

MINUTES

October 26, 1999
Newport News, VA 23607

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

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon M. Birkett)	
Lake Cowart, Jr.)	
Sheppard H. C. Davis)	Associate Members
Laura Belle Gordy)	
Henry Lane Hull)	
John W. White)	
Kenneth Wayne Williams)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		MIS Director
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Administration & Finance
Jane McCroskey		Assistant Chief-Administration & Finance
Debbie Brooks		Secretary-Administration & Finance
Lewis Jones		Assistant Chief-Law Enforcement
Teresa Smith		Administrative Assistant
Randy Widgeon		Eastern Shore Area Supervisor
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Ray Jewell		Northern Area Supervisor
Clifton Marsh		Marine Patrol Officer
Lawrence Ayers		Marine Patrol Officer
Lyle Varnell		Virginia Institute of Marine Science
Gene Burreson		Virginia Institute of Marine Science
Tom Barnard		Virginia Institute of Marine Science
Jack Travelstead		Chief-Fisheries Management

Rob O'Reilly
 Jim Peters
 Lewis Gillingham

Assistant Chief-Fisheries Management
 Fisheries Management Specialist
 Fisheries Management Specialist

Roy Insley

Head-Plans and Statistics

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

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

Gerald Showalter
 Debra Jenkins
 Terrence Walker

Head/Engineering Surveyor
 Program Support Technician, Sr.
 Office Services Specialist

others present:

George C. Verlander
 Denzal Chatham
 Ernest Bowden, Jr.
 Chris Ludford
 Steve Sandford
 Russell Gaskins
 Lee Wirth
 Daniel Gibbs
 Rufus H. Ruark, Sr.
 Peter Vonker
 Tom Powers
 Johnnie Mercer
 Terry Conway
 Maurice L. Bosse
 Robert Brumbaugh
 Ed Nealon
 Stanley O'Bier, Sr.
 R. Hunter Manson

George B. Verlander, Jr.
 Douglas Jenkins
 Kelly V. Place
 Nanner Pruitt
 John W. Ridley
 Dean Dise
 Carl E. Failmezger
 M. Scott Bloxom
 Edwin Ruark
 Sam Daniels
 B. J. Baloga
 Fentress Munden
 Walter Johnson
 Frances Porter
 Kevin Smith
 Warren M. Cosby, Jr.
 Charles Williams, II
 Robert Hunt

Dave Bugg
Allen Jenkins
Cindy Stauton
Devon Fairhurst
Freeland Mason

William Judy
Louis Whittaker
George Londera
Sherry Hamilton
Judy Brunch

and others.

Commissioner Pruitt opened the meeting at 9:30 a.m. All members, except Mr. Cowart, were present; Mr. Pruitt stated that Mr. Cowart would be arriving later in the day. Mr. Gerry Showalter gave the invocation. Associate Member Davis led the Pledge of Allegiance.

1. MINUTES of previous meeting.

Mr. Pruitt asked for corrections to the draft minutes. There being none, Associate Member White moved to adopt the minutes as drafted; the motion was seconded by Associate Member Gordy and was adopted unanimously.

**** APPROVAL OF AGENDA**

Associate Member Hull requested two additions to the agenda: (1) a request by Mr. Maurice Bosse, Roberecht Seafood, to discuss the eel market in Holland and the need for dioxin testing, and (2) an update of the oyster broodstock program by Dr. Jim Wesson. On a motion by Dr. Hull, seconded by Mr. White, the amended agenda was adopted unanimously. The additional items were added as Item 11A and 11B, respectively.

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

Mr. Bob Grab, Chief - Habitat Management Division, briefed the Commission on the following seven Page 2 items (projects over \$50,000 that are uncontested).

2A. RICHMOND DEPARTMENT OF PUBLIC UTILITIES, #99-0593, requests authorization to modify their permit to include the construction of a 10-foot by 300-foot temporary access road on the river side of an existing 54-inch water purification plant pipeline for construction access to the project sites on the James River in the City of Richmond. Recommend standard in-stream construction conditions.

Permit fee not applicable

2B. TOWN OF HILLSVILLE, #97-1553, requests authorization to modify an existing permit to allow for the relocation of a buried sanitary sewer line crossing (crossing number 18) of Little Reed Island Creek in Carroll County to a point 450 feet downstream to facilitate easier construction access. Recommend approval with our standard in-stream conditions previously imposed for the project.

Permit fee not applicable

2C. COUNTY OF ALLEGHANY, #99-1527, requests authorization to temporarily fill 2,680 square feet of subaqueous bottom for construction access and to construct a

230-foot long by 35-foot wide two-lane bridge over the Jackson River for access to the proposed Alleghany Middle School in Low Moor. Recommend standard in-stream construction conditions.

Permit fee..... \$ 100.00

2D. CITY OF VIRGINIA BEACH, #96-0083, requests authorization to reactivate and extend their permit until May 26, 2002, to dredge by hydraulic method approximately 16,398 cubic yards of State-owned subaqueous bottom material to provide navigational access to a public, dual lane, concrete slab boat ramp with riprap toe protection, and construct three timber, open-pile boarding piers totaling 642 feet in length at property situated along Crab Creek in Virginia Beach. Dredging will provide a channel approximately 2,637 feet in length with a 50-foot bottom width, and may be performed to maximum depths of minus six (-6) feet at mean low water. All dredged material will be pumped to the Lesner Bridge Stockpile area and no dredging shall occur during the period of March 1st through November 30th to protect shellfish spawning periods and juvenile summer flounder recruitment.

