

## MINUTES

April 27, 1999  
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	)	
Lake Cowart, Jr.	)	
Sheppard H. C. Davis	)	Associate Members
H. Grant Goodell	)	
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
Dennis Yecke		Department of Planning and Budget
Steven G. Bowman		Chief-Law Enforcement
Lewis Jones		Assistant Chief-Law Enforcement
Randy Widgeon		Eastern Shore Area Supervisor
Ray Jewell		Northern Area Supervisor
Dana Mise, Jr.		Middle Area Supervisor
Christopher Strickland		Marine Patrol Officer
Keith Crandall		Marine Patrol Officer
Tom Barnard		Virginia Institute of Marine Science
Walter Priest		Virginia Institute of Marine Science

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Dr. Jim Wesson

Chief-Conservation and Replenishment

Jack Travelstead  
Management  
Robert O'Reilly  
Lewis Gillingham  
Ellen Cosby

Chief-Fisheries

Assistant-Chief Fisheries Management  
Fisheries Management Specialist  
Fisheries Management Specialist

Bob Grabb  
Tony Watkinson  
Chip Neikirk  
Jay Woodward  
Jeff Madden  
Randy Owen  
Heather Wood  
David Bower  
Ben Stagg

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

Gerald Showalter  
Hank Badger  
Robert Butler

Head-Engineering/Surveying  
Engineering Surveyor  
Engineering Technician

others present:

C. J. Lindemann  
Russell A. Golden  
Candance L. Water  
Relda Schick  
Kyle Schick  
Chris Frye  
George Londeree  
Tommy Dyson  
Terry Getdrell  
Roger Pruhs  
Bill Insley  
C. Blackwen  
William Sydnos  
Gene Barry  
John Dochock  
Robert E. Croonenberghs

Chris Graham  
Jack Golden  
Paul Kidd  
Bill Ellis  
Doug Stamford  
Tom Langley  
Diane & Betty  
Brad Baugel  
Jim Crecghton  
Tom Szelest  
D. A. Carpenter  
Marty Millyn  
Richard Stuart  
Woody Holton  
William L. Pace  
Craig Palubinski

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Ron Peck	George Freeman
James Bullock	David Hudgins
Gerald Condrey	Bob Clark
Rebecca Francese	Tim Hayes
Philip Thatch	Warren M. Cosby, Jr.
Tom Powers	Robert S. Holtz
Jim Hayden	Larry Williams
Russell P. Davis	Russell B. Davis
Jeanne Butler	Charles Waddell
Jim Deibler	David L. Shores
Douglas F. Jenkins	H. Austin
J. L. Ludford	Robert Minor
James Waddell	Larry Williams
Tracey Smith	Scott Carmine
Frances W. Porter	J. Kirkley
Marshall Cox	Jim Jenrette
Rick Robins	Captain Bob Jensen
Kenneth W. Jenkins, Jr.	David Jenkins
David Owens	Loren McClanachan
Philip Pruitt	Greg Welmer
John Pruitt	Tiny
W. Bokelaar	Randall Carr
Roger Wilkins	Bill Rolfe
Tony Ware	Bill & Annis McCabe
Charles F. Hurt	Craig Bell
Olsen Lantz	Laura Druly
Dave Grossman	Eileen Rowan
Kristen Delano	Dave Blazer
Derek Orner	John Neal
Bob Orth	Harry Doernte
Kelly Place	Charles Williams
Pete Freeman	Rob Brumbaugh
Marle Thomas	Stephen Perok
Tommy Leggett	John B. Credle
Eddie Tanden	

The meeting was called to order by Commissioner Pruitt. Members Present: C. Chadwick Ballard, Gordon M. Birkett, S. Lake Cowart, Sheppard H. C. Davis, Laura Bell Gordy, Henry Lane Hull, H. Grant Goodell, and John W. White.

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Associate Member Cowart gave the invocation.

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

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Copies of the Minutes of the meeting held March 23, 1999, had been sent to the Associate Members prior to this meeting. Associate Member White moved to approve the Minutes as distributed. Associate Member Birkett seconded the motion. Motion carried unanimously.

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Mr. Grabb, Chief Habitat Management, requested that two page two items be added. He also said he had a request from the County Administrator, Bedford County, to hear Item 11, Louis Godwin, #98-2242, at 1:00 p.m. immediately following lunch; and Mr. Ellis, Attorney for the applicant, requested Item 9, Colonial Beach Yacht Center, #98-0335, to be heard around 11:00 a.m because he had a meeting with the Secretary. Associate Member White moved to accept the changes that were added to the agenda. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

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Mr. Grabb, Chief Habitat Management, briefed the Commission on 12, page two items. Mr. Grabb explained that those projects involved application for permits for projects over \$50,000 in cost, and a public interest review had been conducted and no objections or concerns were raised about the projects. Staff, therefore, recommended approval for the projects.

**U.S. ARMY CORPS OF ENGINEERS, #98-2179**, requests authorization to hydraulically place approximately 60,000 cubic yards of dredged material, per dredge cycle, from the maintenance dredging of the Hog Neck Creek to Hog Creek section of the Coast of Virginia (WCV) Federal Navigation Project Channel into the surf zone of the Atlantic Ocean along the south end of Wallops Island in Accomack County. Recommend a time-of-year restriction between March 1 and September 30 to avoid impacts to sensitive bird species in the a

PERMIT FEE..... \$ 100.00

**U.S. ARMY CORPS OF ENGINEERS, #94-0035**, requests authorization to reactivate and extend to April 30, 2002, their previously issued permit to fill 3,500 square feet of State-owned

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subaqueous land associated with the relocation of utilities and the construction of a five-lane bottomless culvert bridge at the Battlefield Boulevard crossing of the Southern Branch of the Elizabeth River in the City of Chesapeake.

PERMIT FEE - NOT APPLICABLE

**CONSERVATION AND REPLENISHMENT DIVISION, #99-0195**, requests authorization to construct two (2) 60-foot wide by 500-foot long intertidal oyster shell reefs in Mathews County. One of the reefs is proposed for the East River at 37° 22' 34" N latitude, 76° 20' 39" W longitude, approximately 600 feet east of the Town of Mobjack. The other reef is proposed at 37° 25' 25" N latitude, 76° 26' 49" W longitude, approximately 1,000 feet west of Cradle Point in the North River.

PERMIT FEE NON-APPLICABLE

**CONSERVATION AND REPLENISHMENT DIVISION, #99-0250**, requests authorization to construct a 400-foot by 60-foot intertidal oyster reef sanctuary at 37° 16' 31" N latitude, 76° 35' 07" W longitude, and to install four (4) associated obstruction buoys at the convergence of Kings and Felgates Creek in York County.

PERMIT FEE NON-APPLICABLE

**CONSERVATION AND REPLENISHMENT DIVISION, #99-0194**, requests authorization to construct 60-foot wide by 500-foot long intertidal oyster shell reef along the edge of a shallow bar located at 37° 24' 22" N latitude, 76° 26' 48" W longitude inshore of red channel marker number six near Jarvis Point in the Ware River in Gloucester County.

PERMIT FEE NON-APPLICABLE

**CONSERVATION AND REPLENISHMENT DIVISION, #99-0305**, requests authorization to construct two (2) 400-foot long by 60-foot wide oyster reef sanctuaries in the Lafayette River in the City of Norfolk, the first being located immediately east the Hampton Boulevard Bridge at 36° 54' 14" N latitude and 76° 18' 06" W longitude, and the second being located immediately east of Tanner's Point at 36° 54' 12" N latitude and 76° 19' 15" W.

PERMIT FEE NON-APPLICABLE

**NAVAL FACILITIES ENGINEERING COMMAND, #99-0370**, requests authorization to demolish and replace the south berth, south access trestle of Pier R3 and replace three (3) dilapidated boathouses associated with the pier with one new structure at Yorktown Naval

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Weapons Station on the York River in York County.

