

MINUTES

May 4, 1999
Newport News, Virginia

Commissioner Pruitt reconvened the April 27, 1999 Commission Meeting at 9:30 a.m., May 4, 1999. The following persons were in attendance.

- William A. Pruitt) Commissioner
- C. Chadwick Ballard)
- Gordon M. Birkett)
- S. Lake Cowart)
- 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 Administration
- Jane McCroskey Assistant Chief-Finance Administration

- Steven G. Bowman Chief-Law Enforcement
- Lewis Jones Assistant Chief-Law Enforcement
- Randy Widgeon Eastern Shore Supervisor
- Kenny Oliver Southern Area Supervisor
- Warner Rhodes Middle Area Supervisor
- Ray Jewell Northern Area Supervisor
- Howard Goode Marine Patrol Officer
- Ed Clifton Marine Patrol Officer

- Dr. Jim Wesson Chief-Conservation and Replenishment

- Jack Travelstead Chief-Fisheries Management
- Rob O'Reilly Assistant Chief-Fisheries Management

Commission Meeting

Lewis Gillingham

Fisheries Management Specialist

Bob Grabb

Chief-Habitat Management

Tony Watkinson

Assistant Chief-Habitat Management

Chip Neikirk

Environmental Engineer

Jeff Madden

Environmental Engineer

Tracey West

Environmental Engineer

Bennie Stagg

Environmental Engineer

Gerald Showalter

Head-Engineering/Surveying

Debra Jenkins

Office Services Specialist

Royce Bridger

Sr. Engineering Technician

others present:

Philip Thatch

Timothy Belvin

W. Bokelaar

William Haywood

Philip Pruitt

John Pruitt

Bill Dylar

Tom Powers

Vernon Haywood

Scott Carmine

Lyle Varnell

Steve Stell

Eileen Rowan

Freeland Mason

Penn Close

Jeannie Butler

Kelly Place

Scott Bergman

Tracey Smith

OYSTER GROUND APPLICATION: Odis B. Cockrell and A. Jackson Booth have reached an agreement concerning the application that was heard in January 1999, the Great Wicomico River.

Gerald Showalter, Head-Engineering Survey, briefed the Commission on an application for a 1/2 acre of oyster ground. Mr. Showalter gave information on an agreement reached by Mr. Cockrell and Mr. Booth.. Comments are a part of the verbatim record. Mr. Showalter then explained a letter that he had received from Mr. Cockrell containing a cashier's check for \$1,000 payable to A. Jackson Booth. The letter from Mr. Cockrell also stated that upon Mr. Booth's release of claim to rights of the oyster shore, the check should be released to Mr. Booth for the 1/2 acre oyster shore.

Mr. Showalter said staff's recommendation was to reinstate Mr. Odis Cockrell's application for Oyster Planting Ground, #98-082, and authorize Mr. G. W. Showalter to make a survey and assignment of this approximately 1/2 acre parcel to Odis Cockrell. The check would then be released to Mr. Booth.

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

Associate Member Ballard questioned the Commission's acting as an escrow agent for the \$1,000. Mr. Pruitt responded that he viewed the situation as an arbitrator, rather than an escrow agent.

Associate Member Cowart informed the Commission that he would like to abstain from voting on this issue because he was related to Mr. Cockrell.

Associate Member Hull then moved that Mr. Odis Cockrell's application be reinstated for the 1/2 acre oyster planting ground #98-082 that was denied in January 1999, and to authorize a survey and assignment for this 1/2 acre parcel oyster shore. Motion was seconded by Associate Member White. Motion carried 7 to 1, with Associate Member Cowart abstaining.

OYSTER GROUND APPLICATION:

Russell B. Davis	Application 99-018	220 acres
Russell Patton Davis	Application 99-019	125 acres
Eileen Boush Davis	Application 99-020	220 acres

Three applications are from the same family, all located in the Pagan River, Isle of Wight County, and are protested by the Town of Smithfield and several individuals.

