any questions about the case to be answered during the subaqueous portion of the application. Associate Commission Member Hull respectfully disagreed, and indicated that he would like the case remanded to allow the citizens of the County an easier opportunity to comment. Mr. Hull made a motion to remand the case. The motion was seconded by Mr. White. The motion was defeated on a vote of 5-4, with Associate Commission Members McLeskey, Ballard, Gordy and Birkett and Commissioner Pruitt voting no. Associate Commission Member McLeskey made a motion to uphold the action of the Wetlands Board. The motion was seconded by Associate Commission Member Gordy and adopted on a vote of 7-1, with Associate Commission Member Hull voting no.

\*\*\*\*\*

7. **RICHMOND YACHT BASIN, #00-1752**, requests after-the-fact authorization to retain three (3) 46-foot long by 5-foot wide open-pile finger piers and associated cluster piles, and six (6) 10-foot long finger piers adjacent to an existing boathouse situated along the James River in Henrico County. The project is protested by an adjacent property owner.

Associate Commission Member Hull stated that he would recuse himself from this case because of a business relationship with the applicant.

Ms. Traycie West, Environmental Engineer, briefed the Commission. She showed slides of the marina facility showing the location of structures not authorized by permit. She said the applicant had been issued a Notice to Comply, and had subsequently submitted an after-the-fact application for the unpermitted structures. She said the application was protested by an adjacent landowner, Mr. Tony Wolpert, who also had a pending court case with the applicant involving riparian rights. Mrs. West commented that VIMS had said the environmental impacts would be minimal, but that the VDH comments indicated parts of the application were objectionable. She said the Commission generally refused to act on cases where riparian rights were at issue, and staff recommended deferring a decision on the matter until the court case was decided. Comments are part of the verbatim record.

Associate Commission Member Ballard clarified that the riparian issue just affected the structures on the end of the facility and not the six finger piers behind the boathouse. Comments are part of the verbatim record.

Mr. Tim Hayes, attorney for the applicant, spoke in support of the project. He said the owners were present and had owned the facility since 1958. He said the structures in question at the end of the facility were used to protect the marina facility from floating

**COMMISSION MEETING****FEBRUARY 27, 2001**

debris during spring floods. He indicated that they were the result of long standing experimentation by the applicants with various structures designed to protect their facility from high water. He asked that the Commission consider conditionally approving the permit pending resolution of the court case. Comments are part of the verbatim record.

Mr. Harris, applicant, spoke on behalf of his application. He said he had been an owner of the facility for 43 years and that flooding had always been a threat to the facility, particularly after the construction of the Richmond flood wall. He showed a 1950s aerial photograph of the facilities, pointing out pilings that had been destroyed in high water events in the approximate location of the structures now in question. Mr. Harris explained that the current structures were a combination of piling dolphins and reinforcing walkways and seemed to be working better than past structures. He noted that there was a pending riparian court case, as well as a pending zoning complaint from Mr. Wolpert, but that he was requesting a permit from the Commission conditional on those matters being settled. Comments are part of the verbatim record.

Mr. Wolpert, adjacent landowner and protestant, spoke against the permit application. He commented that the riparian court case had been continued at the applicant's request, that parking was a problem at the marina facility, and that the marina had undergone a substantial expansion in 1986 which pushed their boat shed structure up to the property line and subsequently forced the applicants to build their flood protection devices in what he considered to be his riparian area. Comments are part of the verbatim record.

Mr. Carl Josephson, Assistant Attorney General, asked Mr. Wolpert if there had been any discussion of settlement among the parties and if he had any use of the riparian area in mind. Mr. Wolpert indicated that there had been some discussions among the parties, but no resolution; he said he planned to put a personal dock in the riparian area at some point. Comments are part of the verbatim record.

Associate Commission Member Williams asked how long Mr. Wolpert had been the owner of his property. He responded that his parents bought it in 1974. Associate Commission Member Birkett asked if he had been notified of the 1986 expansion. Mr. Wolpert said he had been notified of the 1986 expansion, but thought the drawings showed structures further behind the applicant's property line and not right up on the line as they now were. Comments are part of the verbatim record.

Mr. Hayes, attorney for the applicant commented that in listening to Mr. Wolpert's testimony he had not heard any opposition to the application, with the exception of the finger piers that were the subject of the pending riparian court case. He also disputed the VDH comment that indicated that the applicant was out of compliance with the required

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

sewage handling requirements. Comments are part of the verbatim record.

Associate Commission Member Ballard clarified that there were two sets of slips in question: one set at the end of the facility that were in the riparian area and a set of six slips behind the boatshed that were after-the-fact. Mr. Hayes indicated that the slips at the end of the facility were grandfathered but still the subject of the riparian case, but he was unsure about the six slips behind the shed. Comments are part of the verbatim record.

Commissioner Pruitt asked Mr. Harris about the status of his VDH permits. Mr. Harris said that they had put \$40,000 into a pumpout facility and he assured the Commission that the marina had the necessary permits. There was a short discussion about the VDH comments where it was noted that VDH had not made a visit to the marina and it was also unknown what problem the VDH representative had with the application.

Associate Commission Member Ballard asked staff for more information on the current policy of not acting on applications if a riparian court case was pending. Mr. Josephson explained that in Zappulla vs Crown, a past court case involving a permit decision where riparian rights were at issue, the Virginia Supreme Court had said the Commission did not have the authority to decide riparian issues. Consequently, as a matter of policy, it had been decided to wait until court cases were resolved before acting on an application. He continued that the Commission still had the authority to act regardless of the policy and could include conditions related to the riparian and sewage handling issues. There was a short discussion of the policy. Comments are part of the verbatim record.

Associate Commission Member Ballard made a motion stating that after considering the documents and materials submitted, and the testimony heard, the Commission grant a permit pursuant to §28.2-1205 for the after-the-fact structures applied for, conditional on (1) settlement of the riparian suit allowing the applicant to retain the structures in the disputed riparian area, (2) staff being provided with evidence of the applicant's compliance with the Health Department's sanitary regulations, and (3) agreement from the applicant to a civil charge of \$1800 in lieu of further enforcement action. The motion was seconded by Associate Commission Member Williams and approved on a vote of 6-1-1, with Associate Commission Member Gordy voting no and Associate Commission Member Hull abstaining.

Civil charge.....	\$ 1800.00
Encroachment on State-owned bottom	
@\$.50sq. ft.....	435.00
Permit fee.....	<u>25.00</u>
Total \$	2260.00

## COMMISSION MEETING

FEBRUARY 27, 2001

\*\*\*\*\*

8. **DENNIS W. SMITH, #97-0402**, requests after-the-fact approval of a previously unauthorized expansion of a private pier an additional 54 feet 6 inches by 4 feet 10 inches and a roof extension of 7 feet 10 inches to an existing boathouse adjacent to his property situated along Gardner Creek in Westmoreland County.

Mr. Ben Stagg, Environmental Engineer, briefed the Commission. He showed slides of the project and indicated that the unauthorized expansion of pier/boatshed facility had been discovered during a compliance check in October 2000. He said the applicant had been contacted and had submitted an after-the-fact application to retain the structures. The applicant had offered that the unauthorized work was the result of a communication problem with the contractor (who was no longer in business). Mr. Stagg said the applicant was not expected to attend today because of another engagement. He said staff recommended approval with an appropriate civil charge. Comments are part of the verbatim record.

Mr. Ballard asked for clarification on the dimensions of the unauthorized construction. Mr. Stagg indicated that the walkway width had been extended 4'3" over the 2' authorized and that the overhanging shed roof had not been authorized. Mr. Ballard asked if the applicant lived in the house. Mr. Stagg said no, it was a summer home. Associate Commission Member Hull asked who the contractor had been. Mr. Stagg said the applicant had not told him. Commissioner Pruitt checked to see if the applicant was present; he was not. Associate Commission Member Williams made a motion to table the case until the applicant appeared. The motion was seconded by Associate Commission Member Hull and adopted unanimously. Associate Commission Member Ballard questioned whether tabling the item was the right action, and suggested that the item be tabled until the applicant appeared, but with the requirement that the unauthorized structure be removed if the applicant had not appeared within 60 days. Associate Commission Members Williams and Hull accepted the change, and the new motion was adopted on a vote of 7-1, with Associate Commission Member Gordy voting no.