PERMIT FEE.....\$ 100.00

**WILLIAMS COMMUNICATION, #99-0186**, requests authorization to install a fiber optic cable along numerous State routes crossing Bull Run and Cub Run in Fairfax and Prince William Counties. Recommend a royalty of \$241.00 for the encroachment over 241 linear feet of State-owned subaqueous bottom at a rate of \$1.00 per linear foot.

PERMIT FEE.....\$ 100.00

**COSCAN BROOKFIELD HOMES, #98-1760**, requests authorization to construct a 40-foot Conspan® unit road crossing over Broad Run in association with the extension of Sudley Manor Drive in Prince William County. Recommend an annual royalty in the amount of \$660.00 for the encroachment over 6,600 square feet of State-owned subaqueous bottom at a rate of \$0.10 per square foot.

PERMIT FEE.....\$ 100.00

**COLONNA YACHTS, #98-1984**, requests authorization to construct and backfill a 130 linear feet of steel sheetpile bulkhead across an existing marine railway slip at their facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. Recommend an annual royalty in the amount of \$1,760.00 for the filling of 8,800 square feet of State-owned subaqueous bottom at a rate of \$0.20 per square foot.

PERMIT FEE.....\$ 100.00

**RAY COURTNEY, #95-1698**, requests a three-year extension of his wetland and subaqueous permit to install a 15-foot wide by 25-foot long private non-commercial gravel boat ramp which may extend a maximum of ten (1) feet channelward of mean low water adjacent to his property situated along the Rappahannock River in Spotsylvania County.

PERMIT FEE - NON-APPLICABLE

**VIRGINIA INSTITUTE OF MARINE SCIENCE, #99-0330**, requests authorization to construct a 25-foot square Cownose Ray exclusion device in three and one-half (3½) feet of water located in the Coan River in Northumberland County. The rope and net device will create a protective enclosure buried in the substrate and extending above the water surface to protect an experimental soft shell clam grow out plot. The two-year clam experiment will commence upon issuance of a permit with the structure and nets remaining in place until

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October 30, 1999, when they will be removed in their entirety. The enclosure will be reconstructed for a second season prior to May 1, 2000, and will be completely removed no later than October 30, 2000.

PERMIT FEE.....\$ 100.00

Associate Member Goodell asked whether the royalty on Item 2H, Williams Communication, #99-0186, was annualized. Mr. Grabb responded that they tried not to impose annual fees unless the fees exceeded \$1,000. Mr. Pruitt asked specifically for the record if there were any public comments on the four Conservation and Replenishment Division Page 2 items. No public comments were made. Associate Member Ballard made a motion to adopt all Page 2 items as presented. Motion seconded by Mr. White. Motion carried unanimously.

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**BRAD BANGEL, #98-0462.** Show Cause hearing to determine Mr. Bangel's and Mr. Bruce Exum, Sr.'s (agent/contractor) degree of responsibility for the failure to obtain the necessary permit to construct and backfill 281 linear feet of bulkhead adjacent to his property situated along the Lafayette River in the City of Norfolk.

Civil Charge (Mr. Bangel).....\$ 500.00  
(Mr. Bruce Exum - agent) \$ 1,000.00

**GUY L. IRELAND, #91-0274.** Show Cause hearing to determine Mr. Ireland's and Mr. Bruce Exum, Sr.'s (agent/contractor) degree of responsibility for a violation of his previously issued permit to construct a 180-foot long by 5-foot wide pier adjacent to his property situated along the Eastern Branch of the Elizabeth River in the City of Norfolk.

Ms. Heather Wood, Environmental Engineer, briefed the Commission on both agenda items four and five. Ms. Wood presented slides showing Mr. Bangel's project and reviewed the chronology of information related to the project. She explained that evidence of the public notice was not received in time from Mr. Bangel, and despite staff communications with the applicant informing him that a permit could not be issued until the public notice was made, the project was constructed. Ms. Wood also commented that Mr. Bangel had verbally indicated that he thought the necessary permits had been acquired and that Mr. Exum, the applicant's agent, had indicated to him that the MRC staff had given verbal authorization for the project to proceed. She also noted that Mr. Exum had a history of incomplete applications and had been notified by letter from staff that applications not completed would remain inactive. She stated that while staff felt the resource impacts resulting from this specific project were minimal and the degree of non-compliance with permitting requirements was moderate, Mr. Exum was an

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experienced agent who was be well aware of permit requirements. Staff recommended an appropriate civil charge in lieu of further enforcement, and that Mr. Exum be placed on probation for a period of one year to ensure his compliance with future applications. Comments are part of the verbatim record.

Ms. Wood then briefed the Commission on Item 5, another show cause case involving Mr. Exum as agent. Ms. Wood presented slides showing Mr. Ireland's project and reviewed the chronology of information related to the project. She indicated that a permit modification request was received to widen the pier from five to eight feet. Ms. Wood stated that a staff inspection found that 156 feet of the pier had been widened before the permit modification request was authorized. She stated that staff felt the resource impacts of this specific project were also minimal and the degree of non-compliance with permitting requirements was moderate, but that again, Mr. Exum was an experienced agent who should be well aware of permit requirements. Staff recommended an appropriate civil charge in lieu of further enforcement, and that Mr. Exum be placed on probation for a period of one year to ensure compliance with future applications. Comments are part of the verbatim record.

Associate Member Davis commented that he felt that the non-compliance with permitting requirements was flagrant not moderate in these two cases. Comments are a part of the verbatim record. Associate Member Cowart asked why a private, non-commercial pier required a permit; Ms. Wood indicated it was because it was a second pier. Mr. Grabb offered further explanation. Comments are part of the verbatim record.

Commissioner Pruitt swore in Mr. Bangel and Mr. Exum. Mr. Bangel said he thought Ms. Wood had done a fair job summarizing the situation. Mr. Exum stated that while he had been a marine contractor for a number of years, he had only been dealing with the permitting process for about two years, prior to that he had a consultant do the permitting work. He said he thought he had the permits necessary to do the work. Associate Member Davis and Ms. Wood clarified that he only had part of the permits necessary to do the work. Comments are part of the verbatim record.

Associate Member Goodell asked about the cost of the project. Mr. Bangel said \$32,000. Mr. Pruitt asked about Mr. Exum's use of a consultant for permitting work. Mr Exum indicated that he was going start using a consultant again.

Associate Member Davis made a motion for one year probation and a \$5,000 civil penalty. There was a discussion about who paid the charges and how the civil charge process worked. Comments are part of the verbatim record. Associate Member Goodell indicated that he thought the proposed \$5,000 charge was steep, but that a charge of \$500 for Mr. Bangel and \$1,000 for Mr. Exum was more appropriate. Commissioner Pruitt asked for a second on Mr.



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Davis' motion. No second was made. The motion failed for lack of second.

Associate Member Ballard then 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 agenda item 6. Motion seconded by Associate Member Hull. Motion carried unanimously.

After the meeting reconvened, Associate Member Ballard moved 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 seconded by Associate Member Davis. Motion carried unanimously.

Associate Member Davis made a motion to assess a civil charge of \$500 against Mr. Bangel and \$1,000 against Mr. Exum in lieu of further enforcement action to include requiring removal of the structure. Motion was seconded by Dr. Goodell. Associate Member Hull asked Mr. Exum how long he had been in the marine contracting business. Mr. Exum stated that it had been seven years. Mr. Hull indicated that ignorance of the process was not an excuse and that Mr. Exum should invest some time learning the permitting requirements. Comments are part of the verbatim record. Associate Member Ballard asked the makers of the motion if they would consider an amendment adding in the one year probation for Mr. Exum as recommended by staff. Mr. Goodell stated that he thought it was unnecessary. Comments are part of the verbatim record. Mr. Davis withdrew his motion and made a new motion to assess a civil

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charge of \$500 against Mr. Bangel and \$1,000 against Mr. Exum and adding a one year probation for Mr. Exum. Motion was seconded by Mr. Ballard. Associate Member Gordy commented that the homeowner should not be penalized for his contractors fault. Comments are part of the verbatim record. Motion carried 7-1, Mrs. Gordy voting no.

