

MINUTES

JULY 27, 1999
Newport News, VA 23607

The regular monthly meeting of the Marine Resources Commission was held in Newport News on the above date with the following present:

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon M. Birkett)	
Lake Cowart, Jr.)	
H. Grant Goodell)	Associate Members
Laura Belle Gordy)	
Henry Lane Hull)	
John W. White, Sr.)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance and Administration
Jane McCroskey		Assistant Chief-Finance and Administration
Margaret Fonner		Business Manager
Linda Hancock		Human Resources Manager
Steven G. Bowman		Chief-Law Enforcement
Lewis Jones		Assistant Chief-Law Enforcement
Randy Widgeon		Eastern Shore Area Supervisor
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Ray Jewell		Northern Area Supervisor
Danny Howlett		Marine Patrol Officer
Dennis Knudson		Marine Patrol Officer
Tom Barnard		Virginia Institute of Marine Science
Dr. Eugene Burreson		Virginia Institute of Marine Science

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Dr. Jim Wesson
Jack Travelstead

Chief-Conservation and Replenishment
Chief-Fisheries Management

Roy Insley
Lewis Gillingham
Ellen Cosby

Head-Plans and Statistics
Fisheries Management Specialist
Fisheries Management Specialist

others present:

Jeff Creekmore
Tony Bevilacqua
Mark Hudson
Betty Grey Waring
Stephen W. Bezch
L. Snider
Charles Williams

Paul Kidd
Janne Joy
Chris D. Wilson
Freeland Mason
Bill Forrest
Tom Powers
Steve Jones

and others.

The meeting was called to order by Commissioner Pruitt. Members present: Gordon M.

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Birkett, S. Lake Cowart, Laura Bell Gordy, Henry Lane Hull, H. Grant Goodell, and John W. White. Associate Member Davis not present.

Associate Member Cowart gave the invocation.

Associate Member Hull led the Pledge of Allegiance to the American Flag.

Copies of the Minutes of the meeting held June 22, 1999, had been sent to the Associate Members prior to this meeting. Associate Member White moved to approve the Minutes as distributed. Associate Member Cowart seconded the motion. Motion carried, with Associate Member Ballard abstaining because he was not present at the meeting.

Approval of the agenda. Commissioner Pruitt said that Associate Member White had a motion regarding the former Assistant Attorney General and it would become item 3A . Associate Member Goodell added agenda item 7A, regarding clarification of wetlands mitigation procedures. Associate Member Hull said he would like to withdraw the consideration for a proposed amendment to 4 VAC 20-670-30, item 9, and at the appropriate time state his reasons. Mr. Travelstead said a petition was received from the James River watermen requesting an extension of the clam season, and they would address the request during the public comment session. In addition, the CCA had contacted staff and requested the opportunity to address the blue crab issues, and they were informed to also address the issue during the public comment period.

Associate Member Goodell asked if the request to extend the clam season had been reviewed by staff. Mr. Travelstead responded that staff had been aware of the request for approximately one week. However, there was nothing in writing, and if the Commission would act on the request, it would require an emergency regulation.

Associate Member Hull moved to approve the amended agenda. Motion was seconded by Associate Member White. Motion carried unanimously.

Bob Grabb, Chief-Habitat Management, briefed the Commission on 12 page two items. Mr. Grabb explained that those projects involved applications for permits and projects over

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\$50,000 in cost, for which a public interest review had been conducted and there were no objections or concerns raised about the projects. Staff, therefore, recommended approval for the projects.

CAMPBELL COUNTY UTILITIES AND SERVICE AUTHORITY, #98-2240, requests authorization to modify their existing permit to cross 110 linear feet of the Big Otter River with a submerged, concrete-encased, 16-inch sewer pipeline near the U. S. Route 29 bridge crossing in the Town of Altavista. The requested modification would relocate the installation of the pipeline to an alternate location 350 feet downstream of the currently permitted site.

Modification - Permit fee not applicable

TOWN OF PENNINGTON GAP, #99-0684, requests authorization to construct a 12-inch thick concrete wall on an existing water intake structure to facilitate improvements and a 1 MGD raw water withdrawal increase for the water treatment plant situated adjacent to the Powell River and State Route 421 in Lee County. Recommend approval with our standard in-stream construction conditions, a 1 millimeter mesh screen size on the intake screens and a maximum intake velocity of 0.25 feet/second to minimize entrainment of eggs and larvae of resident fish populations.

