

MINUTES

March 20, 2001
Newport News, Virginia 23607

The regular monthly meeting of the Marine Resources Commission was held on March 20, 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)
- John W. White)
- Kenneth W. Williams)

- Carl Josephson Assistant Attorney General

- Erik Barth Head-MIS
- LaVerne Lewis Commission Secretary

- Bob Craft Chief-Finance & Administration
- Debbie Brooks Executive Secretary

- Steven Bowman Chief-Law Enforcement
- Dana Mise First Sergeant
- Bruce Ballard First Sergeant
- Kenny Oliver Southern Area Supervisor
- Ray Jewell Northern Area Supervisor
- Burke Landon Marine Patrol Officer
- David Drummond Marine Patrol Officer

VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF

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

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Jack Travelstead
Rob O'Reilly
Roy Insley
Lewis Gillingham
Ellen Cosby
Mike Meier
Chad Boyce
Cory Routh

Chief-Fisheries Management
Deputy Chief-Fisheries Management
Head-Plans and Statistics
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist

Dr. Jim Wesson

Head-Conservation and Replenishment

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

Chief-Habitat Management
Deputy Chief-Habitat Management
Environmental Engineer
Environmental Engineer

Gerry Showalter

Head-Engineering & Surveying

others present:

Doug Wilkins
Kay Wilson
Frances R. Warren
Joseph Miller
Forrest S. Ward
Henry Hudgins
Earle Hall
Craig Palubinski
Jerry Lester
Nancy Taylor
David Bunch
Ben Lacy

Bruce Arnette
Mr. & Mrs. Gordon E. White
Jeffrey Warren
James Lewis
Mr. & Ms. Don L. Geeson
Charles A. Huffman
Preston & Mary Ann Pahilyauer
Josh O'Harra
Jane Oehmann
Damon Doumlele
Glen Croshaw
Lor Grantham-Traywick

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John Breelan	James Alexander
Jeannie Butler	Karla Havens
Dave Bugg	Pat Gilliland
Evelyn Morgan	Sue Joseph
Danny Soles	Billy Hill
Chris Ludford	Joe Palmer
William Webb	George Moon
Louis Whittaker	Jefferson H. Ghent
Jimmy Riggins	Frances W. Porter
Douglas F. Jenkins, Sr.	William Scott
Kelly Price	Randy Birch
Daniel Bock	Marshall Cox
Rick Stilwagen	Mark E. Wallace
Desmond Owens	Mickey Healey
Rick Bobins	Jeff Reid
Jeff Crockett	Joe Reish
Mike Nierman	J. A. Bradshaw
J. Hinson	H. J. Diebler
Terry Conway	Malindan Gallegis
Roger Parks	Lee R. Smith
Gay S. Johnson	Russell Gaskins
George Washington	W. Brian Pruitt
William S. Reynolds	Alan Nagiec
Pat Sanford	Rob Brumbaugh
Charles Waddell	Kenneth Boggess
Shawn Boggess	Tom Powers
Billy Moore	Larry Snider
Kelly V. Place	Becky Pittman
Ruth Ann Scott	Robert L. Lawsen, III
Deirare Bell	
James Woolford	
and others.	

Commissioner Pruitt opened the March meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Cowart, Gordy, Hull, White and Williams. Associate Member

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McLeskey was absent. Commissioner Pruitt established that there was a quorum. Associate Member Hull gave the invocation and Mr. Pruitt led the Pledge of Allegiance.

1. APPROVAL OF MINUTES of previous meeting.

Associate Member Hull moved for approval of Minutes as distributed. Motion seconded by Associate Member White. Motion unanimously.

**** APPROVAL OF AGENDA**

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

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

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

2A. U. S. COAST GUARD, #01-0216, requests authorization to extend two (2) existing 40-foot wide piers an additional 60 feet channelward and add four (4) 19-pile turning dolphins 15 feet off the ends of the proposed pier extensions at the Integrated Support Command Facility along the Elizabeth River in Portsmouth.

Permit fee..... \$ 100.00

2B. DEPARTMENT OF THE ARMY, #00-2237, requests authorization to construct 7,000 linear feet of rock breakwaters, extend three storm water outfalls and nourish 7,000 linear feet of shoreline at Fort Story situated along the Atlantic Ocean in Virginia Beach.

Permit fee..... \$ 100.00

2C. NORFOLK SOUTHERN CORP., #01-0121, requests authorization to maintenance dredge, by mechanical method, approximately 50,000 cubic yards of subaqueous bottom material on an annual basis to maintain maximum depths of -34 feet at mean low water adjacent to their Lambert Point Facility situated along the Elizabeth River in Norfolk.

Permit fee..... \$ 100.00

2D. UNITED STATES GYPSUM COMPANY, #00-2182, requests authorization to construct additional timber walkways, three mooring/breasting dolphins, a transfer house

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and hopper platform and mechanically dredge approximately 13,000 cubic yards of bottom material to provide maximum project depths of -33 feet mean low water at their facility situated along the Southern Branch of the Elizabeth River in Norfolk. Recommend an encroachment royalty of \$5,112.00 for the encroachment over 5,112 square feet of State-owned subaqueous land and a dredging royalty of \$5,850.00 for the dredging of 13,000 cubic yards of new material at a rate of \$0.45 per cubic yard.

Royalty for encroachment over 5,112 sq. ft. of State-owned subaqueous land @ \$1.00 per sq. ft.....	\$ 5,112.00
Royalty for dredging 13,000 cu. yds of new material @ \$0.45 per cu. yd.....	5,850.00
Permit fee.....	<u>100.00</u>
Total	\$ 11,062.00

2E. DOMINION VIRGINIA POWER, ET AL, #01-0053, requests authorization to install three (3) conduits for electric transmission and cable television lines that will replace overhead lines along a proposed 30-foot Virginia Power easement under Hoskins Creek, a tributary to the Rappahannock River in the Town of Tappahannock in Essex County. Recommend our standard instream conditions and a royalty of \$900.00 based on three (300) linear feet subaqueous crossings.

Royalty for three (300) ln. ft. subaqueous crossings @ \$1.00 ln.ft.....	\$ 900.00
Permit fee.....	<u>100.00</u>
Total	\$ 1000.00

2F. CREEKSIDE DEVELOPMENT CORP., #01-0063, requests authorization to install a temporary culvert crossing consisting of three (3) 60-inch by 48-foot pipes for construction access impacting Tomahawk Creek, a tributary to Blackwater Creek in the City of Lynchburg. Recommend our standard instream construction conditions and a royalty of \$2,000.00 for the 2,000 square feet of encroachment permitted assessed at \$1.00 per square foot.

Royalty for encroachment of 2,000 sq. ft. @ \$1.00 per sq. ft.....	\$ 2,000.00
Permit fee.....	<u>100.00</u>
Total	\$ 2,100.00

2G. EVAN ENERGY COMPANY, LC, #01-0188, requests authorization to install by directional bore method a submerged natural gas gathering line beneath the Powell River,

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approximately 250 feet downstream from its confluence with Yellow Creek, in Lee County. Recommend approval pending expiration of the public comment period on March 25, 2001, and a royalty of \$115.00 for the encroachment beneath 115 linear feet of State-owned bottom at a rate of \$1.00 per linear foot.