Gerald Showalter, Head-Engineering and Surveying, said that Mr. Davis came to the office

Commission Meeting

Friday and withdrew the applications. However, Mr. Davis subsequently made new applications for the same exact areas. Mr. Showalter said that would start the application process over, therefore, the item was not an agenda item today. A brief discussion followed regarding the applications. Comments are a part of the verbatim record.

Commissioner Pruitt comment that the item was pulled from the agenda and the Commission would hear from Mr. Davis again in June or July.

Donald Fitchett has requested reinstatement of Lease Number 11552 for 31.70 Acres of Oyster Planting Ground. The lease was not renewed in September 1998, because it had not been worked.

Gerald Showalter, Head-Engineering and Surveying, briefed the Commission and presented a slide that demonstrated the location of the two parcels of oyster grounds. Comments are a part of the verbatim record. Mr. Showalter said both parcels were denied because Mr. Fitchett had put on his application that he used the parcels 100 per cent for crab pounds, which did not qualify under Section 28.2-613 as oyster culture. He said Mr. Fitchett had called several times since March referring to a disease problem. Mr. Fitchett also called the office and stated that he had planted 3,000 bushels of shells near the State reef. Mr. Showalter said consideration could be given for significant use in a disease impacted area if there had been some effort made within the last ten years or if the ground had traditionally produced commercial oysters or clams. The lease 11553 for 23.54 acres, where the shells had been planted, was reinstated. Mr. Showalter then recommended that the request for reinstatement of lease 11552 be denied since no work had been done on the oyster grounds.

Associate Member Cowart commented that there was a strike in the Piankatank last year for the first time in ten years. He wanted to know how much effort Mr. Fitchett had made on his lease in all the oyster ground areas. However, he said if Mr. Fitchett had planted 3,000 bushels of shells in his leased areas that may be one of the larger plantings in the Piankatank. Therefore, the plantings might have some justification for regranting him the leases.

Commissioner Pruitt commented that he thought that was a good point considering that the State had a reef below the area because the main objective was to get more oysters in the water. A discussion followed.

The applicant was not present. There being no other comments, pro or con, the matter was placed before the Commission.

Commission Meeting

Associate Member Davis moved to deny the request because it had not been worked for ten years, and the regulation was clear. The motion failed for lack of a second.

After a discussion between Commission members and staff regarding the reinstatement of the application, the matter was again placed before the Commission.

Associate Member Goodell moved that Donald Fitchett's lease, 11552 of 31.7 acres of oyster planting ground be renewed. Motion was seconded by Associate Member White. Associate Member Hull suggested an amendment to add "we urge Mr. Fitchett to plant shells as he indicated he would." Associate Member Goodell said he would take it further and say, "the Commission would expect him to plant shells." Associate Member White was acceptable to the amendment.

Associate Member Cowart then requested that an amendment also be added that the lease was contiguous to the one he planted shells on earlier.

Associate Member Goodell then restated the motion to say that lease number 11552 should be reinstated, it being contiguous to lease number 11553 that Mr. Fitchett was currently working and had stated that he had planted shells on before. In addition, the Commission expected lease number 11552 to be planted as Mr. Fitchett indicated he would do on his application. The amendment was acceptable to the seconder. Motion carried 7 to 1, with Associate Member Davis voting no.

PUBLIC HEARING: To consider an amendment to Regulation 4 VAC 20-720-10 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 stocks.

Dr. Jim Wesson, Chief-Conservation and Replenishment, briefed the Commission on the 3" cull law on Seaside Eastern Shore which had created a problem for oyster aquaculture operations. Comments are a part of the verbatim record. Dr. Wesson said the proposal was to issue a permit to persons participating in the oyster aquaculture operations, which would exempt them from the wild harvest restrictions. In addition, Dr. Wesson, stated one sentence had been added that said the exemption did not pertain to shellfish sanitation laws.

Associate Member Cowart requested an explanation between the laws on Seaside and the 3" cull laws in the Bay area. Dr. Wesson said the law was an enforcement issue because there were a lot of drains, bays, and marshes on Seaside where the private grounds were contiguous

Commission Meeting

with the public grounds.