\*\*\*\*\*

9. **WORTHINGTON FREEMAN, #99-1238**, requests after-the-fact approval of a previously unauthorized 19-foot by 32-foot open sided covered boathouse built adjacent to his property along Mattox Creek in Westmoreland County. This is the second boathouse at this location.

**COMMISSION MEETING****FEBRUARY 27, 2001**

Mr. Ben Stagg, Environmental Engineer, briefed the Commission. He showed slides of the project. He explained that the applicant had originally submitted the application in July 1999 to modify his existing pier and low-roof boathouse by relocating some of the pier structure and building a second boathouse. Mr. Stagg said in May 2000 the Westmoreland County Board of Supervisors approved the boatshed with open sides. He said at that time, Mr. Stangler, adjacent landowner, had some concerns about the project, but there were some plans for the two parties to work out a compromise. Mr. Stagg stated that in October of 2000 he received a call from the applicant's original contractor, Mr. Horner, saying that he was no longer acting as agent for the applicant and would not build the boathouse. After the call from the ex-contractor, Mr. Stagg said he contacted Mr. Freeman who said that the project had already been built. Mr. Stagg acknowledged that the applicant had a building permit from the County, but he did not have the Commission permit and was required to submit an after-the-fact permit application. He said staff did not recommend removal or relocation of the project, but suggested that the Commission consider a civil charge in lieu of further enforcement action. Comments are part of the verbatim record.

Mr. Freeman, applicant, spoke in favor of the application. He said he thought he had all the permits he needed. Comments are part of the verbatim record.

Commissioner Pruitt asked if the new structure complied with the Board of Supervisors conditions. Mr. Freeman responded that it did and went over some of the details of the construction and some of the accommodations he felt he made in response to Mr. Stangler's concerns. Comments are part of the verbatim record.

Mr. Cowart asked staff if there was a mechanism to ensure that contractors had all necessary permits prior to starting construction. Mr. Grabb responded there was not. He noted that most localities will not issue a building permit prior to the applicant obtaining the required wetlands permits and that language had been added to the permit documents making it clear that it was the applicant's responsibility to ensure that all construction and modifications were properly permitted. Comments are part of the verbatim record.

Mr. Hull asked the applicant how long he had owned the property and whether the new boathouse was in front of Mr. Spangler's property. Mr. Freeman responded that he had owned the property for 8 to 10 years and that the new boathouse was 5 to 6 feet inside his property line extended. Comments are part of the verbatim record.

Associate Commission Member Ballard asked Mr. Freeman if he had applied for a permit in the past. Mr. Freeman said he had not.

**COMMISSION MEETING****FEBRUARY 27, 2001**

Mr. Stangler, adjacent landowner, spoke in opposition to the project. He said he had signed the waiver originally in May 1999, but that the final design did not agree with what he had been told. He said the applicant had 122 feet of shoreline in the other direction and did not need to build the new structure in front of his view. He stated that another purpose for his opposition was to see if the rules could be changed so that localities could not authorize construction without the applicant getting the proper permits from the Commission first. Comments are part of the verbatim record.

Mr. Ballard asked Mr. Stangler if he had withdrawn his protest. Mr. Stangler responded that he had not.

Mr. Wayne Dirosario, Westmoreland County Board of Supervisors, Colonial Beach District, spoke on behalf of the applicant. He said he had been present when the Board considered Mr. Freeman's case, and that both sides had an opportunity to present their information. Comments are part of the verbatim record. Mr. Hull asked Mr. Dirosario if the project was in his election district. Mr. Dirosario responded that it was not.

Associate Commission Member Birkett commented that the building permit letter from the County to Mr. Freeman did not note anything about additional permits being required from the Commission. He also noted some conflicting information about the status of Mr. Spangler's opposition to the project. Comments are part of the verbatim record.

Associate Commission Member Hull stated that he regretted that the matter had come before the Commission in this manner. He noted that the paperwork for the case could have been confusing and that he saw no purpose in requiring the applicant to relocate the project. He said he did not like that the adjacent landowner had to look at the new structure more than the applicant. He then made a motion to approve the application with triple royalty fees and a civil charge in lieu of further enforcement action. It was determined that the appropriate civil charge would be \$1200. The motion was seconded by Mr. Williams. Associate Commission Member Ballard stated that he could not support the motion. He said Mr. Spangler's property rights had been trampled on, and although this may not have been done intentionally, the effect was the same. The motion was adopted on a vote of 5-4 with Associate Commission Members Ballard, Cowart, Gordy, McLeskey voting no.

After the item was concluded, Mr. Cowart made a motion asking the Commissioner to direct staff to work on the problem of contractors constructing projects without the proper permit from the Commission. Associate Commission Member Gordy seconded the motion and it was adopted unanimously. The matter was referred to the Habitat Management

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

Advisory Committee.

Civil charge.....	\$ 1200.00
Permit Fee (Triple).....	<u>300.00</u>
Total \$	1500.00

\*\*\*\*\*

- 10. **DEPARTMENT OF THE NAVY, #01-0187**, requests authorization to install an anchored/floating buoy line extending 1,650 linear feet between Berth 22 and Berths 44/45 of the Norfolk Naval Shipyard along the Southern Branch of the Elizabeth River in the City of Portsmouth. The line will consist of 3/8-inch cable strung through a series of floats, illuminated every 50 feet, with a single mooring buoy located 250 feet channelward of Berth 22 to act as a protective waterfront barrier and line of demarcation for the eastern boundary of the restricted area.

Mr. Jay Woodward, Environmental Engineer, stated that the only difference in this case from what the Commission heard in the previous month related to the Norfolk Naval Base and Little Creek Amphibius Base was that the proposed security structure was entirely inside of the existing security zone established by the Navy in CFR 334-290. He said staff recommended approval of the passive, anti-terrorism structures as proposed.

Commissioner asked if anyone was opposed to the project. No opposition was presented.

Associate Commission Member Ballard made a motion to approve the project. The motion was seconded by Mr. Birkett and adopted unanimously.

\*\*\*\*\*

- 11. **MARINE RESOURCES COMMISSION, #00-2039**. The Fisheries Management Division requests authorization to construct a Triangular shaped subtidal oyster reef sanctuary with three 60-foot wide sides measuring 320 feet, 365 feet and 440 feet long, constructed of oyster and clam shell at 37° 34' 39.0" North Latitude and 76° 19' 10.0" West Longitude in the Rappahannock River between Sturgeon and Broad Creeks in Middlesex County.

Chip Niekirk, Environmental Engineer, briefed the Commission and presented slides on the location and description of the oyster reef sanctuary. Comments are a part of the verbatim record. He said this would be a subtidal reef that would be comprised of 7,000 cubic yards



**COMMISSION MEETING****FEBRUARY 27, 2001**

of clam and oyster shell. He also stated that it was a component of the Oyster Heritage Program. The reef would occupy approximately 58,400 square feet of submerged bottom within Public Ground Number One in Middlesex County. He said the reef would be marked, as required by the Coast Guard for navigational obstruction, using diamond-shaped day boards on piles indicating the corners of the structure.

Mr. Neikirk said that the Virginia Institute of Marine Science (VIMS) stated the individual and cumulative adverse environmental impacts associated with the project will be minimal.

Mr. Neikirk further indicated that Mr. Scott Hardaway, from VIMS, had commented on the viability of the reef and the potential impacts from waves. He said Mr. Hardaway had stated that the reef would be exposed to similar wave climates as the Amoco Reef in the York River and the wreck Shoal Reef in the James River. Neither had been reduced in height by wave action.