Mr. Pruitt explained to the applicant and agent that they had to agree to the penalty or risk further enforcement action. Mr. Exum asked if they had any recourse; he indicated that he thought he had done what was required for permitting based on conversations with Ms. Laura Grignano, former MRC Environmental Engineer. Mr. Pruitt reiterated that they could agree to the charge or risk enforcement action. Comments are part of the verbatim record.

The Commission then considered Mr. Ireland's case. Mr. Pruitt swore in Mr. Ireland's son, who spoke on behalf of his father. Mr. Ireland's son then presented some background on the project. He explained that his father had heart problems and was planning on using a golf cart (requiring the eight foot width) to use the pier. Comments are part of the verbatim record.

Associate Member Goodell asked about the cost of the project. Mr. Ireland did not know. Comments are part of the verbatim record. Mr. White asked about the original project work; it was stated that the cost was about \$16,000 and that an additional \$13,000 was spent on the unpermitted work. Mr. Exum indicated that he thought he had done what was required for permitting based on his conversations with Ms. Laura Grignano, former MRC Environmental Engineer. Comments are part of the verbatim record. Mr. Davis indicated that Mr. Exum was stating hearsay and that Mr. Exum should have known the permit requirements. Associate Member Gordy asked Ms. Wood to read the staff correspondence relating to the requirement for a permit modification. There was further discussion on the correspondence related to the case. Comments are part of the verbatim record.

There was a discussion about whether there was a permit for a eight foot pier. Ms. Wood indicated that she thought the confusion may have come from the original no permit necessary (NPN) letter sent by MRC staff when they thought there was only one pier at the site; subsequent inspection of the site revealed that there were two piers and that the work on the newer pier would have to be permitted. Comments are part of the verbatim record.

There was discussion about the rationale for the permit modification. Mr. Exum indicated that he thought he told staff by telephone that the reason for the pier widening was to accommodate Mr. Ireland's health related need to access the pier by a vehicle. Comments are part of the verbatim record.

There was more discussion about the request for the permit modification. Mr. Pruitt indicated that he felt that Mr. Ireland had done what he needed to do.

Mr. Hull moved that the older marginal wharf be removed by the applicant within 60 days. Motion was seconded by Associate Member Gordy. Mr. Ballard asked if this would resolve the permitting issue for the case. Ms. Wood responded that it would since the newer pier would then be exempt. Mr. Pruitt then swore in Mr. Ireland, the applicant. Mr. Ireland stated that he did not want to remove the older pier; that he would prefer a penalty.

Mr. Hull withdrew his motion. Associate Member Goodell made a motion to assess Mr. Ireland a \$500 civil charge and Mr. Exum a \$1,000 civil charge. Associate Member Davis seconded the motion. Motion did not pass (4-4 vote).

Associate Member Ballard then made a motion to let the previous action against Mr. Exum in the Bangel case stand as sufficient penalty and that no further action was necessary. Motion was seconded by Associate Member Gordy. Mr. Davis commented that he thought a \$500 charge was warranted. Associate Member Gordy commented that the earlier penalty should serve as sufficient warning to Mr. Exum. Comments are part of the verbatim record. Motion carried 6-2.

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**COLONIAL BEACH YACHT CENTER, #98-0335**, requests authorization to dredge 1,000 cubic yards of subaqueous bottom material and to repair and expand existing marina facilities to include 34 additional wet slips adjacent to their property situated along Monroe Bay at Colonial Beach in Westmoreland County. The project is protested by an oyster ground leaseholder.

This item was moved up in the agenda in response to a request by the applicant's attorney, Mr. Ellis. Ms. Heather Wood, Environmental Engineer, presented slides and briefed the Commission on the proposed project. Ms. Wood reviewed the condemned and seasonally condemned shellfish areas in Monroe Bay. Ms. Wood said that Curley Packing Company holds oyster ground in the area and objected to the project. She stated that most of the leased area in question was seasonally condemned and went on to review the potential effects of the project on the shellfish closures. Comments are part of the verbatim record. Ms. Wood reviewed the VIMS, DEQ, VDH, DGIF, and DCR comments. She noted that two letters had been added to their packets from Delegate Murphy and Senator Gartlan. Comments are part of the verbatim record.

Because of expected water quality degradation and expanded condemnation of shellfish waters, staff recommended denial of 190 feet of the requested 263 feet of floating pier sections, denying 34 of the requested 40 wet slips such that the total wet slips be 156, approval of the two

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boathouses only if they are opened, and approval of the remaining improvements as proposed. Comments are part of the verbatim record.

Mr. Bill Ellis, applicant's attorney, spoke on behalf of the applicants, Mr. Kyle Schick and Mr. Adolf Schick; he also indicated that he had Mr. Chris Frye, an environmental consultant with VHB in Williamsburg, in attendance. Mr. Ellis reviewed the chronology and procedures followed for the permit application. He indicated that he felt there may have been some unfairness in the process. He noted that the condemnation zone was recognized as a critical issue to the proposed project and described the applicant's consultants contact with the VDH that indicated that there would not be an impact. He further noted that the delay in authorization of the permit was caused by a procedural problem. In the interim there was a reevaluation of the potential condemnation area by VDH that resulted in the determination that an opening of about 600 acres of seasonally condemned shellfish areas was warranted. Comments are part of the verbatim record.

Associate Member Davis asked a question about the contents of a letter reviewed by Mr. Ellis relative to the need for the VDH to reevaluate the impacts of the project on the condemnation zone. Mr. Ellis indicated that the reevaluation resulted in the reopening of 600 acres of seasonally condemned area. Consequently, the proposed project now had a potential impact on 12 acres of the newly reopened acreage. Mr. Ellis questioned whether the proposed project should be judged on this change in status of the shellfish condemnation zone so late in the permit process. He further suggested that the project should be looked at as opening up of around 600 acres of shellfish area instead of the potential closing of 12 acres. Comments are part of the verbatim record.

Associate Member Cowart commented that VDH is required to reevaluate condemnation zones annually, but that VDH can and does need to review condemnation zones more frequently if circumstances warrant it or as requested by those affected by a condemnation closure. Comments are part of the verbatim record.

Associate Member Hull remarked that he concurred with Mr. Cowart's comment, and that the applicant could not count on the VDH evaluation staying the same. Comments are part of the verbatim record. Mr. Ellis commented that the economic benefits of the marina improvements relied on the use of the wet slips. Comments are part of the verbatim record.

Mr. Chris Graham, attorney, spoke on behalf of the Curley Packing Company. He stated that his clients agreed with the staff recommendation. Mr. Graham said that his clients would not contest the permit if the proposed project did not affect the condemnation zone and did not involve more wet slips. He also stated that his client had planted 10,000 bushels of seed oysters on the 12 acres that would be potentially condemned. He noted that the Yacht Center

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was already the cause of the condemnation on 69 acres of the leases held by the Curley Packing Company. Mr. Graham talked about the VDH decision to reassess the shellfish condemnation zone in Monroe Bay. Comments are part of the verbatim record.

Dr. Goodell asked if Mr. Graham could quantify what the loss in revenue would be from the 12 acres of oyster ground. Commissioner Pruitt swore in Mr. Rusty Curley. Mr. Curley said it was hard to quantify, but that they had planted 7,000 bushels; he expected that a boat could catch 50 bushels per day at \$25-\$30 per bushel for about four months of the year. Comments are part of the verbatim record.