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

Associate Member Davis asked if an aquaculture business could harvest oysters from public grounds. Dr. Wesson responded that the public end was closed. In addition, Dr. Wesson said they would go out and check every site to ensure that it was an aquacultural facility. A brief discussion followed.

Associate Member Davis moved to approved the staff recommendation. Motion seconded by Associate Member Davis. Motion carried.

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

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said he received a call from Mr. Bokelaar requesting that he withdraw this request, and because of the withdrawal it was not necessary to have a public hearing on that issue. However, Mr. Bokelaar asked for permission to import elvers from other jurisdictions where they could be legally harvested. Mr. Travelstead said the current regulation authorized the Commissioner to make that decision.

Associate Member Goodell asked if VIMS had a concern with bringing other species of elvers that were not local. Mr. Travelstead responded that VIMS did not object to the importation provided that the elvers were not mixed with Virginia elvers in the facility and not placed in Virginia waters because of the fear of the introduction of parasites from other jurisdictions. Mr. Travelstead said that VIMS and staff had no problem with importation provided that there was a paper trail to document that the elvers were legally harvested in the other jurisdiction, and that the elvers were kept separate from the Virginia elvers in the facility. Mr. Travelstead indicated that Mr. Bokelaar did have the capability in his facility to accomplish that separate requirement. Mr. Travelstead also stated that under Mr. Bokelaar's existing permit, ten per cent of the Virginia elvers would go back into the river to compensate for his harvest, but that requirement would not apply to the imported elvers.

A brief discussion followed regarding the facility. Comments are a part of the verbatim record.

Acting Chairman White indicated that Commissioner Pruitt would rule on the approval for importing elvers.

Commission Meeting

Eileen Rowan, with the Richmond Audubon Society addressed the Commission. Ms. Rowan gave comments from the December 1998 Draft of the Fishery Management Plan for the American Eel by the ASMFC regarding the trend analysis finding broad base evidence for a stock wide abundance decline of the American Eel within the past 20 years. She said the analysis called for up to a 25 percent reduction in the fishing effort. She said she was opposed to any increase in the quota or increasing the importation of eels because the stock appeared to be declining.

PUBLIC HEARING: Consideration of amendments to Regulation 4 VAC 20-900-10 et. seq., "Pertaining to Horseshoe Crabs" to prohibit the harvest of horseshoe crabs by dredge from May 1 to June 7 and to consider several habitat restoration measures.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said staff had received a number of letters regarding this issue since the Commission first met. Mr. Travelstead then presented letters to the Commission. He said there were three items of concern that were proposed:

- (1) closure of the dredge fishery during the peak spawning season May 1 to June 7;
- (2) habitat protection concerns contained in the ASMFC fishery management plan; habitat items were not items considered in the past and were not regulatory items. He said staff was working with VIMS to identify spawning habitat within the Chesapeake Bay;
- (3) review of the quota which was adopted at the March Commission meeting. Mr. Travelstead indicated that incorrect information was given regarding the quota. He then gave the corrected information and suggested that the Commission may reconsider the motion based on the corrected information. He said staff answered the question based on data that ASMFC had provided, that was a 710,000 crab quota would provide a 31 per cent reduction which was higher than the 25 percent reduction required by ASMFC. The correct answer should have been 20.5 percent reduction in the mid-Atlantic landings of the reference period. He said since the last meeting, staff had been made aware of additional 1998 horseshoe crab landings. Mr. Travelstead said that staff believed that the 1998 horseshoe crab landings were as much as 745,000 crabs. He said with the new landings, staff did not think the landings quota should be changed. He said staff was requesting that the Commission reaffirm the 710,000 crab landings quota at this meeting so it could be drafted in the regulation and sent to Richmond.

Commission Meeting

Associate Member Cowart asked how far offshore was the dredging being done. Mr. Travelstead responded that there was some confusion about dredging taking place in the SAV beds. He said there were regulations on the books that controlled both crab and conch dredging in the Bay. While conch dredging in Bay, you were not allowed to keep the horseshoe crabs as a bycatch. Mr. Cowart asked if anything had been done to limit that activity. Mr. Travelstead responded that the quota, and the proposed spawning season prohibition should help with that. In addition, there was an ASMFC requirement for them to monitor the fishery.