Mr. Neikirk stated that if the reef was properly marked, staff did not believe the reef would adversely impact navigation or other public uses of the waterway. Accordingly, staff recommended approval of the reef as proposed, with the condition that it be marked in accordance with all applicable U.S. Coast requirements.

Marshall Dale Taylor, President of the Virginia Watermen's Association, addressed the Commission. Mr. Taylor commented that this reef was going on a natural public rock location. He said he had talked with people that lived in the area and they did not believe that the Commission should build a rock on top of a natural rock that had produced oysters for many years. He said the oysters caught on that reef this season were five to six inches in size. He then asked the Commissioner to consider locating the reef someplace else. Comments are a part of the verbatim record.

A discussion followed between Mr. Taylor and the Commission regarding the proposed reef's location. Comments are a part of the verbatim record.

Veremdell Hudnall, representing himself, commented that he had worked the Rappahannock River since he was 20 years old and he was now 75 years old. Mr. Hudnall said he did not understand why the Commission was covering up the oysters that were already there to place a reef over good producing oyster grounds. He then requested information on why the Commission was building this reef.

Commissioner Pruitt responded that this reef was the result of a lot of scientific work and input from the industry, which developed into the Oyster Heritage Program. Mr. Pruitt

**COMMISSION MEETING****FEBRUARY 27, 2001**

stated that the program involved the Department of Environmental Quality, VMRC, the Virginia Institute of Marine Science, and private clubs such as the Norfolk Rotary Club, the Chesapeake Bay Foundation and others. Commissioner Pruitt also commented that there was historic evidence of how those reefs were years ago, and the goal was to build a certain amount of reefs in the James, Mobjack, Rappahannock River, Tangier and Pocomoke Sound. He said these reefs would be at the same contours and constructed as the original reefs were, and they would forever become a sanctuary and a place where broodstock could be produced without any interference from outside sources. Commissioner Pruitt also stated that in the overall program there would still be areas, as in the Great Wicomico, where the traditional things would still be done such as bagless dredging and the transplanting of seed.

Commissioner Pruitt also commented that this project was before the Commission today requesting an environmental permit as other citizens or companies making permit requests.

After a brief discussion about the reef, Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams commented that he disagreed with VIMS' statement that there

would be minimal individual and culmulative adverse environmental impacts associated with the project. He said he was as familiar with that bottom as the back of his hand, and he felt this location was the wrong place to put the reef because it was a natural spawning rock with large oysters. Mr. Williams also commented that the money would be better justified and better spent to be build the reef in another area, which would give another area the chance to have oysters. Mr. Williams stated that he supported the reef program, but felt the the proposed location was not a wise decision.

Associate Member Hull commented that he had the greatest respect for Mr. Williams' opinion and since serving on the Commission he had become well aware that the watermen are very involved and knowledgeable. They contribute a great deal to what the Commission discusses and he agreed with Mr. Williams comments because he knew a great deal about the Rappahannock as much as anyone else that was alive. Mr. Hull also stated that while he supported the reef program, he would like to see the reef built in another location.

Commissioner Pruitt asked Mr. Hull what he thought about VIMS' position. Associate Member Hull commented that he understood VIMS position, but the scientist had not been out in the Rappahannock River on a daily basis for 30 to 40 years, experiencing the

**COMMISSION MEETING****FEBRUARY 27, 2001**

conditions that Mr. Williams and the watermen had experienced. Therefore, he believed that there was a difference in having laboratory experience and actually having daily experience of being on the water like the watermen and Mr. Williams.

Associate Member Cowart asked if there was another place in the lower river area that staff, VIMS, and Mr. Williams and several watermen could agree on an area as being the proper area for the location for the reef.

Dr. Wesson presented information on the other proposed reef sites. He said they had listened to all the comments and they had made a compromise on the proposed site. Comments are a part of the verbatim record. Dr. Wesson also stated that as a part of the Oyster Heritage Program and the new Bay agreement, 10 per cent of the natural bottom would be set aside as a sanctuary and 90 per cent would remain for harvest. He said if the proposed reef site was moved further up the river, that area would be without a sanctuary. He said it was the consensus of the scientists in Virginia, that in dealing with diseases, areas would have to be left alone and the oysters die from diseases, so that the oysters could be weeded out by natural selection in order to get to the oysters that were survivors. Dr. Wesson further stated that was the reason why areas would have to be left alone for the biological process, and then they could harvest from the remaining areas. He said this site would be the minimum area they would have to give up to reach their goal. Dr. Wesson also stated that they provided work for the watermen in this project so that it would make up for the areas the watermen could not harvest.

A brief discussion between Commission members and Staff followed regarding the disease tolerant oysters and reef locations. Comments are a part of the verbatim record.

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

Associate Member Williams moved to disapprove placing the reef in the proposed location and that it be moved to another area. Motion seconded Associate Member Hull. Motion failed 3 to 5.

Commissioner Pruitt then requested another motion.

Associate Member Ballard commented that he had a great deal of respect for Mr. Williams and Mr. Williams might be correct in this particular case. However, he had to look at the total Oyster Heritage Program being developed in the Rappahannock River. Mr. Ballard said after looking at the charts, this location was an integral part of the Oyster Heritage Program and they were too far down the road on this project, and this program should not

**COMMISSION MEETING****FEBRUARY 27, 2001**

be turned back now. Associate Member Ballard then moved to approve the reef location as presented. Motion was seconded by Associate Member Birkett. Motion carried 5 to 3.

\*\*\*\*\*

**12. DISCUSSION: 2001 Oyster Replenishment Program.**

Dr. Wesson, Head-Conservation and Replenishment, briefed the Commission and the proposals for 2001. Dr. Wesson said that it was questionable about moving seed this year and they had been adding brood stock to the Piankatank River and the Great Wicomico Rivers since 1996. He said there had been fair and dependable spat sets since 1996. He said there was a large spat set in the Piankatank River last year and a lot of seed was removed from that area. He said some of the seed was made available to private industry. Private industry used the same watermen to move the shell to private grounds, industry would then reimburse the State a bushel of shell for every bushel of seed planted. Dr. Wesson said the Potomac River also used some of those seeds, and reimbursed the State a bushel of shell for a bushel of seed.

Dr. Wesson said they only had a moderate spat set this year. He said the Rivers that were doing well in the past were in bad shape this year because the salinities were very high this Spring. Because of the high salinity, they were setting aside a small amount of money for seed. He said the only safe place would be to move seed to Bowlers Rock where the salinity was 10. He said that PRFC had many more acres of low salinity areas on the Virginia side than Virginia did. Dr. Wesson said that some oysters were moved that had MSX in the areas that were closer to 10 to kill the MSX. PRFC had some of those areas available and PFC expressed an interest in moving some of Virginia's seed to their areas and provided a bushel of shell for ever bushel of seed moved.

Dr. Wesson said he was also recommending that seed be available again to private industry to seed those areas that had low salinity, and would be safer than most of the public grounds. Staff would again make recommendations to private industry of the risk involved.

Dr. Wesson also mentioned the shell planting proposals throughout the Bay. He said the availability of cultch was the largest issue facing the entire Bay for the next several years. He said an increase in funding was predicted for the next ten years to reach the 10-year goal of a ten fold increase in oysters. However, there was not enough fresh shell in the Bay for oyster restoration. He indicated that Maryland had always done their restoration with dredging fossil shells, and shells had always been available to Virginia, but because Maryland's programs were getting so large, they were concerned with how many dredged shell deposits there were. So, they had cut off every state from getting their shells. He said

**COMMISSION MEETING****FEBRUARY 27, 2001**

Maryland was also looking at alternative ways for getting shells as well as trying to recycling shells. Dr. Wesson said they were trying to address the cultch issue by trying to do more than one track at the same time. He said they were pursuing the dredging of shells and would continue the cultch test.

