

## MINUTES

**DECEMBER 19, 2000**  
**NEWPORT NEWS, VIRGINIA 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	)	
Laura Belle Gordy	)	
Henry Lane Hull	)	Members of the Commission
F. Wayne McLeskey	)	
Kenneth W. Williams	)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		Head-MIS
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance & Administration
Jane McCroskey		Deputy Chief-Finance & Administration
Debbie Brooks		Executive Secretary
Steven Bowman		Chief-Law Enforcement
Lewis Jones		Deputy Chief-Law Enforcement
Warner Rhodes		Middle Area Supervisor
Benjamin Major, III		First Sergeant
Randy Widgeon		Eastern Shore Area Supervisor
Ray Jewell		Northern Area Supervisor
Lisa Gruber		Marine Patrol Officer
Trevor Johnson		Marine Patrol Officer

### VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF

Dr. Eugene Burreson  
Tom Barnard  
Lyle Varnell

**COMMISSION MEETING**

**NOVEMBER 15, 2000**

Jim Wesson

Head - Conservation and Replenishment

Jack Travelstead  
Rob O'Reilly

Chief-Fisheries Management  
Assistant-Chief Fisheries Management

Roy Insley  
Tina Hutcheson  
Ellen Cosby  
Lewis Gillingham  
Chad Boyce

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

Bob Grabb  
Tony Watkinson  
Chip Neikirk  
Randy Owen  
Traycie West  
Heather Wood  
Ben Stagg  
Jeff Madden  
Mark Eversole  
Jay Woodward  
Hank Badger

Chief-Habitat Management  
Assistant Chief-Habitat Management  
Environmental Engineer  
Environmental Engineer

Gerry Showalter

Head-Engineering & Surveying

others present:

Julie C. Steele  
Paul Kidd  
William C. Hogge  
George Janek  
Terry scanlon  
Dr. George D. Cole  
Jane Oehman  
Eric Sheroft  
Rob Brumbaugh  
John Melzer  
Scott Harper  
Rick Stilwagen  
Tom Powers

Wesley F. Mallory  
Paul Steele  
Alor Grantham Traywick  
Karl Mertig  
Russell Danser  
Pamela P. Hunter  
David Brigg  
T. O. Mayhew  
Arthur Kellum  
Bob Merten  
Bruce Caskey  
David Spring  
Bob Hutchinson

**COMMISSION MEETING**

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Doug Jenkins  
Bobby Wynn  
Rich Robins  
and others.

Irwin Victor  
Jim Rooke

## COMMISSION MEETING

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Commissioner Pruitt opened the December meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Hull, White, and Williams. Mr. Gerry Showalter gave the invocation, and Mr. Carl Josephson, Assistant Attorney General, led the Pledge of Allegiance to the Flag. Mr. Pruitt established that three members were not present, and he had only heard from Mr. Cowart. He said Mr. Cowart would not be able to attend, however, there was a quorum. Associate Members Gordy and McLeskey arrived later.

**1. MINUTES** of previous meeting.

Associate Member Hull moved that the Minutes be approved as prepared, motion was seconded by Associate Member Birkett. Motion carried, with Associate Member White abstaining because he was not present at the last meeting.

**\*\* APPROVAL OF AGENDA**

Associate Member Hull moved to approve the agenda as presented. Motion seconded by Associate Member White. Motion carried unanimously.

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

Tony Watkinson, Deputy Chief- Habitat Management, announced that Miss Heather Wood would be leaving for another position. He then thanked her for her hard work and her contribution to the agency, especially the Habitat Division.

Commissioner Pruitt commented that Ms. Wood had done an outstanding job for the agency and wished her the best in her new endeavors.

Colonel Bowman, Chief-Law Enforcement, also announced that the Law Enforcement Division had a new employee, David Lumgair from Craddockville, joined the Marine Patrol officers and would be serving in the Northern Area after completing the Academy.

Mr. Watkinson then briefed the Commission on the eight page two items, which were items over \$50,000 in cost, with no opposition. Staff had also conducted a public interest review and staff was recommending approval.

**2A. HENRY COUNTY PUBLIC SERVICE AUTHORITY, #00-1915**, requests authorization to relocate existing sewer lines in two locations along Jordan Creek, a tributary to Smith River in Henry County. Recommend approval with standard

instream construction conditions.

Permit fee.....\$ 100.00

- 2B. QWEST COMMUNICATIONS, #00-1833**, requests authorization to install, by directional method, fiber optic cable crossings under Tide Mill Creek, Newmarket Creek, Johns Creek, Herberts Creek and the Hampton River in the City of Hampton; Hampton Roads between Hampton and Norfolk, and Mason Creek in Norfolk. The 14.3 mile cable route will extend from Langley Air Force Base in Hampton to the intersection of East Taussig Boulevard and Granby Street in Norfolk. Recommend a royalty of \$7,567.00 for the crossing of 7,567 linear feet of State-owned subaqueous bottom at a rate of \$1.00 per linear foot.