Permit fee not applicable

2E. STANLEY KOZUB, ET AL, #99-1413, requests authorization to hydraulically dredge approximately 46,996 cubic yards of intertidal and subaqueous bottom material to provide maximum project depths of minus five (-5) feet at mean low water with a six-inch (6") overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at property situated along Hebden Cove in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$17,614.80 for the dredging of 39,144 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Dredging of 39,144 cu. yds. of State-owned subaqueous bottom @ \$0.45 cu. yds.....	\$17,614.80
Permit fee.....	<u>100.00</u>
Total	\$17,714.80

2F. SIL CLEAN WATER, L.L.C., #99-1441, requests authorization to install wastewater collection and irrigation force main pipes at five (5) locations, by trench method using cofferdam and pump around methods along the North Fork Shenandoah River, Long Meadow Creek, and an unnamed tributary to North Fork Shenandoah River in Rockingham County. Project will serve the towns of Bridgewater and Timberville and Wampler Foods and Rocco Farm Foods. Recommend our standard

in-stream constructions conditions.

Submerged waste water	
pipeline 210 ft. @ \$1.00 sq. ft.....	\$ 210.00
Permit fee.....	<u>100.00</u>
Total	\$ 310.00

2G. CITY OF NEWPORT NEWS, #99-1497, requests authorization to construct and backfill 119 feet of timber replacement bulkheading and to dredge approximately 6,347 cubic yards of State-owned subaqueous bottom from the James River to achieve maximum depths of minus thirteen (-13) feet at mean low water for the purpose of constructing the Virginia Advanced Shipbuilding and Carrier Integration Center adjacent to the property located between 23rd Street and 26th Street in Newport News. Recommend the purchase and planting of 8,202 market size clams as 1.33:1 mitigation for impacts to 0.881 acres of clamming ground.

Permit fee.....	\$ 100.00
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Associate Member Davis asked about the proposed dredging depth in Item 2D, CITY OF VIRGINIA BEACH, #96-0083; he remarked that he thought the depth limit should be 4.5 - 5.5 feet as in a previous project in Lynnhaven Inlet. Mr. Grab responded that the dredge depth in this project did not relate to the other project. Mr. Grab indicated that this project was closer to the inlet opening and a deeper natural contour. When Mr. Davis asked why a six foot depth was proposed, Mr. Grab stated that it was to reduce future maintenance dredging. Mr. Randy Owen provided additional clarification. Comments are part of the verbatim record.

Associate Member Davis made a motion to adopt the Page 2 items as listed. The motion was seconded by Mrs. Gordy, and adopted unanimously.

3. EXECUTIVE SESSION.

Associate Member Ballard moved that the meeting be recessed and that the Commission immediately be reconvened in executive session 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 Items 4 and 6, and legal criteria for Commission case decisions.

The motion was seconded by Associate Member Birkett and adopted unanimously. The Commissioners adjourned to an executive session.

When the Commission returned to regular session, Associate Member Ballard moved:

WHEREAS, the Marine Resources 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 Marine Resources Commission hereby certifies, 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.

The motion was seconded by Associate Member White. Commissioner Pruitt called for a roll vote. Assistant Attorney General Josephson noted that Mr. Hull was absent for a portion of the executive session. The motion was adopted 6-0-1, with Mr. Hull abstaining.

- 4. **PRIDE OF VIRGINIA SEAFOOD PRODUCTS, #99-0277**, requests after-the-fact authorization to retain an 81½-foot long by 84-foot wide commercial timber wharf adjacent to property situated along Cockrell Creek in Northumberland County. The project is protested by an adjacent property owner. Deferred from September 28, 1999, meeting.

Civil Charge (100 pilings @ \$100 ea.)	
per piling.....	\$10,000.00
Encroachment of 5868 sq. ft.	
@ \$3.00 per sq. ft.....	17,604.00
Permit fee (triple).....	<u>300.00</u>
	\$27,904.00

Mr. Jeff Madden, Environmental Engineer - Habitat Management Division, briefed the Commission. Mr. Madden provided the Commissioners with four additional attachments for their notebooks. Mr. Madden reminded the Commission that this item had been carried over from the previous month to allow time for the applicant, Mr. O'Bier, and the protestant, Mr. Williams, to reach a compromise. Mr. Madden indicated that the two were still at an impasse. He said that because the situation had not changed, the staff recommendation had not changed. Accordingly, staff recommended denial of the after-the-fact request, the removal of all unauthorized pilings, and a requirement for a new application if the applicant wanted to continue with the wharf project.

Commissioner Pruitt asked about Attachment 13, a letter from Mr. Bugg, the applicant's attorney, concerning the outcome of the meeting between the applicant and the protestant. There was a short discussion verifying that agreement had not been reached. Comments are part of the verbatim record.

Associate Member Ballard asked about some of the specifics of the project. Mr. Madden responded that there were 170 pilings in question arranged in approximately 12-14 rows on a 6 foot center. Comments are part of the verbatim record.

Mr. Davis Bugg, attorney for the applicant, spoke on behalf of the applicant. He indicated that this dispute was related to another dispute between Mr. O'Bier and Mr. Williams involving the adjacent upland property. He also briefly reviewed the results of the meeting they set up to resolve their differences on this project. Mr. Bugg then reviewed the four points that he had previously provided by letter to the Commissioners to explain why he thought his clients after-the-fact application should be approved as submitted. Comments are part of the verbatim record.

Mr. Charles Williams, III, owner of the Reedville Marina adjacent to the proposed project, spoke in opposition to the project. Mr. Williams indicated that his meeting with the applicant was unsuccessful; he now felt that his future dealings with the applicant would be difficult, and whereas he previously had thought he could agree to only two rows of pilings being removed, he would now like to see six rows removed as he had first asked for in the September Commission meeting. Mr. Williams also discussed his thoughts on whether or not Mr. O'Bier had a legal permit to do the work (the applicant had contended that a permit was not necessary since he thought the work could be considered maintenance and repair). Mr. Williams concluded that he concurred with the staff recommendation. Comments are part of the verbatim record.

Associate Member Ballard asked Mr. Williams if he was still concerned about large boats mooring in proximity to his marina; Mr. Ballard also asked about Mr. William's desire to have at least 6 rows removed (approximately 53 feet). Mr. Williams responded that he still had some concern about large boats mooring in the area in question and the projects potential reduce the maneuverability of large sailboats and other vessels using his facilities. Comments are part of the verbatim record.

After the applicant's representative and the protestant made their presentations there was a long discussion covering many elements of the case, including (1) whether some of the pilings were driven at night after notice of a permit being necessary was given; (2) the actual distance between the two facilities, the amount of space required for boat maneuverability, and how many rows should be removed; (3) the proposed permit stipulation preventing larger boats from mooring at the proposed wharf area at Pride of Virginia; (4) opinions on whether a permit

was necessary (it was noted that the Northumberland General District Court had decided a permit was necessary and Assistant Attorney General Josephson stated that he felt a permit was necessary); and (5) a discussion of the protestant's project across from the proposed project, and two similar projects in the area (Fleeton and Steamboat) that also involved a staff determination of the necessity for a permit. Comments are part of the verbatim record.

Associate Member Davis moved that the after-the-fact application be denied, noting that the applicant had received four warnings that a permit was necessary, a stop work order had to be issued, the Northumberland General District Court had rendered a decision indicating that a permit was necessary, and that in a staff visit to the William's facility no pilings were viewed in the area where the contested pilings were driven (indicating that work under a maintenance and repair policy was not applicable). Motion failed for lack of a second.

A discussion ensued between the Commissioners on the level of penalty necessary in the case, and the need to discourage after-the-fact applications. Comments are part of the verbatim record.

Associate Member Ballard asked Mr. Josephson, Assistant Attorney General, and Mr. Grabb, Habitat Management Chief, to draft a motion to be considered later in the meeting that was based on the following points, (1) a finding that a permit was required, (2) a \$100 per pile penalty for pilings remaining after two rows of pilings were removed, and (3) a condition prohibiting the mooring of large vessels in the vicinity of the new wharf to allow for boat maneuverability in the area.

After the lunch break Mr. Ballard made the following motion:

I move that, in the case of the Pride of Virginia Seafood Products application (VMRC #99-0277), after having fully considered all of the documents and materials in the official record, including presentations by staff, the applicant Mr. O'Bier Sr., the protestant Mr. Charles Williams III, and the oral arguments and written brief provided by Mr. O'Bier's counsel Mr. A. Davis Bugg, that the Commission find that Mr. O'Bier's activities did not qualify as maintenance and repair, and that a permit from the Commission was required for the reconstruction proposed.

Having duly asserted Commission jurisdiction in this matter, I now move approval in modified form the open-pile timber commercial wharf applied for in the application. This motion does not grant approval for the construction of any structure on the wharf without a further evaluation and public interest review. The decision to approve in modified form is predicated upon a finding that the decision to require removal of the two rows of pilings nearest to the common property line between Messrs Williams and O'Bier, is necessary to restore unimpeded public access to the piers which the Commission previously authorized for Mr. Charles Williams to accommodate use of the Reedville Marina and Restaurant facility. In addition,

approval is contingent on Mr. O'Bier's willingness to consent to a civil charge as permitted pursuant to §28.2-1213(B) of the Code of Virginia. Agreement to the civil charge would be in lieu of any further enforcement actions provided in Code and would be assessed at a rate of \$100 for each separate piling (i.e. each violation) that Mr. O'Bier is permitted to retain. Furthermore, the permittee agrees to take the necessary steps to prohibit the mooring, even temporarily, of any vessel alongside the permitted wharf that is parallel to the common property line shared with Mr. Williams, and, to ensure that no part of any vessel legally moored along the channelward face of the pier extends beyond that side of the wharf. The permittee also agrees to effect removal of the two rows of pilings within ninety days of the Commission hearing.

In the event the permittee is unwilling to consent to the civil charge proffered in a reasonable time, this matter would then be forwarded to the Office of the Attorney General for initiation of the appropriate enforcement actions.

The motion was seconded by Associate Member Birkett. The motion carried 4-2-2, with Mr. Davis and Mr. Williams voting no, and Mr. Cowart and Mr. Hull abstaining.

5. **DEVON FAIRHURST, #98-1078**, requests authorization to retain a 16-foot by 10-foot, one-story dock house located at the channelward end of his private pier situated along Parkers Creek in the Cashville area of Accomack County.

Mr. Hank Badger, Environmental Engineer - Habitat Management, briefed the Commission and presented slides. Mr. Badger reviewed the chronology of the case, and indicated that a dock house and a 14' by 14' addition to the pier decking had been built on the applicants pier without authorization. He noted that there were no protests, that VIMS had said there was minimal impact, and that the county was waiting on the issuance of a building permit until after the Commission's decision. Mr. Badger said it was the recommendation of the staff to deny the after-the-fact permit and require removal of the boathouse based on the Commission's policy to limit encroachment of non-water dependent structures in situations where they can be built on the upland.