Dr. Wesson said that the Commission had reef work in the southern part of the Bay. He said they had a grant with Langley Air Force Base and the City of Hampton to build a reef off of Langley Air Force Base where they were having an erosion problem and doing some erosion work. The reef was configured to help with the erosion problem.

Dr. Wesson said the use of vitrous china had done very well in the tests that were done if the china was broken down into shell size pieces. He said they did not know how much of that would come out in the waste stream and come into the land fill, and if there was a way to pull it out. He said the City of Hampton had taken on the project to see if they could work with waste management to do an experiment.

Dr. Wesson said they were working on another reef with the Norfolk Rotary, who had set a goal this year of \$75,000 for a reef in the Elizabeth River. The Bay Foundation had a program to grow oysters and give them to the brood stock program. He said the Bay Foundation was trying to raise a million dollars. Dr. Wesson said with the citizens and children raising oysters it might bring the total up to a million and half oysters to be donated for the program. He said they had been working with the granting agencies to get financial credit for the donations based on every oyster that was donated to the State.

Dr. Wesson said that the Bay Foundation's growout area in Sarah's Creek was a condemned area for shell fish and the Foundation would like to take the oysters out and give them to the Commission's reef sanctuaries. These oysters would not be for human consumption. Dr. Wesson said they had talked with Law Enforcement and the Health Department and they were comfortable with giving them a permit to allow oysters to be taken out of the polluted area and placed on the sanctuary areas.

Dr. Wesson said they would continue the oyster program on Seaside, which is approximately \$80,000 worth of shell planting. In addition, a private lease assistance program had been instituted last year, and when the lease forms were mailed, an application was included that could turn projects over to the Commission and that effort would be approximately \$50,000. Dr. Wesson then presented the funding sources as follows:

**FUNDING SOURCES**

**COMMISSION MEETING****FEBRUARY 27, 2001**

NON-FEDERAL	Amount	In-Kind Value
State:		
	\$589,000- \$629,000	
Indirect Cost Recoveries (ICR)	\$95,000	
Grants:		
Recreational Fishing Grant (Rappahannock; RFG)	\$100,000	
Oyster Reef Heritage Foundation (ORHF)	\$150,000	
Norfolk Rotary Club (Elizabeth River; NRC))	\$60,000	
Chesapeake Bay License Plate Fund(CBLF)	\$30,000	
Chesapeake Bay Foundation and Private Individual Oyster Donations 1,500,000 oysters @ \$0.25/oyster		\$375,000
TOTAL NON-FEDERAL FUNDS: \$1,024,000 - \$1,064,000		\$375,000
FEDERAL		
Langley Air Force Base (LAFB)	\$20,000	
NOAA Community Based - Langley AFB (NOAA)	\$34,710	
DEQ - Coastal Zone - Oyster Heritage Program (Rappahannock; CZM, OHP)	\$500,000	
EPA-Chesapeake Bay Program Alternative Cultch Testing Grant (EPA)	\$349,670	
Corps of Engineers - OHP - Rappahannock (COER)	\$583,000	
Corps of Engineers - Tangier/Pocomoke (COETP)	\$800,000 - \$1,000,000	
TOTAL FEDERAL FUNDS:	\$2,287,380	
GRAND TOTAL		\$3,686,380 -
\$3,926,380		

**COMMISSION MEETING****FEBRUARY 27, 2001**

Broodstock Program \$49,075 ICR

## Piankatank River Seed

5,000 bushels to Bowlers Wharf  
in the Rappahannock @ \$2.00/bu. \$10,000

5,000 bushels to Morattico Bar  
in the Rappahannock @ \$2.00/bu. \$10,000  
(if the salinity drops less than 14 ppt or  
if disease levels are less than in the Great  
Wicomico)

10,000 bushels to the upper Potomac River  
\$3.00/bu. = \$30,000 and replacement of 10,000  
bushels of shell.

10,000 bushels to private industry for  
replacement of 10,000 bushels of shell

## Great Wicomico River Seed

5,000 to 10,000 bushels to the Potomac River  
Fisheries Commission @ \$2.00/bu. = \$20,000\bu.  
and replacement of equal amounts of shell

## Subtotal seed

\$10,000 - 20,000 GF

SHELLPLANTING (Except Tangier - Pocomoke  
and OHP)

## Coan River

Approximately 15,000 bushels of oyster shell  
will be sprinkled over natural bars  
(500-1,000 bu./acre)

15,000 bu. @\$0.80/bu. of oyster shell \$12,000 GF

**COMMISSION MEETING****FEBRUARY 27, 2001**

## Yeocomico River

Approximately 15,000 bushels of oyster shell will be sprinkled over natural bars (500 - 1,000/bu. acre)

15,000 bushels at \$0.80/bu. of oyster shell \$12,000 GF

## Great Wicomico River

Approximately 30,000 bushels of oyster shells will be added at various rates (500 - 3,000 bu./acre) to the seed beds.

30,000 bushels @\$0.90/bu. of oyster shell \$27,000 GF

## Chesapeake Bay - Deep Rock

20,000 bushels of oyster shell from the Northern Neck @\$1.35/bu. \$27,000 GF

20,000 bushels of oyster shell from the Piankatank area @\$1.00/bu. \$20,000 GF

## Piankatank River

60,000 bushels from the Northern Neck @ \$1.35/bu. \$81,000 GF

Total Shellplanting (Except OHP and COE, Tangier-Pocomoke Project) \$179,000

**BAGLESS DREDGING**

## Great Wicomico

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

**OYSTER HERITAGE PROGRAM**



**COMMISSION MEETING****FEBRUARY 27, 2001**

## Bed Preparation - Cleaning

Bed cleaning @ 31.00 acre	\$40,000 CZMOHP
---------------------------	-----------------

\$45,000 ICR

## Shellplanting

160,000 bushels of oyster shells @ \$0.80/bu. from the Rappahannock River area	\$128,000 CZMOHP
---	------------------

99,000 bushels of oyster shells @ \$1.35/bu. from the Northern Neck	\$133,650 CZMOHP
--	------------------

120,000 bushels of clam shells @ \$0.80/bu. from Norfolk	\$90,000 CZMOHP
---	-----------------

919,337 bushels of dredge shells @\$1.00/bu. (estimate)	\$133,337 GF
--	--------------

\$150,000 ORHF

\$53,000 CZMOHP

\$583,000 COE  
Reef Construction

Alternative Reef Cultch Studies	\$349,670 EPA \$100,000 RFG
---------------------------------	--------------------------------

Total Oyster Heritage Program	\$1,805,657
-------------------------------	-------------

## COE - TANGIER - POCOMOKE SOUND PROGRAM

## Bed Cleaning

Watermen will again be hired to clean the reef sites and harvest areas of live oysters prior to cultch placement.

Bed cleaning @\$1.00/bu.	\$60,000 GF
--------------------------	-------------

**COMMISSION MEETING****FEBRUARY 27, 2001**

## Shellplanting

Oyster house shells from the Northern Neck:

61,000 bushels @ \$1.35/bu.	\$82,350 GF
-----------------------------	-------------

Conch shells from the Eastern Shore:

60,000 bushels @ \$1.00/bu.	\$60,000 GF
-----------------------------	-------------

## Dredged Fossil Shells

400,000 to 600,000 bushels @\$1.00 (estimate)	\$400,000 - 600,000 COE
--	-------------------------

## Reef Construction

Dredged Fossil Shells:

100,000 bushels/reef for 4 reefs = 400,000 bushels @ \$1.00/bu. (estimate)	\$400,000 COE
---	---------------

Total - COE Tangier-Pocomoke Sound Prog.	\$1,002,350 - \$1,202,350
--	---------------------------

**REEF CONSTRUCTION**

Funds are available to construct 2 new reefs in the Hampton Roads area.

Back River - this reef will be built in conjunction with a shoreline restoration project at Langley Air Force Base.