Royalty of \$7,567.00 for crossing 7,567 ln. ft. of State-owned subaqueous bottom @ \$1.00 ln. ft..... \$ 7,567.00  
 Permit fee.....  
100.00

Total \$ 7,667.00

- 2C. NAVAL FACILITIES ENGINEERING COMMAND, #00-1738**, requests authorization to replace Pier #3 at the U.S. Naval Station Norfolk with a 1,500 linear foot open-pile, concrete pier and to install 1,076 linear feet of concrete bulkheading and relieving platforms adjacent to the Naval Station situated along the Elizabeth River in Norfolk.

- 2D. EVA B. CORPORATION, #94-1550**, requests reactivation and extension of a permit to dredge a 700-foot long by 50-foot wide channel to create maximum depths of minus three (-3) feet below mean low water, reconstruct 470 linear feet of timber bulkhead, install 50 linear feet of riprap, widen an existing boatramp to 29 feet, construct a 4-foot by 8-foot access pier and an 8-foot by 60-foot L-shaped pier with a 12-foot by 12-foot pump-out area adjacent to the boat ramp, and to place sandy dredge material along 1,200 linear feet of shoreline as beach nourishment at the New Point Campground along Jack's Creek in Mathews County.

Permit fee not applicable

- 2E. POINT WILLOUGHBY SAILING CENTER, #97-1609**, requests a modification

to their previously issued permit to include the construction of a 100-foot long by 8-foot wide commercial floating pier extension with a 45-foot long by 8-foot wide L-head and a 40-foot long by 3-foot wide floating catwalk, and the relocation of 10 existing mooring piles to create two additional wetslips at their facility situated along Willoughby Bay in Norfolk. Recommend an additional annual royalty of \$135.00 for the additional encroachment over 2,700 square feet of State-owned subaqueous bottom at a rate of \$0.05 per square foot.

Encroachment over 2,700 sq. ft.  
State-owned subaqueous bottom  
@ \$0.05 per sq. ft..... \$135.00

**2 F. DEPARTMENT OF THE NAVY, #00-1976**, requests authorization to construct a 102-foot long by 67-foot wide concrete boat ramp at the Cove Marina situated along Little Creek at the U.S. Naval Amphibious Base in Virginia Beach. Recommend approval pending expiration of the public comment period of December 20, 2000.

**2G. NORTHAMPTON COUNTY, #98-0672**, requests authorization to modify a previously issued permit to maintenance dredge a channel approximately 60 feet in width, with maximum depths of minus six (-6) feet at mean low water, to re-establish navigational access from a County marina facility along Parting Creek in Northampton County. Recommend a one-time change in condition #18, which imposes a time-of-year restriction from January 1 through October 31, be lifted between January 1, 2001, and January 31, 2001, to accommodate the upcoming dredging.

Permit fee not applicable

Associate Member White commented that the project looked like it would be successfully completed without any additions. A brief discussion followed.

**2H. VIRGINIA DEPARTMENT OF TRANSPORTATION, #99-0532**, requests a modification to a previously issued permit to include the construction of two (2) temporary sheetpile causeways, one 120-foot long by 30-foot wide, and the second 80-foot long by 30-foot wide, and 195 linear feet of temporary steel sheetpile breakwater in conjunction with the removal and replacement of the existing Route 60/Shore Drive Bridge over Little creek in the City of Norfolk. Additional authorization is also requested for the additional dredging of 260 cubic yards of subaqueous bottom material.

Permit fee not applicable

Associate Member Ballard requested an explanation regarding item 2D, and what was the 12 foot by 12 foot pumpout area adjacent to the boat ramp. Mr. Watkinson responded that it was his understanding that it was a 12 foot by 12 foot platform at the pier to accommodate the pumpout equipment.

There being no further comments on the page two items, Commissioner Pruitt placed the matter before the Commission in its entirety. Associate Member White moved for approval of all the page two items. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**3. EXECUTIVE SESSION** was held.

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 actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), paragraph (7) of section 2.1-344 of the Code of Virginia, pertaining to legal matters relating to Commission decisions and discussion of pending application which is styled ATCIC, 99-1996. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

After returning from the executive session, Associate Member Ballard move that;

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

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4. **PAMELA P. HUNTER, #00-1388**, requests authorization to construct a 120-foot long by 6-foot wide community pier with a 95-foot long by 8-foot wide T-head and 8 wetslips at Chesapeake Watch Subdivision adjacent to property situated along Hodges Cove in York County. The project is protested by several nearby property owners and a nearby oyster ground leaseholder.