Commissioner Pruitt asked what were comparisons between Virginia's working in any part of the horseshoe crab fishery versus people from out of state. A discussion followed.

Commissioner Pruitt opened the public hearing.

Eileen Rowan, representing the Richmond Audubon Society, addressed the Commission. She said they supported the conch dredge closure as stated. She said there was an exemption for the bio-medical industry for both the hand harvest and the conch dredge fishery.

Commissioner Pruitt asked if there were any other nursery grounds, other than in the Commonwealth. Ms. Rowan responded that there were nursery intertidal flats in the shallow waters. Commissioner Pruitt asked Ms. Rowan how she proposed to implement the rules and regulations that were controlled by the local government, the Corps of Engineers, and others that would involve partnership with other agencies. She responded that the Commission had the lead for the habitat measures.

Eileen Rowan also stated that the citizens panel recommended a quota of 50,000 crabs, and the minority recommendation by the watermen was 260,000 as a conservation measure.

Associate Member Gordy asked if the horseshoe crab eggs that the shorebird consumed, affected the population for the horseshoe crabs. Ms. Rowan responded that they were eggs on the surface of the sand which were an excess of eggs and they were not viable. She said the eggs would not survive unless they were deep into the sand beyond the shorebirds reach.

William Haywood, representing the small dredge harvesters for horseshoe crabs, addressed the Commission. He said the small dredgers were bringing in a small minute portion of the landings and he was requesting that the Commission not shove them out of the fishery. Other comments are a part of the verbatim record.

Commissioner Pruitt asked how many were in the small fleet. Mr. Haywood responded that

Commission Meeting

there were approximately 7 or 8 persons working and they had not caught 2,000 crabs a day. It was the large trawlers that were bringing in approximately 20,000 to 30,000 crabs in one trip, and yet the Commission was trying to stop the small fleet. He said a limit should be set on the landings.

Associate Member Davis suggested limiting the landings to a certain number. Mr. Travelstead responded that trip limits could be used. However, the trip limit could not be done today because they had not advertised it.

Phillip Pruitt, a commercial fisherman, addressed the Commission. He said he was actively involved in the conch fishery. He then proposed that the Commission consider a 1000 feet limit off the beach for catching the horseshoe crabs, and to place the watermen on a 1,500 to 2,000 crabs a day. Other comments are a part of the verbatim record.

Philip Thatch, of the Sierra Club, addressed the Commission. He said they were very concerned about the proposed regulations. He said he felt the trawl netters were the ones wiping out the horseshoe crab fishery in this State. He said in order to cap the landings a trip limit would have to be instituted. He said he supported the exemption for the medical community and the shorebirds. Other comments are a part of the verbatim record.

Rick Robbins, representing Chesapeake Bay Packing, addressed the Commission. He said there were four companies processing channeled whelk in Virginia, and employing approximately 150 people. He supported all of staff's recommendations. He also requested that the Commission find a middle ground with the fleet of boats working out of Chincoteague that were conch dredging.

Associate Member Davis urged the Commission to pass an emergency regulation regarding the trip limit.

Mr. Robbins continued his briefing and presented slides that demonstrated the horseshoe management plan. Other comments are a part of the verbatim record.

Kelly Place, a commercial fisherman, addressed the Commission. He said he felt some of the restrictions proposed on the Virginia fishermen would hurt the conch industry, and would impact some of the small and medium size operators in the State. Other comments are a part of the verbatim record.

Tom Powers, representing CCA Virginia, addressed the Commission. He said CCA's position supported the proposed regulations along with the previously enacted restrictions, and he felt they were reasonable first steps to regulating the horseshoe fishery. Other comments are a part

Commission Meeting

of the verbatim record.

Vernon Haywood, presently working in horseshoe crab dredging in Chincoteague, addressed the Commission. He said it was only 7 boats working in the area of Chincoteague, and the amount of crabs they were catching was only a drop in the bucket according to what the trawlers were catching. He said the Commission's proposal today would put them out of business. He said they could live with a 1000 feet limit from mean low water and the shoreline and perhaps a trip limit. Other comments are a part of the verbatim record.