59,260 bushels @\$1.35/bu. NOAA	\$80,000 LAFB, CBLF,
------------------------------------	----------------------

Eastern Branch of the Elizabeth River - Ford Reef

44,444 bushels @ \$1.35/bu.	\$60,000 NRC
-----------------------------	--------------

Total Reef Construction:	\$140,000
--------------------------	-----------

**COMMISSION MEETING****FEBRUARY 27, 2001**

## AQUACULTURE BROODSTOCK PRODUCTION

Chesapeake Bay Foundation, School Children, Citizens

1,500,000 oysters will be donated in 2001 with value \$375,000

## SEASIDE EASTERN SHORE

South Bay - New Inlet

30,000 bushels of harvested shells @ \$1.00/bu.	\$30,000 CZM
--	--------------

Oyster

10,000 bushels of house oyster shells @\$1.00/bu.	\$10,000 GF
--	-------------

Kegotank

20,000 bushels of harvested shells @\$1.00/bu.	\$10,000 CZM \$10,000 GF
---	-----------------------------

Metompkin

20,000 bushels of harvested shells @\$1.00 bu.	\$20,000GF
---	------------

Total Seaside:	\$80,000
----------------	----------

PRIVATE OYSTER GROUND LEASE

ASSISTANCE GRANTS

\$50,000

TOTAL 2001 PROGRAM COSTS:

\$3,322,082 - 3,532,082

**APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2001 OYSTER REPLENISHMENT PROGRAM**

General:

**COMMISSION MEETING****FEBRUARY 27, 2001**

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 28.2-550 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.

A portion of the available oyster seed in the Piankatank and Great Wicomico Rivers 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 in 1,000 bushel increments to all interested Virginia participants. Participants may have more than one 1,000 bushel lot. If there is more interest by private industry in seed oysters than there is available, participants will be selected by lottery. 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 and Great Wicomico Rivers in quantities equal to the seed harvest. A portion of the available oyster seed will also be available to the Potomac River Fisheries Commission for the same direct exchange of equal amount of seed oysters (bu.) for an equal amount of planted oyster shells (bu.).

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

**COMMISSION MEETING****FEBRUARY 27, 2001**

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 2001 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 2001 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

Grant Award Procedure: The Oyster Replenishment Program will administer a Private Lease Assistance Grant program. All private lease holders were notified of this assistance by letter. Applications were accepted until November 30, 2000. Applications will be reviewed and ranked, and contracts prepared for successful grantors. Payment will be made after verification of completion of the work.

If the conditions of the oyster resources changes, or if the Conservation and Replenishment Department 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 2001 Replenishment Program.

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

Commissioner Pruitt placed the matter before the Commission

Associate Member Hull moved to approved both parts of the staff recommendation. Motion seconded by Associate Member Birkett. Motion carried unanimously.

\*\*\*\*\*

**13. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC 20-620-10 et. seq. to establish summer flounder fishing regulations for 2001.

Jack Travelstead, Chief-Fisheries Management, requested approval of Regulation 4 VAC

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

20-620-10 located in the Commission's books.

Commissioner Pruitt then opened the public hearing.

Richard Welton, representing the Coastal Conservation Association, addressed the Commission. He said Virginia's recreational flounder issue was taking the back seat of the rebuilding process coastwide and he felt the other states were taking advantage of Virginia. Mr. Welton indicated that Virginia had taken more cuts than were mandated by the ASMFC for the past two years. Mr. Welton said that Mr. Travelstead had done an excellent job in representing Virginia and aggressively representing Virginia in getting Virginia credit for taking cuts that other states were not taking. He said Virginia was the only state recreationally that was in compliance. Comments are a part of the verbatim record.

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

Associate Member Ballard moved to adopt the amendments to Regulation 4VAC 20-620-10 et. seq. Pertaining to Summer Flounder. Associate Member White seconded the motion. Motion carried unanimously.

\*\*\*\*\*

**14. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC 20-910-10 et. seq. to establish scup fishing regulations for 2001.

Jack Travelstead, Chief-Fisheries Management, gave a brief statement regarding establishing the increase in the minimum size limit of scup from seven inches to eight inches.

Commissioner Pruitt opened the public hearing.

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

Associate Member Ballard moved to adopt amendments to Regulation 4VAC 20-910-10 et. seq., dealing with scup. Motion seconded by Associate Member White. Motion carried unanimously.

\*\*\*\*\*

**COMMISSION MEETING****FEBRUARY 27, 2001**

**15. PUBLIC HEARING:** Consideration of Amendments to Regulation 4VAC 20-950-10 et. seq. to establish black sea bass fishing regulations for 2001.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He indicated that each year the Atlantic States Marine Fisheries Commission met in joint session with the Mid Atlantic Management Council in December to set recreational measures for flounder, scup and black seas bass. Mr. Travelstead explained that the measures before the Commission were to increase the minimum size limit for black sea bass from 10 inches to 11 inches; decrease the possession limit from 50 fish to 25 fish; and to have a new closed season from March 1 through May 9. Mr. Travelstead also stated that the charter boat industry's black sea bass catch was almost 100 percent of their catch during March and April.

Mr. Travelstead said this was a compliance issue and if the regulation was not enforced, this would cause a moratorium of the black sea bass industry. Mr. Travelstead said they had sent a request to the Atlantic States Marine Fisheries (ASMFC) Commission to consider an amendment to the Management Plan that would allow for conservation equivalency, if adopted, and ASMFC had agreed to discuss that issue. However, the earliest that provision would be available would be next year. Mr. Travelstead said that some of the e-mails he had received suggested that the Regulation be adopted, but establish the effective date for May when it was projected that the federal rules would be effective.

Commissioner Pruitt opened the public hearing.

Jim Diebler, representing the Virginia Charter Boat Association, addressed the Commission. He said because of the geographical location of Virginia, the watermen in the northern states were not affected by closing the season down until May 9, because they did not start fishing until the first of May. He said they proposed to have a 1 March to 9 April season, which would not be problem, and give up some time from July 15 to August 14 to make up for that time, which would give them more of a reduction than the month that the federal government had set. Other comments are a part of the verbatim record.

Kevin Farley, owner and operator of the "Beverlee B Etta" Lynnhaven inlet, co-owner of the Vessel First Chance out of Lynnhaven Inlet, and a member of the Virginia Charter Boat Association addressed the Commission. Mr. Farley said he had a commercial and recreational license to fish for black sea bass and he regularly received mailings from the National Marine Fishery Service. However, he was not notified about the overages. Other comments are a part of the verbatim record.

Veremdell Hudnall, stated that he lives on the Potomac. He asked for the location of areas that a 10-inch black sea bass could be caught. Other comments are a part of the verbatim

**COMMISSION MEETING****FEBRUARY 27, 2001**

record.

Chris Ludford asked what year was the voluntary 50 bag limit on the black sea bass implement and if there was any credit for that voluntary measure. Mr. Travelstead responded that retroactive credit would not given for that voluntary measure.

Commissioner Pruitt closed the public hearing.

Associate Member Ballard stated if the Commission adopted a regulation today providing that the fishery would be closed until the end of March, this would provide staff several weeks to communicate with ASMFC, about conservation equivalency. Mr. Travelstead indicated that the Management Board was meeting on Monday to discuss other things and they could bring that issue up. A discussion followed regarding being out of compliance if VMRC closed the black sea bass fishery until the end of March. Comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Ballard moved to adopt the size limit and other provisions in the regulation with the exception of the recommended closed season, and that the season be closed starting March 1 through the last day of March. Mr. Ballard also requested that staff communicate with ASMFC to see if there was a possibility of instituting a conservation equivalency closure and at that time the Commission would consider an addition to the closure period. Associate Member Gordy seconded the motion. Motion carried unanimously.

\*\*\*\*\*

**16. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC 20-270-10 et. seq. to modify the boundary of the closed area for fish pots.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on recommendations of Regulation 4 VAC 20-270-10. Mr. Travelstead indicated that there was a chart in the Commission evaluations which showed the new and old boundary lines.

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

Associate Member Cowart moved to accept the amendments to Regulation 4 VAC 20-270-10 et. seq. Motion seconded by Associate Member Hull. Motion carried unanimously.