Tracy West, Environmental Engineer, indicated that an additional protest letter was given her while in the executive session, she then provided the Commission members with a copy. Ms. Wood briefed the Commission and presented slides on the location and description of the property. Comments are a part of the verbatim record.

Ms. West said that as part of the covenant for the subdivision, private piers were not allowed and the one community pier would be used by residents only. The pier would include 7 lots and 8 slips, the additional pier would be for guests or for a second boat. No rental of slips would be accepted. She also indicated that there were two riparian oyster ground leases and three regular leases nearby. Ms. West stated that the pier did not appear to encroach on the oyster leases, but the leases were located in the cove.

Ms. West also stated that the project was protested by four nearby residents and one oyster ground lease holder. She said Mr. Hogge was opposed to the construction of the pier because he felt the pier and the increase in boat traffic would likely increase erosion in the cove. Mr. Hogge was also concerned that the proposed project would pose a detriment to his oyster ground lease. The residents that were concerned about the size of the facility, the impact to their view, increase in noise and boat traffic, increase in erosion caused by boat traffic, potential petroleum spills, impact to water fowls that used the spit, and any navigation restrictions that the pier may impose for navigation in the creek.

Ms. West indicated that the Health Department stated that the proposed project was in compliance with the Sanitary Regulations. She said specifically asked if the proposed project would result in the closure of any shellfish grounds in the area. The Department responded no (letter from the Department was enclosed in the Commission package ).

Ms. West said that VIMS commented that incidental pollution could be expected from the operation of the community pier, but VIMS felt this could be eliminated by trash receptacles being placed on the pier and signs to promote awareness for residents of the subdivision. In addition, there could be some localized erosion due to the increase in boat traffic.

Ms. West said according to the Marina Siting Criteria, most aspects of the project were categorized as desirable. She stated that the area was not currently condemned for shellfish marketing and did not expect the proposed project to cause condemnation because of the construction of the community pier. Ms. West also stated that the deepest water in the cove was approximately 100 feet from the end of the pier. Therefore, the proposed alignment of the pier did not appear to impede navigation through the cove. The proposed project would also eliminate the need for seven individual private piers, which should help prevent the disturbance of the underdeveloped shoreline associated with the subdivision.

Ms. West further stated that a mooring facility was preferred in this situation. Staff, therefore, recommended approval of the project provided that no overnight occupancy be allowed on the boats, and that the applicant be required to record restrictions forbidding private piers in the property deeds rather than just in the covenants. She mentioned that the applicant also submitted a recordation of conservation easement of the resource protection area, which is 100 feet from the shore. Ms. West said that the conservation easement stated that no buildings or structures would be permitted. She said staff did not believe the two restrictions alone provided enough assurance that private piers would be adequately controlled. Staff recommended a royalty in the amount of \$0.30 per square foot for encroachment over State-owned submerged lands.

**CARL MARTEG** with Environmental Specialists Group, presented charts that showed the proposed location of the pier, with the T-head. Mr. Marteg also gave comments supporting the proposed project regarding the number of slips and limiting public access to the project. He said the length of the pier extended into the cove 110 feet, which was commensurate with other piers in that location. Mr. Marteg further stated that the proposed pier would encroach on a minimal amount of bridging tidal wetlands. He also stated that they were willing to incorporate in the deed the language stating there would be no private piers. Other Comments are a part of the verbatim record.

**WILLIAM HOGGE** said the residents in the cove were not opposed to the pier, but they were opposed to the size of the pier.

Associate Member White asked how far was the proposed pier from Mr. Hogge's property? Mr. Hogge responded that his pier was approximately 1000 yards.

Associate member Ballard commented that he understood Mr. Hogge's reason for the four lots being out in the Bay, but he did not understand Mr. Hogge's specific objection to the size of the pier. Mr. Ballard asked how would the size of the proposed pier impact Mr. Hogge? Mr. Hogge responded that the size of the boats coming in and out of the cove across his oyster ground would cause more wake and traffic, resulting in a lot of silt. The area was shallow

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where they came out the cove, which was approximately 6 feet of water and it would be more silt and more wash. Mr. Ballard asked how many boats were moored in the cove. Mr. Hogge said he was unsure, but he would guess 30 small boats. A discussion followed.

**HERRICK SHERIFF** addressed the Commission. He gave comments in reference to the jet skies running in and out of the cove. He said they disturbed the water and it washing away of his shoreline. A discussion followed regarding the length of the pier. Comments are a part of the verbatim record.