Permit Fee..... \$ 100.00

YORK COUNTY DEPARTMENT OF ENVIRONMENTAL AND DEVELOPMENTAL SERVICES, #99-0548, requests authorization to extend and enlarge two (2) existing stormwater outfalls adjacent to Yorktown Beach. Construction includes trenching, placing bedding stone in the trench, backfilling of the trench and installing pile bent support structures and armor stone at the terminus of the outfalls.

Permit Fee..... \$ 100.00

ALLEGHANY COUNTY, #99-0759, requests authorization to construct waterline crossings of Dunlap Creek, Johnsons Creek and Ogle Creek in association with the Callaghan Water Project. Recommend our standard instream construction conditions.

Permit Fee..... \$ 100.00

ARMY CORPS OF ENGINEERS, #99-0941, requests authorization to place approximately 20,000 cubic yards of beach-quality sandy dredged material along 2,000 feet of the Rappahannock River shoreline immediately upriver of the mouth of Greenvale Creek in

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association with the regular maintenance dredging of the Greenvale Creek Federal navigation project channel in Lancaster County.

Permit Fee.....\$ 100.00

CITY OF SUFFOLK, #98-2204, requests authorization to install a 1,300 linear foot eight-inch (8) diameter water treatment discharge pipeline and outfall diffuser with associated riprap scour protection into the Nansemond River approximately a half-mile upstream of the Route 125 bridge in the City of Suffolk.

Permit Fee.....\$ 100.00

NORFOLK NAVAL SHIPYARD, #98-1064, requests authorization to modify a previously issued permit to include the construction of an additional 127 linear feet of concrete bulkhead adjacent to Berth 21 at their facility situated along the Southern Branch of the Elizabeth River in Portsmouth.

Modification - Permit fee not applicable

CITY OF CHESAPEAKE, #95-1288, requests extension to May 31, 2002, of their permit to construct a 610-foot long concrete bridge downriver and parallel to the exiting Route 168 bridge crossing of the Nansemond River in the City of Chesapeake.

Extension - Permit Fee not applicable

SUFFOLK DEPARTMENT OF PUBLIC UTILITIES, #99-0580, requests authorization to install a 24-inch diameter 1,013-foot long watermain crossing of Bennett's Creek in the City of Suffolk. The watermain will be attached to the Route 17 bridge crossing.

Permit Fee..... \$ 100.00

LEE COUNTY PUBLIC SERVICE AUTHORITY, #99-0484, requests authorization to construct an outfall structure in the Powell River approximately 260 feet south of the Route 58 Poteet Ferry Bridge and install a submerged 8-inch, diameter sewer force main beneath the Powell River and Station Creek at four locations to facilitate construction of the Town of Jonesville Waste Water Treatment Plant and its associated discharge line in Lee County. Recommend approval with our standard in-stream construction conditions and an April 1 to May 30 time-of-year restriction on instream construction activities to protect spawning bass populations.

Permit Fee.....\$ 100.00

CITY OF BRISTOL, #99-0860, requests authorization to construct a 77-foot long by 18-foot wide concrete, box culvert or arch culvert bridge road crossing of Little Creek for vehicular access along West State Street in the City of Bristol. Recommend approval with our standard in-stream construction conditions.

Permit fee..... \$ 100.00

DEPARTMENT OF MINES, MINERALS AND ENERGY, #99-0795, requests authorization to remove 19,133 cubic yards of accumulated mine-related sediments, install 900 linear feet of riprap streambank protection and construct a low flow channel, 15 K-dams and 12 plunge pools to enhance instream aquatic habitat along 14,400 linear feet of Indian Creek adjacent to U.S. Route 23 near the Town of Pound in conjunction with the Indian Creek Sedimentation Project, Phase II, in Wise County. Recommend approval with our standard instream construction conditions.

Permit fee.....\$ 100.00

There being no comments, pro or con, from the public on the page two items, Commissioner Pruitt placed the page two items before the Commission.

Associate Member White moved to approve the page two items. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Associate Member Ballard moved that the meeting be recessed and that the Commission immediately reconvene in executive closed meeting for the purpose of consultation with legal counsel and briefings by staff pertaining to Commission's jurisdiction in the Back Bay area as permitted by Sub-section (A) paragraph (7) of Section 2.1-344 of the Code of Virginia. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Meeting reconvened after an executive session.