Royalty for encroachment of 115 ln. ft. of State-owned bottom @ \$1.00 per ln. ft.....	\$	115.00
Permit fee.....		<u>100.00</u>
Total	\$	215.00

2H. VIRGINIA CENTER INC., #98-0211. Requests a permit modification to increase the previously authorized width of a new bridge over the Chickahominy River between Henrico and Hanover Counties from 60 feet to 72 feet. Recommend a royalty of \$300.00 for the additional encroachment over 600 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Royalty for encroachment over 600 sq. ft. State-owned submerged land @ \$0.50 per sq. ft.....	\$	300.00
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There being no comments, pro or con, on the page two items, Associate Member Gordy moved to approved the eight page two items as presented. Motion was seconded by Associate Member White. Motion carried unanimously.

- 3. EXECUTIVE SESSION** (not necessary).
- 4. 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. Continued from the February 27, 2001, Commission meeting.

Randy Owen, Environmental Engineer, briefed the Commission and presented slides on the location and description of the project. Comments are a part of the verbatim record. Mr. Owen said that this was an appeal of the Virginia Beach's Wetlands Board decision of December 18, 2000 to deny a permit to Kenneth Wilkins to construct and backfill 1,050 linear feet of steel sheetpile bulkheading involving a coastal primary sand dune and beach in Virginia

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Beach.

Mr. Owen indicated that the Commission had reviewed this project on appeal at their October 24, 2000, meeting and voted to remand the matter back to the Virginia Beach Wetlands Board for further consideration. He said the Commission gave specific instructions for the Board to reconsider the project's economic impacts, Mr. Wilkins' rights as a property owner in the Sandbridge area, and to give additional consideration to the questions raised by staff and the appellant's attorney, Mr. Glenn Croshaw. The Board was also directed to address the issues related to a past City Council emergency declaration for the Sandbridge area, and the apparent subsequent administrative approvals of bulkhead projects in that area involving coastal primary sand dunes and beaches in the absence of a local wetlands board review.

Mr. Owen said that Mr. Croshaw had requested a continuance in February to allow his client to work with the City staff on a modified project proposal, but he was unsuccessful. Mr. Owen then briefed the Commission on the two previous review of appeals. Comments are a part of the verbatim record.

Mr. Owen stated that after much discussion on the proposal, the Virginia Beach Wetlands Board voted on a motion to approve the project as submitted. Since the recorded vote was 3 to 3, the project was denied because the Code specifies that four affirmative votes are needed for approval. He said Mr. Croshaw was asked if his client wanted the Board to reconsider a motion that would contemplate a landward realignment of the bulkhead. Mr. Owen stated that the applicant declined that proposal.

Mr. Owen said that Mr. Croshaw then filed a notice of appeal on behalf of his client. Mr. Croshaw bases his appeal on an allegation that the Board failed to fulfill its responsibility under the Coastal Primary Sand Dune Act; and that the substantial rights of the applicant were prejudiced because of the findings and conclusions of the Board. Mr. Croshaw also alleged that the Board's decision was in violation of Constitutional provisions, in excess of the statutory authority or jurisdiction of the Board, and although not an unlawful procedure, was arbitrary and capricious and an abuse of discretion. Mr. Croshaw further alleges that three of the Board members ignored the evidence of the substantial economic impact and private property rights of the applicant that were presented during the December hearing and the Board failed to fully consider the Commission's directive to review the previous administrative approvals of certain Sandbridge bulkheads.

Mr. Owen said based on staff's review of the record, they were unable to conclude that the Board erred procedurally in this matter. He said the Board was clearly polarized and debated the economic issues at length as instructed. Certain members of the Board believed that the project, by design, was inconsistent with the standards and guidelines, and that the project

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would have significant adverse impacts on the beach and sand dune system. Mr. Owen stated that this position was supported by the Virginia Institute of Marine Science (VIMS) who further stated that the end effects of the previously bulkheaded properties to the north would be extended south of the City's Little Island Park. Mr. Owen said it was also VIMS' opinion that the proposed project would eliminate the entire dune system and much of the high water beach along with their attendant functions and values. Mr. Owen said VIMS had indicated that the values included erosion protection, flood buffering and wildlife habitat. He said the City of Virginia Beach was concerned about their continued commitment to nourish the Sandbridge area, and that the City also questioned the necessity for the project. VIMS concluded that the project was undesirable and that it would be preferable to eliminate the bulkhead and restrict any development to the area lying landward of the coastal primary sand dune.

Mr. Owen said the applicant had expressed an unwillingness to consider a modified bulkhead alignment at the landward toe of the coastal primary sand dune. Staff believed that such an alignment would be in keeping with the charge of §28.2-1401 of the Code, which requires that the Board, when practical, accommodate necessary economical development, but in a manner consistent with the protection of the natural resources. The project was denied based on that charge. He said the application appeared to have been legitimately denied because the motion was to approve project, and that failed because of a 3 to 3 vote. The requirement for approval is for four affirmative votes. Accordingly, staff recommended that the Virginia Beach Wetland Board's decision be upheld. The applicant still had the recourse to reapply in a modified form or to pursue independent legal action against the City in the appropriate court.

Mr. Croshaw provided comments regarding his client's request for a permit. He indicated that his client wanted to be treated with the same fairness that the other property owners had in the five miles to his immediate north. They were permitted to protect their property with bulkheads. He said the applicant was here because of an anomaly in the State Code. That anomaly requires majority vote by the wetlands board. Mr. Croshaw also stated that the applicant debated the two issues that the Commission had remanded the matter for, (1) private property rights; and (2) that the Virginia Beach Wetlands Board should consider the economic impact. He then asked rhetorically how could it be fair to the applicant on a 3 to 3 tie that his permit was not approved.

Kay Wilson, Assistant City Attorney for Virginia Beach, who represented the wetlands board, addressed the Commission. Ms. Wilson stated that this was the second appeal of denial of this particular project by the Wetlands Board of Virginia Beach. She then explained that the Commission's responsibility was to examine the record that was transmitted by the Board to determine: (1) if the Board fulfilled its responsibilities under the Coastal Primary Sand Dune Ordinance, and (2) if the substantial rights of the applicant were prejudiced. Ms. Wilson further stated that the facts were: (1) this property contained a well-vegetated coastal primary

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sand dune; (2) all this property was located south of White Cap Lane, which was apparently important to the General Assembly in 1991 when they allowed the exemption to putting up bulkheads at Sandbridge; (3) this property was never covered by the exemption provided by the General Assembly. Looking at these properties, the north and south of Sandbridge are different places. The north was approximately 62 percent bulkheaded and was very developed. The south of Sandbridge was not; (4) VIMS and the Virginia Beach Planning Department both recommended denial of the project at the beach; (5) the project was remanded for two reasons for the Board to further examine the administrative approvals that had been made and to examine the economic interest involved, and the Board did that at length.

Ms. Wilson also indicated that the applicant believed that the Board refused to listen to him and the facts. She said the motion to approve was denied by a vote of 3 to 3. This indicated that the applicant was not able to garner the four votes necessary for approval. Ms. Wilson then said that the Board acted properly. The Board examined the issues the Commission charged the Board to do and they applied proper procedures in denying the project for a second time. The Board also followed the tenets of the Coastal Primary Sand Dune Ordinance as the Board saw them. She said that the Board did not act arbitrarily, or unfairly to the applicant. She also noted that the applicant did not want to consider any alternatives to this project, even though the alternatives would have lessened the impact on the dune and allowed economic development in a manner consistent with the protection of these features according to the Virginia Code. Ms. Wilson said that a difference of opinion was not a reason to overturn the decision of the Wetlands Board. Therefore, the City of Virginia Beach requested that the Board's decision for denial of this project be upheld.

Associate Member White asked how the gentlemen that stated "it was only a paper loss" had voted. Ms. Wilson said she thought he voted against the proposal.

After a brief discussion between the Assistant Attorney for the City of Virginia Beach and the Commission regarding the tie vote, 3 to 3, Ms. Wilson reiterated that an approval of the project requires four affirmative votes.

Mr. Croshaw addressed the Commission in rebuttal. Mr. Croshaw indicated that the applicant had agreed to tie in to the bulkhead to the north of the City right-of-way, but the City would not assure him that they would approve that tie in. He said he did not know what else the applicant, Kenneth Wilkins, could do other than what he had done to try and protect his property.

A discussion followed between Commission members regarding the decision of the Wetlands Board, the arguments, pro and con, regarding the applicant's property rights, and the criteria outlined in the Code of Virginia. Comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Cowart moved to uphold the Wetlands Board's decision based on VIMS' recommendations, the Board's charge in the Code of Virginia to protect the primary sand dunes, and the fact that the Board offered an alternative to Mr. Wilkins, in that he could build the bulkhead behind the sand dunes and develop the rest of his property. Motion was seconded by Associate Member Hull. The vote was 3 to 3, with one abstention. Commissioner Pruitt then said that based on the statements he had made earlier even though the property rights issue concerned him, the charge of the Commission was to determine if the Local Wetlands Board adhered to the Code. He believed they did adhere to the Code and therefore was voting for the motion. The motion to uphold the Virginia Beach Wetland Board's decision carried 4 to 3.

5. **DENNIS W. SMITH, #97-0402**, requests authorization for after-the-fact approval of a previously unauthorized expansion of a private pier an additional 54 feet 6 inches by 2 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. The Commission directed the applicant's appearance before the full Commission within 60 days.

Ben Stagg, Environmental Engineer, briefed the Commission on Mr. Smith's after the fact request to retain 54 1/2 feet by 4 feet 10 inches of pier addition and roof extension. He stated that at the last meeting the Commission requested that the request be tabled until Mr. Smith appeared before the Commission to explain why the structures were built. Mr. Stagg explained that he was available to present the slides if the Commission would like a review of the project, but everything remained the same as last month's presentation. He said had the applicant applied for the permit originally, the Commission would likely have approved the permit, since the environmental impacts were minimal.

Dennis William Smith, applicant, addressed the Commission. Mr. Smith said it was an oversight on his part when they submitted the plans. He said it was not intentional, they made some changes to the original plans a few weeks after the originals were drawn and somehow the right copy did not get submitted to the Commission. He then publicly apologized to the Commission.

Associate Member Ballard asked Mr. Smith if he had read the permit when he received it? Mr. Smith responded yes.

There being no opposition, however, Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy requested to see one of the slides that showed all of the project. Staff complied with that request.

Associate Member Ballard indicated that staff had stated that the modifications would have been approved had the changes to the plan been submitted. However, Mr. Ballard, said he was concerned that the applicant was definitely on notice regarding the permit requirements, (according to the applicant's own testimony), and that any deviations to the plans should have been submitted for approval. As a result, he felt Mr. Smith was well aware of the requirements. Mr. Ballard then moved that the permit be granted, provided that the applicant agree to a civil charge in lieu of further enforcement of \$1,800.00, based on a minimal environmental impact, but a major degree of noncompliance. Motion was seconded by Associate Member Hull. Motion carried unanimously.

- 6. **THOMAS E. METCALF, #00-1545.** Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form, a permit to construct and backfill 77 linear feet of timber bulkheading at his property situated along Buchanan Creek in Virginia Beach.
- 7. **MICHAEL D. PICKARD, #00-1548.** Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form, a permit to construct and backfill 158 linear feet of timber bulkheading at his property situated along Buchanan Creek in Virginia Beach.

Randy Owen, Environmental Engineer, indicated that staff had received a written request from the City of Virginia Beach to continue the Metcalf and Pickard cases. Mr. Owen said these cases were the subject of numerous hearings. He said he spoke to the City Clerk yesterday and since there were 10 verbatims being prepared, the City had not had time to prepare the full record.

Neither of the applicants were present. Mr. Pruitt placed the matter before the Commission.

Associate Member White moved for a 30-day continuance. Motion was seconded by Associate Member Williams. Motion carried unanimously.

- 8. **MOORES CREEK CHANNEL ASSOCIATION, #00-0210,** requests authorization to maintenance dredge 1,658 cubic yards of subaqueous bottom material and 1,709 cubic yards of new material to extend and deepen to minus seven (-7) feet at mean low water,

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the Moores Creek entrance channel, and to add riprap to the existing channel jetties and extend the western jetty 166 feet channelward into the Piankatank River in Middlesex County. The project is protested by an oysterground leaseholder.

Chip Neikirk, Environmental Engineer, showed slides of the project and briefed the Commission. He said the existing channel was 30 feet wide and possessed depths of minus 5-7 feet at MLW. It had been maintenance dredged to six feet in 1980. He mentioned that the applicants now wanted to increase the channel depth from minus six to minus seven feet. Mr. Neikirk stated that the adjacent oyster ground leaseholder, Mr. Croxton, was opposing the project as he had in 1980. Commissioner Pruitt asked where the proposed spoil site was. Mr. Neikirk showed the spoil area on the adjacent beach and noted that the spoil material was a good quality sand material and would be protected by a silt fence. Mr. Neikirk said that VIMS recommended allowing dredging only to the depth necessary, imposing a time-of-year dredging restriction of October to November, and allowing the intertidal spoil area. He said DEQ asked that the spoil be placed above MHW, and that VDH and DCR had no objections to the project. He said staff recommended approval of the project with several conditions: 1) allow dredging to a minus six foot depth only, 2) require a pre-dredge conference and post-dredge survey, 3) deployment of a sediment curtain around the disposal area and 4) that a March 15-June 30/ October-November time-of-year dredging restriction be imposed. Comments are a part of the verbatim record.

Mr. Breeden, attorney for the applicant, spoke on behalf of the project. He said the 1980 project had been approved with the understanding that the channel would need to be maintenance dredged. He noted that the channel did go through the corner of the protestant's lease and that Association members had talked with Mr. Croxton and thought that the lease area near the channel was now muddy ground not well suited for oysters. He commented that if the Commission authorized the full seven foot dredge depth being requested, it would be longer before the Association was back to reapply for maintenance dredging. Comments are a part of the verbatim record.

Mr. Don Geeson, volunteer manager of the dredging project for the Association, spoke in favor of the project. He stated that there were more than 60 residential lots that had access to Moores Creek. Comments are a part of the verbatim record.

Mr. Mike Croxton, protestant, spoke in opposition to the project. He said he thought the dredge spoil being placed near the shore was washing back into the channel and also affecting his oyster ground. He submitted evidence of his oyster growing activity on the lease from the early 1980s. When questioned about shell plants or seed harvests in the 1990s, however, he indicated that there were none. Mr. Pruitt asked what he thought of the staff recommendation to use a silt fence to surround the spoil area. Associate Member Gordy asked what he would

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think if the spoil was moved elsewhere. Mr. Croxton said he did not know, but he felt that his oyster ground had been ruined and he would like to get some money back. Comments are a part of the verbatim record.

Associate Member Williams remarked that he represented many of the people involved in this project through his position on the local Board of Supervisors. He said he supported work on the channel. Mr. Breeden suggested there were two options: 1) give the applicants 30-60 days to work out something with the protestant or 2) require the spoil site to go somewhere else. Mr. Williams made a motion to continue the matter to give the applicants more time to work with the protestant. The motion was seconded by Dr. Hull and adopted unanimously.

9. **D. M. COLVER, #00-1430**, requests authorization to install a 125-foot long by 4-foot wide floating dock with 12 support piles that will attach to an existing community pier for the exclusive mooring of eight (8) community boats adjacent to the Colver subdivision on Folly Creek in Accomack County. The project is protested by adjacent property owners.