Mr. Mertig gave rebuttal comments regarding the size of the pier, the boat and the MLW level. Comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

**PAMELA COLES BEASLEY HUNTER** commented that everyone in the cove was not opposed to the pier, and that Mrs. Promp had withdrawn her objection. Ms. Hunter said she felt the same conditions would apply to other lots along the Poquoson River.

Associate Member Ballard moved that in the case of Pamela B. Hunter, #00-1388, the Commission had considered all the material provided in the briefing package, considered staff's briefings and recommendations at the hearing, and having heard the evidence presented on behalf of the applicant and protesters, the Commission finds that the project does meet the Marina Citing Criteria and that there were both public and private benefits to this project. Therefore, approved staff's recommendation to issue the permit. Associate Member Williams seconded the motion. Motion carried, with Associate Member Gordy abstaining because she was not present for the presentation.

Royalty for encroachment		
of @\$0.30 sq. ft.....	\$	450.60
Permit fee.		
.....	<u>100.00</u>	
Total	\$	550.60

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- WESLEY MALLORY, #00-1841**, requests authorization to construct a 24-foot by 12-foot open-sided private boathouse adjacent to his existing pier situated along Sturgeon Creek in Middlesex County. The project is protested by an adjacent property owner.

Chip Neikirk, environmental engineer, briefed the Commission and presented slides on the

description and location of the proposal. Comments are part of the verbatim record.

Mr. Neikirk indicated that the project was protested by Ms. Mary Cary Finley, an adjacent property owner. He said Ms. Finley was concerned with the potential environmental, aesthetic and navigational impacts associate with the project.

Mr. Neikirk stated that the proposed project would not encroach on any private or public leased oyster ground. No State agencies had commented on the project. He also indicated that if the protestant had not objected to the open-sided boathouse, it would have qualified for exemption contained in §28.2-1203 (A)(5) of the Virginia Code. Mr. Neikirk said that the open-sided design should minimize the visual impacts associated with the structure and the navigational and environmental impacts should not exceed those associate with the existing pier and uncovered boatlift. Accordingly, staff recommended approval of the project.

**WESLEY F. MALLORY**, applicant for the proposed project, addressed the Commission. He stated that he just wanted to put a cover over his boatlift to keep the elements off of his boat. Mr. Mallory indicated that the way the opponent's property was elevated, the proposed boatcover would not obstruct her view. He also stated that Ms. Finley resided in New York. He said he had owned this property for six years and he had never seen her. In addition, her property was not kept up, and he had to go and pick the litter off her beach.

There being no one present in opposition, Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to approved the project as proposed in its entirety. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Permit fee.....\$ 25.00

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- 6. **THOMAS YOSS, #00-1314**, requests authorization to construct a 24-foot by 24-foot open-sided private boathouse adjacent to his existing pier situated along Sturgeon Creek in Middlesex County. The project is protested by a nearby property owner.

Chip Neikirk, environmental engineer, briefed the Commission and presented slides that showed the location and description of the proposal. Comments are a part of the verbatim record. Mr. Neikirk said that the project did not encroach on any public or private oyster grounds associated with the proposed project. No comments had been received from any State agencies

on the project. The project was protested by Ms. Mary Cary Finley, a nearby property owner. Ms. Finley was concerned with the potential environmental, aesthetic and navigational impacts associate with the project.

Mr. Neikirk further stated that the proposed boathouse was under 700 square feet in size and would qualify for the statutory exemption contained in the Code, except for the two-slip boathouse, which the Code specified to cover a single slip. Therefore, Section 28.2.1203 (A)(5) did not apply and a permit was required. The proposed structure appeared to be reasonably sized to protect Mr. Yoss's two 21-foot boats. Mr. Neikirk also indicated that the open-sided design should minimize the visual impacts associated with the structure and the environmental effects should not exceed those associated with the existing pier. He stated that the proposed pier would extend beyond the existing pier. However, staff did not anticipate the extension would adversely affect navigation within the creek. Therefore, staff recommended approval of the project.

**ALORA GRANTHAM-TRAYWICK** representing Mr. Yoss addressed the Commission. She stated that many of Mr. Yoss's neighbors already had boathouses or covered slips. Ms. Traywick indicated that Mr. Yoss had recently purchased the property and the boat and he wanted to have a covered slip to protect two of his three boats.

There being no one present in opposition to the application, Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams moved to approve application #00-1314. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Permit fee.....\$ 25.00

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- 7. **DISCUSSION:** Overview and Long Term Projections for the Oyster Replenishment Program as it relates to the new Baywide Oyster Goal and Developing Funding Opportunities.

Dr. Jim Wesson, Head-Conservation and Replenishment, informed the Commission that he needed approval for procurement activity for the 2001 Oyster Replenishment Program Broodstock Movement and Cleaning of the Harvest Areas so that he could get started on some of the work projects beginning the first of the year.