Associate Member Ballard moved that:

WHEREAS, the Marine Resources Commission has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance

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with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, §2.1-344.1 of the Code of Virginia requires a certification by this Commission that such executive meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Commission. Motion was seconded by Associate Member Birkett. Motion carried as follows:

Associate Member Ballard	"aye"
Associate Member Birkett	"aye"
Associate Member Cowart	"aye"
Associate Member Goodell	"aye"
Associate Member Gordy	"aye"
Associate Member Hull	"aye"
Associate Member White	"aye"
Commissioner Pruitt	"aye"

Associate Member White moved to accept the following resolution, item 3A:

WHEREAS Frederick S. Fisher, an Assistant Attorney General of the Commonwealth of Virginia, served as the primary legal adviser and counsel to the Virginia Marine Resources Commission from December 1981, until May 1999 and

WHEREAS he handled many significant cases and gave the agency wise advice and counsel on a variety of issues and circumstances during his tenure, and

WHEREAS he consistently provided detailed and accurate legal research on a wide-range of agency related activities, and

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WHEREAS during the course of month of the meeting of the Commission Board he often aided members in crossing difficult potential legal mine fields and trouble spots with the soft-spoken, yet meaningful discourses, and

WHEREAS he consistently supported the mission and goals of the Commission in his role as counsel, and

WHEREAS his work has always been at the highest level and in the finest professional manner.

BE IT THEREFORE RESOLVED that the Virginia Marine Resources Commission expresses its sincere thanks to Mr. Fisher of friendship, dedicated services and a reliable legal counsel extends to him its sincere appreciation for a job well done, and offers best wishes for continued success with new endeavors in the Office of the Attorney General of Virginia.

BE IT FURTHER RESOLVED that a copy of this resolution be appropriately presented to Mr. Fisher and also conveyed to the Attorney General and the Governor of the Commonwealth of Virginia.

Motion was seconded by Associate Member Gordy. Motion carried unanimously.

JOHN BENNETT, #99-9023, requests authorization to install 100 linear feet of quarry stone riprap and one 50-foot long low-profile groin adjacent to his property situated along Onancock Creek in the East Point area of Accomack County. A Coastal Primary Sand Dune and Beach permit is required.

Hank Badger, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Since Accomack County had not adopted the Primary Coastal and Sand Dune and Beach ordinance, Mr. Badger reminded the Commission that they were responsible for the administration of the ordinance in that locality. Mr. Badger said a public hearing was held on June 24, 1999, at which the Wetlands Board approved the wetlands aspects of the project as presented, by a vote of 4-0. The Wetland Board's jurisdiction over this project was the intertidal area lying between mean low water and mean high water marks. He said VMRC's jurisdiction over this project was from the high water line to the bank. The Commission staff held a hearing in the Accomac County Administration Building, to accept public comments on the project. Mrs. Bennett was the only person in attendance, and there was no opposition to the project.

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Mr. Badger said VIMS reviewed the project and indicated that from an erosion control and marine habitat perspective, it was preferable to retain the existing beach. However, as an alternative, VIMS suggested grading back the upland scarp and installing the riprap behind the beach. If this were done, the Marine Resources Commission would no longer have any jurisdiction. VIMS also suggested that all the debris be removed, which would serve to control further upland erosion and retain the existing beach and intertidal communities. Mr. Badger said VIMS also indicated that the longshore transport and potential for sand entrapment appeared to be minimal in that area. He said our BMP's recommended that the distance between groins be 1.5 times their length, and that they should be offset a minimum of 25 feet from the property line.

Mr. Badger said since the applicant's shoreline was showing signs of erosion and Mr. Bennett's home was within 20 feet of the bank, staff recommended approval of the riprap structure provided the existing debris was removed. The project drawings should also be modified to show a 2:1 slope and that the toe of the structure be buried below the mean low water elevation. This alignment would retain two to three feet of existing beach above the mean high water line. Staff also believed that the proposed groin may not function effectively and could starve the adjacent beaches of what little sand that remains in the system. Therefore, staff recommended that the groins be denied.

Commissioner Pruitt requested that staff show how the proposed groin would not function effectively. Mr. Badger responded that there was not much sand in the system itself, and VIMS had indicated that it probably would not fill more than 20% of capacity and it was only 40 feet away from the existing groin. Mr. Badger said he had met with Mr. Bennett and Mr. Turner, the adjacent property owner, onsite and Mr. Turner did not have a problem with the groin although it might cause some erosion on his property.