Mr. and Mrs. Collen and Devon Fairhurst, applicants, addressed the Commission. They explained that they did have a permit for the dock but did not realize that a permit for the boat shed and additional decking was necessary. Mr. Fairhurst said their mistake was not intentional.

Commissioner Pruitt asked how the boat shed was used. The Fairhursts responded that it was used for boat gear, tackle, as a sitting area, and as a navigational point at night.

Associate Member Gordy made a motion to approve the after-the-fact permit. The motion was seconded by Mr. White.

There was a short discussion where the Commissioner's reviewed their thoughts on the case, and discussed another project with an observatory that had been approved (it was determined in that case there were extenuating circumstances - remote location and the applicant's ownership of 2-3 miles of the adjacent shoreline). Comments are part of the verbatim record.

Mr. Pruitt called for a vote. The motion failed 3-4, with Mr. Ballard, Mr. Davis, Mr. Williams, and Mr. Hull voting no.

Mr. Davis made a motion to remove the boathouse in a reasonable amount of time. Mr. Hull seconded the motion, providing that Mr. Davis would accept an amendment to the time frame to specify 90 days for removal. Mr. Davis accepted the amended motion and the motion was adopted 4-3, with Mrs. Gordy, Mr. White, and Mr. Birkett voting no.

6. **SHOW CAUSE HEARING** to determine Mr. Roger McKinley's degree of responsibility as an agent and contractor for Mr. Willie E. Bush (#99-0340), pertaining to permit violations associated with a previously authorized dredging project adjacent to Old House Cove, a tidal tributary to Dividing Creek in Northumberland County.

Associate Member Hull made a motion to carry Item 6 over until the November Commission meeting at the request of the applicants. The motion was seconded by Mr. White and carried unanimously.

The Commission broke for lunch at approximately Noon. Associate Member Cowart was present during the afternoon session.

7. **OYSTER PLANTING GROUND APPLICATION:** On January 21, 1999, Mr. Leslie E. Allen, III, applied for a 4.00 acre lease of oyster planting ground in the waters of Rock Hole Creek, South of Public Ground 37, in Northumberland County. We have received a letter of protest bearing signatures from eight households opposing the assignment.

Mr. Gerry Showalter, Head of the Engineering and Surveying Department, briefed the Commission. He stated that he had helped the applicant and protestants reach an agreement on the case.

Associate Member Davis asked counsel, if an agreement had been reached, whether the Commission could forgo the full briefing. Mr. Josephson said it could since the briefing material on the case and the subsequent agreement was provided in their packets. Commissioner Pruitt asked if anyone in the audience wished to speak on the matter. There being no public comment, Associate Member Ballard moved to grant the assignment as had

been agreed. The motion was seconded by Mr. Birkett and carried unanimously.

- 8. APPLICATION FOR REASSIGNMENT OF OYSTER PLANTING GROUND:**
James M. Shinault, II, completed an Application for Reassignment of Oyster Planting Ground for lease #12061, containing 16.79 acres in the East River, which was due August 1, 1999. His lease was not renewed and he has appealed that decision to the full Commission.

Mr. Gerry Showalter, Head of the Engineering and Surveying Department, briefed the Commission. He stated that Mr. Shinault had only planted 25 bushels of shell and harvested 5 bushels of oysters in the last 10 years. He indicated he did not feel this was sufficient for a 16.79 acre lease to comply with the lease conditions requiring that oyster grounds be worked. Mr. Showalter recommended that the lease assignment for Mr. Shinault be reduced to 2 to 3 acres.

Mr. Shinault was not present to make his appeal. Mr. Showalter had told him by leaving a recording on his phone and he had been notified by letter that the appeal would be considered at this Commission meeting.

Associate Member Cowart commented on the current disease situation and the poor potential productivity in many areas. He also mentioned the 97 amendment that added the last sentence (in 613) that referred to MSX and DERMO and whether the ground had traditionally produced commercial quantities of oysters. Comments are part of the verbatim record.

Mr. Davis made a motion to allow Mr. Shinault 2.5 acres, with the condition that he pay all applicable survey and plat fees. After a short discussion concerning the absence of Mr. Shinault, Mr. Pruitt asked for a second to the motion. There being none, the motion failed.

Associate Member White made a motion to continue the case until the December meeting. The motion carried 7-1, with Mr. Davis voting no.

- 9. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC 20-620-10 et seq., "Pertaining to Summer Flounder" to adjust the opening date and trip limit for the offshore commercial fisheries during the fourth quarter, 1999.

Mr. Lewis Gillingham, Fisheries Management Specialist, briefed the Commission. He explained that since 1993, the coast had been under a quota management program for flounder. He indicated that under regulation, the fourth quarter season was scheduled to start November 15, but in the last 3 years the fourth quarter start date has varied at the request of the industry for market reasons. He also said some processors were interested in increasing the trip limit in the fourth quarter from 5,000 pounds per day per boat to 10,000 per day. He said he had been asked by Chincoteague Seafood to say that they favored an increase in the trip limit to 10,000

pounds and a November 1 start date. Mr. Gillingham also described the vessel numbers and the general fishing power of the fleet. He stated that staff was reluctant to recommend an increase in the trip limit at this time and would prefer to wait until early 2000 to look at trip limits in all four quarters. He said the staff recommendation was to start the season on November 1 and to keep a trip limit of 5,000 pounds per boat per day. Comments are part of the verbatim record.

Associate Member Davis asked if an overage in the fourth quarter would be taken off of the 2000 quota; Mr. Gillingham said yes. Mr. Davis asked if the quota would be fully utilized with the 5,000 pound trip limit. Mr. Gillingham indicated that it probably would be, remarking that in 1998 the million pound quota (approximately twice the 1999 quota) was landed in 12 days with the 5,000 pound trip limit in effect.

Mr. White asked how many boats worked out of Chincoteague. Mr. Gillingham said he estimated about eight boats based on 1998 participation.

Mr. Pruitt opened the public hearing.

Mr. Sam Daniels, representing Wanchese Fish Company, spoke in favor of the 5,000 pound trip limit and a November 15 start date. Comments are part of the verbatim record.

Mr. Frank Peabody, Peabody LLC, spoke in favor of the 5,000 pound trip limit and a November 15 start date. Comments are part of the verbatim record.

A representative of Old Point Packing spoke in the favor of the 5,000 pound trip limit and a November 15 start date. Comments are part of the verbatim record.

Mr. James Fletcher, United Fisherman's Association, spoke on the problems with the quota coastwide; he felt the overall quota was too low. He also spoke in favor of the 5,000 pound trip limit and a November 15 start date. Comments are part of the verbatim record.

Mr. Fentress Munden, North Carolina Division of Marine Fisheries, advised the Commission that his State planned to open their fishery on December 1 with a 10,000 pound trip limit. Comments are part of the verbatim record.

The public hearing was closed.

Associate Member Davis made a motion to open the season on November 15, 1999 with a 5,000 pound trip limit. The motion was seconded by Mr. Cowart.

Mr. Ballard said he had heard from other fisherman who did not favor a November 15 start; he asked if the Fisheries Management Advisory Committee (FMAC) had considered this issue.

Mr. Gillingham said it had not been discussed.

The motion failed on a 4-5 vote, with Mr. Ballard, Mr. Birkett, Mr. Hull, Mr. Williams, and Mr. Pruitt voting no.

Associate Member Ballard voted to retain the 5,000 pound trip limit and start the season on November 1. The motion was seconded by Mr. Williams, and carried 6-2, with Mr. Davis and Mr. Hull voting no.

10. **PUBLIC HEARING:** Proposed amendments to Regulations 4VAC 20-890-10 et seq., "Pertaining to Channeled Whelk", to replace the experimental fishery with a limited entry commercial fishery.

Mr. Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the proposal to convert the current experimental fishery to a limited entry commercial fishery. Mr. O'Reilly said that there were 43 participants in the current experimental fishery and that staff projected about 60 participants if the limited entry fishery outlined in the draft regulation was adopted. He indicated that the proposal was to allow all current permittees, except those not meeting reporting requirements, and any others that could document offshore conch harvest between 1/1/97 and 10/1/99 into the proposed limited entry fishery. Mr. O'Reilly continued with a review of the draft regulation that had been included in the Commissioner's notebooks. Comments are part of the verbatim record.

There was a short discussion regarding the permittees that did not report correctly and were proposed to be left out of the fishery. Mr. O'Reilly said this applied to seven permittees: permit numbers 38, 46, 50, 63, 66, 67, and 76. In these cases, staff had not received responses to non-reporting notices. He also noted that the permittee's permit documents stated that their permits could be revoked for failure to comply with reporting requirements. Comments are part of the verbatim record.

Mr. O'Reilly stated that it was staff's recommendation to adopt the changes to 4 VAC 20-890-10 effective January 1, 2000 imposing a 60 bushel per vessel landing limit, including a clause to allow for permit revocation if reporting requirements were not met, and abolishing the experimental fishery as of 1/1/2000.

Mr. Hull noted that a comma should be added in Section 4 VAC 20-890-30(A) to clarify the intent.

Associate Member Davis commented that he had received telephone calls from individuals favoring a limit of 50 licenses for the proposed limited entry fishery. Associate Member Williams asked if there was scientific data to help establish the license level. Mr. O'Reilly responded that he did not think there was much difference between 50 license and the 60

licenses that was proposed. He also explained how staff had arrived at the 60 license level, the status of data associated with the fishery, and the difficulty in determining an appropriate permit level with limited data. Comments are part of the verbatim record.

Commissioner Pruitt asked Assistant Attorney General Josephson what recourse permittees that were proposed to be dropped from the fishery because of reporting problems would have. Mr. Josephson responded that the normal recourse would likely be a court appeal, but nothing would preclude the Commission from considering their appeals.

Commissioner Pruitt opened the public hearing.

Mr. David Hart, crab and conch fisherman, stated that he was one of the permittees (#50) that would be dropped under the proposal. He said he had called in to Mr. O'Reilly to say he had not been using his permit. He indicated that he would like to remain in the fishery. Comments are part of the verbatim record.

Associate Member Davis commented that he agreed with the staff proposal. After some additional discussion, Mr. Davis made a motion to adopt the proposed regulation as outlined in the staff recommendation. The motion was seconded by Associate Member Ballard with a request to amend the motion to not revoke Permit #50. Mr. Davis agreed to the amendment to his motion. Motion carried unanimously.

11. **PUBLIC HEARING:** Proposed amendments to Regulations 4VAC 20-270-10 et seq., and 4VAC20-1040-10 et seq., to reduce effort in the crab pot fisheries and establish new cull ring requirements.

Mr. Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He handed out a packet containing copies of 46 public comment letters that had been received. He said the letters were generally from concerned citizens not involved in the fishery and that they generally favored taking some action to protect crabs.

Mr. Travelstead said that he planned to review the two draft regulations that would be necessary for the staff recommendation, as well as, a crab management time line. He mentioned that this would not be the last hearing on blue crabs, more data was coming, and more decisions would be necessary. He indicated that the proposal today was directed at managing the rapidly growing peeler pot fishery; he stated that peeler pot license had increased 84% since 1994, despite Commission actions to limit effort in the crab fisheries.

Mr. Travelstead said there were two ways to reduce effort in the peeler pot fishery, (1) reduce the number of pots each fisherman gets and (2) eliminate licensees. Mr. Travelstead explained the three options described in the Commission packets to reach the target goal of 234,000 peeler pots proposed by staff. He concluded that the goal would not be easily achieved without

significantly cutting the pot limit and or the number of licensees (e.g. cut the daily pot limit from 400 to about 243 per licensee per day or reduce the number of licensees by 172 and reduce the pot limit to 300). He stated that staff was unable to find anything in the record saying the goal had to be reached in a single year, so for peeler pots, he said, a more stepped approach might be to reduce the pot limit to 300, continue the license freeze, tighten down on license transfers, and hope for gradual licensee attrition.

Mr. Travelstead described the outcome of the Blue Crab Management Advisory Committees deliberations. He indicated that there was no consensus. He said the group had discussed several ideas, including the use of a graduated license, a 300 pot limit, the addition of a second cull ring to mainstem Bay pots, and the concept of transferable pot quotas. Mr. Travelstead said the only action recommended by the Advisory Committee was the second cull ring, which was passed on a 6-5 vote.

Mr. Travelstead said the staff recommendation was to take more than a year to achieve their goal, reduce the pot limit from 400 to 300, and add a requirement for a second cull ring in mainstem Bay pots. Comments are part of the verbatim record.

Commissioner Pruitt stated that he had received requests to delay the Commission's decision on crabs until November to allow time for more complete harvest statistics and other comments from VIMS. He said, on the advice of counsel, the public hearing would be held today; he then opened the hearing.

Mr. Terry Conway, representing the John Handy Co., the largest soft crab producer in the Bay, spoke in favor of waiting on further regulation until there was more data. He presented data indicating that the soft crab harvest was only about 5% of the overall crab harvest. He said his company understood the need for conservation, but wanted to see that conservation measures were fair and equitable to all sectors of the crab fisheries. Comments are part of the verbatim record.

Mr. Jeff Crockett, President-Tangier Waterman's Association, spoke in opposition to further regulation in the crab fishery. He questioned the validity of the scientific surveys and stated that the crab fishery was seeing lots of crabs now. Comments are part of the verbatim record.

Mr. Pruitt, a crabber from Tangier, spoke in opposition to further regulation in the crab fishery. Comments are part of the verbatim record.

Mr. Doug Jenkins, President, Twin Rivers Waterman's Association, said he opposed additional restrictions. Comments are part of the verbatim record.

Mr. Carl Failmezger, "Save the Crab" Foundation, spoke in support of the recommendations. He said his organization was opposed to sponge crabbing in Virginia. He presented the

Commissioners with a letter describing a survey of 52 legislative candidates and their positions on a proposal to ban sponge crabbing. Comments are part of the verbatim record.

Mr. Ernie Bowden, President-Eastern Shore Waterman's Association, responded to several of the elements of the crab proposals reviewed by Mr. Travelstead. He said some license holders had some legitimate reasons for not using their licenses and therefore should not be dropped from the fishery. He stated that a sponge crab ban would close down crab picking houses. He thought a 300 pot limit would have a serious effect on peeler potting after the spring doubler run. He said he opposed further restrictions. Comments are part of the verbatim record.

Mr. Tom Powers, Coastal Conservation Association, spoke in favor of considering the ITQ concept in the crab fishery. Comments are part of the verbatim record.

Mr. Chris Ludford, commercial crabber, described how many crabs were being shipped out of state for higher prices, which contributed to the perception that there were fewer crabs available. Comments are part of the verbatim record.

Dr. Rob Brumbaugh, Chesapeake Bay Foundation, said he felt the crab population had not collapsed, but that it was only sustaining itself at a low level. He favored delaying the vote to get more comprehensive data. Comments are part of the verbatim record.

Mr. Jim Dalias, Tangier, spoke in opposition of the further restrictions.

Mrs. Judy Brunk, Eastern Shore soft crabber, spoke in opposition of more regulations and limited entry.

A waterman from Saxis, said he had a heart attack in 1991 and was unable to crab for a time, but now he needed to get his license back.

Mr. Walter Johnson, spoke in opposition of further regulations.

Mr. Warren Cosby, Upper River/Croaker Landing Association, spoke in favor of sponge crab restrictions and provided some comparisons to the Maryland crab fishery. Comments are part of the verbatim record.

Mr. Tony Ashford, talked about how fishermen go in and out of the crab fishery, which causes fluctuations in the harvest numbers. Comments are part of the verbatim record.

Mr. Louis Whittaker, President-Virginia Soft Crabbers Association, said he had worked on seven rivers this summer and from what he had seen there was not a problem in the soft crab fishery. He said he favored instituting a graduated licensing scheme to reach the proposed peeler pot limit. Comments are part of the verbatim record.

Mr. Brian Pruitt, Onancock, spoke in support of keeping a 400 peeler pot limit. Comments are part of the verbatim record.

Mr. Johnny Graham, Graham & Rollins Crab Co., said that crabbing had been bad in 1998 and the first half of 1999, but now there were crabs all over in Virginia, Maryland, North Carolina, and Delaware. He also described the coming pressure of the importation of foreign crab meat would have on the crab fishery. Comments are part of the verbatim record.

Mr. Freeland Mason, President, Virginia Waterman's Association, spoke in favor of the second cull ring requirement for the mainstem Bay. Mr. Mason also encouraged the Commission to continue to allow transfers and questioned the Commission's current policy on transfers. Comments are part of the verbatim record.

Commissioner Pruitt closed the hearing and indicated that the final decisions related to the hearing would be made at the Commission's November or December meeting.

11A. Request by Mr. Maurice Bosse, Roberecht Seafood, to discuss the eel market in Holland and the need for dioxin testing.

Mr. Hull introduced Mr. Bosse of Roberecht Seafood, one of the largest eel producers in the State. He said Mr. Bosse was at the meeting with Mr. William O. Sydnor, Chairman of the Board of Supervisors in Westmoreland County, and Mr. Walter Johnson, a waterman from the area. The three were there to discuss the European eel market and their desire for dioxin free eels.

Mr. Bosse, stated that dioxin had been found in eels, chicken, and beef in Europe. He indicated that he did not think there was a problem here yet, but his customers in Europe had warned him that he should be finding a way to test his product to show that it was within acceptable dioxin levels.

Commissioner Pruitt said he would refer the matter to Dr. Burreson at VIMS, Jack Travelstead, and Dr. Croonenberghs at the Department of Health.

Associate Member Cowart asked what level of dioxin may be acceptable. Mr. Bosse responded that he did not think there was a problem here; he said he would talk to his contacts to see what level was a concern. Mr. Pruitt asked him to have that information available when the staff and VIMS considered the issue.

Mr. Sydnor, spoke on the importance of the eel fishery to Westmoreland County and the Northern Neck. He encouraged the Commission to provide funding to allow dioxin testing of eels to occur. Comments are part of the verbatim record.

Mr. Cowart commented on the cost of testing and who should bear the cost of testing.

Associate Member Williams made a motion to pass the question of funding to the Commercial Fisherman Advisory Board as a discussion item. The motion was seconded by Mr. Hull and was adopted unanimously.

11B. Update on the Commission oyster broodstock program

Dr. Jim Wesson, Chief-Conservation and Replenishment, explained that this was a continuation of the item from last month. He said that the instructions on how to handle the broodstock program this year were not clear last month, and that the Commissioners had requested an update of the surveys and what Dr. Wesson planned for the broodstock program this year. Dr. Wesson said they had begun their dive and dredge surveys and indicated that the situation looked good in the Piankatank where the broodstock program had occurred in previous years. He said they would soon start their patent tong survey and would also have to do an additional contractual survey in the Lower Rappahannock for the DEQ Oyster Heritage Program. He said his dilemma was how to fit in the oyster broodstock program with so much survey work to be done. He said that in the past the watermen usually wanted to commercially harvest in November and December when the markets were good, and then participate in the replenishment work after that. Comments are part of the verbatim record.

Mr. Freeland Mason, commented that some of the watermen in his area were not enthusiastic about the reefs. He said there was a good set in the Rappahannock in areas where there were no reefs. Comments are part of the verbatim record.

Mr. Jeff Crockett, talked about the participation of watermen from his area in the oyster surveys. He said they agreed totally with the repletion program this year. There was a short discussion about what was seen on some of the rocks surveyed. Comments are part of the verbatim record.

There was a discussion about what decision was needed by the Commission. It was indicated that the motion in the previous meeting supported the broodstock relocation work being done in November and December; Dr. Wesson was saying that he could not do it then with current staff and that the broodstock work would have to be done between January and April. Mr. Pruitt asked Mr. Josephson about the need for an additional hearing to consider this adjustment; Mr. Josephson's response was that this was a work program adjustment and not a regulation, and did not require another hearing. Associate Member Davis asked about problems with freezing affecting the broodstock transfer and the ability of program personnel to work around the weather at the start of the year; he also asked about the amounts being paid to watermen for the replenishment work. Comments are part of the verbatim record.

Mr. Pruitt indicated that from the minutes and Mr. Josephson's comments he felt that the Commission's previous decision allowed for the flexibility to delay the work as Dr. Wesson wanted. He said that he thought that the Commissioners would want an update to know that

this was happening. Comments are part of the verbatim record.

12. CONSIDERATION of an appeal of a Commercial Fisherman Registration License exception request.

Mr. Jack Travelstead stated that Mr. John P. Allison was appealing the Commission's decision to not allow him a commercial registration license. He said Mr. Allison had sent in a one line justification in his exception request saying that he was 50 years old and needed the money. Mr. Travelstead said staff had no record of commercial fishing licenses for Mr. Allison dating back to 1986. He said the regulation did not allow exceptions based only on economics.

Mr. Allison was not present.

Dr. Hull made a motion to deny Mr. Allison's appeal. The motion was seconded by Associate Member Davis. The motion was adopted, with Mr. Williams abstaining.

13. DISCUSSION: Striped Bass regulations and ASMFC mandates for 2000. Request for public hearing.

Mr. Jack Travelstead gave a short briefing. He said the Atlantic States Marine Fisheries Commission (ASMFC) was requiring new restrictions for striped bass in 2000 because of evidence of overfishing on larger striped bass (age 8 and older). He said staff had met with the advisory committees to consider ways of reaching the ASMFC requirement for a 14% reduction on harvest of age 8 and older fish in both commercial and recreational fisheries. Mr. Davis asked how large an 8 year old fish was; Mr. Travelstead said it was 28 inches and up.

Mr. Travelstead said staff had worked out options with the advisory committee to meet the new ASMFC requirements. He said Mr. Rob O'Reilly had been on a conference call with the ASMFC Striped Bass Technical Committee this morning, and all of the options that had been developed had been approved except one. The exception was the 39" maximum size limit proposed for the ocean commercial fishery; he said the Technical Committee would only allow a 28"-37" slot limit in this case.

Mr. Travelstead then reviewed the options:

For the recreational fishery a 18"-34" slot limit in the Bay and a 28"-34" slot limit in the ocean was favored; for these slot limits an individual would be allowed one fish 18" (Bay) or 28" (ocean) and above, and if a second fish was caught it would have to be within the slot limit sizes. A second option for the recreational fishery was to reduce the ocean fishery possession limit to one fish per day; this was not favored by fishermen, but was approved by the ASMFC Technical Committee as an option.

For the commercial fishery, a 37" maximum size limit statewide was proposed as an option. A second option was a closed season in the last six or seven days of December.

Mr. Travelstead recommended that the Commission advertise these options for public hearing in November.

Associate Member Williams asked whether instead of the last six or seven day closure in December, closure on the weekends in December could be considered. Mr. Travelstead said that option had not been presented to the ASMFC Technical Committee because staff did not think it would be approved. Comments are part of the verbatim record.

Mr. Pruitt asked if the upcoming annual ASMFC meeting would have any effect on the proposals. Mr. Travelstead responded that the ASMFC Striped Bass Management Board also had to approve the options being proposed by Virginia. Comments are part of the verbatim record.

Associate Member Birkett made a motion to take the proposed options to public hearing at the next meeting. The motion was seconded by Mr. Davis, and was adopted unanimously.

14. STEVE SANFORD - Appeal for suspension of mandatory reporting.

Associate Member Williams indicated he would be abstaining on this case.

Mr. Jim Peters, Fisheries Management Specialist, briefed the Commission. He said Mr. Sanford had been requested to appear at the August meeting for failure to report harvest. He said Mr. Sanford was not present at that meeting and the Commission suspended Mr. Sanford's commercial registration license and his gear licenses until he appeared. Mr. Peters said Mr. Sanford was notified of the action. He said Mr. Sanford sent in his harvest reports on the day before the September meeting. Mr. Peters indicated that although staff had notified him, Mr. Sanford still did not understand that he had to appear before the Commission to clear up his license suspension. After more discussions in October with staff, Mr. Sanford agreed to appear at the October meeting to appeal his case.

Mr. Peters said staff recommendation was a six month probation with any additional violation cause for an immediate suspension of all licenses and a requirement to appear before the Commission.

Mr. Pruitt asked if Mr. Sanford's reports were now up to date. Mr. Peters said they were.

Mr. Davis asked if the staff recommendation followed previous guidelines. Mr. Peters said it did.

Mr. Pruitt asked Mr. Sanford if he now understood the importance of harvest reporting. Mr.

Sanford responded that he did.

Mr. Davis moved to accept the staff recommendation. Mr. Ballard seconded the motion. The motion was adopted, with Mr. Williams abstaining.

15. PUBLIC COMMENTS.

Mr. Warren Cosby, commented on the dioxin problem in eels. He said he had contacted the EPA in regard to the paper plant in West Point and alleged pollution problems there. When questioned whether it was a DEQ or EPA, Mr. Cosby thought it may have been DEQ. Comments are part of the verbatim record. Mr. Pruitt advised Mr. Cosby to get the phone number for Mr. Dennis Treacy, the DEQ Director, from Mr. Grabb.

Associate Member Davis made the following suggestions to Mr. Cosby: report his concerns to conservation reporters at local papers and organize local fishermen to protest the situation to the papers and elected officials. Comments are part of the verbatim record.

Dr. Hull commented that in the previous testimony by Mr. Bosse that he did not say dioxin was showing up in Virginia eels. He said he did not want Mr. Bosse's comments to be construed as evidence of a dioxin problem. Comments are part of the verbatim record.

Mr. Cowart and Mr. Davis commented on previous dioxin concerns associated with the paper plant and whether or not the plant was in compliance with its current permit. After a short discussion it was strongly suggested that Mr. Cosby should contact DEQ first.

Dr. Gene Burreson introduced Mr. Lyle Varnell, his new Assistant Director of Advisory Services. Dr. Burreson said Mr. Varnell had been a VIMS employee for nine years and at VMRC before that. He said Mr. Varnell would be helping coordinate VIMS advisory services for all State agencies. Comments are part of the verbatim record.

Associate Member Cowart commended Jack Travelstead for his work on the crab issue. Comments are part of the verbatim record.

Dr. Hull wished Commissioner Pruitt a happy birthday. Comments are part of the verbatim record.

Assistant Attorney General Josephson asked if the procurement methods for the replenishment activities needed to be adopted. Dr. Wesson said he would bring that matter back to the Commission in January.

There being no further public comments, pro or con, the meeting adjourned at approximately 5 p.m.

William A. Pruitt
Commissioner

Erik Barth