**Approval of Procurement activity for the 2001 Oyster Replenishment Program Broodstock Movement and Cleaning of Harvest Areas Projects.**

*General:*

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

*This section of the Code states that:*

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

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

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

**Approval, by the Commission, of the Replenishment Projects will also include approval of the Procurement methods mentioned above.**

Commissioner Pruitt commented that the approval of the procurement activity for the 2001 Oyster Replenishment Program was in keeping with the Baywide program goals. Mr. Pruitt then placed the matter before the Commission. Mr. Williams asked what areas were included. Dr. Wesson said the Rappahannock, Piankatank, and Tangier Island were included in the Oyster Heritage Program.

Associate Member Ballard moved to approve the procurement methods as outlined under

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Section 28.2-550 of the Code of Virginia. Motion was seconded by Associate Member McLeskey.

Assistant Attorney General, Carl Josephson, stated that the proper Code should be cited correctly and reflect the procurement activity outlined in Section 28.2-550 of the Code. Mr. Ballard amended the motion to reflect the proper Code. Motion carried unanimously.

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Dr. Jim Wesson, Head-Conservation and Replenishment, presented a detailed briefing on the fall surveys. He said the spatset was very low this year, and they did not understand why the spat set was so low Baywide. However, they saw relatively good survival of oysters throughout the Bay except for the Coan and Yeocomico Rivers and in some of the Potomac Tributaries which had a significant dieoff of oysters. He said those rivers were show case rivers on how well they were doing, and it was puzzling as to why the dieoff in those rivers was so significant.

Dr. Wesson indicated that the 2000 Completion Report was included in the Commission's packages. He also indicated that the program would have been larger this year, but they did not receive the promised shells from Maryland.

Dr. Wesson then briefed the Commission on the Virginia Oyster Restoration 10-year Plan. He said oyster scientists from the Bay area met in 1999 and came up with the best strategies for oysters in the Bay. The scientists came to an agreement that building 3-D sanctuaries with harvest areas was the best for the entire Bay to bring oysters back. He also talked about the Virginia Oyster Heritage Program Partners.

Dr. Wesson also mentioned the establishment of a private foundation called the Virginia Oyster Reef Heritage Foundation that was formed to solicit money from people to contribute to the oyster restoration program. He said the program would also be added to the United Way Program as a source of contributions. Dr. Wesson also indicated that they had lobbied Congress for funds to implement this program on a larger scale. Dr. Wesson said the Chesapeake Bay Foundation sponsored an affair in Washington and House of Representative members that attended the affair indicated that they would work to get monies in the federal budget for the future of oyster restoration. Dr. Wesson said our 10-fold increase in oysters goal was to bring the oysters back to the 1960's level.

Dr. Wesson also indicated that the program needed to maintain the monies they had been getting to keep up with the population monitoring, oyster bed cleaning, keeping shells on the areas done previously, seed movement and maintaining what they had previously completed. Dr. Wesson estimated that it would cost at least \$1,000,000 just to maintain the efforts done in

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the past. He said he estimated that at least \$3,100,000 a year was needed to move forward in reaching the 10-fold goal.

Dr. Wesson stated that in June 2000, a new Chesapeake Bay Program agreement was signed by all the governors in the area and the Chesapeake Bay Program. The agreement stated that by 2010 oysters would be increased by 10-fold. Dr. Wesson then explained the approach to the 10-fold goal; the committed funding for oyster restoration, potential available funding for oyster restoration, and the potential problems and opportunities. Comments are a part of the verbatim record. Dr. Wesson also mentioned the alternative materials used as clutch substitutes.

Associate Member Ballard commented that the Virginia Oyster Industry definitely needed some help. He said he knew the industry was very interested in seeing the Oyster Restoration Program move forward. Mr. Ballard also expressed concern about moving the efforts forward for the mining of the shells and questioned the necessity to go through the permitting process. He said industry was interested is this becoming a "front burner" item. A brief discussion followed.

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Associate Member White presented Associate Member Davis, a former member of the Commission, a recognition plaque for his service to the Commission.

Mr. Sheppard H. C. Davis gave complimentary comments to the Commission. Comments are a part of the verbatim record.

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The Commission convened for lunch.

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**NOT AN AGENDA ITEM:**

Mr. Bruce Caskey addressed the Commission and requested an exception to transfer his crab dredge license to a licensed watermen. Mr. Caskey wanted to keep his vessel for fishing, but he was unable to crab dredge because of two back operations.

Commissioner Pruitt commented that it was not an increase in crab dredge licenses, it was just "a one in and one out" situation. Mr. Pruitt also reminded Mr. Caskey that he could not come back and get the license.