Associate Member Birkett commented that usually a seasonal closure ended in September and started again in May. He asked why Mr. Curley would be affected by the seasonal closure (since his prime oyster harvest time was around the Thanksgiving Christmas seasons).

Mr. Cowart said a seasonal condemnations usually ran from April 1 to November 1. Mr. Hull asked the protestant to clearly state what he opposed in the proposal and how it would impact him. Mr. Graham said they opposed the extra wet slips and the resulting seasonal closure. Comments are part of the verbatim record. Mr. Hull commented that he had visited the Yacht Center and would like to see improvements, but he was concerned about the affect on oysters. Comments are part of the verbatim record.

Commissioner Pruitt swore in Dr. Robert Croonenberghs, VDH Department of Shellfish Sanitation. Dr. Croonenberghs stated the potential seasonal closure on the 12 acres was based on 30 more slips (not including the four slips associated with the travel lift). He explained the VDH process for evaluating shellfish growing areas in general, and in this specific case. He commented that the improvements in the sewage plant in this area was a major factor. He discussed the usage of the area by recreational boats during the summer months. He indicated that their re-review of the seasonal condemnation was prompted by this project, but that they had to follow their normal review process which resulted in the re-opening of the area. Comments are part of the verbatim record.

Associate Member Goodell asked about the historical fecal coliform data used to evaluate the condemnation zone and whether or not, if nothing else changed, an increase in fecal coliforms could be attributed to the additional wetslips. Dr. Croonenberghs said they could not directly relate the two, since they do not have a way of proving where fecal coliform bacteria come from. Associate Member Birkett commented that the law now prohibited the discharge of sewage overboard, therefore there should not necessarily be a problem caused by the boats at the proposed wet slips. Dr. Croonenberghs explained that he realized this, but that VDH still had to take this type of boat discharge into account when evaluating shellfish harvest areas.

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Comments are part of the verbatim record.

Mr. Ellis commented that Curley Packing had first obtained their leases in the 1950s and the marina had started in 1946. Comments are part of the verbatim record. He asked the Commission to ask Dr. Wesson’s opinion on the vitality of the oyster grounds in the area.

Mr. Pruitt swore in Mr. Douglas Jenkins. Mr. Jenkins spoke in support of Curley Packing Company and their history of trying to use this area to grow oysters. Comments are part of the verbatim record.

Mr. Pruitt swore in Mr. Kyle Schick. In response to a question by Mr. Hull he stated that his company purchased the Yacht Center in 1988 from the town of Colonial Beach. Comments are part of the verbatim record.

Associate Member Hull talked about his personal knowledge of this area. Dr. Hull said he could not support a project that would adversely affect oyster grounds. Comments are part of the verbatim record. Dr. Hull moved for the denial of 190 feet of the floating pier, denial of 30 of the proposed 40 wet slips for a total of 160 wetslips; he further moved to approve the two boat houses only if they were opensided to minimize navigational concerns, and to approve the remainder of the proposed project as submitted and recommended by staff, including the fees proposed by staff. The motion was seconded by Mr. White. Associate Member Ballard concurred with the motion, but for the record he stated his opinion was based on a study of Section 28.2-1205 of the Code of Virginia and the Commission’s subaqueous guidelines. Comments are part of the verbatim record.

Mr. Ellis asked whether the Commission would entertain more testimony from Mr. Schick concerning whether the boat houses should be opensided. After conferring with the Associate Members, Mr. Pruitt stated that there was a motion on the floor, that he felt they understood Mr. Schick’s desire to close them in, and no further testimony was necessary. Motion carried 7-1.

Dredging of 1206 sq. yd. @		
\$0.45 per sq. yd.....	\$	450.00
Fill of 1028 sq. ft. @ \$1.00		
per sq. ft.....		1028.00
Permit Fee.....		<u>100.00</u>
	Total	\$ 1578.00

(Encroachment royalty pending receipt of revised drawings)

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Associate Member Goodell commented that the Commission should try to restrict testimony to individuals withstanding. Commissioner Pruitt indicated that he needed the help of the Commissioners to identify those situations, and that they should all strive to be timely in their questions and remarks.

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Meeting was recessed for lunch.

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**WILLIAM E. INSLEY, JR., #98-0440**, requests after-the-fact authorization to retain a 61-foot long by 5-foot wide extension of a previously authorized commercial pier and a 62½-foot long by 5-foot wide extension of a previously authorized commercial pier adjacent to the Islander Marina situated along White House Cove in the City of Poquoson. The project is protested by adjacent property owners, an oyster planting ground leaseholder and residents in the vicinity.

Ms. Tracye West, Environmental Engineer, presented slides and briefed the Commission on the case. Ms. West stated that staff had initially received an anonymous call saying that pilings were being driven at the marina; when staff contacted Mr. Insley he said he was replacing existing structures. He acknowledged, however, the new configuration differed from the original structures. She said the staff instructed Mr. Insley to apply for an after-the-fact permit. Ms. West stated that five area individuals had submitted a petition opposing the project (two of these petitioners subsequently removed their names after seeing the improvements at the marina). Ms. West described the history of permitting for the site and reviewed information about who was responsible for unauthorized alterations of the site. Comments are part of the verbatim record.

Ms. West stated that staff recommended Mr. Insley be required to remove any structure in excess of what was permitted in the areas where he acknowledged building beyond the existing permitted structures, that he be allowed to keep the structures in the areas that he was not responsible for unauthorized construction, and that triple fees be applied to the permit.

Associate Member Ballard asked staff how much pier they were recommending be removed. Ms. West responded that it would be 37 feet and the L-head. Mr. Davis asked how many new slips were created by the violation; Ms. West that there were no new slips just a reconfiguration. There was a discussion begun by Associate Member Goodell about a prior case where the Commission held a new owner responsible for a violation by a past owner, and why the Commission staff did not hold the same type of position in this case. Comments are part of the

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verbatim record.

Commissioner Pruitt swore in the applicant, Mr. Insley. Mr. Insley described some of the modifications he had made to the marina. Comments are part of the verbatim record. Mr. Ballard asked Mr. Insley if he thought he needed a permit to do the work he did. He stated that when he called he was told he could replace structures but not alter the original design. He indicated that he felt the work he had done, did not alter the original configuration. Dr. Hull asked when he purchased the property; he responded that it was April 15, 1994. Associate Member Davis then asked Mr. Grabb about what would be allowable for maintenance and repair of an existing permitted structure without further permit. Mr. Grabb responded that maintenance and repair consisted of replacing decking, cross braces, broken pilings, etc, but if an individual pulled a structure and replaced it, that would constitute reconstruction and would require a permit. Comments are part of the verbatim record.

Mr. Insley stated that he had owned the marina for five years and that there was no shellfish activity in the area. Comments are part of the verbatim record.

Mr. Pruitt swore in Mr. David Carpenter, owner of Poquoson Marina, who was in support of Mr. Insley's application. Mr. Carpenter stated that the oyster grounds in question had not been worked by Mr. Hartz. He said he thought Mr. Insley had only replaced what had been there originally and had improved the marina by removing unneeded pilings and fixing the deteriorated structures. Comments are part of the verbatim record.

Mr. Pruitt asked if anybody was present in opposition to the application, there being none, he placed the matter before the Commission. Associate Member Gordy made a motion to leave the project as is (in other words approve the after-the-fact permit as proposed by the applicant). The motion was seconded by Dr. Hull. Associate Member Goodell asked what happened legally when a pier started out as a non-commercial pier and then became a commercial pier. Mr. Grabb responded that a change in use had been recorded for the site. Comments are part of the verbatim record. The motion carried unanimously.

PERMIT FEE.....\$100.00

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**U.S. ARMY CORPS OF ENGINEERS, #98-0665**, requests authorization to place up to 3,000,000 cubic yards of dredged material per year in the James River at four (4) overboard placement sites between Hog Island and Hopewell in association with the annual maintenance dredging of the James River Federal Navigation Project Channel. Portions of the project are protested by several residents along the river and a private tour boat operator.



Mr. Tony Watkinson, Deputy Chief of Habitat Management, presented slides and briefed the Commission on the proposed project. Comments are part of the verbatim record. Mr. Watkinson stated that the opposition to the project occurred in the Westover area which had not been dredged since 1983. Mr. Watkinson said that one of the protestants, Mr. Fred Fisher, owner of Westover Plantation, had proposed moving the disposal site elsewhere. Mr. Watkinson pointed out the location of Westover Plantation, the location preferred by the protestant, Mr. Fisher, for dredged spoil, and the area the boat tour company was concerned would be affected by shoaling caused by the proposed project. Comments are part of the verbatim record.

Mr. Watkinson commented that this project had last been approved by the Commission in 1992 when it was authorized for 1.5 million cubic yards. He said the Corps was now requesting authorization to dispose of more dredged spoil if necessary and that not all of the spoil sites would be used every year. Mr. Watkinson stated that the last Environmental Impact Statement (EIS) for the project was done in 1974; he reviewed some of the considerations related to the EIS and to kepone. Comments are part of the verbatim record. Mr. Watkinson then reviewed other Agency comments. He stated that VIMS concluded that the project would have relatively widespread impact, but that the areas affected would be expected to recover within a few months to a few years. Comments are part of the verbatim record. He said VIMS recommended that the Corps be required to monitor impacts and that a time of year exclusion from February 15 to June 15 be applied to the permit to protect anadromous fish. He said the DGIF also requested a time of year restriction for anadromous fish, and that they commented on the importance of eagles in the area (they suggested that dredging activity within 750 feet of a eagle nest site be precluded between November 15 and October 1). Mr. Watkinson said that DCR had mentioned the eagle resources, but more importantly had commented on the States tributary strategy for protecting water quality in the area; DCR recommended that alternatives to overboard disposal be considered. Mr. Watkinson stated that DEQ had issued their water protection permit for the project with certain monitoring and testing requirements. Comments are part of the verbatim record.

Mr. Watkinson concluded by saying that this is a long running program and that the Corps felt that the overboard disposal sites were their best alternative. Staff recommended approval of the proposed project for the next five years, with the stipulation that the Corps be required to reevaluate other alternatives for dredge spoil disposal, and that certain time of year conditions be applied to the permit to protect eagle resources (closed November 1 – October 1 within 750 feet of an active nest site) and anadromous fish (closed February 15 – June 30), other monitoring conditions, and a management assessment of the impact of the dredging in light of James River tributary strategy to reduce sedimentation. Comments are part of the verbatim record.

Mr. Davis asked for clarification on how much of the requested activity would take place. Mr. Watkinson indicated that based on his conversations with the Corps, activity was likely to occur in three out of the four areas. Comments are part of the verbatim record. Mr. Davis again asked why upland disposal was not considered; Mr. Watkinson restated the Corps' position. Comments are part of the verbatim record.

Mr. Pruitt asked if the Corps representatives had any comments. None were given. Mr. Pruitt asked if anyone was present in opposition to the project. There being none, Associate Member Davis moved to approve the permit subject to the six requirements outlined by staff, with an additional proviso requiring the Corps to come back within three years with a study addressing the feasibility of upland placement of the dredged material. The motion was seconded by Mr. Birkett.

Commissioner Pruitt swore in Mr. Roger Pruhs, Chief of the Technical Support Section of the Corps. Mr. Pruhs spoke about the overboard placement policy in the middle part of the James; he stated that the channel was far from the shore and that upland disposal sites were also expensive. Comments are part of the verbatim record.

Motion carried unanimously.

PERMIT FEE.....\$ 100.00

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**DON SMITH, SR., ET AL, #98-1990**, requests authorization to hydraulically dredge 5,268 cubic yards of bottom material, of which approximately 1,206 cubic yards is State-owned subaqueous material, to create 853 linear feet of navigable channel possessing an average project depth of minus four (-4) feet at mean low water with a tolerance of plus or minus one (1) foot at their properties situated along Old Donation Creek in the City of Virginia Beach.

Mr. Randy Owen, Environmental Engineer, presented slides and briefed the Commission on the case. Comments are part of the verbatim record. Mr. Owen stated that staff had asked the agent for the applicants to consider an overdredge tolerance of six inches for the portion of the project that the Commission had jurisdiction over, which was consistent with staff policy for private projects. The applicants did not agree with the 6 inch overdredge tolerance and wanted to present their proposal for a twelve inch overdredge tolerance. Comments are part of the verbatim record.

Mr. Owen reviewed other Agency comments. He stated that VIMS did not think there would be adverse impacts if the dredging was only to restore the channel to navigational depths. He

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said there were no significant shellfish resources in the area. Mr. Owen said DEQ intended to issue their water protection permit. He said staff recommended approval of the project with a 6 inch overdredge tolerance, revised drawings reflecting the six inch tolerance, post dredging monitoring and appropriate royalties for the dredging.

Associate Member Goodell commented on the importance of non-vegetated mud flat habitat and asked where the dredge spoil would be placed. Mr. Owen responded that the spoil would be placed in an upland borrow pit; he also said a federally sponsored task force would be reviewing the overall dredging project in the area including the importance of the mud flat habitat.

Mr. Davis asked that in light of the task force results not being available, should they wait on this particular project. Mr. Owen responded that he did not feel it was necessary to wait given the project review that had been undertaken. Comments are part of the verbatim record.

Commissioner Pruitt swore in Mr. Tom Langley, consultant to the applicant. Mr. Langley commented on the task force meeting and their agreement on how to analyze the environmental impacts of the 30 or so projects anticipated for this area. He stated that he thought sufficient review had been made on this project and further input from the task force was not necessary. Mr. Langley also provided detailed testimony about dredging methodology to support the applicant's request for a 12 inch overdredge tolerance. Comments are part of the verbatim record.

Associate Member Goodell commented on the potential damage to the habitat by these projects. There was further discussion about the importance of the habitat in the area of the project. Comments are part of the verbatim record.

Mr. Ballard asked staff about Mr. Langley's testimony that the 6 inch overdredge tolerance was not doable with current dredging technology. Mr. Grabb responded that staff's recommendation equated to a dredging range between 3.5 feet and 4.5 feet or  $\pm 6$  inches.. There was further discussion on the required channel depth. Comments are part of the verbatim record.

Associate Member White asked if there was anybody else present that wanted to give testimony pro or con. Associate Member Davis stated that his upcoming motion should not serve as a precedent for any future cases; he then moved to approve the application with staff recommendations, he further clarified that the dredge depth should average four feet and not exceed -4.5 feet at mean low water. The motion was seconded by Dr. Goodell. Motion carried unanimously.

Dredging of 1206 sq. yds.

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@ \$0.45 per sq. yd.....	\$	542.70
Permit Fee.....		<u>100.00</u>
Total	\$	642.70

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**PORT KINSALE MARINA, INC., #98-1974**, requests authorization to construct a 108-foot long by 94-foot wide commercial boathouse and reconfigure two (2) existing fixed piers to create 23 additional wetslips at their facility situated along the West Yeocomico River in Westmoreland County. The project is protested by area residents and an adjacent property owner.

Associate Member Cowart stated that he would abstain from voting on this case because he had a business relationship with one of the protestants; he said he would like to be able to comment on the case.