Christopher Downing Wilson, Coastal Marine Construction, representing Mr. and Mrs. John Bennett addressed the Commission. He said Mr. Badger had given a very good presentation. Mr. Wilson said it was easy to see from the presentation that the property needed something done, and the only decision that needed to be made was how much of the rock would be accepted and how much would be used. Mr. Wilson also stated that more rock was needed and that was the reason he requested a 3:1 slope. However, he said the 2:1 slope would probably work, but he liked the idea of using more rock. He said it would also encroach to the mean high tide line, which would limit the use and accessibility. He said the groin that was in place now had trapped four to six inches of sand. Mr. Wilson then explained the reason for the request for another groin. Comments are a part of the verbatim record. He said the Bennetts felt that if anything could be done in their location to trap some sand, they would like to do it.

Associate Member Goodell commented that he did not think another groin would work, and the groin would only create more erosion downstream.

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

Associate Member Gordy commented that she had been on this particular property and the house was located directly on the beach. She said she understood the reason the Bennetts wanted as much riprap as they could get and she felt the Commission should do all they could to help them.

Associate Member Gordy then moved to adopt staff's recommendations. Motion was seconded by Associate Member White. Motion carried unanimously.

TONY BEVILACQUA, #99-0816, requests authorization to construct and backfill 115 linear feet of vinyl bulkheading adjacent to his property situated along Onancock Creek in the East Point area of Accomack County. A Coastal Primary Sand Dune and Beach permit is required.

Hank Badger, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of verbatim record. He said the County of Accomack had not adopted the model Coastal Primary Sand Dune and Beach ordinance, therefore, the Commission was responsible for administering the provisions of the ordinance within that locality.

Associate Member White asked how far this property was from the Bennett's property which was considered previously. Mr. Badger responded that there was one bulkheaded lot between the Bevilacqua's and the Bennett's house.

Mr. Badger said the Commission staff held a public hearing in Accomack County on July 13, 1999. No one attended the hearing and no opposition has been received on the project.

He said VIMS reviewed the project and stated that from an erosion control and marine habitat perspective, it was preferable to retain the existing beach. VIMS also indicated that bulkheads could be responsible for secondary impacts to adjacent marine habitat due to their reflection of wave energy. As an alternative, VIMS recommended grading back the upland scarp and installing a riprap revetment behind the beach on a 2:1 slope. In addition, VIMS also stated that if a bulkhead was deemed necessary, it should be aligned as close to the upland as possible with a riprap toe to prevent scour. Mr. Badger said placement of fill material and the

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construction of a bulkhead in a jurisdictional beach area adjacent to mean high water, conflicted with the Commission's Coastal Primary Sand Dune/Beach Guidelines. Therefore, the project, could result in the unnecessary deflation of the beach system and could increase erosion on the remainder of the beach and neighboring properties.

Mr. Badger said since the applicant's shoreline was showing signs of erosion, staff agreed that some form of shoreline stabilization was necessary. However, staff believed that a properly designed and installed riprap revetment would provide greater protection and preserve the majority of the beach. Staff then recommended that Class I - stone riprap over filter fabric be placed in front of the existing scarp on a 2:1 slope with the toe of the structure buried below the mean low water elevation. If the bulkhead was approved, however, staff recommended an alignment as close to the upland as possible with a riprap toe for scour protection.

Associate Member Ballard asked if the toe of the riprap was buried below the MLW mark would the beach be covered with riprap. Mr. Badger responded no, it was from an elevation standpoint and it came down at a 2:1 slope, which would mean going out approximately four feet and then going straight down.

Associate Member Goodell commented that he felt a lot of the problems related to this project were the groins. He said if the two groins were taken out, some of the problems would be resolved. Mr. Badger responded that the applicant had groins on both sides of the property. Dr. Goodell said he felt that was the problem with the whole section of shoreline and the groins and contributing material added to the erosion.

Tony Bevilacqua, owner of the property in discussion, addressed the Commission. He said on Onancock Creek at the east point section, there were 16 individual pieces of property, plus a public beach. He said twelve of the properties were bulkheaded. He said the Commission had approved bulkheads in that area as late as last year. Mr. Bevilacqua said there would be an additional cost for him to put in riprap. He also said he had been told that riprap was not a "cure all" for the problems he was having. He said he understood the problem with the groins, and he intended to tie his seawall into the end of the groins, which would eliminate the surge of water.

Commissioner Pruitt commented that the property was in a serious condition and no matter what was done, it would be an ongoing problem whether a bulkhead or riprap was used. Mr. Bevilacqua said he was putting in the plastic bulkhead which would give him more years, and then requested that the Commission approve his request for a bulkhead. Commissioner Pruitt asked Mr. Bevilacqua how he felt about staff's recommendation regarding the alignment of the bulkhead being close to the upland as possible with a riprap toe for scour protection. Mr.