**COMMISSION MEETING****FEBRUARY 27, 2001**

\*\*\*\*\*

**17. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC 20-995-10-et. seq. to establish additional requirements for persons participating in the random drawing for a commercial hook-and-line license.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the provisions that were established to enter the random drawing for the commercial hook-and-line fishery. Mr. O'Reilly said there is be a requirement that there be a 1000 pound seafood reporting for the previous two years in order to be able to transfer into the fishery. He said after reviewing the Minutes of the Task Force meeting in July, it was determined that the intent of the provision should be the same criteria across the board including the lottery applicants.

Mr. O'Reilly then recommended the adoption of subsection 4 VAC 20-995-20 (C) as part of the permanent regulation.

Commissioner Pruitt opened the public hearing.

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

Associate Member Hull moved to adopt the amended subsection 4 VAC 20-995-20 (C) as part of the final regulation 4 VAC 20-995-10 et. seq. Motion was seconded by Associate Member White. Motion carried unanimously.

\*\*\*\*\*

**19. RECOMMENDATIONS** of the Recreational Fishing Advisory Board.

Jack Travelstead, Chief-Fisheries Management, gave the Commission members copies of 25 comment letters that staff had received recently. He said one letter supported the staff proposals and the rest were opposed to the proposals.

Mr. Travelstead briefed the Commission on the Recreational Fishing Development Fund for Virginia American Shad Restoration Program. He said that the Wallop-Beaux funds were not available in 2001 to cover the \$267,000.00 cost of the program. The Commission had approved \$70,000.00 to be used from the Recreational Fishing Development Fund. He said no funding was received from the General Assembly for the program. Mr. Travelstead

**COMMISSION MEETING****FEBRUARY 27, 2001**

explained that other funding sources had been found, but they were still short \$99,000. He then presented slides that showed the funding sources as follows:

\$ 70,000.00	VMRC Recreational Fishing Development fund
46,000.00	VDGIF in-kind services
25,000.00	Corporate Donation
20,000.00	Department of Environmental Quality
<u>7,000.00</u>	VMRC indirect cost recoveries
\$168,000.00	

Mr. Travelstead said VDGIF had converted funding from a VMRC previously funded project, The Harborton Boating Access Project, to federal Wallop-Beaux funding which resulted in a savings of \$169,466 in saltwater license funds. He said that Secretary Woodley, VDGIF Director, Bill Woodfin, and Commissioner Pruitt suggested that the Recreational Fishing Advisory Board recommend the expenditure of the \$99,000.00 from those savings for the Shad Restoration Program and that the remaining \$70,466.00 be returned to the Saltwater Recreational Fishing Development Fund.

Mr. Travelstead further stated the Dr. Onley had said that based on his samples for the past several years, it did not appear that the stocks would make a comeback without some type of hatchery effort. Therefore, staff felt the Shad Program was beginning to show some success and now would not be the time to stop funding the program. He said they had tried to look at this issue as a resource restoration issue, and not a recreational or commercial one. Mr. Travelstead said the anglers were concerned that the shad fishery was a commercial fishery and the anglers license funds should not be use to fund the project.

Mr. Travelstead said another comment that came up at the public hearing was that the anglers could not support using saltwater license money as long as there was a commercial fishery in Virginia that harvest shad which is a coastal intercept fishery for American Shad. Mr. Travelstead said that several years ago, Virginia and all the other Atlantic Coast States negotiated an agreement to eliminate the Coastal Intercept Shad Fishery within five years, and to reduce that fishery by 40 per cent in the third year, which is 2002. That fishery would then be regulated so that it would be reduced by 40 percent and in two years the coastal intercept shad fishery would be eliminated. Mr. Travelstead said he felt that agreement should be honored.

Commissioner Pruitt opened the meeting to comments from the public.

Richard Welton, representing the Coastal Conservation Association and most of the recreational fishermen, addressed the Commission. He said the CCA felt it was wrong to

**COMMISSION MEETING****FEBRUARY 27, 2001**

use recreational money for shad research, because the anglers did not fish for shad. Mr. Welton said the saltwater recreational fishing fund had disbursed approximately one million dollars for shad restoration and the recreational fishermen did not want to spend their saltwater license money for shad. He also felt that this fund had become a target of the scientific community as an easy place for money. Comments are a part of verbatim record.

Jim Diebler, representing himself, addressed the Commission. Mr. Diebler said a lot of money had been money invested into this project and according to the scientist the project was beginning to work. Therefore, he thought the money should be used for this project. He said in some states the shad was a viable recreational fishery. Mr. Diebler also stated that he felt shad was important to the ecosystem of the Chesapeake Bay. Comments are a part of the verbatim record.

Joe Hicks, President of the Association of Independent Watermen and a member of the shad restoration project, addressed the Commission. He said he felt this was a very important project and that he had been involved with the project since the first meeting on the shad project. He said they fish seven days a week and when they fish for shad, it took up all their time. Mr. Hicks also commented that 80 percent of the adult shad collected in the upper James River were of hatchery origin. This was proof that there was very little natural recruitment going on in the River and that the Boshers's Dam fish passage facility in 2000 had doubled from the previous year. He said they were expecting a strong shad fishery this year from fish that was stocked in 1997. Comments are a part of the verbatim record.

Kelly Place, a commercial and recreational fisherman, addressed the Commission. Mr. Place gave statistical figures on how the recreational licensing fund had been used. Comments are a part of the verbatim record. Mr. Place also stated that he felt the recreational community had received benefits from the shad restoration program. He said he supported the Commission in whatever decision was made.

Ernest Bowden addressed the Commission. He said he fished shad in the ocean. Mr. Bowden said shad was an insignificant commercial fishery. He felt that too much money had been spent for the program, and to stop the program now was unwise. He also felt that the commercial fishing license funds had contributed a lot to the fisheries in Virginia because of the mandatory reporting, which benefited both the recreational and commercial fisheries. He said this year shad should have a big return. Comments are a part of verbatim record.

Bill Formacelli, representing the Peninsula Salt Water Sports Fishing Association, addressed the Commission. He asked if we were really protecting the shad or not, because they did not want to give their money away. Comments are a part of the verbatim record.

**COMMISSION MEETING****FEBRUARY 27, 2001**

Commissioner Pruitt commented that he agreed with both sides, Mr. Welton and staff, however, he felt Mr. Travelstead was right in this particular case. Mr. Pruitt said the shad fishery was a resource and the shad fishery would benefit everyone. He also thanked the Department of Game and Inland Fisheries for their prudent management of the Harbartone Project in order to have money returned to the fund. He then placed the matter before the Commission.

Associate Member Ballard said he felt everyone made a good presentation. However, he felt the right thing to do for the Commonwealth was to use \$99,000 of the \$169,466 from the funds returned to the Commission for the continuation of the shad restoration program. Mr. Ballard then moved to use the funds for the shad restoration program. Associate Member Hull seconded the motion. Motion carried unanimously.

Mr. Travelstead said he failed to mention that they also had received monies from employees of the agency and other agencies that would contribute to the shad project, which might reduce the \$99,000 by a small amount. He also mentioned that Mr. Roundtree, a member of the Recreational Fishery Advisory Board, indicated that he would also make a personal donation to the project.

\*\*\*\*\*

**20. SEA TURTLES:** Discussion and request for public hearing to consider measures to reduce mortality of threatened and endangered sea turtles.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the mortality of the sea turtles. He indicated that every Spring sea turtles migrate from south to north along the Atlantic Coast and they would get trapped in fishing gear, get caught on the rod and reel, get caught by trawlers, and caught in gill nets and die. However, sea turtles were protected by the Endangered Species Act. He said last year there were a large number of sea turtles stranded in North Carolina and Virginia, and the Federal government using their authority, prohibited all gill netting from the middle of May to the middle of June in the territorial sea of Virginia and the Lower Chesapeake Bay. Mr. Travelstead said that the federal law affected a large number of fishermen who set gill nets in that area, whether they caught turtles or not. Mr. Travelstead said the National Marine Fishery Service (NMFS) wrote to VMRC describing their action and asking for VMRC's assistance in documenting more precisely what fisheries were responsible for the sea turtle mortalities. NMFS also requested VMRC to take action this year to avoid the strandings in order that the federal government would not have to adopt a broad brush regulation that affected innocent fishermen.