Ms. Heather Wood, Environmental Engineer, presented slides and briefed the Commission on the case. Comments are part of the verbatim record. Ms. Wood stated that the proposed project was opposed by Bevans Oyster Company and showed the location of their property on a slide. She stated that there was a seasonal condemnation around the area of the marina and that the VDH did not propose an expansion of the condemnation zone as a result of the additional wetslips proposed in the project. Ms. Wood listed three additional protestants: Mr. James Bullock, Mr. George Freeman, and the Virginia Outdoors Foundation. Ms. Wood stated that the protestants were worried that the additional wetslips would result in a future increase in the seasonal condemnation zone, and that the additional boat traffic would increase erosion and damage wetlands. Comments are part of the verbatim record.

Ms. Wood said that staff had received several letters related to the project that suggested conditions be imposed on the proposed project; the letters were included in the Commissioner's packets. Comments are part of the verbatim record. Ms. Wood stated that VIMS commented that the impacts of the project would be minimal and deferred to VDH on the potential impact to the seasonal condemnation zone. She said staff was of the opinion that the two pier replacements would improve the property and have minimal impacts, that the boathouses had not been opposed, and that expansion of the marina would not result in an expansion of the seasonal condemnation zone as based on the VDH comments. Accordingly she said staff recommended approval of the project; should the Commission want to include a condition on the permit as suggested by some of the protestants, staff favored the language proposed by the Northumberland County Board of Supervisors (Item 5A in the Commissioner's packets).

Mr. Richard Stewart, attorney representing the applicant, introduced Mr. Martin Miller, owner

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of the marina, Mr. William O. Sydnos, Chairman of the Westmoreland County Board of Supervisors, Mr. Pace and Mr. Palubinski, representatives of Bayshore Design, consultants on the proposed project. He stated that the addition of slips were critical to the economics of the project. He said he did not agree with the conditions suggested by the protestants that would require the marina to stop operating the new portions of the marina if the seasonal condemnation was increased in the future as a result of the new activities. Comments are part of the verbatim record.

Associate Member White asked about the Northumberland County resolution and their proposed conditions for the project. Mr. Ballard asked if the applicant's representatives and the protestants had discussed the proposed conditions and attempted to reach a compromise on them. There was additional discussion on the proposed conditions, and the rights of oyster ground leaseholders and other users of the resources. Comments are part of the verbatim record.

Mr. Pruitt swore in Mr. Pace, agent for the applicant, and Mr. Sydnos, Chairman of the Westmoreland County Board of Supervisors. Mr. Pace testified that the owner was attempting to make the facility environmentally sound. He provided detailed testimony on the measures already completed and other planned activities to improve the environment affected by the marina. He stated that the project had the full approval of Westmoreland County Board of Supervisors and Wetlands Board, and the Army Corps of Engineers. He asked that the project be approved without the conditions proposed by the protestants. Comments are part of the verbatim record.

Mr. Sydnos spoke in favor of the application. He said the Westmoreland County Board of Supervisors and the Planning Commission had approved the project with specific conditions that had been provided to the Commission. Comments are part of the verbatim record.

Mr. Ballard asked why they had comments from both Westmoreland and Northumberland Counties. It was explained that the project was in Westmoreland, but that Northumberland County was just across the river.

Mr. Tim Hayes, attorney for the Bevans Oyster Company, spoke against the project. He explained his client's concern about the potential for an increase in the seasonal condemnation zone. He listed other protestants and stated that he was also speaking for Mr. Jim Bullock and Mr. George Freeman. He then spoke in favor of the conditions discussed earlier to protect the interests of the oyster leaseholders in the area. He referred to the condition language proposed by Mr. Gasch's letter (attachment 6B in the Commissioners packet). Comments are part of the verbatim record.

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Mr. White asked if all of the protestants agreed with the wording of the Northumberland County conditions. Associate Member Goodell pointed out that it would be very difficult to directly attribute a change in the condemnation zone to the marina activity as required by the proposed condition.

Mr. Hull asked if Mr. Jett from the Northumberland County Board of Supervisors could explain their resolution. Comments are part of the verbatim record.

Mr. Cowart commented on the application of condemnations as buffer zones around marinas. He explained a little about the nature of the computer models used to establish the condemnation zones and the potential for increases in the seasonal condemnation zones and the impact on the oyster growers. Comments are part of the verbatim record.

Mr. Pruitt swore in Mr. Miller, owner of the property. Associate Member Hull asked about Mr. Miller's opinion on the proposed conditions being discussed. Mr. Miller indicated that he did not support the use of these conditions, but suggested that he may agree with the conditions if they spelled out that arbitrary changes in the computer model resulting in further condemnation would not be cause for his marina to change their activities. He did agree that the marina should be held accountable for impacts they may cause. Comments are part of the verbatim record.

Dr. Goodell suggested modifying the Northumberland language in attachment 5A(2) to add a clause restricting the marinas responsibility to impacts due to increased levels of contamination from the 23 new wet slips. There was a discussion about the length of time the oyster leases in the area had been held and the importance of protecting oyster resources. Comments are part of the verbatim record.

Dr. Hull asked what Mr. Miller would do if the application was approved without conditions, and then a seasonal condemnation was increased. Mr. Miller testified that he would take steps to improve marina management practices as best as possible. Comments are part of the verbatim record. Mr. Hull asked Mr. Miller if the additional slips were necessary. Mr. Miller responded that the new slips were essential. Comments are part of the verbatim record. Mr. Freeman spoke on the importance of protecting the efforts to protect the environment in the area. Comments are part of the verbatim record.

Mr. White asked if the marina held oyster ground in the area. Mr. Miller said that they were about to receive an assignment of grounds to be used for shellfish culture for some of the marina's oyster related activities. Comments are part of the verbatim record.

Mr. Stewart clarified that the staff recommendation was to approve the project without

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conditions. He restated that he did not agree with the conditions. Comments are part of the verbatim record. Mr. Pruitt indicated that he did not think the protestants and the applicant were that far apart.

Mr. Douglas Jenkins, spoke in favor of using the conditions proposed by the protestants. Comments are part of the verbatim record.

Dr. Hull made a motion to approve the application with a condition using the language of the Northumberland County Board of Supervisors resolution, "in the event the State Health Commissioner or the Department of Health condemns additional areas for the taking of shellfish or extends the time period for the taking of shellfish condemnation as a result of the activities authorized by this permit the permittee shall forthwith abate the discharge or cease the activities that resulted in the additional condemnation". The motion was seconded by Mr. White. Motion carried 7-0; Mr. Cowart abstaining. There was some question whether the language read by Mr. Hull was the same as in the Northumberland County resolution, staff said they would verify the language with the original resolution.

Royalty (annually)		
Encroachment of 15,444 sq. ft.		
@ \$0.05 per sq. ft.....	\$	772.20
Permit Fee.....		<u>100.00</u>
	Total	\$ 872.20

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**LOUIS GOODWIN, #98-2242**, requests authorization to construct an 18-foot by 20-foot private road crossing of Overstreet Creek to provide improved vehicular access to his property located along State Route 640 near Curtis in Bedford County. The project is protested by several nearby property owners.

Mr. Chip Neikirk, Environmental Engineer, presented slides and briefed the Commission on the case. He stated that there were several protestants that were worried about flooding and possible environmental impacts. Comments are part of the verbatim record.

Mr. Neikirk stated that DGIF had commented that Overstreet Creek was a wild trout stream and recommended an alternative site or a clear span bridge; if this was not feasible they recommended a bottomless arch bridge to keep the streambed clear. He said the DGIF also recommended a time of year restriction for construction between October 1 and March 31, and standard instream conditions. Comments are part of the verbatim record. Mr. Neikirk said the modified proposal would satisfy suggestions made by DCR. He said DEQ had determined that the project would not require a permit from them. Mr. Neikirk then reviewed comment letters

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from other individuals and organizations. Comments are part of the verbatim record.