Eileen Rowan, Richmond Audubon, addressed the Commission. She said she was concerned about the testimony the local watermen gave, because she did not want to see the local watermen put out of business at the expenses of the out-of-state trawlers.

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

Jack Travelstead, Chief-Fisheries Management, said a 2,000 crab trip limit would protect the dredgers, which would allow the dredgers to continue to work. He said this proposal would eliminate the offshore fishery.

A discussion followed between Commission members and staff regarding trip limit and the use of different types of gear used to harvest the horseshoe crabs.

Mr. Travelstead said the dredge horseshoe crab fishery was new in Virginia waters.

Associate Member Davis moved to approved staff's recommendation for prohibition of dredging from May 1 to June 7, and endorsement of the habitat measures, and the reaffirmation of 710,000 crab limitation. Motion was seconded by Associate Member Goodell.

A discussion followed regarding amending the motion not to prohibit crab dredging from May 1 and June 7, but allow the dredging to continue with a 1200 crab trip limit. Mr. Josephson said he thought that was within the scope of what was advertised.

Associate Member Ballard then offered a substitute motion which included staff recommendation, the habitat protection, and reaffirming the 710,000 crab quota. In addition, to close the dredge fishery from May 1 to June 7, but impose a 2,000 crab trip limit during that time for the dredge fishery only. Commissioner Pruitt then ruled that the substitute was germane to the original motion, and if the maker would be acceptable, it would be a part of the motion. Associate Member Davis was acceptable if the crab quota was reduced to 625,000. A discussion followed.

Commission Meeting

Associate Member Davis restated the motion to approve staff recommendation with the proviso that dredging between May 1 to June 7 would be prohibited, with an exclusion of up to 2,000 crabs a day for those who currently held the license. In addition, it would include an endorsement of the advertised habitat measures and a reaffirmation of the 710,000 quota. Associate Member Goodell accepted the substitute. A discussion followed regarding the reaffirmation of the 710,000 crab harvest limit and the loophole for the licensed dredgers.

Associate Member Davis again amended the motion to approve staff's recommendations for the prohibition of crab dredging from May 1 through June 7, with the present 35 licensees and a 1500 crab trip limit, effective immediately, and endorsement of the habitat measures and reaffirmation of the 710,000 horseshoe crab limit. Motion seconded by Associate Member Ballard.

A discussion followed regarding accommodating the dredge fishermen that currently held conch dredge licenses. Comments are a part of the verbatim record.

William Ray addressed the Commission and stated that according to the motion, if the conch dredge licenses were cut off at the end of 1998, it would affect approximately 12 to 14 persons. Other comments are a part of the verbatim record.

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 agenda item 20.

The meeting reconvened after executive session and Associate Member Ballard moved that

WHEREAS, the Commission has convened in 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

Commission Meeting

in the motion convening the executive meeting were heard, discussed or considered by the Commission. Motion was seconded by Associate Member Goodell. Motion carried unanimously.

Commissioner Pruitt declared the meeting back in session. The Commission returned to Item 20, pertaining to horseshoe crabs. Mr. Pruitt said there was a motion on the floor before the executive session.

Associate Member Davis withdrew the motion.

Associate Member Goodell then moved that the Commission adopt staff's recommendation regarding the immediate prohibition on crab dredging from May 1 to June 7, the habitat protection provisions in the advertised Notice be undertaken, and the Commission reaffirm a cap of 710,000 crabs annually. Motion was seconded by Associate Member Birkett. Motion carried 7 to 1, Associate Member Ballard voting no.

Associate Member Davis moved that by the next Commission meeting staff be requested to come forward with a proposal to make the horseshoe crab an individual fishery, and consider a limited fishery for horseshoe crabs with the proper regulations. Motion was seconded by Associate Member Birkett. A brief discussion regarding the exact meeting date, May or June. Commissioner Pruitt commented that staff could be ready by the May meeting for an advertising at the June meeting. Motion carried 7 to 1, with Associate Member Gordy voting no.