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Bevilacqua asked if staff was recommending placement of the riprap in front of the bulkhead? If so, he did not see the benefit of that because the water would still be accelerating when the water hit the groins. A discussion then followed concerning the purpose of riprap toe protection and reflected wave energy.

Associate Member Ballard said that it seemed like the bulkhead could be moved back considerably, take less of the beach, but still preserve the trees. A discussion followed regarding alignment of the bulkhead. Comments are a part of the verbatim record.

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

Associate Member Gordy commented that all the neighbors had agreed with the proposal, and she felt the bulkhead looked better than some of the other methods used to stabilize the beach. Associate Member Gordy then moved to approve the bulkhead. Associate Member White seconded the motion.

Associate Member Goodell commented that he felt the placement of the bulkhead should not be no further seaward than the ends of the groins. A discussion followed.

Associate Member Ballard commented that he would vote against the motion because he thought there was an alignment that would preserve more of the beach and that was the Commission's charge. Mr. Ballard then stated that his alternative would be to extend the groins back to meet the bulkhead. As a result, the bulkhead could be placed a lot closer to the shoreline.

Mr. Bevilacqua stated that if he placed the bulkhead further back, his neighbor to the east of his property would be more seaward, than the end of his bulkhead.

Associate Member Cowart asked for clarification concerning the bulkhead being tied into the back of the groins. Mr. Grabb responded that he understood the motion was to approve staff's recommendation. A brief discussion followed.

Mr. Bevilacqua asked if he could tie into his neighbors bulkhead. Commissioner Pruitt responded that was not what the motion stated. The motion was to bring the bulkhead back to where staff had recommended. Motion carried 6 to 1, with Associate Member Ballard voting against the motion.

HARRY C. BEATTIE, IV, #99-0789, requests authorization to install a maximum of 125 linear feet of quarrystone riprap revetment, the toe of which is aligned ten feet landward of mean low water, adjacent to his property situated along the Mattaponi River in King and Queen County. Wetlands permit required.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Mr. Madden said staff conducted a public hearing on July 6, 1999, in the King and Queen County Courthouse. Mr. Beattie and staff were present. No one else attended to express opposition to the project. He said VIMS reviewed the project and indicated that the impacts associated with the proposal would be minimal. No other agency had objected to the project.

Mr. Madden said that since the 20-foot high bluff was experiencing active erosion, stabilization was warranted to reduce the potential impact to both the wetlands and the adjacent submerged lands that could result from any further bank failure. He said the impact to the sand/mudflat community and marine resources appeared to be minimal. As a result, staff believed the public and private benefits outweighed any potential public and private detriments.

Accordingly, staff recommended approval of the project with the condition that the toe of the revetment be buried a minimum of 18 inches below the mean low water elevation to prevent the structure from being undermined.

There being the comments, pro or con, the matter was placed before the Commission.

Associate Member Birkett moved to accept staff recommendation. Motion seconded by Associate Member Gordy. Motion carried unanimously.

COMMISSION APPROVAL of a Deed conveying certain submerged lands in the James River between Amherst and Bedford Counties to the United States Forest Service in accordance with the provisions of House Bill 2590 to permit the construction of a pedestrian bridge crossing the Appalachian Trail.

Jeff Madden, Environmental Engineer, briefed the Commission. He said he needed to add one other thing to the deed. He said he was prepared to give a briefing and provide background information. Mr. Pruitt commented that the Commission was familiar with the Deed from the last time and the briefing could be dispensed with.

Carl Josephson said that since the United States was expending appropriated funds, a more

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permanent interest was necessary other than just a permit, hence, the legislation and the special Act of Assembly. He said this easement deed was drafted similar to what the former counsel had used in the past.

Janne Joy, realtor specialist with the United States Department of Agriculture, and the National Forest Service with the George Washington and Jefferson National Forest, addressed the Commission. She said they were very pleased that they were at this point and they wanted the Commission to help them execute this permanent easement so that the bridge could be constructed. Other comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission. Associate Member Hull moved to approve a resolution and execute the Deed. Motion was seconded by Associate Member White.

Associate Member Goodell asked if a hold harmless clause was necessary to ensure the Commission was held free from liability. Mr. Josephson responded that the Commonwealth enjoyed the privilege of sovereign immunity and that wasn't necessary. Motion carried unanimously.

WETLANDS MITIGATION PROCEDURE - Associate Member Goodell.

Associate Member Goodell commented that at the last meeting, the Commission granted a permit to JPM, Inc. that resulted in the destruction of 3,060 square feet of wetlands. That loss was to be mitigated with the creation of 7,676 square feet of wetlands to offset the loss. However, he felt the Commission made a mistake because staff had recommended that a bond of \$8,000 be posted to ensure that the restored wetlands were properly engineered and were healthy. Mr. Goodell then gave some statistics on wetlands losses which he had pulled from the VIMS website. He said in instances where an individual took an upland that had never been a wetland before and tried to convert the area into wetlands, the failure rate of the wetlands approached 85%. Dr. Goodell further stated that most successful wetlands restorations were done where previous wetlands had been destroyed by diking or road construction. He then suggested that contractors be required to submit their record on wetlands building to establish a reference bank of people that could be contacted, and who had long histories of successes with wetlands restoration. If a person were required to undergo a mitigation process and select one of the contractors, then the contractor could be looked on more favorably. On the other hand, if they wanted to go outside of those contractors, the Commission should demand that a bond be posted to ensure that the wetlands were restored.

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Dr. Goodell gave comments regarding the incremental loss of a few feet of wetlands here and there due to installation of bulkheads or ripraps, which were never mitigated. Comments are a part of the verbatim record. He said Virginia needed to start a wetlands bank because the Commonwealth should be compensated for the loss of those wetlands. The Commission took no action on Dr. Goodell's suggestion.

The Commission recessed for lunch.

The Commission returned from lunch.

REPEAT OFFENDERS.

Lewis Jones, Assistant Chief-Law Enforcement, briefed the Commission. He said Mr. Forrest was before the Commission for the first time as a repeat offender. Mr. Forrest had received two summonses in May 1998, and one in February 1999. Mr. Forrest was convicted on all three charges. He said Mr. Forrest's primary business was seafood buying.

George Forrest - addressed the Commission. Mr. Forrest said one of the charges was operating without a buyer's license. He said he had been in business 34 years and it was negligence on his part, but now he bought the license and settled it in court. He said the other charges was for possession of small crabs.

Associate Member White suggested that Mr. Forrest have some type of method to mark the crabs when they come in.

Associate Member Goodell moved to give Mr. Forrest 12 months probation. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Lewis Jones, Assistant Chief-Law Enforcement, briefed the Commission. He said Mr. Jenkins was convicted on April 12, 1998, and June 20, 1998 for obstruction of cull rings; and on January 11, 1999 for taking and possession for sale of uncultured oysters, found guilty on all three charges. He said the records showed that this was Mr. Jenkins' first time as a repeat offender.

Bennie L. Jenkins

Commissioner Pruitt asked if he went to court on the charges. Mr. Jenkins responded that he paid them all.

Bennie L. Jenkins - addressed the Commission. He said the crabs were hard to keep straight. He said he also received a ticket two weeks ago.

Mr. Pruitt asked if he understood about the cull rings. Mr. Jenkins responded yes.

The matter was placed before the Commission. Associate Member Cowart asked if the ticket he received two weeks ago, would go against his probation period. Mr. Jones responded that they would consider the summon issued after today's date.

Associate Member Goodell moved to place Mr. Jenkins on a 12 months probation. Motion seconded by Associate Member Gordy. Motion carried unanimously.

PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-670-30, "Gear Restriction," to eliminate the requirement that persons licensed to use a recreational gill net shall stay within 100 yards of such nets when it is overboard.

Associate Member Hull commented that after he had raised this issue last month, he spoke with a number of people and he wanted to reexamine the issue. He said he realized that he should have studied the issue in more detail before bringing it to the Commission last month. However, he was very concerned about the safety issue, and he now felt that gill nets should be manned at all times. Therefore, he strongly supported maintaining the current regulation. Mr. Hull said that in reading some of the correspondence sent regarding the proposal, there were concerns expressed that he was misusing the license. He said he did not have a gill net license, recreational or commercial, and he had no self-interest in proposing this request. He said he had acted based on talking with some people that thought it was a good idea, but he was now requesting the proposal be withdrawn.

Carl Josephson, Assistant Attorney General, commented that since the Commission had adopted the proposal for approval for advertisement, it would take a vote of the Commission to withdraw the proposal.

Motion was seconded by Associate Member White to withdraw the proposal. Motion carried unanimously.