Mr. Neikirk said staff felt that the revised proposal for a low water bridge and bottomless arch culverts, coupled with the DGIF conditions were sufficient to protect the environment. Accordingly, staff recommended approving the project with the following conditions: time of year construction prohibition between October 1 and March 31, standard instream construction conditions, and an appropriate royalty.

Associate Member Goodell asked about the extent of study on water flow through the proposed culverts. Mr. Neikirk explained that the revised project utilized a low water riprap bridge designed to have water pass over the bridge in high water events. Comments are part of the verbatim record.

Commissioner Pruitt swore in the applicant Mr. Goodwin. Mr. Goodwin spoke in favor of the project.

Mr. Pruitt swore in individuals wishing to speak in opposition to the project.

Mr. Tony Ware, Member of the Bedford County Board of Supervisors, spoke in opposition to the project. He commented about the potential for any structure to dam up the stream in high water events and cause erosion and flooding downstream. Comments are part of the verbatim record.

Mr. Bill Rolf, Bedford County Administrator, spoke in opposition to the project. He mentioned the potential erosion problems, that the county officials had not seen the revised drawings, and that there were alternative access points to the property. Comments are part of the verbatim record.

Mr. Davis asked about alternate access to the site. Mr. Rolf said there was; the applicant did not agree.

Mr. Bill McCabe, adjacent land owner, spoke in opposition to the project. He discussed his fears about the effect of the proposed structure during flood events. Comments are part of the verbatim record.

Mr. Charlie Hurt, consultant and upstream landowner, spoke in opposition to the project. Comments are part of the verbatim record.

Mr. Craig Bell, Peaks of Otter Soil and Water Conservation District, stated that he reviewed plans of this sort in his area. He said he thought that the peak flow calculations used for the



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design of the bridge were incorrect; he did not think the project should be approved. Comments are part of the verbatim record.

Mr. Pruitt asked Mr. Rolf, County Administrator, if the subdivision to be accessed by the proposed bridge had been approved. Mr. Rolf said it had been approved. Comments are part of the verbatim record. Associate Member Davis asked if the construction of the bridge was grandfathered. Mr. Rolf said it was, so it was more a matter of selecting an appropriate bridge design. Comments are part of the verbatim record.

Mr. Goodwin spoke about one of protestants, Mr. McCabe's opposition to the bridge being related to a failed land deal. Comments are part of the verbatim record.

Mr. Davis asked again about property access. Mr. Goodwin termed it unusable access because the route did not go through a visually nice area. Comments are part of the verbatim record.

There was a discussion about alternate bridge designs and potential flood problems. Comments are part of the verbatim record. The applicant indicated that he was willing to use an alternate design if necessary. Mr. Cowart moved that the matter be referred to the Soil and Water Conservation District in the Bedford County area, to let them come up with a design that could handle the stream flow; he said then staff could look at the revised design for instream or other impacts, before the matter returned to the Commission. The motion was seconded by Mr. Davis. Motion passed unanimously.

Encroachment of bridge		
270 sq. ft @ \$0.50 per sq. ft.....	\$	135.00
Permit Fee.....		<u>100.00</u>
	Total	\$ <u>235.00</u>

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**BLUE CRAB FISHERY: Status of the resource; updates on the fishery; review of the 11-point management plan; report of the ad hoc panel reviewing the license exemption process; comments from the public.**

Jack Travelstead, Chief-Fisheries Management, gave the Commission an overview on the presentation requested by the Commission on the current assessments, recent survey trends, discussion regarding predator prey relationships, spawning stock protection quarters, and the 11-point plan currently in place and where the plan was successful, staff would recommend changes, and the ad hoc panel would address the Commission.

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Derrick Warner, from NOAA and Coordinator for the Chesapeake Bay Stock Assessment Committee, presented the two assessment studies on Blue Crabs. Comments are a part of the verbatim record.

Associate Member Davis expressed his concerns regarding the status of the blue crabs, the overharvesting and what should be done to conserve the blue crabs. Comments are a part of the verbatim record.

Rob O'Reilly, Assistant-Chief Fisheries Management, briefed the Commission on the fishery independent data, surveys, and the three-year running averages,

Ron Lipcus briefed the Commission and presented slides. Comments are a part of the verbatim record. He presented information on the dredge survey, direct estimate of the spawning stock, and what VIMS suggested as a long term strategy and protected habitat network, which might conserve a small fraction of the blue crab population. Comments are a part of the verbatim record.

Dr. Herb Austin briefed the Commission and presented slides. He gave information regarding the blue crab being a diet item for the striped bass. He also presented information regarding the study of the feeding habits of the large striped bass in the State of Virginia. Comments are a part of the verbatim record.

Jacques van Montfrans briefed the Commission and presented slides. He gave information on the study that was done regarding fish predation on crabs in sea grass beds. He said the study was conducted in the mouth of the York River. Comments are a part of the verbatim record.

Dr. McConaugha from Old Dominion University briefed the Commission and presented slides. He gave information on the biochemical ageing of the blue crabs. Comments are a part of the verbatim record.

Commissioner Pruitt asked Dr. McConaugha if he planned to make this presentation to the Bi-State Blue Crab Advisory Committee. Dr. McConaugha responded yes.

David Blazer, Maryland Director of the Chesapeake Bay Commission, briefed the Commission and presented slides. He gave comments on the Bi-State Blue Crab Advisory Committee which consisted of legislative groups with Senators and Delegates from Virginia, Maryland, and Pennsylvania in the Bay restoration effort. He said the Committee was formed in 1996 to coordinate efforts between Maryland and Virginia. He said Associate Member White, Commissioner Pruitt and Secretary Woodley also served on that Committee along with Mr. Jack Travelstead.

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Mr. Travelstead commented that there were a number of ongoing studies that would improve the understanding of the blue crab and hopefully to assist them in managing the blue crab. He then suggested that the Commission delay any decisions regarding long-term regulations or management measures immediately until the studies were completed by the end of the year, which would allow for a more informed decision. Mr. Travelstead then presented slides that explained the Commission's request regarding the successful or unsuccessful issues of the 11-point plan. Comments are a part of the verbatim record.

Mr. Travelstead said staff recommended as short term measures: a freeze on all crabbing licenses, including crab traps and crab scraps, to stem the increases. In addition, he said the freeze should apply to the granting of any exceptions and any transfers of licenses from other persons trying to get into the fishery. He said staff also recommended that effort controls were needed in the blue crab fishery, whether the Ruglo Assessment or the Miller and Hood Assessment were used, and that all the scientists agreed that the fishery was overcapitalized. He said an ITQ system would be difficult to put in place, and administratively, very burdensome on the present staff. Therefore, an increase in staff members would be necessary to implement the ITQ program on crab pots and peeler pots, and it would take approximately three new staff members to implement the program.

Commissioner Pruitt opened the public hearing. He also stated that he had a letter from the Coastal Conservation Association Virginia with recommendations, which was a part of the evaluation packages.

Freeland Mason, President of the Virginia Watermen's Association, addressed the Commission. He said he had a web page that listed crab prices that watermen had sent him from around the State. Mr. Freeland then suggested that anyone with prices of crabs should send the information to him.

Joe Palmer, a working waterman, addressed the Commission. He gave comments in reference to his income as part time crabber. He also gave additional comments regarding the current regulation, which were very effective and he was satisfied with the way things were now. Comments are a part of the verbatim record.