Hank Badger briefed the Commission and showed slides. He explained that the applicant wanted to add a 125 foot floating dock to the existing community pier. He said staff was recommending changing the configuration from the L-head proposed by the applicant to a T-head that would minimize encroachment into the deeper water of the Creek. He said there were two protestants, Mr. Berg and Dr. Turner. They both opposed the additional structure because of navigational concerns. He said VIMS had indicated there would be minimal environmental impact and that VDH, DEQ and DGIF had expressed no objections. Associate Member Gordy commented that the Creek was very narrow in that area. Mr. Badger agreed, and said the alternate alignment should lessen the impact. He said the applicant had agreed to the T-head configuration proposed by staff. Comments are a part of the verbatim record.

Mr. Colver, applicant, spoke in favor of the project and said they went along with the recommendation by staff. Comments are a part of the verbatim record.

Mr. William Berg, protestant, stated that he had two concerns: 1) navigation and 2) that this was the second extension requested by the applicant. He suggested that the lack of use at the facility was causing it to fill in. He also noted that with crab pots in the area, navigation was a problem. Comments are a part of the verbatim record.

Dr. James Alexander spoke in favor of the project. He agreed with Mr. Berg's comment about the lack of use causing the area around the dock to fill in. He said not many crab potters worked the Creek and he thought that should not be a problem. Comments are a part of the

verbatim record.

Associate Member Gordy stated that she was familiar with Folly Creek and that the project was in a very narrow, heavily used area, where it was already difficult to find a place for a boat. She said she could not support the application and made a motion to deny the project. The motion was seconded by Associate Member White and adopted unanimously.

10. THE NEW RAPPAHANNOCK OYSTER COMPANY, #00-1937, requests authorization to construct two (2) open-pile, timber, T- head community piers and to reconfigure an existing commercial pier to provide 18 wet slips adjacent to their property situated along Bells Creek in Northumberland County. The project is protested by a neighboring property owner.

Associate Member Cowart stated for the record that he would not be voting or discussing this item.

Jeff Madden, Environmental Engineer, briefed the Commission and showed slides. He described the applicant's plan to demolish the existing commercial buildings and replace them with a residential development with nine duplexes. He said the applicant was requesting 18 wet slips (one for each housing unit). Mr. Madden reviewed the applicant's and staff's consideration of alternate pier locations, including multiple piers, in an attempt to work with adjacent landowners and avoid potential impacts on SAV beds. He said VDH had indicated no further seasonal closure would be required. He said the nearby leaseholder was on record as not opposing the project. Mr. Madden said he had checked on the local zoning rules and found the property could accommodate five residential lots. He said staff recommended a single pier location with ten wet slips. Comments are a part of the verbatim record.

The Dave Bugg, attorney for the applicant, spoke in favor of the project. He stated that the project would improve water quality since petroleum storage and pollution discharges from the existing commercial facilities would be eliminated. He said he was concerned with the staff recommendation being late in the process and only allowing for one combined pier facility away from the proposed clubhouse for the development. He said the local Board of Supervisors and Wetlands Board had approved the project, and the adjacent landowner's concerns had been worked out, so the only opposition for the applicant's proposed layout was from the MRC staff and VIMS. He said the staff concerns related to SAV beds, but his client had aerial pictures showing the SAV beds in the area were well away from the applicant's proposed structures. Mr. Dave Bugg, the applicant's attorney, also suggested that the applicant could potentially subdivide the property into 18 lots and at two slips per lot could request 36

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slips which was twice the number being applied for; he said limiting the applicant to 10 slips was not justifiable. Comments are a part of the verbatim record.

Ms. Carla Havens, agent for the applicant, submitted additional information about SAV in the area.

Mr. Charles Chase, applicant, spoke in support of the project. He said he had considered alternative development plans and felt that the residential plan the proposed was the best fit for the property. He said he lived very close to the property and would not build something unattractive in his back yard. Comments are a part of the verbatim record.

Mrs. Frances Warren, adjacent landowner, testified that she had met several times with Mr. Chase and they had worked to resolve her concerns over the potential impacts to marshes on her property. She also discussed aerial pictures that were in the Commissioner's packets showing SAVs in her area of the cove. Associate Member Ballard reaffirmed that she was not opposed to the project. Mrs. Warren said as long as there was 193 feet of separation between her property and the proposed docks 2 and 3, she had no objection. Comments are a part of the verbatim record.

Associate Member Hull asked Mr. Chase if he planned on demolishing the two other houses on the property. Mr. Chase said he did plan to remove the structures and build nine duplexes on the property. Dr. Hull stated that from what he had heard today, and considering a similar project approved recently, he would move to approve the project with a three pier configuration as proposed by the applicant with the 193 foot requirement requested by Mrs. Warren. The motion was seconded by Associate Member Gordy. Associate Member Ballard commented that he intended to support the motion, but that there were several factors that came into play involving SAVs and water quality, and in his mind the direct improvements to the property outweighed the small indirect impacts the pier facilities could have. Mr. Grabb reminded the Commission that the applicant had asked for relief from an earlier permit condition concerning a change of use in pier 2 from commercial to community. Associate Members Hull and Gordy agreed to accommodate the request in their motion. The motion was adopted 6-0-1, with Mr. Cowart abstaining.

- 11. **BETHPAGE CAMP RESORT, #99-2329**, requests authorization to construct 740 linear feet of open-pile marginal wharf with sufficient mooring piles and finger piers to create 74 additional wetslips adjacent to the Bethpage Campground, located along Robinson Creek in Middlesex County. The project is protested by several nearby property owners.

Associate Member Ballard stated for the record that he would not be voting or discussing this item.

Chip Neikirk, Environmental Engineer, briefed the Commission and showed slides. He explained that the applicant was requesting 74 additional wet slips to relieve crowding and boat traffic in the vicinity of the campground's boat ramp. He said that several area residents were opposed to the project because of the potential for increased boat traffic and associated shore erosion. He said VIMS considered that the environmental impacts to be minimal, but that increased erosion was possible. Mr. Neikirk stated that VDH had submitted a map indicating potential movement of the condemnation line in the area. He said DEQ and DCR both found the project acceptable. He described how boat traffic at the campground differed from a typical marina in that it was largely vacant for half the year, and that while boat usage could be high they were mostly trailered and not necessarily in the water as much as in a typical marina, making it hard to evaluate potential pollution from leaching. Mr. Neikirk said that staff had to err on the side of the environment and could not recommend approval of the project. Comments are a part of the verbatim record.

Mr. Hurley, applicant, submitted information about his family's campground and stated that the property was zoned waterfront commercial. He explained how the additional slips would allow his customers to leave their boats in the water over a weekend instead of having to take their boats in and out each day because no mooring sites were available. He mentioned that since they were only trailerable boats they were not usually painted with antifoulants. Comments are a part of the verbatim record.

Mr. Ben Lacy, attorney for a nearby marina owner, stated three recommendations from his perspective client if the project was approved: 1) require no wake signs, 2) require education program on responsible boating for campers, and 3) use riprap to minimize erosion if necessary. Mr. Lacy also showed a picture of the facility in the summer months without all current slips being used. He suggested additional slips were not necessary. Comments are a part of the verbatim record.

Mr. Warbuck, landowner across the creek from the campground, said he was worried about erosion and would like no wake signs posted. Comments are a part of the verbatim record.

Mr. Curtis Morton spoke against the project. He said the ecosystem was greatly affected by additional boats. Comments are a part of the verbatim record.