**COMMISSION MEETING****FEBRUARY 27, 2001**

Mr. Travelstead further stated that Commissioner Pruitt established a Turtle Stranding Work Group, which consisted of commercial fishermen from the Lower Bay and offshore and some seafood processors, as well as representatives from the federal government and the Virginia Institute of Marine Science. He said they met a couple of times during the past six months and came up with proposed regulations that they believe would minimize the strandings. He said the approach would be to start with a multi-tier approach with the regulations and follow the strandings that would occur in the Spring, and should those strandings reach a pre-determined level, they would then try to pin point the fisheries responsible for those strandings, and would come back to the Commission and request that additional regulations be adopted for that specific gear causing the stranding problem. If strandings would continue to rise, and an additional action was needed, then it would be likely that NMFS would step in with more regulations to stop the fisheries. The proposals adopted by the Task Force are as follows:

1. Licensed gill net fishermen may fish no more than seven 1200-foot gill nets from May 1 - June 30.
2. No gill nets may be fished in a tied-down fashion from May 1 - June 30.
3. In the area from Smith Island Lighthouse south to North Carolina border, all gill nets with a mesh greater than 6 inches will be prohibited from June 1 - June 30.
4. The VMRC will attempt to document additional fishery-turtle interactions (example: pound net, pot fisheries, haul seine, and possibly recreational activity) and take additional regulatory actions in a "second tier" if necessary.
5. The Task Force recommends that the NMFS place similar restrictions on fisheries in the EFZ and, in particular, the monkfish gill net fisheries which utilize a tie-down gill net.

Acting Chairman White open the meeting for public comments. There being none, pro or con, Mr. White placed the matter before the Commission.

Associate Member Gordy moved to have a public hearing on the proposals. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

\*\*\*\*\*

COMMISSION RECESSED FOR A FIVE-MINUTE BREAK.

**COMMISSION MEETING****FEBRUARY 27, 2001**

**18. BLUE CRAB:** Report of the Crab Management Advisory Committee. Staff request for public hearing to establish regulation for 2001 crabbing season.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the request for a public hearing regarding the recent results from the Crab Management Advisory Committee Report from last week. Mr. O'Reilly said the Bi-State Blue Crab Advisory Committee and The Chesapeake Bay Commission recommended a 15% harvest reduction by 2003. After the VMRC Crab Advisory Committee meet in January, the Committee motioned that they would wait and see how the April stock assessment would be. If necessary, they would try and get the 15% reduction in 2002 and 2003. The Commission then recommended that the Advisory Committee have them make recommendations for 2001 to achieve a 5% reduction in the harvest. Mr. O'Reilly said the Commission specifically requested that the Committee address the sanctuary issue and how much of a reduction the sanctuary afforded. (A slide was presented demonstrating the sanctuary area) Mr. O'Reilly said, to date, no one had a report regarding the harvest reduction from the sanctuary area. He also stated that the sanctuary was not intended as a way to reduce harvest. He said after the meeting with the Advisory Committee, they were initially disappointed that there could be no credit assumed for the sanctuary. The Advisory Committee voted not to have the sanctuary as part of a reduction measure for 2001. However, they were looking for at least a 5% harvest reduction in 2001. Mr. O'Reilly stated that there were two ways to reduce fishing mortality rates: 1) reducing harvest; and 2) increase abundance.

Mr. O'Reilly then presented slides that showed harvest reduction by reducing the peeler pots from 400 to 300. He also presented information regarding reducing the harvest by taking a day off, part of a monthly closure, time of day limit, a gear reduction, bushel limit or gear modifications (establishing the large cull ring 2 5/16 in all mainstem bays and the sounds). Comments are a part of the verbatim record. He said Law enforcement met with fishery management to resolve questions regarding what to do after the daily curfew, for example, what do I do about moving gear, etc. He also talked about pros and cons of bushel limits. Mr. O'Reilly said the vote was 6 to 5 in favor of time limits. He said if time limits were the measure chosen, a start time would have to be determined.

Mr. O'Reilly said staff recommended advertising the following measures for public hearing on March 20, 2001: An 8-hour work day for the crab pot and peeler pot fisheries, with a start-up time no later than one hour before sunrise, and a 17-barrel limit for the crab dredge fishery and a reduction in the allowable harvest for licensed recreational crabbers.

Rom Lipcius, from VIMS, briefed the Commission on the population status for the blue crab, and discussed the sanctuary issue. He presented slides regarding the population stock

**COMMISSION MEETING****FEBRUARY 27, 2001**

status on spawning stock abundance, and larval abundance and post larval abundance. Comments are a part of the verbatim record.

Dr. Lipcius then presented information on expanding the spawning sanctuary and corridor into the nursery grounds. He said the benefit of the sanctuary corridor network was through a full sanctuary corridor network that protects the full life cycle. Dr. Lipcius said that sanctuary corridor network would allow multi-species management, consider compensation for the crabbers impacted by the sanctuaries (reallocation potentially higher harvest with other species), which would allow for collaborative management, enforcement, and assessment of effectiveness was one of the important advantages of the sanctuary. Dr. Lipcius also stated that they did have funds from NOAA to conduct the study of sanctuary corridor network.

Dr. Lipcius then talked about how they subdivided the Bay and gridded it out, and placed constraints on the extensions of the sanctuaries. The three basic constraints are: 1) they would have to link up spawning sanctuary and corridor, 2) have to incorporate seagrass in the shallows, and 3) incorporate a certain percentage of the population. He then requested that the Commission consider enacting two experimental sanctuaries, which represented approximately two percent protection of the population. He also stated that if the Commission decided to endorse this approach, two percent reduction could be used towards meeting the 5% in fishing mortality or have the two percent be used for next year's reduction.

Commissioner Pruitt gave persons from the audience an opportunity to speak that would not be attending the March 20 public hearing.

Joe Palmer, who works in the Lynnhaven area, addressed the Commission. He gave comments regarding all the regulations that had been placed on crabbers. He then read the State Code 28.2-203 (4) regarding shared burden on part-time crabbers. He felt that the 8-hour day time limit would work a hardship on the part time crabber. He felt that enforcing the current laws would also reduce the burden on the crabs. He also felt eliminating the number of pots in the water would also reduce the burden on the crabs and to keep the moratorium by not letting persons sell their licenses.

Pete Nixon addressed the Commission and requested that the public hearing not be limited to the one option set by the Crab Committee.

Commissioner Pruitt commented that was a good point.

Commissioner Pruitt placed the matter before the Commission.

**COMMISSION MEETING****FEBRUARY 27, 2001**

Associate Member Gordy moved to have a public hearing March 20, 2001 to establish regulation for the 2001 crabbing season and all measures listed on the staff handout. Associate Member Hull seconded the motion.

A discussion followed between Commission Members and staff regarding taking the sanctuary issues to public hearing. Comments are a part of the verbatim record.

Associate Member Cowart said he would like to amend the motion to include adding two additional areas to tie in the corridor located on the Eastern Shore or Western Shore and that the Blue Crab Committee come up with the recommendations for the two locations. The amendment was acceptable to the maker and seconder of the motion. Mr. Cowart also requested that this issue be presented to the Bi-State Committee and that VMRC would not want this measure to be effective this year, and fight the same fight with ASMFC that we get no credit for what was done ahead time.

Motion carried 7 to 1, with Mr. Williams voting no.

Mr. Nixon asked if more than one public hearing would be held? Commissioner Pruitt suggested that all persons be brought to the public hearing on March 20.