Associate Member Cowart commented that according to some letters received in the packages, there was some concern regarding whether the matter was not done properly. He said he was under the opinion that if the proposal was brought up at the last meeting and advertised that was the proper procedure. He said he did not think Mr. Hull had any ill intentions for bringing this proposal before the Commission. Mr. Cowart said Mr. Hull had just perceived a problem and this was the proper way to address the issue. Commissioner Pruitt commented that was the only way to address the issue was through a public hearing. Mr. Pruitt said the Commission also revisited regulations from time to time.

For the record, Commissioner Pruitt asked Mr. Josephson, the Assistant Attorney General, if the Commission advertised this issue properly. Mr. Josephson responded yes. Mr. Pruitt explained that there would not be a public hearing, therefore, no action would be taken.

Cases pertaining to the failure to report commercial seafood harvests.

Mr. Travelstead said the item had been withdrawn.

PUBLIC COMMENTS.

Associate Member Hull commented that he had heard yesterday that a group was being formed in the Northern Neck called "Save the Blue Crab Foundation." He said the group would be working to get legislation and appearances before the Commission on banning the harvest of sponge crabs.

Associate Member Cowart commented that a letter came in the packages from Dr. Gene Burreson regarding the study done on Chesapeake Bay Restoration by the Chesapeake Research Consortium. Mr. Cowart said he agreed to most of the proposal, but he did not agree with the portion dealing with moving seed oysters from one area to another. He said here in Virginia some removal of oysters was necessary in order to make the areas productive that did not reproduce on their own. He then asked if Dr. Burreson could tell how the decision making process went in this particular report.

Dr. Burreson responded that issue was discussed most within that committee. He said it was primarily driven by Maryland. He said according to the Maryland scientists, the Maryland

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Department of Natural Resources was moving a great deal of seed oysters infected with dermo to low salinity areas. The rationale was that although there was low salinity, the dermo was not very active and if the seed was moved into those areas, it was all right and there would be no mortality and no development, which was all right to do. He said that was all right to do until you had a year like this year where it was very dry and the salinity would go up and accelerate diseased areas that historically had low salinity. He said according to the scientists on that committee, Maryland was moving seed oysters in the low salinity areas. However, now the scientists were opposed to that idea in Maryland. He said the principle was bad to move infected organism around because all moving the diseased oysters did was spread the disease around. He said a good example was the spread of dermo throughout the Bay by moving infected oysters from the James River into other tributaries. However, they realized that the disease was essentially everywhere now. He said they tried to limit the movement of the disease oysters, but they realized that some movement was necessary to allow some harvest, and it would be unreal to have a total moratorium on movement of oysters.

Associate Member Cowart further commented that the best growout areas were in the State of Virginia and Maryland particularly in the low salinity areas. However, he said the best growout areas were not the areas where reproduction took place on a regular basis. Therefore, he said if you did not introduce seed oysters into those areas for industry purposes, the chances for having reproduction was very small.

Steve Bezch, addressed the Commission. He said he drafted a letter and sent it to Mr. Travelstead regarding an extension of the polluted season in the James River due to the bad weather this year. He said he had sent a petition around to the clammers, and he had talked to Mr. Insley, and the buyers also signed the petition.

Mr. Insley, Head-Plans and Statistics, addressed the Commission. He said he had been contacted by Steve, some dealers, and the clammers regarding extending the season. He said there was considerably less production this year than last year. He felt that it was attributed to effort, although the numbers had not been received from the watermen. He said he did a brief catch per unit effort over last year's. The catch per boat was up 15% over last year. He said the effort was down, they had counted 38 boats today, and last year at this time it was 48 to 52 boats in the same week of last year. He said he felt the river could be worked, and this would help the clam dealers and the watermen make more money. He, therefore, recommended an extension of the season for no more than two weeks.

Commissioner Pruitt requested that staff give the report regarding the Corps dredging project.

Jack Travelstead, Chief-Fisheries Management, addressed the Commission. He said the environmental document prepared by the Corps prior to that dredging said that the Corps would contact staff so that arrangements could be made to take the clams out of the area before the dredging. However, the Corps had failed to notify staff and the first notice he had received was a couple of weeks ago. Mr. Travelstead said they looked into how to get the clams out of the area as quickly as possible. He said Mr. Insley secured the services of two watermen to use modified crab dredges in those areas. He said the watermen started this morning and they would attempt to remove all of the clams in those areas before the dredging. He said they had lost some areas because the dredging started a couple of weeks ago.

A discussion followed between Commission members and staff regarding the Corps dredging. Comments are a part of the verbatim record.

Mr. Travelstead said the money being used to transfer the clams was set aside out of the Marine Improvement Fund, specifically for the placement of clams in the clam sanctuaries. He said the clams would be moved to the Middle Ground Clam Sanctuary, where they would be protected and serve as broodstock for the Hampton Roads Area.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member White moved by emergency action to add two additional weeks to the clam season in the James River, which would expire September 1, 1999. Motion was seconded Associate Member Hull. Motion carried unanimously.

Tom Powers, representing the CCA, addressed the Commission. He commented that he was interested in the blue crab regulations and the blue crab fishery. He suggested that a complete comprehensive look be done regarding the blue crab and other fisheries. Comments are a part of the verbatim record. He said one of their primary concerns was reducing the number of crab pots in the water.

Associate Member Cowart commented that the Commission had a limit on all gear, rather than allowing a particular gear to expand. Mr. Powers responded and there were no regulations on the books for holding steady after the freeze expired on May 26. Mr. Cowart responded that at the October hearing, the crabbers would have an opportunity to give their input because the crabbing season would be over, and more data from this season's harvest would be available.

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Mr. Travelstead commented that the public hearing in October would only consider reductions in peeler pot licenses or the number of pots per licensee, and the other issue dealt with cull rings as to whether the larger rings in crab pots be opened in the main stem of the Bay.

Commissioner Pruitt commented that he felt a comprehensive look at the crab issue should be undertaken, because depending on whom you talked to as to where the solution was.

Mr. Powers commented that the Commission had indicated changing and expanding the membership to include more biologist and noncommercial interest. Mr. Pruitt responded that Mr. Kale and Mr. Travelstead were working on trying to get people that were willing to serve on that committee.

Mark Hudson addressed the Commission. He said he had been a fisherman for ten years and had received his rock tags when they were first issued. However, since then, his house was broken into and half of his tags were stolen. He said he had only used 150 tags and he received \$7,000 for the tags. He had filed the police report, and was told to bring the police report to the Commission meeting, but the police report was not ready.

Ellen Cosby, Fisheries Management Specialist, said that Mr. Hudson had talked with her regarding the stolen tags, and he had reported his tags were missing after his move and suspected some people may have taken the tags. She told him to file a police report and take the report to a law enforcement officer. She said Mr. Hudson wanted the tags replaced, but she told him she did not have the authority to replace the tags. However, they were in the exchange program now where the people are bringing in their metal tags in exchange for plastic tags and there were sufficient tags, if the Commission approved the request.

Commissioner Pruitt responded that he could not suggest doing anything until he saw the police report. Mr. Pruitt asked when were the tags stolen. Mr. Hudson responded approximately five days ago. Mr. Pruitt said once the police report was received, the matter could be dealt with administratively. Mr. Pruitt then suggested that he give the police report to Colonel Bowman and meet with Colonel Bowman. He said staff would then contact the police and see what they had on the case.

Larry Snider gave comments based on his individual opinion. He said he would like to compliment VMRC's officials who were actively engaged in the apprehension of people regarding the illegal taking of Sturgeon in Virginia. Other comments are a part of the verbatim record.

Freeland Mason addressed the Commission. He said the CCA's comments on the crab situation was discussed with the Commission before. He said he felt the matter should be discussed comprehensively so that each segment of the industry would bear its own pain. Mr. Mason then referred to the comments made by Associate Member Hull. He said the sole purpose of the Committee that Dr. Hull mentioned earlier was to enact legislation to prohibit the taking of sponge crabs. Commissioner Pruitt said depending upon who you talked with and the area they were from. If you talked to people in this area, they would say, "if you did away with peeler pots, they would have something to pick down here," and that is the reason why the issue should be discussed comprehensively. Comments are a part of the verbatim record.

Mr. Mason then asked the status of his request for consideration of a wallet-size rock tag permit. Commissioner Pruitt responded nothing had been done at this point, but it was under advisement. Mr. Mason also requested the VMRC's web page be extended administratively to list licenses for sale. Commissioner Pruitt commented that he would have staff look into the matter. In addition, Mr. Mason said he wished there was more visibility on the web page and information on where to go.

Associate Member Goodell commented that Mr. Mason had raised a good point regarding listing the numbers of stolen tags on the web page. Commissioner Pruitt responded that was a good suggestion, and it was something that would have to be looked into, but the police report was very important in that situation.

Meeting adjourned at 1:15 p.m.

William A. Pruitt
Commissioner

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10920
July 27, 1999

LaVerne Lewis
Secretary