Ms. Alor Grantham-Trawick, agent for the applicant, reminded the Commission that the facility was only operating six months of the year, and when operating, most business was on Friday, Saturday and Sunday. She commented that the photograph submitted by the adjacent

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marina owner showed the facility at mid-week. She also suggested that many of those protesting were being affected by boat traffic around the boat ramp- traffic which could be reduced by the project. Comments are a part of the verbatim record.

Associate Member Williams asked if boats stay in the water. Mr. Hurley responded that less than 10 percent of the boats stay in the water all the time. Associate Member Williams made a motion to approve the additional slips with a condition that no wake signs be posted. The motion was seconded by Associate Member Gordy and adopted 6-0-1, with Mr. Ballard abstaining.

- 12. C. R. BARBER, ET AL, #00-1953**, requests authorization to construct and nourish four (4) armor stone breakwater structures for the purpose of stabilizing a barrier sand spit. The proposed beach nourishment material is to be obtained from the dredging of 400 cubic yards of sand from the mouth of Tide Mill Creek, adjacent to the applicant's property along the Potomac River in Westmoreland County.

Mark Eversole, Environmental Engineer, briefed the Commission and showed slides. He noted that he had been contacted this morning by a leaseholder potentially affected by the project and he had said he would not protest the project. He said SEAS had indicated that erosion was minimal in the area. Mr. Eversole said that improved tidal flushing was one of the applicant's rationales for the project, but both VIMS and VDH did not think this was necessary. He said staff had to consider the effect of the project on other permissible uses, and in their opinion the impact of the project was too great to stabilize a 500 foot sandspit with minimal erosion. He also said dredging to acquire fill was not desirable. Comments are a part of the verbatim record.

Associate Member White asked if there were any protestants. Mr. Eversole said there were no protestants.

Mr. Craig Palubinski, agent for the applicant, stated that the spit was eroding and had lost 5 to 15 feet in the last four years. He said the dredge material could be used for beach nourishment. He also said he had talked with Mrs. Mary Wright at VDH, who indicated that the Creek was condemned because of high fecal coliform counts. Mr. Palubinski said that increased tidal flushing could help improve that situation. Comments are a part of the verbatim record.

Mr. Doug Jenkins said he wasn't initially concerned with the dredging, but had worked some adjacent oyster ground for the Bevan's Oyster Company and now he had some concerns over the project. He asked that it not be passed. Comments are a part of the verbatim record.

Associate Member Williams made a motion to deny the application as recommended by staff. The motion was seconded by Associate Member Hull and adopted 6-0-1, with Mr. Cowart abstaining.

- 13. HAMPTON ROADS MARINA, LLC, #97-0916**, requests authorization to modify their existing permit to reconfigure two (2) piers and add 24 finger piers and associated mooring pilings adjacent to their property situated along the Hampton River and Sunset Creek in the City of Hampton. The project is protested by a resident in the vicinity.

Tracy West, Environmental Engineer, briefed the Commission and showed slides. She indicated that the project had been initially approved in 1997, that there had been a permit modification last year, and the applicant was now requesting several more modifications to the original permit. Mrs. West reviewed the proposed changes, including changing a covered sales area to a travel lift area for boat repair and adding 15 additional slips. She said there had been concern about the proximity of the project to the federal navigation channel, but that the proposed changes were within the 40 foot setback recommended by staff. She said staff recommended approval of the project modifications with all previous conditions in effect and adding a requirement for a hull washdown facility with a sediment trap. Comments are a part of the verbatim record.

Mr. Charles Huffman, attorney for the applicant, stated that his client did not want to enlarge the facility but wanted to improve the facility in stages. He passed out drawings of the proposed project and reviewed the requested changes. Comments are a part of the verbatim record.

Mr. Earl Hall, applicant, stated that a review of the original design during the construction bid process had revealed a more efficient way of doing the same project. Comments are a part of the verbatim record.

Mr. Bill Thomas, Hampton University, said that University officials were concerned that they had not seen a rendering of the project yet and would like to see one prior to approval of the project. Comments are a part of the verbatim record.

Mrs. Pat Gilliland, adjacent townhouse owner, asked if the project would affect the historic Herbert House. Mr. Hall commented that the City of Hampton had reviewed the plans for four months and had approved destruction of the structure. Although initial plans were to remove the structure, he was planning on meeting with the City again to see if some other compromise

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could be worked out. Comments are a part of the verbatim record.

Mrs. Molly Ward, homeowner on Sunset Creek, spoke in opposition to the project. She complained that not all landowners were properly noticed about the proposed changes and that the applicants were not complying with their existing permit. She also expressed concern about navigational problems and the potential effect of the project on the historic Herbert House. She also mentioned that the applicants had opposed a rip rap project on her Mother's nearby property on the basis of navigation concerns. Comments are a part of the verbatim record.

Mr. Forrest Ward, homeowner on Sunset Creek, submitted pictures of the existing facility taken the previous evening, alleging there were problems at the site. He said he was also concerned about navigability, crab potting in the vicinity, and the applicant's fiscal resources to complete the project. He requested that the project not be approved until these questions were answered. Comments are a part of the verbatim record.

Mrs. Susan Bentley Joseph, another nearby landowner, also spoke in opposition to the project. She contended that the applicants did not do things carefully and asked the Commission to take another look at the project. Comments are a part of the verbatim record.

Associate Member Hull commented that he could not make a decision today based on the conflicting testimony he had heard.

Associate Member Birkett asked staff if the notification process had been performing according to the rules. Mrs. West said yes. He then asked if the proposed changes exceeded the existing footprint of the facility. Mrs. West responded that it did in one small area, but that area was 50 feet from the channel. Mr. Birkett said he thought the case could be ruled on today. Comments are a part of the verbatim record.

Mr. Huffman, attorney for the applicant, submitted a letter indicating that neighbors should have been aware of proposed changes. He also noted that his client could continue with the current permit, but preferred to make the modifications as requested.

Commissioner Pruitt asked if the applicant agreed with the staff's recommendations on the proposed modifications. Mr. Huffman said they did.

Mr. Birkett made a motion to approve the project's modifications with the conditions recommended by staff. He indicated that he had a concern about the historic structure, but the Commission did not have the jurisdiction to deal with it. The motion was seconded by Mr. Williams. Associate Member Hull commented that he could not support the motion.

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Associate Member Gordy asked if a royalty was intended. Mr. Grabb indicated it was included. The motion was adopted on a vote of 5-2.

- 14. **SHORE VENTURES ASSOC., LLC, #00-1559**, requests authorization to construct an 8-slip condominium facility situated along Crab Creek in the City of Virginia Beach. The project is protested by an adjacent property owner.

Item was continued at request of applicant. Associate Member Ballard moved to approved the continuance. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

- 15. **DAVID E. FULK, #96-1703**, requests after-the-fact authorization to retain a 140-foot long concrete culvert road crossing which encroaches over approximately 1,568 square feet of the Little Dry River, a tributary to the North fork of the Shenandoah River in Rockingham County.

Jeff Madden, Environmental Engineer, provided a brief description of the after-the-fact application. He mentioned that the applicant had been unaware of the Commission's jurisdiction and if the application had been submitted, normally staff would have likely recommended it. Accordingly, he said staff would recommend the after-the-fact application be approved with triple royalty and permit fees, an appropriate civil charge, and a condition allowing for debris cleanup at the project site. Comments are a part of the verbatim record.

Commissioner Pruitt asked if anyone was in opposition. No one was in opposition.

Associate Member White made a motion to approve the application. The motion was seconded by Associate Member Cowart and adopted unanimously.