\*\*\*\*\*

**21. CONCH:** Request for public hearing to modify minimum size limit for conch imported from other jurisdictions.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission regarding a request for the public hearing to modify the current minimum size limits for conch imported from other jurisdictions. Mr. O'Reilly then presented a letter from Mr. Rick Robbins of the Chesapeake Bay Packing Company to the Commission. He also stated that the only problem staff had with the request were concerns that all the conch be imported by land from the Carolinas and the size limit being legal in those States. He said they had talked about this issue with law enforcement and they indicated that it could be a problem with the harvesters close to the North Carolina and Virginia waters, and then steam the conchs to North Carolina for legal landings. Mr. O'Reilly then requested advertisement at the March 20, public hearing.

Commissioner Pruitt asked if the public hearing could be held in April.

Mr. Robbins responded that the original reason for the March 20 public hearing was so that



**COMMISSION MEETING****FEBRUARY 27, 2001**

his boats could work down there in February or March, but that was not possible.

Associate Member Ballard then moved to take the matter to public hearing. Motion seconded by Associate Member Williams. Motion carried unanimously.

\*\*\*\*\*

**22. WILLIAM TREAKLE:** request for pound net license.

There being no comments from the Commission, Mr. Pruitt asked if there were any problems with staff's recommendation to reinstate Mr. Treakle's license.

Associate Member Cowart moved that staff recommendation be accepted. Motion seconded by Associate Member Hull. Motion carried unanimously.

\*\*\*\*\*

**23. PUBLIC HEARING:** The Clam Committee Requests the opening of the Hampton Flats Relay Clam Management Area April 1, 2001.

Chad Boyce, Fisheries Management Specialist, briefed the Commission. Mr. Boyce indicated there this would not be a request for a public hearing as stated last month, but approval for the new draft regulation, which would open and close the season this year. If approved, the regulation would follow Regulation 560, "Pertaining to Shellfish Management Areas," and would have to be amended next year. He said the Hard Clam Advisory Committee requested that the Hampton Flats hard clam harvest area for relay be opened one month earlier for the Hampton Roads Shellfish Management area. Mr. Boyce then explained to the Commission that the map in their packages showed the specific area, which was part of an pre-existing area and was approximately 2000 acres of the Hampton Roads Shellfish relay area. He said the request was to open the area April 2, and advertise for a public hearing in March.

Commissioner Pruitt commented that he thought the Commission had approved this issue previously so that it would not have to keep coming back to the Commission every year.

Commissioner Pruitt asked if the industry was divided on the issue. Mr. Insley said he heard that one comment today and if industry was divided he had no other indication. He said he was told the market would be better to open it in October.

Mr. Boyce indicated that staff had surveyed the area and it appeared that the clam numbers

**COMMISSION MEETING****FEBRUARY 27, 2001**

have increased since the survey was last done in 1996. Mr. Boyce said because this was a relay area the water temperatures 50 degrees or higher as required by the Health Department.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Birkett moved to take the matter to public hearing as requested. Motion seconded by Associated Member Williams. Motion carried unanimously.

\*\*\*\*\*

Jack Travelstead, Chief-Fisheries Management, addressed the Commission and stated that he had bypassed an issue regarding shad and he needed the Commission's approval for the procurement procedures. He said the law requires that the procurement procedures for procuring the services for the watermen for the shad restoration project be approved by the Commission. The proposed procurement procedures are as follows:

# NOTICE

## NOTICE OF REQUEST FOR PUBLIC PARTICIPATION IN THE 2001 SHAD RESTORATION PROJECT

**The Marine Resources Commission invites WRITTEN RESPONSE as to the availability of as many as 11 individuals for capturing American shad (shad) from the Pamunkey River (unless otherwise directed by the Virginia Department of Game and Inland Fisheries, VDGIF) for the 2001 shad restoration project. Project dates will be approximately March 16 through mid-May, 2001.**

**The procurement of services for the 2001 American Shad Restoration Project must be approved by the Commission, using its authority under Section 11-35G of the Code of Virginia.**

**PROJECT DESCRIPTION: A total of nine individuals will be selected as permitted project participants, and two individuals will be selected as project alternates. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries project coordinator. The need for participation by alternates in the project will be determined by the Virginia**

**COMMISSION MEETING****FEBRUARY 27, 2001**

**Department of Game and Inland Fisheries project coordinator.**

**For fishing days during the March 16 through mid-May, 2001 period, 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.**

**Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these 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. The lottery will be held on March \_\_\_\_\_ at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.**

**EVALUATION CRITERIA**

- 1. You must have participated in one or more of the 1992 through 2000 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.**
- 2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.**
- 3. You must be available to fish for shad during most of the days between mid-March and mid-May.**
- 4. You must have experience in fishing for shad in upriver areas, using drift gill nets.**

**Any person interested in participating in this project should send a written response describing his or her ability to meet the above criteria. In the response, include the name of the boat to be used and a current daytime telephone number where you can be reached.**

**COMMISSION MEETING****FEBRUARY 27, 2001**

**Written responses must be received by the main office of the Commission by 5:00 P.M., March 5, 2001 and should be sent to:**

**Jack G. Travelstead Chief, VMRC Fisheries Management Division,  
Virginia Marine Resources Commission  
2600 Washington Avenue, 3rd Floor  
Newport News, VA 23607**

Associate Member Ballard moved that we approve the procurement procedures for the shad restoration project. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

\*\*\*\*\*

**24. PUBLIC COMMENTS.**

William Hall, from Oyster, VA, addressed the Commission. He was concerned about the Nature Conservancy buying all the docks around Oyster. He said the organization was taking out the docks and not replacing them and putting concrete along the edge. He said there was not going to be any place left for them to tie up there boats. Commissioner Pruitt referred Mr. Hall to the County Board of Supervisors for that locality and request that they look into the issue because that matter did not fall under the jurisdiction of the Commission..

\*\*\*\*\*

Dale Taylor addressed the Commission. Mr. Taylor requested clarification on the oyster program that allowed an exchange of a bushel of shell for a bushel of seed oysters. Mr. Travelstead responded that was correct. Mr. Taylor also requested clarification of Dr. Wesson's presentation on the reef location, and his statement that the spat set would only travel three miles.

Dr. Wesson responded that for every bushel of seed planted, they would receive a bushel of shells. He said that private industry paid to have the seed planted and the shells transported.

Associate Member Williams commented that Mr. Taylor was concerned as to why the seeds were not placed back on State bottom instead of selling them to private industry and why the State was getting into the private enterprise.

**COMMISSION MEETING**

**FEBRUARY 27, 2001**

Commissioner Pruitt commented that private industry was volunteering to do the job and was paying to get the job done. Mr. Pruitt asked Mr. Taylor if he was interested in getting into the program.

A discussion followed regarding planting oyster seed on public and private ground. Comments are a part of the verbatim record.

Dr. Wesson responded to Mr. Taylor question regarding the location of the reef in Pocomoke and Tangier Sound. Comments are a part of the verbatim record.

\*\*\*\*\*

Everett Landon addressed the Commission and asked if he could get his hard crab pot license upgraded. Other comments are a part of the verbatim record.

Mr. Travelstead responded that there was no provision in the regulation to allow for a license upgrade because of the license sale moratorium.

\*\*\*\*\*

Steven Landon said he was reapplying for his commercial card and any type of crab pot license.

Commissioner Pruitt advised Mr. Landon that staff could work with him on getting a commercial card, but a moratorium was still in effect for getting a crab pot license.

\*\*\*\*\*

Eddie Landon addressed the Commission. He said he had the hard crab pot license and wanted the 300 peeler pot license.

Commissioner Pruitt also advised Mr. Landon that the moratorium prevented him from getting a peeler pot license.

There being no further business before the Commission the meeting adjourned at 5:15 p.m.



**COMMISSION MEETING**

**FEBRUARY 27, 2001**

William A. Pruitt, Commissioner

---

LaVerne Lewis  
Commission Secretary