Frances Porter, with the Virginia Seafood Council, addressed the Commission. She said the Council believed the blue crab resource was in serious jeopardy. She also gave comments in reference to the decline in the blue crab harvest. She said at the Council's last meeting a detailed discussion took place on all aspects of the hard and soft crab industry, such as, the basket trade, harvest methods and restrictions, including traditional potting, peeler potting, dredging and existing management strategies and basic economics. Other comments are a part

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of the verbatim record. She said their proposals were included in staff's recommendation. However, she felt the following concerns should be addressed: a total moratorium on the issuance of crab licenses until there was scientific evidence that the resource had recovered and could produce sustainable yield season after season; development of new crab sanctuaries and expansion of existing sanctuaries to protect female crabs and the protect large male crabs; and there should be a 1:00 p.m. time limit on each day's harvest to reduce daily pressure on the resource.

Pete Freeman, a commercial fisherman for 56 years, addressed the Commission. He said he supported staff's recommendation. In addition, he gave comments in reference to the size of the female crabs and the pink sign peeler crabs. He said there should be a check on the number of crab pots in the water. Comments are a part of the verbatim record.

Warren Cosby, representing the Croaker Landing Watermen's Association, addressed the Commission. He said he had listened to VIMS and their research and their probable cause. He said because there was a warm winter crabs were being caught at the Hull Street Bridge in Richmond, and at Walker's Dam. He said he felt that was part of the reason VIMS winter dredge survey was so low this past year. Mr. Cosby also gave a suggestions for a restocking program. Comments are a part of the verbatim record.

Chris Ludford, waterman and commercial crabber, addressed the Commission. He said he supported an immediate moratorium with no hardship exceptions, establish a minimum size on female crabs, lower peeler pots from 400 pots to 200 pots, go to the pink sign as a minimum sign, and he supported using ITQs for crab pots. In addition, he felt the habitat protection should be looked into.

Jeff Crockett, President of Tangier Watermen's Association, addressed the Commission. He said there was nothing wrong with the crabbing industry and the last thing that was needed was another 25 point plan to regulate the blue crabs. He then gave comments on the crab harvest for this Spring. He said the watermen in the State of Virginia could not withstand another set of regulations.

A discussion followed on the Winter dredge and the Spring dredge and the extraordinary correlation. Comments are a part of verbatim record.

Rob Brumbaugh, Chesapeake Bay Foundation, addressed the Commission. He said he thought staff had done an excellent job of dissecting the 11-point plan. Other comments are a part of the verbatim record.

Robert Holtz, with the Coastal Conservation Association Virginia, Co-chairman of the Fisheries

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Management Committee, and President of the Tidewater Chapter addressed the Commission. He then read the Association's six-point plan into record; prohibit the taking and possession of all females sponge crabs with eggs showing, prohibit all dredging of crabs, revoke all crab licenses that have not reported any landings for two of the last three years, including 1999; revoke the crab license from anyone that makes less than 50 per cent of their income from commercial crabbing and or fishing, increase the size limit on peelers and soft crabs, particularly during the early April May shad when 60 or 70 per cent of the peeler that had not spawned; reject the enabling legislation that was passed by the General Assembly in 1998 enabling bait in peeler pots, and in 1999 allowing peeler and crab pots to be interchangeable. Other comments are a part of the verbatim record. He said the crab exemptions given recently should be reviewed.

Commissioner Pruitt closed the public hearing.

A discussion followed regarding the remaining agenda items. Comments are a part of the verbatim record. On the advice of the Assistant Attorney General, the public hearings should be opened and then continued.

The Commission returned to the Blue Crab issue.

Associate Member Davis moved for a public hearing to lower the peeler pot license to 200 pots, freeze licenses, with no exceptions, and have a discussion for ITQ tags, and limit the size of taking female crabs. Motion seconded the Associate Member Ballard. He requested the time of day restriction be added as 1:00 p.m. Motion carried 7 to 1, Associate Member Cowart voting no.

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Mr. Travelstead informed the Commission that the Striped Bass issue should be heard today.

**PUBLIC HEARING:** Consideration of amendments to Regulation 4 VAC 20-252, "Pertaining to Striped Bass", Regulation 4 VAC 20-751, "Pertaining to the Setting and Mesh Size of Gill Nets", and Regulation 4 VAC 20-995, "Pertaining to Commercial Hook-and-Line Fishing to adjust spring striped bass fishing restrictions, clarify rules for the commercial hook-and-line fishery, and establish a minimum tag quantity for transfers under the ITQ program.

Commissioner Pruitt opened the public hearing.

Chris Ludford representing the Charter Boat Association addressed the Commission. He said the Charter Boat Association supported the extended trophy fish season from the 15 May to 15 June.

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Associate Member Birkett moved to approved the staff recommendations. Motion seconded by Associate Member White.

Jim Hayden, with Coastal Conservation Association, addressed the Commission. He said the CCA was opposed to allowing unlicensed crew members to participate in the Commercial Hook and Line Fishery as a crew member. Other comments are a part of the verbatim record.

Kelly Place, commercial fisherman, addressed the Commission. He said he was in favor of staff's recommendation. He said it was a matter of codification for the two Hook and Line regulations. He said there would be no more effort or increase on the striped bass harvest. He was also opposed to the stringent regulation, because no other fishery had such a stringent regulation because there was no hired help that could qualify. Other comments are a part of the verbatim record.

Harry Doernte, commercial hook and line fisherman, from Poquoson addressed the Commission. He said he supported staff recommendation regarding the crew members not having to be registered fishermen. Other comments are a part of the verbatim record.

Chris Ludford addressed the Commission. He said for safety reasons crew members should be allowed to assist, and he supported staff recommendations.

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

Rob O'Reilly, Assistant Chief-Fisheries Management, informed the Commission that FMAC had asked for 50 tags as a minimum for a transfer, however, since that time, public comments had been received from the hook and line fishermen that 20 tags as a minimum would be the least common denominator for transferring tags.

Colonel Bowman was agreeable with the proposed change.

Associate Member Birkett withdrew his motion.

Associate Member Ballard then moved to adopt the proposed amendments to Regulation 4 VAC 20-252-10 seq., and 4 VAC 20-71-10 seq., allowing for the adjustments to Spring recreational and commercial striped bass fisheries. He further moved that the proposed amendments to Regulation 4 VAC 20-995-10 in seq., and 4 VAC 20-610-10 to achieve conformity between those regulations regarding the use of crew members for the hook and line commercial fishery; and that 4 VAC 20-252-10 et. seq. establish 20 tags as a minimum transferable amount of striped bass tags. Motion seconded by Associate Member Birkett.

Mr. O'Reilly informed the Commission that regulation 4 VAC 20-252-10, established a change to a maximum size limit of 28 inches from March 15 to June 15 to March 26, to June 15.

Associate Member Ballard accepted the change as a part of the original motion. Motion carried unanimously.

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Commissioner Pruitt then opened the Public Hearing for item 15.

**PUBLIC HEARING:** To consider amending Regulation 4 VAC 20-720-20 et. seq., "Pertaining to Restrictions on Oyster Harvest." The proposed amendment will require that aquacultural operations on Seaside Eastern Shore obtain a harvest permit, and with this permit be exempt from all other regulations pertaining to wild oyster stock.

There being no one in opposition the matter was continued to May 4, 1999.

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**PUBLIC HEARING:** Consideration of increasing the elver harvest quota of Anguilla Culture Technology, Inc. from 1300 pounds to 2000 pounds.

Associate Member Cowart commented that there was an opponent to this matter, but he had to leave.

Commissioner Pruitt requested advice from Assistant Attorney General regarding the legality of continuing the meeting until next Tuesday. Mr. Josephson responded that it should not be a problem. Commission Pruitt then declared the meeting recessed until Tuesday, May 4, 1999.

Meeting recessed at 8:00 p.m. until May 4, 1999.

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William A. Pruitt  
Commissioner

Commission Meeting

**10787**  
April 27, 1999

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LaVerne Lewis  
Commission Secretary