- 16. **DISCUSSION:** Commission assessment of the mandates on local government embodied in the Tidal Wetlands and Coastal Primary Sand Dune Zoning Ordinances.

Bob Grabb, Chief-Habitat Management, briefed the Commission. He explained that state law required a periodic review of the State mandates imposed on local governments. He said that

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the Commissioner had sent a letter to the Commission on Local Governments asking them to drop two MRC mandates from their list, those being the wetlands and sand dune zoning ordinances. He indicated that it was the Agency's position that the localities adopted these ordinances as provided for by law and therefore the rules were local ordinances and not a mandated rule from State law. He said the Commission on Local Governments had not agreed with this position, so it was necessary under Executive Order 1-98 for the Commission to endorse a recommendation to retain legislation embodied in the wetlands and sand dune ordinances. Comments are a part of the verbatim record.

Associate Member Ballard made a motion to do what was required. The motion was seconded by Associate Member White and adopted unanimously.

ITEM 24:

Cory Routh, Fisheries Management Specialist, indicated that the Recreational Fishery Advisory Board reviewed the Jones Creek Boat Ramp, phase two during the five-month review process, January through May 2000, and the Board voted unanimously to recommend funding of the project. Mr. Routh then stated that staff recommended approval of the project. Associate Member Williams moved to accept staff's recommendation. Associate Member Gordy seconded the Motion. Motion carried unanimously.

18. PUBLIC HEARING: Establishment of conservation measures for the 2001 blue crab fishery.

Rob O'Reilly, Deputy Chief-Fisheries Management, presented a letter from Congresswoman Joann Davis. Ms. Davis wrote the letter on behalf of her concerned constituents regarding the time of day limit for crabbing. Her letter also stated that she looked forward to some type of bushel limit or shortening of the harvest season.

Mr. O'Reilly briefed the Commission on the meeting of the Bi-State Blue Crab Committee that met in October and their recommendations to reduce the fishing mortality rate to a safer level. He also stated that they had meetings with the Blue Crab Management Advisory Committee in November, January, February and March. In addition, Mr. O'Reilly said a briefing was done by VIMS at the January Commission regarding the surrounding threshold mortality rates and target mortality rates. At that meeting, it was recommended that a reduction of 15% in harvest

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by 2003 was necessary in order to move to a target fishing mortality rate. The Crab Management Advisory Committee Meeting was held in February to try and get the committee to endorse a 5% harvest reduction for 2001. He said after much discussion, the Advisory Committee voted in favor of the proposal by a vote of 6 to 5 for a time of day limit for 8 hours, with a startup time of one-hour before sunrise.

Mr. O'Reilly provided background information on several options that were advertised for a public hearing, which were the 8-hour day, gear or pot reductions, bushel limits, shortening the dredge season, barrel limits for the crab dredge season and recreational limits for licensed crabbers. Comments are a part of the verbatim record. Mr. O'Reilly also gave information regarding the 14 point plan implemented by the Commission since 1994. Mr. O'Reilly said that the Potomac River Fisheries Commission option was the time of day limit (7-hour workday), and their public hearing would be held on March 29. Maryland had indicated that they would have something in effect by April 1.

Mr. O'Reilly presented slides regarding the 30 regulations that had been implemented on the blue crab since 1994. Comments are a part of the verbatim record. He also provided information from tables in the Commission packages. Mr. O'Reilly also indicated that they had received a great deal of comments regarding affecting some and not all.

Mr. O'Reilly gave information on the three regulations regarding (1) Section 30 of Regulation 270: the amendment that would incorporate a daily time limit. The new language is as follows: "it would be unlawful to take or catch crabs using crab or peeler pots for commercial purposes or to take up or deploy crab pots or peeler pots between the hours of 2 p. m. and 6 a.m. during the months of April, September, and October, and November or between the hours 1 a.m. and 5 a.m. during the months of May through August." (2) Regulation 40 lowers the dredge limit from 20 to 17 barrels of harvest per day; and (3) a new Regulation pertains to establish harvest limits for licensed recreational gear.

Mr. O'Reilly then briefed the Commission on the last Crab Management Advisory Committee Meeting. He said they discussed time of day limit as the preferred option of the three options. However, there were less supporters than at the February meeting. They also discussed the existing sanctuary and the proposal from Dr. Lipcius of VIMS to add to the sanctuary and to be able to conduct experiments to determine the fishing mortality and the natural mortality in areas that would be set and closed off for experimentation. Mr. O'Reilly said the Committee voted unanimously to delay any action for harvest reduction until Maryland enacts a harvest reduction.

Mr. O'Reilly said the Seafood Council supported the time of day limit, The Chesapeake Bay Foundation supported the 5% harvest reduction and requested some control strategy to look

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closely at the reduction. He said staff's recommendation was to adopt the amended regulations and delay an effective date until May 1, 2001.

Jacques Van Montfrans briefed the Commission and presented slides on the predation studies that VIMS had conducted. Mr. Montfrans indicated that the study was conducted in the lower part of the Chesapeake Bay, with assistance from Dr. Bob Orth, Dr. Rom Lipcius and David Coombs. Mr. Van Montfrans also talked about the different elements on how the natural predators played a role in the reduction of the crab numbers in the Bay, habitat degradation and physical factors that affected the larvae as it developed offshore, anthropogenic stress, and pesticides. Dr. Van Montfrans also provided information on the sampling areas and the type of nets used to collect the fish and crabs. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Terry Conway, representing the Blue Crab Conservation Coalition addressed the Commission. Mr. Conway stated that the Coalition consisted of eight seafood processors in Virginia and Maryland, six watermen associations in Virginia and Maryland, and the new organization recently formed in Maryland called, "Save the Watermen." He then presented slides and provided information on the following subjects: (1) science versus arbitrary decisions that had been made; (2) arbitrary regulations; (3) watermen as a strong environmentalist; (4) need to share the conservation efforts; (5) and what the watermen were looking for. Comments are a part of the verbatim record.

Dr. John Hoenig, from VIMS, addressed some of the comments made by Mr. Conway. Dr. Hoenig stated that he disagreed with the statement that Mr. Conway made in reference to scientific decisions were sometimes arbitrary. Dr. Hoenig said he felt that it should be recognized there were limitations to what science could tell you and they did know where the danger points were, and they needed to be prudent. However, as to how prudent and how to implement the regulations to be prudent was the Commission's decision.

George C. Washington, from Whitestone speaking on behalf of the Virginia Watermen Association, addressed the Commission. He said he thought the whole problem should be looked at. He said his group was adamantly opposed to the 8-hour day limit for safety reasons and the inability to work and move the gear as necessary. He also indicated that a watermen needed to be able to work the necessary hours and more than one fishery to be able make the money that was needed. Other comments are a part of the verbatim record.

Desman Owens, a crabber, gave comments regarding the 8-hour day limit. Comments are a part of the verbatim record.

Mark Wallace gave comments in regarding Seaside receiving special treatment. Comments are

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a part of the verbatim record.

Douglas Jenkins, representing the Twin Rivers Watermen's Association, addressed the Commission. He said the crab fishery had more than one problem relating to the grass beds, water quality, and predators. He also stated that he felt the crab study done by VIMS in the Fall should also be done in May during the crab shedding season. Comments are a part of the verbatim record.

Mickie Hailey commented about his concerns regarding the crabbers were not the only problem but was bearing all the burden. Comments are a part of the verbatim record.

Mike Nierman, a part time crabber for 30 years, was opposed to the 2 p. m. curfew because it would shut him down. He felt to limit the recreational crabbers to a bushel was ludicrous. Mr. Nierman also suggested that a p.m. be placed on the part timer license which would allow them to work their 8 hours. Other comments are a part of the verbatim record.

Jeff Ghent, Coastal Harvest Company, a company with watermen, commercial fishermen, crabbers and soft shell harvesters addressed the Commission. He said he also had provided written comments. He said the 8-hour day limit was an excessive burden on crabbers. Comments are a part of the verbatim record.

Frances Porter, Virginia Seafood Council, addressed the Commission and presented a statement of support from the Virginia Seafood Council to limit crab harvest to 8 hours per work day beginning with this season. Other comments are a part of the verbatim record.

Joe Reish, a part time crabber for 30 or more years, addressed the Commission. He said the 8-hour day limit would eliminate his family's small business and keep his 16 year old son from working this summer. Other comments are a part of the verbatim record.

Evan Moore, representing Moore & Moore Seafood and a commercial crabber, addressed the Commission. He gave comments regarding rockfish being predators to the blue crabs. Comments are a part of the verbatim record. He also mentioned that the commission should go to the General Assembly to get the watermen a summer rockfish fishery. He said if a time limit and barrel limit was implemented, it would create another hardship on the commercial fishermen because those regulation would not have any impact on the blue crab species.

Pete Nixon, President Lower Chesapeake Watermen's Association, and a member of the Crab Committee, addressed the Commission. He commented that he felt things were being shoved down their throats and being done in an inappropriate fashion and hurriedly. He said they were not even using Virginia's data, but Maryland data in their fishery with the time limit proposal.

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Mr. Nixon then presented a petition that was signed by the watermen in opposition to the proposed amendments to the regulations. Other comments are a part of verbatim record.

Jeff Crockett, President of the Tangier Watermen's Association, addressed the Commission. He said he endorsed 90 per cent of everything that had been said today. He then presented an alternative. Mr. Crockett said, as a member of the Bi-state Commission, he would suggest that a licensing program be implemented in the State, which would allow and require a complete guarantee that a person would not lose their license if they did not crab, that license could be placed in an inactive status. At this time, Mr. Crockett suggested that nothing be done on the proposed regulations and give the Crab Committee an opportunity to try and work out a licensing program to better access the data that was available.

Ken Boggess, a crabber, addressed the Commission. He said he had not heard anything today that would solve the problem and felt the proposed regulations should be postponed in order put off the hardships on the crabbers for one year. He said they had three years to accomplish 15 percent. He suggested taking the license money and support the scientist to get some information that could be used to justify changing the regulations.

Tom Powers, representing the Coastal Conservation Associations, and a member of the Blue Crab Advisory Committee, addressed the Commission. He said he was concerned that if something wasn't done to help this fishery in three to five years, the crab fishery was going to crash and all the men and women would be out of a job. He felt that the Commission should support improvements to the grass beds. Other comments are a part of the verbatim record.

Paige Hogge, from Urbanna and a member of the Bi-state Blue Crab Committee, addressed the Commission. Ms. Hogge indicated that she was speaking on behalf of the Soft Shell Crab Association. She said the reason why they did not go to the General Assembly was because the General Assembly wanted to see the outcome from the committee meeting. She said the peeler pot fishery was 9 percent of the fishery and they would like to be regulated accordingly. She said with the peeler pot reduction they experienced last year, and if any regulation was done for the peeler pot fishery, that reduction should be taken into consideration which equalled 5.4 percent, and that would give the peeler potters their first year reduction of 5 percent reduction in harvest.

Commissioner Pruitt commented that he had made some of those points that were mentioned today at the beginning of the Bi-state Committee Meeting when they first got started.

Rob O'Reilly commented that a wealth of information had been presented today from industry. However, no comments were made regarding the role of the environment in the crab fishery. Mr. O'Reilly also indicated that he felt everyone was responsible for managing the blue crab resource. He said they were considering the fact that they were close to overfishing and they

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also wanted to maintain a balance in terms of the harvest.

Mr. O'Reilly reemphasized on the issues he discussed earlier and suggested that an effective date be delayed until May 1. He said as a partner in the Bay, it may be important to let other jurisdictions know that the Commission was going for the 5 percent reduction.

Dr. John Hoenig readdressed the Commission. He said the regulations before the Commission were designed to reduce the fishing mortality and the effective fishing effort. He said the discussion of reducing the catch was misleading because they were trying to end up in the long term with more fish. He also mentioned that Rom Lipcius had information on stock recruitment and the Commission might want to look at that. He also stated VIMS had no opinion on the proposed regulations except to say that they should move toward a lower, effective effort. However, if no action was not taken, the fishing mortality would not be reduced, but some action would need to be taken, not necessarily the proposed actions presented today.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams commented that he had listened to the comments today and he agreed with the scientist. He said they had done a number of things: cull rings, sanctuaries, colored sook, pot reductions and bushel limits, set aside another 400 square miles of sanctuary and they received no credit for taking those conservation measures. Mr. Williams then moved that the Commission wait until next month and see what their neighbors were going to do before the Commission took any other action.

Commissioner Pruitt commented that the public hearing had been done and the Commission could act at any time. Associate Member Gordy seconded the motion to postpone action until the April meeting.

Associate Member Ballard commented that he agreed in part with Mr. Williams. However, he thought the 8-hour day limit was not a bad action out of the alternatives. He said he totally agreed with the theoretical homework that the Bi-State Blue Crab Committee had adopted, (10 percent threshold with 20 percent target). He thought that the Commission would make a determination within the next three years on how to reduce the effort the crab fishery by 15 percent. Therefore, at the April meeting, he felt that the Commission would have to act regardless if Maryland had taken any action or not.

After a brief discussion, Commissioner Pruitt commented that perhaps a work session before the April Commission meeting, with staff, Commission members, and the scientist to deliberate on this issue before making a final decision would be better.

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Associate Member Williams and Associate Member Gordy were acceptable to the Commissioner's comments being made a part of the motion.

Associate Member Cowart commented that he has been Chairman of the Blue Crab Subcommittee for three years and the Committee had spent a great deal of time on the issues and without some of the regulations being in place, where would the fishery be. In addition, he felt that some thought should go given to what would happen if the resource would totally collapse, that was the reason the regulations were put in place to preserve the resource in order that one could be able to make living. He said they may not get credit for percentages of reduction in resource harvest, but in the long run, this could be the thing that would make the difference. He then talked about putting walkways into the grass beds to move the crabs in the sanctuary, but no positive vote was received from the committee.

Commissioner Pruitt postponed the vote until later in the meeting.

17. PUBLIC HEARING: Request for a modification of the minimum size limit for imported channeled whelk.

Robert O'Reilly, Deputy Chief-Fisheries Management, informed the Commission that the briefing was already done, and there had been no public comments received. Mr. O'Reilly said Mr. Robins spoke on this request last month. He said staff was recommending the adoption of the regulation, specifically, Section 30 that would allow import of the channeled whelk.

Commissioner Pruitt placed the matter before the public.

Rick Robins, representing Chesapeake Bay Packing and Bernie's Conchs, addressed the Commission. He said he wanted to clarify that their purpose in requesting this amendment to the existing regulation was not to subvert Virginia's policies or conservation strategies on this species. Mr. Robins stated this amendment was to allow for the legal importation of whelks that were legally landed in other states, providing that documentation of the origin of the product as being out of state.

There being no other public comment, Mr. Pruitt closed the public hearing and placed the matter before the Commission.

Associate Member Hull moved for approval of the adoption of the amended Section 30 as part of the permanent regulation 4 VAC 20-890-10 et. seq. Motion was seconded by Associate Member White. Motion carried unanimously.