Associate Member Davis then moved that staff be encouraged to implement a plan to work with other agencies. Commissioner Pruitt responded that a motion was not necessary because the chair understood Mr. Davis wishes and that issue would be taken care of. Commissioner Pruitt then directed staff to get with DEQ, and all the appropriate agencies, local government, PDCs, and others to establish the committee.

Associate Member Davis asked about forming a subcommittee to address the horseshoe crab issue. Commissioner Pruitt responded that was an ongoing issue, and as the ASMFC plan developed, and as more scientific data was received, a subcommittee would probably be established.

PUBLIC HEARING: Consideration of Amendments to Regulation 4 VAC 20-430-10 et. seq., "Pertaining to the Marking and Minimum Mesh Size of Gill Nets," to exempt the river herring fishery from the 2 7/8 inch minimum mesh for that fishery.

Rob O'Reilly, Assistant-Chief Fisheries Management, informed the Commission that he had received one letter from the Coastal Conservation Association in opposition to the proposal. He said the proposal to exempt the upriver herring fishery from the minimum gill net mesh size requirement of 2 7/8 inch stretch mesh was presented to the FMAC by the upriver watermen. The FMAC voted to allow for the exemption to the 2 7/8 inch minimum gillnet mesh size, as described in Regulation 4 VAC 20-430-10 et. seg. The reason for the proposal was that the fishermen were catching a lot roe female fish with the mesh sizing they were using, and in the spirit of conservation, they thought they would be able to catch more male fish if they were able to use the smaller mesh size. Mr. O'Reilly said staff did not have a lot to tell about the river herring, except that around the turn of the century, the bay-wide harvest was approximately 30 million pounds, currently, harvests bounce around from several hundred thousands pounds to less than 100,000 pounds. He said even though there was no good stock information on the stock abundance or fishing mortality rates, the population overall coastwide was very low. He said staff's recommendation would be to allow this exemption.

The Associate Commissioners discussed calls they had received from watermen regarding the mesh size, bait fish, and the menhadden. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Larry Synder, from the Coastal Conservation Association, addressed the Commission. He said they were concerned with this species and what the rest of the fish in the Bay would be eating. He said because the catches were low lately, he thought it was not wise at this point, until more data from VIMS was available, that such a move would be positive. Therefore, they opposed any lowering of the mesh size.

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

Associate Member Birkett commented that the upriver fishermen had suffered as much as any of the other fishermen because of the restrictions on the rockfish spawning ground, shad fishing in the upriver, and now to further hamper their ability to catch another species by changing the mesh size. He then moved to accept staff's recommendation. Motion seconded by Associate Member Goodell. After a brief discussion regarding the value per pound, the motion carried 5 to 3.

DISCUSSION: Request for public hearing pertaining to amendments to Regulation 4 VAC 20-80-10 et. seq., "Pertaining to the Setting of Fishing Devices Proximate to the Chesapeake Bay

Commission Meeting

Bridge Tunnel."

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said this was a request for a public hearing to modify the regulation to: (1) the distance specified in the regulation should be measured from the outer edge of each trestle rather than the centerline of the roadbed to improve enforcement; (2) changing the 300 yard distance to 250 yards to lessen the additional closed are created by the new span, and to account for its measurement from the outer edge of the roadbed; (3) FMAC voted 11 to 3 to recommend that the new closed area not apply to this portion of the new trestle during November 1 - December 31 for drift nets for the striped bass fishery.

Commissioner Pruitt placed the matter before Commission.

Associate Member Gordy moved to approve staff's recommendation to take the three issues to public hearing. Motion was seconded by Associate Member Hull. Motion carried unanimously.

PUBLIC COMMENTS:

Associate Member Goodell indicated that a Federal Court had handed down a decision in the Sea Hunt Case, awarding the Juno, a Spanish warship that sunk after 1763 to the Spanish Government. He then asked Mr. Grabb if the Spanish Government would have to come before the Commission to salvage that vessel if it was within Virginia's territorial waters.