Associate Member Gordy moved the approval of the transfer of the crab dredge license. Associate Member White seconded the motion. Motion carried unanimously.

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**8. PUBLIC HEARING:** Revisions to the rules governing the marking of commercial fishing gear used recreationally.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the Public Notice that was advertised. Mr. O'Reilly also explained the revision to the regulation was about cost effectiveness and a more efficient gear marking system. He then pointed out the six gear types that were involved as commercial gear used for recreational purposes as follows:

1. Recreational gill net, \$7.50
2. Recreational fish cast net, \$8.00
3. Recreational fish dip net, \$6.00
4. Recreational crab pot, \$29.00
5. Recreational crab trap, \$5.00
6. Recreational ordinary crab trot line, \$8.00

Mr. O'Reilly also mentioned that the Administration and Finance, Law Enforcement and Fisheries Management Divisions met concerning that issue and came up the following consensus recommendations:

1. License tags are not necessary for recreational gill nets, as recreational gill net fishermen shall stay within 100 yards of such gear when it is overboard.
2. License recreational crab potters are required to affix a license tag to the boat, yet a number of recreational crabbers fish ports away from public access areas, so a license tag is of limited value in an identification scheme.
3. The limited number of recreational trotline licenses, issued each year since 1993, does not justify the the administrative costs associated with maintaining an identification tag for this gear.
4. The issuance of license tags for recreational gill net, crab trap, crab pot and crab trotline should be suspended.
5. A new marking system should be initiated for the 2001 fisheries, whereby the

buoys of gill nets, crab pots and crab trotlines would be marked with the licensee's last 4 numbers of her or his driver's license or social security number, preceded by the letter "R." Similarly, one of offshore stakes of a crab trap would be marked in a manner that display's a licensee's last 4 numbers of her or his social security number or driver's license, preceded by the letter "R."

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

Associate Member Ballard moved that the proposed amendment be adopted to Sections 30 and 40 as parts of the final regulation 4 VAC 20-670-10 et. seq. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**PUBLIC HEARING:** Establishment of provisions to improve the monitoring and enforcement of horseshoe crab quotas.

Lewis Gillingham, Fisheries Management Specialist, briefed the Commission on the adoption of the 152,495 horsecrab quota and the importance of closely monitoring the quota in a timely manner. Therefore, staff was requesting amendments to the regulation 4 VAC 900-10 et. seq., Pertaining to the Horseshoe Crab as follows:

1. Establish a Horseshoe Crab Endorsement License (HCEL) required for the landing or possession of horseshoe crabs in excess of the bycatch limit of 50 horseshoe crabs. This license would be limited to those individuals that had documented landings of 500 horseshoe crabs or more in either 1998, 1999, 2000.
2. Allocate 85% of Virginia's annual quota to those persons who would hold a ~~vd~~ HCEL endorsement license. Further, that this quota be subdivided into semi-annual periods (January 1, through June 30, and July 1, December 31). Recommend a possession limit of 2,000 horseshoe crabs. The possession limit would be reduced by 50% of the landed quota.
3. Reserve 15% would be allocated as bycatch for individuals that did not qualify for the HCEL and limit these individuals to a possession limit of 50 horseshoe crabs.
4. HCEL holders be restricted from offloading horseshoe crabs between the hours of 10:00 p.m. and 7:00 a.m.

5. Require all HCEL holders call in to the Virginia Marine Resources Commission's Operation before any offloading of horseshoe crabs and give their location, time, and vessel. Following the offloading within 24 hours, they would call in to the soon to be automated IVR system, and provide the landings information.

Associate Member Ballard asked what was the procedure of the voice response system if it went down. Mr. Travelstead responded that they could call the office.

Commissioner Pruitt opened the public hearing.

Rick Robins, representing the Chesapeake Bay Packing and Bernie's Conch, addressed the Commission. Mr. Robins indicated that the proposed amendment regarding the individuals without a HCEL permit harvesting 50 to 100 crabs, as bycatch allocations, was too low to be inefficient and it was not practical. He said 250 crabs was the minimal distribution quantity because it took that many to fill a vat, and therefore, 250 horseshoe crab would be a more reasonable bycatch allocation. Mr. Robins also gave comments regarding possession limit of (2,000 to 5,000). He said he felt 4,000 to 5,000 crabs would be a minimal and reasonable amount for the trawl boats. Mr. Robins also gave comments regarding landing quotas that should be triggered after 85% of the quota was landed instead of 50% because the proposed IVR system would help monitor the landed quota.

There being no further comments, the public hearing was closed.

Associate Member Ballard requested staff's response to industry's three comments. Mr. Gillingham responded that those were the types of comments staff was looking for and staff had no problem with changing the landing quota's trigger from 50% to 85% because with the IVT system in place it would be easy to monitor the landed quota. Mr. Gillingham said he disagreed with Mr. Robins bycatch limit of 250 horseshoe crabs. He said two bycatch landings of 250 crabs each would then qualify an individual for the HCEL. He said according to the tracking on the mandatory reports, it would be rare to land more than 100 horseshoe crabs as bycatch for one trip. Mr. Gillingham said choosing 50 for the bycatch would protect everyone's interest. He also stated that staff had no problem with the 4,000 to 5,000 trip limit.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to adopt regulation 4 VAC 20-0-900-10 et. seq. with the recommendations that staff made, changing the HCEL possession limit from 2,000 horseshoe crabs to 4,000 crabs, and that the trigger point be changed from 50% of the quota to 85% of the quota, and the bycatch possession limit be 100 horseshoe crabs instead of 50. Motion was

seconded by Associate Member Williams. Motion carried unanimously.

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**10. PUBLIC HEARING:** Revision to the commercial flounder harvest rules for 2001. Lewis Gillingham, Fisheries Management Specialist, informed the Commission of Mr. Wesley McDonald's letter from Chincoteague Fisheries supporting the flounder regulation. Mr. Gillingham also indicated that there appeared to be a consensus among industry members that wanted to try the change to see if it would work. The three proposed changes are as follows:

1. To allow a vessel two landings, with a cumulative possession limit of 10,000 pound in any 10-day period of the first quarter of the directed summer flounder season.
2. Dealers be required to call in to VMRC's Operations Center and report the weight of Summer Flounder landed by a vessel, once offloading was complete.
3. Open the First Quarter on the first Monday which follows January 1.

Commissioner Pruitt opened the public hearing.

Jim Raul, commercial fisherman from North Carolina who primarily packed in Hampton and was a member of the Mid-Atlantic Fisheries Management Council addressed the Commission. Mr. Raul updated the Commission on North Carolina's time certain trip limit associated with summer flounder. He said it was a definite improvement over their original system, it was now a more fair and equitable system for everyone involved in the fishery, and a more safe. Mr. Raul also suggested that some flexibility of adjusting the trip limits through proclamation be considered, which would allow adjustment of the quota at the end of the 10-day period for the next 10-day period.

Commissioner Pruitt closed the public hearing, and placed the matter before Commission.

Associate Member Ballard moved to adopt the proposed amendments 4 VAC 20-620-10 et. seq. "Pertaining to Summer Flounder." Motion seconded by Associate Member Birkett. Motion carried unanimously.

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**11. DISCUSSION:** Establishment of 2001 management measures for the recreational and commercial striped bass fisheries.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the fishing mortality on the 14% reduction in the harvest of the larger striped bass in the commercial and recreational fisheries. Mr. O'Reilly stated that ASMFC came back and said everything was fine with the older fish and the fishing mortality rate overall. He said ASMFC offered two options either to resume the benchmarks that were in place in 1998 and 1999 or 2001 and 2002 have the 2000 regulations carried forward for those two years. Mr. O'Reilly said that the 2001 and 2002 was to be in advance of the next amendment by ASMFC, which would take effect January 1, 2003. Mr. O'Reilly then handed out information to the Commission from Mr. Synder. He said the CCA was proposed keeping the 2000 recreational regulations, which were managed by a slot limit on one fish for the coast in the Bay, and at the same time, continue that for 2001-2002. The CCA also recommended two modifications regarding the commercial harvest of striped bass: (1) the Commission was asked to consider the revocation of the trial commercial hook and line fishery for the 30-hour extension at the Chesapeake Bay Tunnel; (2) establish a maximum size for the commercial fishery, contingent with the Fulton Fish Market of 36 inches.

Mr. O'Reilly also indicated that in the past, the Potomac Fisheries Management Commission and VMRC had made the seasons similar for the Potomac River tributaries and the main stem of the Potomac. Staff then requested approval to take to public hearing the same size limit for both the Potomac Tributaries and the main stem of the Potomac. In addition, both positions that ASMFC was proposing: return to 1998-1999 regulations; or maintenance of 2000 regulations for 2001-2002 period. In addition, CCA's position as outlined in Mr. Synder's letter.

Commission placed the matter before the Commission.

Associate Member Birkett commented that they had already spent three months discussing CCA's position on the revocation of the 30-hour fishing extension at the Chesapeake Bay Tunnel and the Commission had made a ruling at the last meeting. Therefore, he wanted to know why it would be necessary to go into this matter again at this time. Mr. O'Reilly responded that the Commission planned to take the subject up again in 2001 because it was on a one-year trial basis, which was different than the request of revocation.

Commissioner Pruitt then requested Mr. Synder from the CCA address the issue.

Larry Synder for the CCA stated that the request was just to get it on the table again and the Association felt it should be considered along with the other 2001 issues. Mr. Synder felt that the extended time did place additional pressure on the large fish that time of year.

Associate Member Ballard requested information on amendment 6. Mr. O'Reilly responded that

he would like to do that next month because it was an allocation issue, which would be the 10.5 million pounds quota baywide. A discussion followed regarding ASMFC and the large fish issue. Comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to take the management measures for the striped bass to public hearing next month. Associate Member Hull seconded the motion. Motion carried unanimously.

Mr. Travelstead requested clarification on what was to go to public hearing. Associate Member Gordy stated that she was referring to staff recommendations when she made her motion.

Mr. O'Reilly reiterated that the two options for two year management regime, or adopt 1998, 1999 regulations or stick with 2000 regulations for the 2001-2002 season. The other request was the Potomac Tributaries issues to make the size limits contiguous with the Potomac main stem. A discussion followed between staff and the Commission.

The motion carried unanimously.

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- 12. DISCUSSION:** Establishment of 2001 management measures for the recreational summer flounder fishery, scup and black sea bass fisheries.

Mr. Travelstead indicated that there were no staff evaluations because the meetings were held in Atlantic City last week and no final decisions were made on what the measures would be for next year's summer flounder and scup. Therefore, staff had no recommendations to take to public hearing.

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- 13. PUBLIC COMMENTS.**

John W. Green requested that his crab dredge permit be transferred to Arthur A. Kellum. Mr. Green stated that he wanted out of the crab dredge fishery.

Commissioner Pruitt commented that it would be a one in, one out situation.

Associate Member Williams moved to grant the transfer of the crab dredge license. Motion

was seconded Associate Member Gordy. Motion carried.

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John Melzer stated that Mr. Travelstead sent him a letter saying that he would be denied his commercial hook and line. Mr. Melzer said he was operated on in October 1999, and other serious medical conditions, therefore, he was unable to use his license. Mr. Melzer presented the Commission a letter from his doctor stating his condition. Mr. Melzer said he would like to go back to work because he spent most his retirement.

Mr. Travelstead explained that the Commission adopted the new regulation on the commercial hook and line license in October 1999. The license holder must harvest or sell 1000 pounds of seafood in the previous two years to maintain eligibility for that license in future years. Mr. Travelstead said there were no exceptions adopted in the regulation. It was an all, or nothing situation. A discussion followed between staff and Commission members. Comments are a part of the verbatim record.

After a discussion between Commission members, Associate Member Hull moved to have a public hearing next month to point 3, under "A" to allow the Commission to have a case-by-case jurisdiction giving exceptions to the rule. Associate Member Gordy seconded the motion. Motion carried unanimously.

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Erwin Victor, commercial watermen, congratulated the Commission for the intent of the regulation, but no rules should be made without allowing an exception. Other comments are a part of the verbatim record.

Dave Spring addressed the Commission and stated that he had financial hardship and he too was requesting an exception.

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Bobby Wind said he purchased all the gear and his license and needed transfer the license to his name.

Chad Boyce, Fisheries Management Specialist, said he received Mr. Wind's application and everything seemed to be in order.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams to approved the transfer. Motion seconded by Associate Member McLeskey. Motion carried unanimously.

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Ernie Bowden said that they had a problem on the Eastern Shore. He said the way the dredge law was written, you can purchase a clam dredge license and keep the clams. You can purchase a crab dredge license, you can keep the crabs but if you have both legal licenses, you can't have both on the boat. He said it only affected Eastern Shore on Seaside. A discussion followed.

Commissioner Pruitt asked what regulation he was referring to: 4 VAC 170. Commissioner Pruitt suggested taking a look at the regulation in its entirety to see if it could be amended. Staff would then bring a recommendation.

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Douglas Jenkins, Twin Rivers Watermen's Association, addressed the Commission. Mr. Jenkins gave comments indicating that the recently passed seven suggestions seemed unfair to fishermen in his area. Other comments are a part of the verbatim record.

A brief discussion followed between staff and the Commission. Comments are a part of the verbatim record.

Kelly Price commented on the importance of Mr. Bowden comments. He said since the eel grass had come about, they had lost two-thirds of the Bay to work and they are stuck out in the middle where they work year after year.

There being no further business to come before the Commission, the meeting adjourned at 2:30 p.m.

**COMMISSION MEETING**

**DECEMBER 19, 2000**

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William A. Pruitt, Commissioner

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LaVerne Lewis, Commission Secretary