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After a brief discussion, the Commission agreed to have the work session on April 10, 2001 at 10:00 a.m. at the Virginia Institute of Marine Science (VIMS). Mr. Pruitt indicated that no public comments would be accepted, however, the public may attend the work session. He also welcomed any comments in writing from the public before the work session.

19. DISCUSSION: Modification of the May 1 - October 31 commercial harvest and landing quota for scup.

Chad Boyce, Fisheries Management Specialist, requested a public hearing concerning the summer quota for the scup commercial fishery. Mr. Boyce then explained how the scup quota was divided between three different periods (winter I, summer, and winter II period). Mr. Boyce indicated that the effective date of the regulation would be May 1, 2001.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to go to public hearing for scup quota in April. Motion was seconded by Associate Member Hull. Motion carried unanimously.

20. DISCUSSION: Establishing the Annual Bluefish quota for Virginia, request for public hearing.

Lewis Gillingham, Fisheries Management Specialist, requested a public hearing for the establishment of the bluefish quota. He indicated that it was a compliance issue with the ASMFC Blue Fish Plan.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to have a public hearing for establishing the annual bluefish quota for Virginia at the April meeting. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

21. PUBLIC HEARING: Conservation measures to reduce mortality of threatened and endangered sea turtles.

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Jack Travelstead, Chief-Fisheries Management, indicated that the Commission had a copy of the staff proposal in the briefing books. Mr. Travelstead said that staff had indicated last month that the National Marine Fishery Service enacted a broad brush regulation to outlaw all gill netting in the lower part Bay and territorial sea for one month period. Mr. Travelstead said they were trying to avoid that situation from occurring this year by adopting regulations in a tiered approach, designed to reduce the strandings and mortality of the sea turtles. Mr. Travelstead stated that the Task Force had met over the past several months and formulated a series of proposed regulations that he believed would minimize impacts to sea turtles 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 the North Carolina border, all gill nets with a mesh greater than 6 inches will be prohibited from June 1- June 30.

Mr. Travelstead stated that if they found that the strandings continued to be high, staff may come back to the Commission and request additional regulations. If those regulations were unsuccessful, then it would be likely that the National Marine Fishery Service would adopt regulations of their own.

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

Associate Member Ballard moved to adopt the regulations as presented by staff regarding the reduction mortality of threatened and endangered sea turtles. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

22. PUBLIC HEARING: Modification of relay season for Hampton Flats.

Chad Boyce, Fisheries Management Specialist, informed the Commission that staff had requested a public hearing for April . However, since that time the Clam Committee had met and decided to withdraw the request for the opening of the season in May. The committee decided that economically it would be better to open the season at the end of the regular relay season, August 16 through September 30, 2001, which would require advertisement for a

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public hearing in June. Mr. Boyce stated that staff supported the Clam Committee's recommendation.

Commissioner Pruitt opened the public hearing. There being no comments, pro or con, Commissioner Pruitt closed the public hearing. Mr. Pruitt then indicated they were proposing to modify the season date. He then placed the matter before the Commission.

Associate Member Cowart requested that Mr. Roy Insley address the abundance issue.

Mr. Insley stated that staff had done a survey and the abundance of clams in the area was up considerably over the past survey in 1996. He also said that he felt the area could be harvested based on the last survey. Mr. Insley also mentioned that several comments were received from the public (couple of dealers and clambers) at the Clam Committee meeting. He said they commented that the market would be better if the season would begin at the end of the relay season, August 16 through September 30, 2001.

Associate Member Cowart moved to adopt the proposed regulations for clams which would open Hampton flats from August 16 until September 30, 2001. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

23. REPORT on black sea bass issues.

Jack Travelstead, Chief-Fisheries Management, informed the Commission that the black sea bass issue was a ASMFC compliance issue, which set the closed recreational season on black sea bass as March 1 through April 9. After hearing public comments at the March meeting, many recreational, charterboat and headboat watermen indicated that this would cause significant impact to the charterboat and headboat fishery in the Rudy Inlet and Lynnhaven Inlet areas. They recommended an alternative season closure of March 1 through March 31, and July 15 through August 14. Mr. Travelstead said that the black sea bass plan did not allow states to adopt their individual preferred closed seasons. He said the black sea bass plan applied to all states as a compliance measure.

Mr. Travelstead also indicated that he had planned to attend the black sea bass meeting in Northern Virginia the following Monday, but that meeting was cancelled because of bad weather. However, a conference call was held the following Friday and staff brought that issue up to the states, they were all sympathetic to Virginia's situation and indicated that they had found themselves in similar situations from time to time and were forced to comply with the management plan. Therefore, they were unwilling to endorse the proposal.

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Mr. Travelstead explained that the public hearing was held last month and the Commission adopted a portion of the closed season and agreed to come to the April meeting and either adopt the remainder of the closed season as dictated by ASMFC or adopt an alternative plan. Mr. Travelstead also mentioned that if an alternative plan was adopted other than the closed season of March 1 through May 9, the Commission would be out of compliance.

Commissioner Pruitt asked staff what were the feelings of the recreational fishermen? Mr. Travelstead said the charterboat fishery did not support the ASMFC season, they preferred closing for a one month period from mid July to mid August. He said staff had data to show that that closure period would be more conservative for the resource.

A discussion followed regarding ASMFC's season closure dates and the proposed alternate closure of March 1 through March 31 or July 14 through August 15. Comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard commented that he felt the proposed ASMFC's closed black sea bass season was egregiously unfair to Virginia. Mr. Ballard then compared the 2000 black sea bass catch statistics State by State versus Virginia's catch. He indicated that even though Virginia had a reduction in their catch, they were being asked to reduce their harvest. Comments are a part of the verbatim record. Mr. Ballard then moved that they continue the closed season for black sea bass recreational season from March 1 to March 31, and that the Commission did not continue under the ASMFC regime to close from April 1 to May 9 and close the season on July 15 to August 14. Motion was seconded by Associate Member White. Motion carried unanimously.

Teddy Marshall addressed the Commission regarding his crab scrape license. He said he had been crab scraping since he was 15 years old. He hurt his back last year and did not realize that he should get his crab scraping license last summer. He said he peeler pot fished through the summer. He found out two weeks ago that he had lost his crab scrape license.

Jack Travelstead said that the regulation stipulated that in order to be eligible for a license in any year, you would have to had the license the prior year.

Commissioner Pruitt placed the matter before the Commission.

COMMISSION MEETING

Associate Member White moved to reinstate Mr. Marshall's license because of his circumstances. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Associate Member Hull commented that for the past four years citizens from Chester Town, Maryland had been constructing a full scale replica of the 1767 Schooner Satano. The hull was completed and would be taken through the streets of the town on Saturday and launched in the Chester River.

25. PUBLIC COMMENTS.

A gill netter addressed the Commission regarding grey trout and dog shark bycatch. He said the 150 pound bycatch limit was crippling them. He requested that the Commission consider for next year that the season open in March.

Commissioner Pruitt responded that that issue would have to be taken to the ASMFC and they would do the best they could.

Mr. Travelstead indicated that the grey trout issue was on the agenda of Finfish Advisory Committee meeting.

The gill netter also commented on the dog shark bycatch. He then requested that the Commission set aside bycatch for the Southeast Region.

Commissioner Pruitt said they would try again with ASMFC. Mr. Travelstead said that ASMFC would be voting on an amendment to the dogfish regulation on April 20 in Northern Virginia, which could potentially establish state-by-state quotas on the dogfish fishery.

There being no further business before the Commission, the meeting adjourned at 5:45 p.m.

COMMISSION MEETING

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March 20, 2001

William A. Pruitt, Commissioner

LaVerne Lewis
Commissioin Secretary