Mr. Grabb responded that Mr. Fisher had forwarded a copy of Judge Clark's ruling, but he had not had the opportunity to review it. He said the Commission's decision was not specific when they issued a permit to Sea Hunt for two recovery areas. However, from the Commission's standpoint, unless Sea Hunt could bring up something that could be dated or categorically tied to the Juno, he said that it was staff's position that neither was it the La Galga or the Juno and it could easily be one of two hundred other wrecks that had gone down within Virginia's three mile limit. Other comments are a part of the verbatim record.

After a brief discussion, Commissioner Pruitt said he would ask the Attorney General's Office to be available at the next meeting to discuss the Court 's decision and its implications.

Associate Member Goodell moved that the Commission entertain a mandatory adjournment

Commission Meeting

motion at 1800 hours or 6:00 p.m. This motion would give the Commission the opportunity to assess and make a determination on whether to continue the meeting. Motion seconded by Associate Member Ballard. Motion carried unanimously.

Associate Member Goodell also commented that he would hope that staff could arrange the agenda so the last items on the agenda could be dropped without prejudice in terms of the necessity for having to meet and make decisions.

Associate Member Davis asked if the Commission was still pursuing the matter about the sunken boat in the harbor. Commissioner Pruitt responded that the Attorney General was taking him before the Judge on May 18.

Associate Member Davis requested that in the future, the crab issue be placed on the agenda first after lunch.

After a brief discussion, Commissioner Pruitt said the Commission would do their best to have the issue around 3:00 p.m.

Associate Member Davis commented that there should be a balance on the Crab Subcommittee. After a discussion between Commission members, Commissioner Pruitt suggested that the Associate Members submit two or three names as a starting point. Mr. Davis suggested that perhaps a watermen, a crabber, a peeler potter, a couple of persons from industry, two recreational crabbers, representative from the environmental and scientific communities would be a balance for the Committee.

Freeland Mason addressed the Commission. He congratulated the Commission for their web site. Mr. Mason then suggested that the web page be increased to include people who wanted to buy or sell licenses in all of the various fisheries. In addition, notations be made on the Minutes on the web page to indicate the action taken on each item. He said a study should also be done on the crab impact by the recreational crabbers. Mr. Mason also stated that licenses be limited to those persons who would take a course and pass an exam on various aspects of the seafood industry.

Associate Member Goodell commented that an apprenticeship program would be helpful to the

watermen.

John Nekunas addressed the Commission. He indicated that he had been issued a commercial hook and line license. He said he had held the license for two years. He said the Commission recently indicated to him that an erroneous mistake had been made, and he was not entitled to the commercial hook and line license. He stated that he had followed all the regulations and filed his mandatory reports, and he felt it was unfair to take his license because of a staff error.

After a discussion between staff and Commission members, Associate Gordy moved to let Mr. Nekunas keep his license because it was no fault of his that caused the error. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Steve Perok addressed the Commission. He requested that the Commission keep the oyster season open in the James River until the seasonal quota of 15,000 bushels of oysters had been met or until June 30 whichever came first.

Dr. Jim Wesson informed the Commission that he had no problem with extending the season or until the 15,000 bushels quota had been met. Dr. Wesson also said that it would have to be advertised.

Associate Member Ballard moved to advertise the request. Associate Member Gordy seconded the motion. Motion carried unanimously.

Dr. Jim Wesson reminded the Associate Members that an emergency regulation would be necessary to continue the season for 30 days.

Associate Member Cowart moved to extend the season through the end of May by an emergency regulation. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Associate Member Ballard requested that staff reinstate the page three consent agenda items, for after-the-fact permits. In addition, he requested that staff review the enforcement matrix which was promulgated in 1991 (Ch. 11 Acts of Assembly 91). He also requested that staff

May 4, 1999

Commission Meeting

revise the matrix to reflect the increase based on the CPI-U (Consumer Price Index-Urban). Mr. Grabb indicated that staff would do so and present a revised matrix at the May meeting. A brief discussion followed.

There being no further Commission business, the meeting was adjourned at 1:20 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary