

## MINUTES

March 23, 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	)	
Henry Lane Hull	)	
John W. White, Sr.	)	
Frederick Fisher		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
LaVerne Lewis		Commission Secretary
Erik Barth		MIS Director
Jim Uzel		Senior Programmer Analyst
Bob Craft		Chief-Finance and Administration
Jane McCroskey		Assistant Chief-Finance and Administration
Steven G. Bowman		Chief-Law Enforcement Division
Lewis Jones		Assistant Chief-Law Enforcement Division
Ray Jewell		Northern Area Supervisor
Randy Widgeon		Eastern Shore Area Supervisor
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Thomas B. Moore, Jr.		Marine Patrol Officer
Charles E. Clifton, Jr.		Marine Patrol Officer
George R. Daniel		Marine Patrol Officer
Dr. Eugene Burreson		Director of Research

Commission Meeting

Tom Barnard  
Walter Priest

Virginia Institute of Marine Science  
Virginia Institute of Marine Science  
Virginia Institute of Marine Science

Dr. Jim Wesson

Chief-Conservation and Replenishment

Jack Travelstead  
Rob O'Reilly

Chief-Fisheries Management  
Assistant Chief-Fisheries Management

Roy Insley  
Lewis Gillingham  
Ellen Cosby  
Tracey Patton

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

Tony Watkinson  
Chip Neikirk  
Jay Woodward  
Jeff Madden  
Randy Owen  
Heather Wood  
Tracey West  
David Bower  
Bennie Stagg

Assistant Chief-Habitat Management  
Environmental Engineer  
Environmental Engineer

Gerald Showalter  
Hank Badger  
Robert Butler  
Debra Jenkins

Head-Engineering/Surveying  
Engineering Surveyor  
Engineering Technician  
Office Services Specialist

Others Present:

Marshall Cox, Sr.  
William McCormich  
Cynthia Hall  
Bobby Sehgl, Jr.  
Gray Lawrence  
Nan B. LaRue  
Garland T. Shackelford

Tim Wivell  
Kelly V. Place  
Jane Oehman  
Woody Parrish  
Dorothy H. Silsby  
Patrick A. Genzler  
Susan D. Annis

Danny R. Annis  
Stephen M. High  
Thomas Stokes  
Tom B. Langley  
Gaynette LaRue  
Christine Greenleaf  
Trinh Lay  
Tim Mullane  
Hugh Lessig  
James Brawley  
Joshua Merritt  
Donnie Thrift  
Timmy Pruitt  
Dave Grossman  
Eileen Rowan  
Jim Ralman  
Bill Portlock  
William C. Parks  
Dan Matthews  
George H. Marshall  
Freeland Mason  
Tom Powers  
Ray Cardone  
Charles Williams  
Bob Hutchinson  
Jeffrey Crockett  
Larry Snider  
Willy Bokelaar

Eugene Jordan  
Paul Kidel  
Susan Feehery  
Bert Parolani  
David Herne  
C. R. Seaglioni  
John Pope  
Amy Mullane  
June McPantland  
Charles Parks, Jr.  
Tommy Mason  
Richard Hesterberg  
Edward Kellum  
Pamela Dummutt  
Edward H. Bender  
Richard Welton  
Neil Renouf  
Jeff Reid  
Warren M. Cosby, Jr.  
Larry Gordon  
Jeannie Butler  
Rick Robins  
Pete Freeman  
Leroy Turnes, III  
Herbert Thom  
Charles R. Forrest  
Shawn Boggess

and others.

The meeting was called to order by Commissioner Pruitt. Members present: C. Chadwick Ballard, Gordon M. Birkett, S. Lake Cowart, Henry Lane Hull, H. Grant Goodell, and John W.

White, Sr. Associate Member Gordy was absent. Associate Member Davis would arrive later. Commissioner Pruitt established that there was quorum.

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Gerald Showalter gave the invocation.

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

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Copies of the Minutes of the meeting held February 23, 1999, had been sent to the Associate Members prior to this meeting. The following corrections to the Minutes were made: Page 28 insert the complete description of the Oyster Replenishment Program; and on page 67 an editorial correction to delete "and all its splendor"; and on page 41 sentences were added to clarify the "Procurement Procedures for the Shad Restoration Program"; spelling of "Taylor" to "Tayloe"; page 65 correct seconder of motion to, Associate Member Gordy seconded the motion; correction on page 29, the word Ice to Istea. Associate Member White moved to approved the Minutes with the above corrections. Motion seconded by Associate Member Hull. Motion carried unanimously for approval of Minutes.

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Commissioner Pruitt placed the matter of approving the agenda before the Commission. Associate Member Hull moved to approve the agenda as submitted, with the addition of the "Resolution" by the Commission in memory of Clifford O. Dameron, a distinguish retired member of the Marine Resources Law Enforcement Division. In addition, Mr. Hull also moved that the issue of crab exceptions be revisited regarding Mr. Larry Gordon and Mr. Richard Hesterberg. There being no further changes to the agenda, Associate Member Ballard moved to adopt the agenda as amended. Motion carried.

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Mr. Tony Watkinson, Assistant Chief-Habitat Management, briefed the Commission on the five page two items. Mr. Watkinson explained that those projects involved applications 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, was recommending approval for the projects.

**BUCHANAN COUNTY INDUSTRIAL AUTHORITY, #99-0006**, requests authorization to construct a 172-foot long by 32-foot wide concrete, pile-supported bridge crossing of the Levisa Fork approximately 21 feet downstream of an existing, one-lane bridge to facilitate improved access to the Industrial Park located in Buchanan County. Recommend inclusion of our standard in-stream permit conditions.

PERMIT FEE.....\$ 100.00

**NAVAL FACILITIES ENGINEERING COMMAND, #98-1066**, requests authorization to replace Pier #2 with a 1,500-foot long by 95-foot wide concrete pier, to install an 885 linear foot steel sheet pile replacement bulkhead, a maximum of 22 feet channelward of an existing bulkhead, and to convert 33,228 square feet of upland to subaqueous bottom adjacent to the Naval Station situated along the Elizabeth River in Norfolk.

PERMIT FEE.....\$ 100.00

**ORCA YACHTS, L.L.C., #98-1917**, requests authorization to construct two (2) 96 linear foot travel lift piers and a 298 linear foot fixed and floating commercial marginal wharf with three (3) 32 linear foot finger piers creating 6 wet slips adjacent to their property situated along Deep Creek in Chesapeake. Recommend an annual royalty of \$159.00 for encroachment over 3,180 square feet of State-owned subaqueous bottom at \$0.05 per square foot.

Encroachment over 3,180 sq. ft. of State-owned subaqueous bottom @ \$0.05 per sq. ft. (annually).....	\$ 159.00
Permit Fee.....	<u>100.00</u>
Total	\$ 259.00

**CAMPBELL COUNTY UTILITIES AND SERVICE AUTHORITY, #98-2240**, requests authorization to cross 110 linear feet of the Big Otter River with a submerged concrete encased 16-inch water pipeline adjacent to the Route 29 bridge crossing in the Town of Altavista. Recommend approval with our standard in-stream construction conditions.

PERMIT FEE.....\$100.00

**ARTHUR B. AND ANNIE SANDLER, #98-0698**, requests a 45-day extension into the time-of-year restriction imposed on their previously authorized dredging project in the Eastern

Branch of the Lynnhaven River in Virginia Beach. Require that all dredging be completed by no later than April 14 to minimize potential adverse impacts to shellfish, to protect shellfish spawning periods, and to minimize impacts on juvenile summer flounder recruitment.

A brief discussion between Commission members regarding the time of year restriction followed. Comments are a part of the verbatim record.

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

Associate Member Goodell recommended that the page two items be accepted. Motion was seconded by Associate Member White. Motion carried unanimously.

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Commissioner Pruitt read into the record a letter from Roger L. Chaffe, Senior Assistant Attorney General, regarding the assignment of the Mr. Carl Josephson. Mr. Josephson will become the lead attorney for the Marine Resources Commission, effective April 5, 1999, and he will attend the Commission meetings. In addition, the responsibilities of the Commission will be shared between Mr. Josephson and Mr. Fisher. Other comments are a part of the verbatim record.

Assistant Attorney General Fisher commented that he had enjoyed his work with the Commission and he was delighted that he would still work with the Commission. Other comments are a part of the verbatim record.

Commissioner Pruitt commented that Mr. Fisher was a fine gentlemen and one of the finest legal researchers he had dealt with. Other comments are a part of the verbatim record.

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The Commission determined that an executive session was not necessary.

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**STEPHEN HIGH, #98-1364.** Commission review on appeal of the November 24, 1998, decision of the Hampton Wetlands Board directing the restoration of 2,150 square feet of wetlands vegetation on his property adjacent to Herberts Creek in the City of Hampton.

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Jeff Madden, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. He said with the Commission's concurrence he would like to show a topographic map, some aerial and ground photos, which the Wetlands Board had not seen. Since the Board members had visited the site, staff did not consider showing the slides opening the record. The Commission gave their concurrence to view the slides.

Mr. Madden then briefed the Commission and presented slides on the location of Mr. High's property and the impacted area that was involved. Comments are a part of the verbatim record. Mr. Madden said that on July 28, 1998, Mr. High submitted an application to backfill 200 feet of bulkheading and construct a 90-foot long private, noncommercial pier with a 20-foot T-head on his property. On September 4, 1998, on a routine investigation, the Hampton Wetlands Board concluded that a herbicide had apparently been applied to wetlands within the Board's jurisdiction. The Board then notified Mr. High of the violation and indicated that he should cease further application of the herbicide. The Hampton Wetlands Board held a meeting on September 23, 1998, which included a staff briefing, photographs, and they also heard testimony from Mr. High and his agent/contractor, Mr. Ed Call. Mr. Madden said the VIMS report indicated that the alignment of the proposed bulkhead, based on the drawings, was unclear. Therefore, a definitive evaluation of impacts was not possible, and VIMS recommended that an elevation survey be prepared in order to clearly determine the boundary of the tidal wetlands. Mr. Madden said that the Wetlands Board held another meeting on October 27, 1998, and the applicant was granted a deferral because there were only three Board members present. At the November 24, 1998, meeting the Board reconsidered the bulkhead portion of the project, and heard testimony from the Wetlands Board staff, Commission staff, Mr. High, and Mr. Vannice, the adjacent property owner residing at 33 Pine Cone Drive. The Board then approved the bulkhead and moved on to the violation.

Mr. Madden said that after the discussion of the violation by the Wetlands Board, their staff considered the impacts to be 2,150 square feet. Mr. High, the applicant, then requested that the Board wait until Spring to see what would emerge in the impacted area. The Board was agreeable to the suggestion and commented that SEAS and VIMS should be asked to determine the specific vegetative type and the planting schedule. The Wetlands Board then made a motion to approve and direct Mr. High to develop a plan to revegetate the damaged 2,150 square feet of wetlands with appropriate wetland materials. The motion carried unanimously.

Mr. Madden said following that hearing, the Commission staff was notified by Mr. Eugene Jordan, Mr. High's attorney, that Mr. High was aggrieved by the decision of the Wetlands Board. Mr. High felt that the impacted area was significantly less than the amount estimated

by the Wetlands Board. Mr. High maintained that any impacts to the wetlands were restricted to those areas around the base of the fence posts where he used the herbicide, not the alleged impact of 2,150 square feet. Mr. Madden said VIMS had not commented on the impacts to the wetlands within the Board's jurisdiction due to herbicide application.

Mr. Madden said the Wetlands Board required restoration of the impacted areas, and they framed their motion to delay the restoration until Spring, which should involve both VIMS and SEAS in any plan to revegetate the area. Therefore, based on staff's review of the record, they were unable to conclude that the Board erred procedurally in their consideration of this matter, or that the rights of the applicant had been prejudiced by their decision. Accordingly, unless VIMS states that the impacted area would recover naturally, staff recommended that the November 24, 1998, decision of the Wetlands Board to require the development of a restoration plan for the revegetation of 2,150 square feet of impacted wetlands be upheld.

Associate Member Cowart asked if VIMS had made a statement in reference to the impacted area. Mr. Madden responded no, and that VIMS was not approached by the Wetlands Board to provide any comment as to the impacts to the wetlands. Mr. Cowart asked if it was determined what herbicide was used. Mr. Madden responded that he was unable to answer that. A discussion followed regarding the use of the herbicide.

Tom Barnard, VIMS representative, addressed the Commission. He said the Wetlands Board nor staff had requested VIMS to look at the area and provide comments. Therefore, he could not determine the impact to the area.

Commissioner Pruitt commented that VIMS did not know if the impacted area would recover naturally because VIMS had not looked at the impacted area to determine if the area would recover. Mr. Barnard responded that they did not know the impacts at this time.

Eugene M. Jordan, representing the applicant, addressed the Commission. He said Mr. High was disputing that the evidence in this was not sufficient. In fact, there was no evidence until he got to the hearing on the impact to the area. Mr. Jordan said that Mr. High had been advised earlier in dealing with the Corps of Engineers that he could treat this land as you would your own yard normally. He said Mr. High admitted to staff that he put a herbicide down by the fence line. When Mr. High went to the hearing, he thought he was going to hear something about evidence on putting herbicide by the fence line. Instead, at the hearing, for the first time he heard about the impact to 2,150 square feet. Mr. Jordan said the contention was that there was no evidence that there was a herbicide application to the 2,150 square foot area. Mr. Jordan said, in fact, the impacted area was 150' by 6" wide by the fence line. He

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said there was a miscommunication of apples and oranges. Mr. High thought he was going to hear about what do I do about not doing this anymore, and he ceased putting the herbicide by the fence line. Mr. High came out of the meeting thinking that he would have to revegetate the 2,150 foot area that were wetlands. Mr. Jordan said they retained Mr. Stokes, from the Virginia Extension Service, to come to the property, investigate, get samples, and have the samples examined. Mr. Jordan said essentially the area had gone into a dormant state.

Commissioner Pruitt requested Mr. Jordan to answer Mr. Cowart's question regarding the type of herbicide used.

Mr. Jordan responded that roundup was used by the fence line, and the other areas were never sprayed with roundup. However, on the upland area in Mr. High's yard, a crab grass preventer was used, which was not in the jurisdictional area.

Associate Member Cowart asked if anyone had made a determination if the roots were dead on the plants. Mr. Jordan responded that they had obtained Mr. Stokes and he would provide an answer.

Thomas Lane Stokes, Jr., President of Stokes Environmental and Associates, Ltd., answered questions posed by Mr. Jordan. Mr. Jordan asked if he pulled samples from the 2,150 square foot area? Mr. Stokes responded yes. He said he collected six or seven samples across the wetlands area, and it was predominately salt grass with a little Juncus scattered throughout. He said he also went to a reference site that was the same type of salt grass near Old Dominion University in Norfolk and collected samples. Mr. Jordan asked if he found anything that indicated the plants were dead at the roots.

Mr. Watkinson addressed the Commission and stated that Mr. Stokes's testimony or evaluation was not a part of the Wetlands Board's record. He said if the Commission wanted to hear from Mr. Stokes, the Commission would have to vote to open the record.

Commissioner Pruitt then placed the matter before the Commission regarding hearing from the environmental engineer.

Associate Member Cowart moved to hear the evidence presented by Mr. Stokes.

Associate Member Davis asked what were the technicalities of opening the record? Mr. Cowart responded that he felt this particular evidence could weigh on what the Wetlands Board based their decision. However, the Wetlands Board did not have this information available at that time, and the Commission should hear the information from Mr. Stokes and perhaps it

would be a reason to send the matter back to the Wetlands Board. Motion seconded by Associate Member White. Motion carried unanimously.

Mr. Stokes continued with his presentation. He said from the samples he collected, he found that there was no difference in the amount of living material between Mr. High's yard and the reference site in Norfolk. He said the stems beneath the sheets on the plants were green in both locations. He said there were shoots coming up in both locations, and there was no difference in the abundance of the green shoots between the locations. He said, however, that there was a difference in the total abundance of plant material in Mr. High's yard. The material was more dense and it was mowed a little closer which would cause the plants to grow closer together. He said, in his opinion, the grass appeared to be alive. A discussion followed regarding the use of herbicide on the upland area. Comments are a part of the verbatim record.

Associate Member Goodell asked if someone said Mr. High had sprayed his upper lawn with some chemicals to keep down the crab grass. Dr. Goodell asked if the runoff from the lawn down into the wetlands area killed the material in the wetlands area. Mr. Stokes responded that it could. A discussion followed.

Pat Thomas, staff coordinator for the Wetlands Board for the City of Hampton, addressed the Commission. She said she took the photographs shown during the hearing that showed the upland being green and the area being brown. They were taken in September. She said they did not know if one part of the area was sprayed or not, but it was clear to them that something had been applied in the wetlands area because there was a distinct difference in the color of the vegetation. She said they sent Mr. High a letter and he did not respond. Therefore, there was no discussion between Mr. High and the Wetlands Board staff regarding the extent of the violation. A brief discussion followed between Ms. Thomas and the Commission regarding Mr. High's not responding to the Wetlands Board letter. Comments are a part of the verbatim record.

Mr. Jordan was given the opportunity to respond in rebuttal. Mr. Jordan said the Wetlands Board's letter stated that a herbicide had been applied in the jurisdictional wetlands, and to cease putting the herbicide application immediately. Mr. Jordan said he felt it was still a miscommunication.

Associate Member Davis asked why Mr. High had not responded to the Wetlands Board's letter. Mr. Jordan responded that the case was placed on the docket at the same time as the bulkhead application, and Mr. High thought both issues would be considered at the same time. Other comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Cowart moved that in light of the fact that VIMS had not looked at the site to determine whether the roots were dead or alive, and more damage could possibly be done by replanting the vegetation, he was in favor of remanding the matter back to the Wetlands Board for reconsideration after VIMS had looked at the site to determine what damage had been done and if restoration was necessary. Motion was seconded by Associate Member Goodell. Motion carried. Associate Member Davis abstained from voting because he came in late and did not hear all the testimony.

Commissioner Pruitt said the matter was remanded back to the Hampton Wetlands Board.

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Commissioner Pruitt gave Mr. Davis an opportunity to address the Commission on a change to the agenda.

Associate Member Davis addressed the Commission regarding agenda item 18, concerning the severe shortage of blue crabs. Mr. Davis motioned that the crab item be placed on the agenda first after lunch. Commissioner Pruitt commented that he had told various persons that the item would not come up before 3:00 p.m. After a brief discussion, Assistant Attorney General Fisher said perhaps Mr. Davis could address the Commission at the beginning and at the end of the meeting others could address the subject. The motion was seconded by Associate Member Ballard. Motion carried 4 to 3 to hear item 18 after lunch.

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**GARLAND T. SHACKELFORD, #99-0026.** Commission's review of the February 10, 1999 decision by the Gloucester County Wetlands Board to approve the filling of approximately 13,000 square feet of tidal wetlands to facilitate the construction of a freight transfer facility at Shackelford Seafood Company's property along Browns Bay in Gloucester County.

Associate Member Cowart stated that he would not be voting on this issue because he did business with Mr. Shackelford. However, he would like to participate in the discussion of this matter.

Commissioner Pruitt asked if there was anything that would come before the Commission that

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had not gone before the Wetlands Board? Mr. Neikirk responded that he did not think so, but he would like to show some aerials and a vicinity map, which was routine because the Commission had not visited the site.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. He said Mr. Shackelford proposed to fill 1.25 acres of tidal and nontidal wetlands to support an expansion of his seafood business. The application did not differentiate between the amount of tidal and nontidal wetlands that would be impacted. However, the Virginia Institute of Marine Science had estimated that 13,000 square feet of the filled area involved tidal wetlands within the jurisdiction of the Wetlands Board. The total impact of the entire project was 2.22 acres and the fill area was approximately 300 feet by 400 feet.

Mr. Neikirk said that Mr. Shackelford represented himself at the Wetlands Board meeting and provided a brief history of his business, revenue generated, and the need for the building. In addition, Board Member Ms. Breedy provided the Local Wetlands Board with a list of information she felt the applicant needed to provide (under tab E of the Commission package).

A letter of objection was received concerning the environmental impacts associated with the construction. There were four adjacent property owner forms which were in the record indicating no objection to the project. No public comments was presented during the hearing. The VIMS representative, Ms. Mason, said she did not prepare a report for the Board because she was informed that the item would be tabled or continued pending receipt of additional information. Mr. Neikirk said the Board discussed several options for wetlands compensation to the impacted area, which included setting aside existing tidal wetlands areas not to be touched, breaching the dikes in various locations to restore the tidal inundation to portions of the diked area. However, the Board did not discuss other alternatives to minimize the impacts of the project. He said Mr. Shackelford was agreeable to provide 1:1 wetland compensation, the project was unanimously approved, with the condition that the applicant provide the requested information, and provide 1:1 compensation by breaching a portion of the outer dike.

Mr. Neikirk said staff did not believe the application considered by the Board during their February 10, 1999, hearing was complete because the application did not include the information specified in the Model Wetlands Ordinance. In addition, the Wetlands Board's staff presented a page of items that were essential and needed to be addressed by the applicant, such as, the description of the project, justification, location of wetlands impacted, and alternatives to minimize the impacts. Therefore, the Board acting on the incomplete application, did not have the necessary information to evaluate the impacts of the projects, nor

could they consider alternatives to minimize the project's impacts as required by the Wetlands Guidelines. Mr. Neikirk also said that the Wetlands Board acted without a VIMS report, and VIMS was unable to prepare a report based on the sparse information contained in the application. The Board also failed to evaluate the necessity of the proposed project or alternatives to minimize the impact to the project prior to seeking 1:1 compensation for the fill.

Mr. Neikirk said although the wetlands at the site had been previously impacted, the impacts associated with this proposal were significant. Given the degraded nature of the wetlands at the site and the economic benefits which might be derived from the project, staff believes the project may be justifiable. However, staff was concerned that the Board acted without the information necessary to fully evaluate, or possibly minimize impacts resulting from the proposal. Accordingly, staff recommended that the project be remanded to the Wetlands Board for reconsideration, after the applicant submits all the information stipulated in the Model Wetlands Ordinance and the information requested by the Gloucester County staff.

Walter Priest, a member of the Wetlands Board, addressed the Commission. He said the jest of the Board was that the permit was approved contingent upon an acceptable mitigation plan and receipt of all of the information that was stipulated by the county staff. A discussion followed between Commission members regarding the permit. Comments are a part of the verbatim record.

Garland Shackelford attempted to present photos concerning the project, but they were not acceptable to the Commission because they were only reviewing the Wetlands Board's decision, and not accepting new evidence. Mr. Shackelford stated for clarification that no permit had been issued. Other comments are a part of the verbatim record.

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

Associate Member Davis moved to remand the matter back to the Local Wetlands Board. Motion was seconded by Associate Member Goodell. Motion carried unanimously.

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**SHOW CAUSE HEARING** to determine the roles of Mr. Melvin T. Greenleaf, Jr. and Mrs. Christine G. Greenleaf in the abandonment of two Navy deck barges on State-owned submerged land in the Eastern Branch of the Elizabeth River in the City of Norfolk.

Randy Owen, Environmental Engineer, addressed the Commission and stated that staff was prepared to brief the Commission on this matter. However, there was a letter, dated March 19,

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1999, from the Greenleaf's attorney, Patrick A. Genzler, requesting that this matter be continued. The three reasons he gave for the continuance were: the applicants were not necessarily a party to this hearing; secondly, Mr. Genzler had asked for the government to consider resuming the custody of the two Navy barges; and lastly, Mr. Genzler was prepared to put on a number of witnesses, which could take two to three hours. Therefore, Mr. Genzler was requesting the Commission to consider the need for a prehearing conference, as allowed by the APA, whereby an appointed hearing officer would take this information and bring it back to the Commission.

Commissioner Pruitt commented that he felt the attorney's request for a continuance should be addressed first.

Patrick Genzler, representing Mr. and Mrs. Greenleaf, addressed the Commission. He said the basic reason for requesting this continuance was because of the government's sale of scrap steel to Mrs. Christine Greenleaf. The government's contracting office sold the scrap steel to Mrs. Greenleaf, and assumed that the sale included the four barges, but it was for the two that were still listed. He said Mr. and Mrs. Greenleaf deny they ever bought those barges, and deny that they ever took possession of the barges. He said the issue before the Commission, under 28.2-1210 of the Code of Virginia, was to determine the owner of the barges which revolved around the interpretation of the government contract.

Mr. Genzler said he was asking the Commission to also include The Departments of Defense, The Department of Navy, and The Defense Logistics Agency as parties to the Show Cause Order. In addition, Mr. Genzler's was also concerned about Mr. Grabb's March 5, letter advising them of the Show Cause Hearing for Mr. Greenleaf, Mrs. Greenleaf, Mr. Peter Havert, and Mr. Whittington, who were involved with the barges. However, when he got to the meeting today, only the Greenleafs were here for the Show Cause Hearing. He said if the Commission wanted to know who was the owner and responsible party for the barges, all the persons including the two government agencies needed to be a part of the hearing. Mr. Genzler said they would be ready as soon as a hearing officer could be appointed and the hearing could be held.

Associate Member Goodell commented that he felt until the ownership of the barges could be ascertained, it would be premature for the Commission to hear anything.

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 6. Motion seconded by Associate Member Davis. Motion carried unanimously.

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 Goodell. Motion carried unanimously.

Commissioner Pruitt called the meeting back to order and stated they were still on item 6, the Show Cause Hearing.

Associate Member Davis moved that agenda item 6, Show Cause Hearing, be referred to a hearing officer from the list prepared by the Executive Secretary of the Supreme Court of Virginia to determine the ownership of the barges, and that the hearing officer should report back to the Commission by July 1, 1999. Motion seconded by Associate Member Cowart. Motion carried unanimously.

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**RIVERBEND MANAGEMENT, #99-0057**, requests authorization to renovate an established commercial marina by demolishing 3,380 square feet of existing deteriorated piles and decking and replace it with 3,255 square feet of new decking and piles to support a new restaurant

structure with additional renovation and downsizing to include 43 floating wet slips adjacent to their property situated along the Hampton River in the City of Hampton.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. He said the applicant was requesting authorization to demolish the existing 3,400 square feet of deteriorated pier space and the associated piles. The proposed renovation included the reconstruction of 3,255 square feet of new decking to accommodate a 3,400 square-foot, two story restaurant. In addition, the piers and slips would be reconfigured to provide 39 permanent slips for recreational vessels and 6 transient slips for restaurant patrons arriving by boat. Letters of endorsement were received from Jane McPartland, the Director for Retail Development for the City of Hampton, and Richard Chinappi, General Manager of the Painted Lady Tea Room at Ghent Gardens in Norfolk.

Mr. Madden said the Health Department reviewed the project and it was in compliance with the sanitary regulations. VIMS commented that in light of the fact that this was an impacted waterway, the direct impacts associated with the construction and the additional boat slips should be minimal. He said staff and VIMS concurred that the siting of a non-water dependent structure over State-owned submerged land was in conflict with Commission guidelines. Therefore, staff was reluctant to recommend approval of a structure that clearly had no inherent requirement to be over state-owned submerged lands. As such, staff recommended denial of the proposal to construct the restaurant over the water, and that the restaurant be placed on the adjacent upland. Staff, however, recommended approval of the proposed realignment of the current marina and construction of 43 wet slips with the standard conditions that included a solid waste disposal plan and a fuel contingency plan. Staff also recommend a royalty assessment of \$1.00 per square foot for encroachment of the project.

A discussion followed between Commission members and staff regarding the guidelines related to non-water dependent structures. Comments are a part of the verbatim record.

Associate Member Ballard commented that the current structure was dilapidated and non-water dependent, and the new proposal called for an attractive structure, which could possibly contribute to the economy of Hampton. Mr. Ballard said since there were only a few environmental down sides to the proposed project, he was not agreeable to staff's recommendation.

Robert E. Schlege, Jr., General Manager of Riverbend Management, addressed the Commission. He said they took over this property in September 1998, and it was ongoing as

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the Jones Marina. Mr. Schlege then explained the proposed plan for this property. Comments are a part of the verbatim record. He presented letters for the record from watermen regarding the proposed restaurant.

Associate Member Ballard asked Mr. Schlege if they were going to keep the facility as a watermen's marina. Mr. Schlege responded that they were trying to make every effort to keep the marina as a watermen's marina because he felt that would help sell the idea to the public, and he thought it was a great plan for the whole region.

John Pope, a member of the Board of Directors for the Downtown Development and a retired member of the Fire Department, addressed the Commission. He said the Hampton Fire Department and the Downtown Development had always had problems with the property, until the new owners cleaned it up, and now it was an asset to the community. Other comments are a part of the verbatim record.

Richard Chinappi, General Manager and Operating Partner of the Painted Lady Restaurant in Norfolk, addressed the Commission. He said Mr. Bill Cougar was unable to be here today to answer questions. Mr. Chinappi gave comments regarding the proposed restaurant as a major attraction. He said they were going to put a major investment into the operation to ensure that it was a first class restaurant. Other comments are a part of the verbatim record.

Associate Member Goodell asked Mr. Chinappi if they would be interested in building the restaurant on land. Mr. Chinappi responded that they were not interested in developing the restaurant on land.

Tom Langley, with Langley McDonald Engineers, addressed the Commission. He said there were no objections from the adjoining owners, the Blue Water Yacht Sales and Preston L. Hall and Georgetown Condominiums. He said the character of a waterfront restaurant built over the water was very interesting, and there were very few restaurants of this type. He said the City of Hampton was very supportive of the project.

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

Associate Member Davis moved to approve the project as presented. The motion was seconded by Associate Member Birkett.

Associate Member Goodell commented that since he had been serving on the Commission, the

Commission had turned several applications down for persons wanting to construct a similar commercial venture over water because it violated the guidelines of the Code. He said he would vote against it this time, except for the fact that the proposed structure would be similar to the existing structure, and he felt it was a continuation of the same kind of activity that was there before and not a new venture.

Associate Member Hull commented that he felt this was a tradeoff because they were taking a piece of property, through private initiative, and not using public funds, and making the property better. Therefore, he strongly supported the project.

Associate Member Davis commented that he did not want to establish a precedence. He said, in his view, this was a distinct case with minimal impact and in an area that was highly developed, and therefore he felt this was distinguishable from the other requests.

The question was called, and the motion carried unanimously.

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**STEVEN SANDLER, #98-0798**, requests authorization to construct a 525 square foot, private, non-commercial, open-sided boathouse at the channelward end of an existing 275-foot long private pier at his property situated along Lynnhaven Bay in Virginia Beach. The project is protested by an adjacent property owner.

Randy Owen, Environmental Engineer, briefed the Commission and presented slides. He gave comments on the location and the proposed construction for the project. Comments are a part of the verbatim record. He said the project would encroach on the oyster ground of Mr. John Keeling, but he had not expressed any opposition to the project. No state agencies had expressed any opposition.

Mr. Owen said that the boathouse appeared appropriately sized and open-sided, with the low-profile roof, and the visual impacts associated with the proposal should be minimal. He said Mr. Parker had asked that the Commission consider a flat roof instead of an A-frame roof. Staff also felt that the navigational impacts were minimal because of the existing pier. In addition, there were similar structures in the area. Accordingly, staff recommended approval of the project as proposed.

Associate Member Davis commented that he felt a flat roof was a reasonable request. Mr. Owen responded that he had no objection, but he should hear from Mr. Sandler's representative.

Associate Member Birkett commented that he understood about having the flat roof, but sometimes an A-roof would facilitate getting the boat higher out of the water without having a higher structure. He said if you use a flat roof, you would have to go up with the pilings to get the clearance on the bottom of the boat to avoid storm wave action. Therefore, he recommended staying with the A-roof configuration.

Gray Lawrence, attorney from Chesapeake, representing the applicant, addressed the Commission. He said the engineer, Mr. Wood Parrish, was also present, and he could address any legal issues the Commission had.

There being no further comments, pro or con, Acting Chairman White placed the matter before the Commission.

Associate Member Cowart moved that the application be approved as presented. Motion was seconded by Associate Member Davis.

Mr. Watkinson informed the Acting Chairman that comments had not been received from anyone in opposition. Acting Chairman White was apologetic and asked Mr. Seaglion to come forward.

Charles Seaglion, adjacent property owner, addressed the Commission. He said putting a covered boathouse at the end of the pier obstructed Mr. Parker's view and his view and others that came to see the inlet. He said a pier was one thing, but putting a permanent structure on the end of a pier was something that they had to look around, and he did not think that was necessary at the end of pier in public waters. Other comments are a part of the verbatim record.

There being no one else wishing to address the Commission, Acting Chairman White again placed the matter before the Commission. The question was called. Motion carried unanimously.

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**VIRGINIA ELECTRIC AND POWER COMPANY, #99-0287**, requests authorization to cross Proctors Creek with an electric distribution line that will encroach over 50 linear feet of State-owned subaqueous bottom and install one (1) 18-inch diameter utility pole on property located in Chesterfield County. Both wetlands and subaqueous permits are required.

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David Bower, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Mr. Bower said Chesterfield County had not adopted the Model Wetlands Ordinance. As a result, the Commission was charged with reviewing the impacts associated with the utility pole installation in the wetlands, as well as the subaqueous crossing associated with this project. He said a public hearing on the wetlands portion of the application was held in the Chesterfield County Administration Building on March 18, 1999. No opposition or public comment on the project was received. However, VIMS reviewed the project and indicated that the individual and cumulative impacts associated with the proposal were minimal.

Mr. Bower said since the project would have minimal adverse impact on the wetlands, and no opposition had been received, and the project conformed with the standards prescribed in the Code of Virginia, staff recommended approval of the project as proposed. Staff also recommended a royalty assessment in the amount of \$50.00 for the encroachment over 50 linear feet of State-owned subaqueous bottom at a rate of \$1.00 per linear foot.

Associate Member Goodell asked how many miles or square acres of wetlands did Chesterfield County have? Mr. Watkinson said he could get the information. Dr. Goodell said he felt Chesterfield County should have a Wetlands Board and he resented the Commission having to make the decisions for them, and he would oppose the project.

A discussion followed regarding the jurisdictions that had not adopted the Model Wetlands Ordinance. Comments are a part of the verbatim record.

Tom Barnard, from VIMS, provided an answer to Dr. Goodell's earlier question. He said that Chesterfield County had approximately 857 acres of vegetated wetlands and 45 miles of shoreline. Dr. Goodell said that would seem to be enough wetlands and shoreline to form a Wetlands Board.

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

Associate Member Ballard moved to grant the permit. Motion seconded by Associate Member Birkett. Mr. Ballard gave comments concerning Dr. Goodell's idea. He said he felt Chesterfield County should have a Wetlands Board. However, he felt the Commission's duty today was to evaluate the application in light of the Code of Virginia and the Wetlands Guidelines. He said the proper venue to influence politics in Chesterfield County would be a resolution from the Commission.

The question was called, and the motion was carried 6 to 1, with Dr. Goodell abstaining.

Associate Member Goodell moved that the Commission resolve for a resolution to the Chesterfield Board of Supervisors that a Wetlands Board be formed so that they could better manage their wetlands resources. Associate Member Hull amended the motion to include adopting a Model Wetlands Ordinance. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Mr. Watkinson responded they had sent a letter in the past, but they would followup.

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**AN OYSTER PLANTING GROUND APPLICATION** in the name of John N. McKay, Jr. and John L. Ames, Jr. for 18 acres in Dix Inlet in Virginia Beach came before the Commission. While checking on Riparian Assignments a recorded deed was found, over land seaward of the mean low water, in the area covered by the application.

Gerald Showalter, Head-Engineering and Surveying, briefed the Commission. He said during a research of this application, staff found a deed similar to a highland deed that was entirely in the water. He said the record needed to be clear before they proceeded with the application. Mr. Showalter then explained the background and details of the Oyster Planting Ground Application. Comments are a part of the verbatim record.

Mr. Showalter said he wrote a letter to the Clardy's when he found out about the situation. In staff's letter, he requested them to show why this deed should be honored because it was in the water and not a part of something that could be honored unless it was granted by the sovereign. He said he notified the Clardys, and they referred him to an attorney, Mr. Mark Johnson. Mr. Johnson then notified staff that he had not found any such grant, and he may or may not be present today. Mr. Showalter then requested that the Commission consider giving staff the authorization to lease the ground. He said to do otherwise would perhaps set a precedence.

Associate Member Goodell asked if the Clardys had been paying taxes on the property. Mr. Showalter responded that the Clardys told him they had been paying taxes. Mr. Showalter said that was not uncommon because the tax map would show that a lot of parcels went out into the water in Virginia Beach. He said he had addressed the Land Surveyors Association in Virginia Beach and the attorneys with the Lawyers Title Insurance Company with regards to deeds going into the water. He said their explanation was that the old deeds went out into the water, and they were just following the old lines. Mr. Showalter stated that they also said because of

the restrictions in the City regarding the square feet in a lot, it was advantageous to show this out in the water because they would get enough square feet to build a larger house, so they did not want to cut the square footage back.

Associate Member Goodell asked what affect would this have on the Clardys, other than losing the title to the property, and the other people could just have the oysters. Mr. Showalter responded that they had other leases in that area that went over some of the encroaching deeds.

He said he had talked to some of the attorneys about the deeds in the water, and staff had not been challenged yet, but some people had gone to the City and said they did not want to pay taxes on that land. The City responded and told them to get a survey and they would cut the area back.

Assistant Attorney General Fisher commented that he did not think this was an unusual problem. He said a normal grant went to the waterline that had been extended by statute to the low water line. He said that was where it usually stopped. However, he said years ago developers would draw all the water into the development and include the water in the plats, but there was no basis for that because there had never been a grant of the sovereign to convey this underwater property. He said whether the private owner showed this or not, it really did not affect them because they did not own the bottom of the creeks, unless they could show a grant from the sovereign which specifically included that area. He said there was no evidence that this property had legally left the ownership of the Commonwealth and the property should be treated as Commonwealth bottom.

There being no one present to address the Commission on this issue, the matter was placed before the Commission.

Associate Member Cowart moved that the Commission grant the leasing of this oyster planting bottom to the applicants. Motion was seconded by Associate Member White. Motion carried unanimously.

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**DISCUSSION:** Continuing discussion on possibility of severe shortage of blue crabs - Mr. Sheppard H. C. Davis.

Associate Member Davis addressed the Commission and said he would like to have a hearing next month on the issue. He said that Tom Miller, scientist from the University of Maryland, had said "the crab population was close to a brick wall." Jacques van Mont Frans, of VIMS

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supported Mr. Miller's idea. He said he was extremely concerned for the full time working watermen because crabbing provided approximately 80 per cent of the income for the working watermen. He said an up-to-date stock assessment was necessary to determine the shortage of the blue crab. Mr. Davis then provided information that indicated that the catch of the blue crab was down approximately one third since 1993. Comments are a part of the verbatim record. Associate Member Davis then moved to have a full discussion of the blue crab issue at the April Commission meeting, and to hear from watermen, scientist from VIMS, and others. A status report on the stock assessment should also be available.

Mr. Travelstead informed the Commission that the Chesapeake Bay Stock Assessment Committee would meet in April to prepare a new stock status report on crabs, but the stock assessment would not be completed in April.

Associate Member Goodell commented that he felt staff should develop some type of strategy or plan to alleviate the stock assessment problem.

Associate Member Davis explained that Dr. Goodell's point was exactly what he was requesting staff to do, and he would like some specific proposals developed to address the situation.

Commissioner Pruitt opened the floor for discussion by Commission Members.

Associate Member Davis commented that the situation should be aimed primarily to the full time working watermen, because they would be the ones impacted by the action. He said at least 50 per cent of their income should come from crabbing, because 75 per cent of the crabbers were not full time working watermen. He said he also felt the seven-point plan for 1994 and the four-point plan in 1996 should be implemented. Associate Member Davis stated that the excess gear in the fishery also should be addressed.

Associate Member Ballard commented that they were not trying to regulate how many pots were in the water, but they should be regulating how many crabs were being caught, and that could be done by regulating the number of pots in water. He said the regulation should go right to the point, and not be tangential to the point. He said he would like to hear a discussion of the actual quota on the crabs caught. Mr. Ballard commented that the final data would probably not be available in April. Therefore, he thought there should be more than one meeting.

Associate Member Goodell commented that he felt the Commission did not have the courage

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to do the right thing, by restricting the fishery further. He said they could not go on indefinitely increasing the number of pots for hardship or economic reasons. The Commission must stand by what it said it would do, even though that would be difficult.

Associate Member Birkett said he was hesitant about additional regulations until they knew all the facts. He said one scientific world was saying we have crabs, and another one was saying we are on the brink of disaster, and the working waterman, who sees what's going on, was saying that the crabs were at a medium level. Until he was convinced in his own mind that one of the factions were correct, it would be difficult to make any type of decision, and he felt it would boil down to what source you wanted to believe the most.

Associate Member White commented that the situation did not get bad overnight and it would not get well overnight. He said he felt if they were going to use any type of restrictions, they should go on catch data.

Associate Member Cowart, Chairman of the Blue Crab Committee, commented that the Blue Crab Committee was like the rest of the situation, they had adopted a "wait and see" attitude this year.

Commissioner Pruitt commented that the General Assembly allocated money from both bodies of the General Assembly for a two-year study and to study the entire baywide plan.

Associate Member Cowart also commented that the crab season would begin on April 1, and he felt the Commission should determine what the stock situation was, and the Commission could not react this season. He said he did not favor additional regulations at this time, but some form of stock assessment was needed, and a public hearing should be held.

Associate Member Hull said he agreed with Mr. Birkett regarding not having the information to make a decision, and he did not see how the Commission would be in a position next month to take the necessary action without the stock assessment.

Mr. O'Reilly gave information on when the survey would be available. Comments are a part of the verbatim record.

Associate Member Hull commented that the entire regulatory process should be reviewed, especially the 400 peeler pot license.

Associate Member Davis commented that he felt the situation would require more data, and

apparently more data would be received by April, and then there would be no more until the year 2000. Mr. Davis said he felt the potential for a very difficult situation was too high to let it go for nine or ten months.

Commissioner Pruitt then reiterated all the comments made by Commission members. Comments are a part of the verbatim record. A discussion followed.

Associate Member Goodell said that according to the data they had at the present time, the catch per unit effort was going down, which meant they had passed the peak on the MSY curve.

A discussion between Commission members regarding what criteria should be used to reduce the possibility of a severe blue crab shortage. Comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission for a motion.

Associate Member Ballard moved to place the matter on the April Commission's agenda for a presentation by staff, as to the current status of the blue crab stock, including what recent fishery independent data was available. In addition, watermen and other interested citizens would be given the opportunity to address the Commission on the current regulatory regime on the status of the fishery. Associate Member Davis seconded the motion.

Associate Member Hull reminded the Commission that when the agenda was changed to accommodate this item, the Commission would not take a vote until after 3:00 p.m. today so that others could come and speak on the issue. Commissioner Pruitt then suggested that Mr. Davis leave his proxy with Mr. Ballard. Commissioner Pruitt stated that the motion would sit until after 3:00 pm.

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#### **REPEAT OFFENDERS.**

Colonel Steven G. Bowman, Chief-Law Enforcement, addressed the Commission and stated that Attorney John Poulson had requested a continuance in the matter of Clifton Curtis, Jr. and Wayne C. Justis because he had a court appearance in Norfolk. Colonel Bowman said he granted the continuance with the understanding that no more continuances would be granted. He said Polly D. Custis also requested a continuance due to her infant child being ill.

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Susan D. Annis - 218-72-5389, present.

Colonel Bowman said Ms. Annis had three violations: September 16, 1997, possession of unculled crabs, found guilty and fined \$100; May 29, 1998 possession of unculled crabs, found guilty and fined \$50.00; July 29, 1998 possession of unculled crabs, found guilty and fined \$50.00. He said there was nothing aggravating in the record and this was her first appearance before the Commission as a repeat offender.

Ms. Annis addressed the Commission, and said she was a seafood buyer, and how was she supposed to know what was in the basket of crabs she purchased? She also stated that she did not know what was in the regulation. Other comments are a part of the verbatim record.

Acting Chairman White asked Ms. Annis how long had she been buying crabs? Ms. Annis responded two years.

Colonel Bowman explained the regulation to the Commission, and said they were just enforcing the regulation as adopted.

Acting Chairman White placed the matter before the Commission. Associate Member Ballard move to give Ms. Annis 12 months probation. Associate Member Goodell seconded the motion. Motion carried unanimously.

Acting Chairman White advised Colonel Bowman to make sure Ms. Annis received a book of the regulations.

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William J. Cox, 217-90-0096 - not present. Associate Member Davis moved to remove Mr. Cox's license until he appeared before the Commission. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Charles Parks, Jr., 224-37-4257 - Present.

Colonel Bowman said Mr. Parks was charged on the following dates: On September 27, 1997, with possession of undersized crabs, found guilty and fined \$50.00; on April 14, 1998 with possession of undersized crabs, found guilty and fined \$80.00; on September 3, 1998, with possession of undersized crabs, found guilty and fined \$500. Colonel Bowman said there was

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nothing aggravating in the record and this was his first time appearing before the Commission under the repeat offender provision.

Mr. Parks addressed the Commission and said he knew it was not right to do it, and he had no intentions of continuing to violate the law.

Acting Chairman White placed the matter before the Commission. Associate Member Davis moved to grant Mr. Parks 12 months probation. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

William C. Parks, 230-47-4040 - Present.

Colonel Bowman said Mr. Parks had three violations for possession of undersized crabs: on September 27, 1997, found guilty and fined \$50.00; on April 14, 1998, found guilty and fined \$80.00; on September 3, 1998 found guilty and fined \$500. He said there was nothing in the record that was aggravating, and Mr. Parks had never been before the Commission as a repeat offender.

Mr. Parks said he was guilty as charged. Associate Member Davis moved for 12 months probation. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Jeffrey P. Reid, 216-70-6246 - present.

Colonel Bowman said Mr. Reid had been charged with three violations of undersized crabs: on July 15, 1997, found guilty and fined \$100; on October 23, 1997 found guilty and fined \$50; on April 27, 1998 found guilty and fined \$200. He said there was nothing aggravating in the record, and Mr. Reid had not been before the Commission before as a repeat offender.

Mr. Reid said he would like the Commission to note that his last ticket was April 27, of last year.

Acting Chairman White placed the matter before the Commission. Associate Member Davis moved for 12 months probation. Motion was seconded by Associate Member Goodell. Motion carried unanimously.

Lay Trinh, 353-72-2383 - present.

Colonel Bowman said Mr. Trinh was charged on June 11, 1998, with possession of dark

sponge crabs in excess of 35 per barrel, found guilty and fined \$50; on July 20, 1998, charged with possession of dark sponge crabs in excess of 35 per barrel, found guilty and fined \$100; on August 8, 1998, charged with possession of black sponge crabs in excess of 35 per barrel, found guilty and fined \$100. Mr. Trinh had never been before the Commission before as a repeat offender and nothing aggravating was in the record.

Mr. Trinh gave a statement that was undiscernible. Acting Chairman White asked if he knew what the limit of possession dark sponge crabs was. Mr. Trinh responded, he knew what the limit was.

Acting Chairman White placed the matter before the Commission. Associate Member Davis moved for 12 months probation. Motion seconded by Associate Member Goodell. Motion carried unanimously.

Associate Member Goodell asked for an explanation for variances in the fines. Colonel Bowman responded that it was judicial prudence, the Judge had the latitude to assess the fines.

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**DISCUSSION:** Request for a public hearing to amend regulations pertaining to striped bass, to adjust spring fishing season restrictions, achieve conformity concerning the use of crew members in the commercial hook-and-line fishery and adjust the minimum number of tag transfers allowed in the ITQ program.

Robert O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission on the proposal for four public hearings relating to the striped bass fishery. He said three of the proposals were industry proposals.

1. **Adjustment of Spring Fishing Season.** Extension of the trophy size 32 inches and greater recreational striped fishery that would end May 15, 1999. He said industry's proposal which was endorsed by FMAC and ASMFC to continue that trophy size fishery until June 15, 1999.

2. **Delay the imposition 28 inch maximum size limit for the commercial fisheries.** Currently the maximum size would go into effect March 15. However, the industry proposal was to extend the maximum size to March 26, which would delay it for eleven additional days. In addition, he said there was a companion proposal which would seek to delay imposing the gill net fishing that went effect on March 15, of a six inch or less stretch mesh size. The

industry proposal would delay that request until March 26, to be combined with when the 28 inch size limit would take affect. This proposal was also endorsed by FMAC and ASMFC. He said of the two proposals, it was possible to adopt the recreational measure for 1999. The Commercial measure and the timing of the ASMFC approval was last week would have to wait until the year 2000 before it could be adopted.

3. **Involved the Commercial hook-and-line fishery for striped bass.** He said Regulation 4 VAC 20-995-10 et. seq., "Pertaining to the Commercial Hook-and-Line Fishing," and Regulation 4 VAC 20-252-10 et. seq., "Pertaining to the Taking of Striped Bass," needed to be in conformity concerning how the crew was used. He said regulation 4 VAC 20-995-10 which converted the commercial hook-and-line license and the other 4 VAC 20-252-160 should be in conformity concerning how the crew was used. He said Regulation 4 VAC 20-995-10 was clear that you could have three crew members, but regulation 4 VAC 20-252-10 also needed to establish that you could have a crew, and that the crew need not be licensed as commercial registration holders.

4. **Adjustment of the Minimum Number of Tags Transfer in the ITQ system for striped bass.** He said the problem was that some of the fishermen that had tags had already transferred a number of tags, so they could no longer transfer tags. He said FMAC reviewed this issue on January 19 and determined that there should be a minimal of 50 tags that could be transferred.

Associate Member Goodell moved that a public hearing be held in April for regulations pertaining to striped bass to adjust Spring fishing restrictions, achieve conformity concerning the use of crew members for the commercial hook-and-line fishery and to adjust the minimum number of tags transferred allowed in the ITQ program. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**REQUEST FOR EXCEPTION** to the limited entry criteria for the Black Drum Fishery.

Tracey Patton, Fisheries Planner, briefed the Commission on the Regulation 4 VAC 20-320-10 et. seq., for the Taking of Black Drum, which establishes a 120,000 harvest quota and a limited entry into the commercial fishery in order to prevent over-capitalization and improve economic benefit to full-time participants in the fishery. Comments are a part of the verbatim record.

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Ms. Patton then explained the number of fishermen with the Black Drum permits. She said there were 62 permitted fishermen in 1995; 71 permitted fishermen in 1996; 72 permitted fishermen in 1997, and 71 permitted fishermen in 1998. However, there were seven exceptions request received for Commission consideration in 1999. Five of the seven requests failed to meet criteria one, which required them to have held a Black Drum Permit in at least one year from 1988 to 1993. The other two requests were for transfers, which could be treated as a one-in, one-out situation. Ms. Patton said the two persons requesting transfers were Mr. Bruce C. Birch and Mr. Mark R. Heath.

Acting Chairman White requested the applicants to come forward:

Edward H. Bender addressed the Commission. He said he had fished black drum for 20 years and they stopped, and now they have come back and historically they caught black drum. He said they just wanted to be able to sell the black drum they caught as a bycatch.

Edward M. Bender - represented by father.

Dirk A. Sanford - not present.

Bruce Birch - not present.

Mark R. Heath addressed the Commission and stated he was requesting a transfer from his father to himself. He said his father was getting older and he wanted to be able to take over.

Associate Member Ballard commented that staff had recommended approval for Mr. Heath based on a one-in, one-out situation.

Frank West - not present.

Joe Crumb - not present.

Richard Welton, from the Coastal Conservation Association, addressed the Commission and said they supported staff's recommendation to grant the transfers as proposed, but they were opposed to letting in new persons into the Black Drum fishery at this time. Mr. Welton gave other comments regarding studies done by Old Dominion University on the Black Drum. He said it brought millions of dollars to Cape Charles, then there was a hiatus, but they were starting to come back with the crab dredge sanctuary in the area. He said there were three large recreational fish in Virginia, Black drum, Red drum and Cobia. Other comments are a part of

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the verbatim.

Acting Chairman White placed the matter before the Commission.

Associate Member Ballard moved that the Commission approve the two transfers of Mr. Mark Heath and Mr. Bruce Birch. Motion seconded by Associate Member Hull. Motion carried unanimously.

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**REPORT** of the Horseshoe Crab Ad Hoc Panel Meeting.

Jack Travelstead, Chief-Fisheries Management, addressed the Commission. He said the Horseshoe Crab Ad Hoc Committee was appointed by the Commission and they met last night to discuss the issue of a commercial landings cap on the horseshoe crabs. He said staff contacted the National Marine Fishery Service to verify the landings of horseshoe crabs for Virginia because there was a discrepancy in staff's number for horseshoe crabs landings and a trawl captain's numbers given at the last Commission Meeting. He said when he contacted the National Marine Fishery Service and verified the landings for Virginia, there were approximately 1,700,000 pounds or 548,000 crabs landed in 1998. He said that the National Marine Fishery Service was in the process of finalizing their numbers, and the final numbers should be available by the end of April. He said there had been almost a four fold increase of crabs coming from Virginia waters in 1998 compared with 1997. He said the data was severely lacking on the horseshoe crabs because they did not have a stock assessment or a baseline of historic information on the status of horseshoe crabs. He said the committee felt that when data was not available about a species, management should approach the issue conservatively until more information was available. Mr. Travelstead also pointed out that horseshoe crab's blood was vital to the biomedical community. He said the substance that came from that blood was the only compound that was used by the biomedical industry to verify the safety of pharmaceutical, such as hypodermical needles, intravenous equipment, and types of equipment used on patients in hospitals had been tested with that compound.

Associate Member Goodell asked what was the requirement for the horseshoe crab bait in Virginia? Mr. Travelstead responded that industry's projection was approximately one and half million crabs.

Dave Grossman, from the National Audobon Society, asked what was the conversion factor used to go from 258,000 to 1.7 million pounds? Mr. Travelstead said there were a number of

conversion factors that were used. He said Virginia used two pounds per crab, NMPS used 2.6 pounds per crab, and other states used three, four, and five pounds per crab. It was dependent upon where the crabs were harvested as to the conversion factor used.

Commissioner Pruitt opened the public hearing.

Rick Robbins, representing Chesapeake Bay Packing and Bernie's Conch, addressed the Commission. He said he was unable to attend the meeting last night. He said the East Coast Crab population was not a unit stock and should not be managed as a unit stock. He said it was a compilation and collection of a discrete population. He said that a biomass estimate would be necessary in the future, and he would like to see the State take the initiative in that direction.

He said according to all the trawl captains there was an extensive resource off the coast, but it had not been harvested because it was hard to get to, far offshore, and the crabs were smaller and less desirable. Therefore, it was easier to buy the crabs out of Ocean City, Maryland, and Delaware because it was less expensive and easier to do. He said he did not think it was appropriate that Virginia's historically low landings number were used to determine a quota. He said some of the areas that needed to be addressed in the future were changing the harvesting techniques, mainly getting away from the hand harvesting of grabbing the females on the beach, and focusing on dredging and trawling to harvest horseshoe crabs, and there would be a better sexual composition of landings. He said he also supported one of the initiatives put forth by the Committee last night that it would be all right to close state waters within one mile of the beach to the harvesting of horseshoe crabs from May 1 to June 7. He said if the Commission was going to use 700,000 or 7,100 crabs, and if the Commission was compelled to consider a quota he urged the Commission to consider the net bait needs as a proxy for that quota. Other comments are a part of the verbatim record.

Jim Rahman, M.D., a member of the Ad Hoc Committee representing the environmental concerns, addressed the Commission. He said Dr. Kahn, Director of Research at Children's Hospital, in Washington, D. C. was present last night, but unable to be present today. Mr. Rahman presented the importance of product LAL in the medical field. He said not one injection, nor IV solution was administered in the United States that had not been tested. Every needle that had been through human skin had been tested. He said LAL was the only test for pyrogens that were not bacteria for toxin for proteins that may cause fever and illness when injected in tiny quantities. LAL had also been developed for a test for meningitis. He said Dr. Kahn said the horseshoe crabs of the east coast of the United States were a national treasure. He said that was the only place in the world where there were congregation and all efforts should be made to conserve the horseshoe crab. He said Japan had no horseshoe crabs, and they were forbidden to take them. He said China had used all their horseshoe crabs. Southeast

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Asia used the horseshoe crab eggs as delicacies. He said we had the remaining stock of horseshoe crabs for the world which was very necessary to medicine. Dr. Rahman also read into the record a letter, from Dr. John S. Palmintier. Dr. Palmintier emphasized in his letter the importance of the use of LAL in the sterilization of pharmaceutical products to prevent bacterial endotoxins from contaminating sterile medical supplies. In addition, LAL was used to strengthen suture material by the use of kitin. He also emphasized his support for 1999 landings cap of 50,000.

Associate Member Ballard asked if Dr. Palmintier was a member of the Ad Hoc Committee. Dr. Rahman responded that yes, Dr. Palmintier was a member of the Ad Hoc Committee, but he was unable to attend the meeting today because of a schedule change. Dr. Palmintier was a member of the medical usage section of the Committee.

Commissioner Pruitt asked if there were other sources of the LAL. Dr. Rahman responded none.

Associate Member Ballard asked who chose the members of the medical community on the Ad Hoc Committee? Commissioner Pruitt responded that the Commission just stated that they wanted all three groups represented.

Associate Member Hull asked Dr. Rahman when was the value of the horseshoe crab discovered for medical research? Mr. Rahman responded that he believed it was in the 1980's.

Dr. Bill McCormick, a member of the Committee's bio-medical users, addressed the Commission. He said he worked for Bio-Whittaker located in Maryland, and they obtained their LAL from Chincoteague, Virginia. He said their crabs came from in and around Chincoteague inlet and in and around the Ocean City inlet. He then responded to the earlier question posed by Mr. Hull. He said back in the forties, it was recognized that some type of protection was necessary for the fever induced cybro action when drugs were contaminated with antoxins. He then explained the experiment process that was used in the 40's and 60's. Comments are a part of the verbatim in record. He said after the necessary cells were used from the horseshoe crab, the crab was returned alive to the waters. He said it was the East Coast population of horseshoe crabs that was very important to their industry and important to the safety of drugs worldwide. He said if there was a collapse of the horseshoe crab population along the East Coast, the world would lose this resource.

Associate Member Goodell asked Dr. McCormick if he had any problems getting horseshoe crabs or if he had evidence that the stock was rare compared to ten years ago? Dr. McCormick

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responded that their quantities were fairly insignificant relative to the quantity required by the bait industry. He said the entire industry up and down the coast needed to collect and bleed around 250,000 year. He said over the past 15 years, their business had increased steadily 10 per cent per year. He said they had been able to increase their effort and continue to meet their needs in and around Chincoteague and Ocean City. He said he felt that the 548,000 crabs quota was not low enough.

Associate Member White asked what was the fatality rate of the bleeding? Dr. McCormick responded the rate was around 5 to 15 per cent.

Eileen Rowan, representing the Virginia Audobon Society on the Ad Hoc Panel, addressed the Commission. She said the major consensus of the major scientist wildlife managers who were observing horseshoe crabs was that the stock in Virginia was declining. Based on that information, conservative measures were in order. She said starting with August last year, the ASMFC's Draft Fisheries Management Plan included a stock assessment, which found that a conservative risk adverse coastwide management strategy was necessary. She said the draft management plan represented a 25 per cent reduction in coastwide landings from pre-1998 levels in each state. The peer review panel reviewed that stock assessment and agreed that a conservative strategy was necessary.

Commissioner Pruitt asked what were the other areas doing with respect to the horseshoe crabs? Ms. Rowan said that Japan had stopped the taking of horseshoe crabs.

Marshall Cox, President of the Lower Eastern Shore Watermen's Association, and a member of the Ad Hoc Committee, addressed the Commission. He said he had a problem with trying to put a figure on the stock assessment. He said he supported the 548,000 crabs with a reduction of 10 per cent, as a precautionary measure. He said the bio-medical industry needed to be protected. He said he felt a state harvest quota should be set this year, and come back next year and take another look at the situation, which would ensure that the bio-medical community was in good shape.

Dr. Burreson, from VIMS addressed the Commission. He said that they were not in a situation to establish enough information for a scientifically based quota. Therefore, when they were in that situation, VIMS always recommended a risk adverse conservative approach. He said they had to be cautious. He said there were two issues, the harvest from Virginia waters in 1997 was 25, 000 crabs, and in 1998, 100,000 crabs were harvested, which was a four fold increase and that should be a cause for concern. He said VIMS' recommendation would be to at least cap the harvest from Virginia waters at a 100,000 crabs, and preferably to reduce that number.

He said the prohibition of dredging horseshoe crabs from May 1 to June 7 may result in that cap or reduce it, but he was unsure. He said the second issue was the loophole regarding the accuracy of the 1998 harvest of 548,000 crabs, and the harvest of 28,247 in 1997. He said that figure was a cause for the loophole concern, and a 10 per cent reduction would not close that loophole, it would essentially maintain the loophole. He said VIMS would recommended reducing the quota below the 10 per cent reduction in harvest for the horseshoe crabs that industry recommended. He said for the same reason that the bio-medical could not support the 50,000; VIMS could not support 50,000 either because it would be too much of a hardship on the industry. He said he would urge that the quota be reduced as much as possible without hindering the industry. He said a reasonable compromise was 260,000 as proposed by staff last month, but he was not in a position to recommend a specific number. However, he would recommend the Commission reduce the number as low as possible and consider the industry's need, but he thought 494, 000 crabs was too high.

Commissioner Pruitt asked how long did it take the horseshoe crabs to rebound? Dr. Burreson said it would take a long time because it took 10 years for it to mature. However, he said it was difficult to estimate that, but it would not be a rapid recovery in their opinion because it took ten years for the animal to reach reproductive age. He said he recommended

setting a limit this year, and take a look and see what the situation would be next year. In addition, he said he did not think Virginia could support a 1.5 million crab harvest unless some were coming from out of state.

Associate Member Goodell asked if there was an alternative bait that industry could use? Dr. Burreson responded that the bait industry had been looking for some alternative bait, and there had been some studies on done for alternative bait. He said they had tried the cownose rays, and apparently nothing held up as well as the horseshoe crabs.

Associate Member Ballard commented that Dr. Burreson had recommended establishing a quota somewhere from 50,000 - 550,000, and he wanted to know if there was any data to show the declining population in Virginia or the catch per unit decline. Dr. Burreson said they did not monitor horseshoe crabs at VIMS, but they did have anecdotal information mainly from Mark Luckenbach, who was head of the Eastern Shore Lab that said he did not see as many horseshoe crabs as he used to. A discussion followed regarding the landings in Virginia. Comments are a part of the verbatim record.

Kelly Place, speaking on behalf of commercial fishermen, addressed the Commission. He said the main expert in this field worldwide was Dr. Carl Schuster. He said he spent a few hours

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with him last week at the ASMFC meeting, talking with him about some of the management problems. He said Dr. Schuster started his Ph.D in the late forties on the biology of the horseshoe crabs, and he had spent more than fifty years researching horseshoe crabs. He said he felt the questions the Commission had could be answered better by Dr. Schuster in an accurate manner. Mr. Place suggested that before any major decisions were made, a consultation with Dr. Schuster might be helpful.

Commissioner Pruitt relinquished himself as Chairman to Associate Member White in order that he could speak as the agency head, and not as Chairman.

Commissioner Pruitt said that Secretary Woodley raised one point during their meeting last week. Secretary Woodley felt that if ASMFC developed a plan, or whenever it was developed, and if ASMFC used historic landings data, Virginia again would be left short. The Secretary of Natural Resources did not want to see that happen. He said whatever was done today, a paragraph that stated that the Commission was interested in using the 1998 landings data should be a part of the record.

Associate Member Goodell asked why a quota could not be developed based on demand, rather than on supply?

Mr. Travelstead commented that he would like to make the Commission aware of two things. The ASMFC Horseshoe Crab Management Board met last week to review the status of compliance for the states with a current Management Plan. He said the only compliance element was the mandatory reporting requirements, which were supposed to be in place for this year so that a quota based system could be developed by 2000 on reliable information. It was reported last week that most of the states were out of compliance with the Management Plan. Mr. Travelstead said many of the Board members, hearing that, indicated that it would be likely that ASMFC would not place a quota on the fishery for the year 2000 because they would not have any better data than last year's data. He said most of the states were in the process of putting a system on line, but it was not in place yet. He said the other information was that Maryland, New Jersey and Delaware have implemented significant regulations on their fisheries. Maryland had reduced their harvest in 1998 by 80 per cent, New Jersey had reduced their quota by 60 per cent; Delaware had reduced their quota by 9 per cent. He said if Virginia was capped at the 1998 levels, a 31 per cent reduction would be achieved in the harvest. He said the AMSFC Management Plan recommended a 25 percent reduction in each state's harvest rate. Therefore, Virginia would be in compliance with a 31 per cent reduction. Mr. Travelstead said one their arguments at ASMFC should be the bait needs of all the states, and not attempt to manage this fishery on a state-by-state quota basis, but rather on a coastwide

quota basis. There were states that had fisheries, but had no bait needs and vice versa. He said there should be a sharing of the overall quota that could be set at a reasonable level and allow all of the various needs to be met.

Associate Member Goodell ask if dredging in shallow water, came before the Ad Hoc Panel. Mr. Travelstead said the recommendation of the Ad Hoc Panel was a total prohibition for dredging of horseshoe crabs in State waters from May 1 to June 7. A discussion followed regarding the bycatch.

Associate Member Ballard asked if the quota was set at 710,000 crabs, as Mr. Rick Rollins had suggested, what would the coastwide reduction be?

Assistant Attorney General Fisher commented that the question was regarding adopting a regulation. He said today they heard a report from the Ad Hoc Committee, but he was not sure any regulation had been exposed for public comments. He said he thought there should be a proposal on what to do, and then let the public comment on that. He said it seemed to him that this was just a report of a study to the Commission, but there had been no particular report or recommendation that the public could comment on.

Jack Travelstead responded to the earlier question asked by Associate Member Ballard. He said the coastwide reduction would be 26.7 per cent. Mr. Ballard asked if 25 per cent was the target reduction under the Management Plan? Mr. Travelstead said the Commission advertised and held a public hearing on a landings cap at a low number. He thought a landings cap could be adopted today because the public hearing had been held on that issue. He said if anything would be adopted for the dredge prohibition, you would have to readvertise and hold a public hearing next month.

Assistant Attorney General Fisher said he concurred with Mr. Travelstead.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to adopt a landings cap of 710,000 crabs, which would achieve a greater quota than the coastwide quota reduction of 26.7 per cent, and it would also meet the bait needs of Virginia's industry. Associate Member White seconded the motion. Motion carried unanimously.

Associate Member Dr. Goodell moved that the two points be taken to public hearing agreed to by the Ad Hoc Panel on the harvest of crabs during the spawning season to prohibit dredging

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for horseshoe crabs between May 1 and June 7, and the point about habitat conservation restoration to implement section 4.3 of the interstate plan and section 4 of the baywide plan. Seconded by Associate Member White. A brief discussion on the habitat conservation issue followed. Comments are a part of the verbatim record. Motion carried unanimously.

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Commission recessed for a break.

The Commission came back in session.

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**DISCUSSION:** Use of the Marine Fishing Improvement Fund to purchase plastic tags for striped bass, to replace metal tags.

Jack Travelstead, Chief-Fisheries Management, presented a telephonic survey that was done last week regarding striped bass metal tags usage. Comments are a part of the verbatim record. He said the metal tags were not ideal because of the sharp edges, and one could get cut. In addition, the tags would become rusty by the end of the season, which could make it difficult to sell fish with a rusty tag. Mr. Travelstead said during the survey, they also asked the watermen if the tags could be replaced this year, would they be willing to support the use of the commercial license fund. He said this was the only source of money to replace the tags. He said after talking with seven of the fishermen that said the tags should be replaced this year, six of them said they would be willing to support the use the commercial license fund to replace the metal tags. He said the cost factor involved had been as high as \$20,000 and as low as \$12,000, which depended upon the style of the tags and the writing that was placed on them.

He said the metal tags were the low bid and cost approximately \$8,000. Mr. Travelstead said they had found a replacement tag that was plastic, but it was expensive. He said to use this tag as a replacement it would cost approximately \$19,000 and \$22,800, which did not include placing the Virginia seal in place. Mr. Travelstead then presented a sample of the tag that would be used next year.

Commissioner Pruitt asked the audience how many were having problems with the metal tags and would like for something to be done right away?

Johnny Thirft commented that the metal tags that used while trying to hold a live fish were a problem. He said the Potomac River tags were far superior.

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Jeff Crockett commented that he had some problems with the metal tags.

Associate Member Hull commented that he attended the Virginia Watermen's Association meeting two weeks ago, and the their President was present today, there was strong support for changing the tags. In addition, he said several of the fishermen from the Lottsburg area met with him and showed the cuts on their hands. He said the possibility of the metal tags causing tetanus and a severe infection made the metal tags undesirable.

Associate Member Cowart commented that several watermen complained to him that in rough waters it was difficult and the tags were causing problems.

Commissioner Pruitt then placed the matter before the Commission.

Colonel Bowman commented that if the tags were replaced now, the regulation would probably have to be changed to indicate that the present tags had been issued and were no longer valid.

Associate Member Cowart commented that if the tags were traded it would be a one in, one out situation.

Mr. Travelstead suggested that if the Commission wanted to cut cost, it should be optional for watermen to turn in their tags.

A member from the audience said most of the watermen had used some of their tags, and replacement of the tags probably would only be necessary for 40 to 50 per cent of the tags.

Mr. Crockett commented that although there were times when one would get cut, most of the watermen used gloves. Therefore, since most of the tags had been used, he felt that the watermen could complete the season with the metal tags. He said if there was \$20,000 to spend give the money to oyster replenishment.

Richard Welton, Coastal Conservation Association suggested purchasing 75,000 to 100,000 and distribute them on a first come, first serve basis for as long as the tags would last.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull said he respected Mr. Crockett's opinion very highly, but he had seen some very bad cuts, and there were some watermen that did not wear gloves. Associate Member Hull then proposed that 50,000 tags be ordered and distributed on a first come, first

serve basis to trade the tags. Motion seconded by Associate Member Ballard.

Associate Member Goodell asked what the cost would be? Mr. Travelstead responded that they cost approximately 9 1/2 cents each, which would be approximately \$5,000 for \$50,000 tags. Mr. Travelstead asked if the motion included taking the money from the Marine Improvement Fund. The Commission responded yes. Motion carried unanimously.

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**CONSIDERATION** of hardship request - Dr. Henry Lane Hull.

Commissioner Pruitt commented that persons had contacted Associate Member Hull regarding their hardship request. In the meantime, persons had also contacted staff.

Associate Member Hull commented that there were two persons that had contacted him immediately after the last meeting regarding their hardship. He said Mr. Larry Gordon had the flu and he had a doctor's letter stating that he was unable to attend the meeting. Mr. Gordon had requested an upgrade to 200 crab pots and a peeler pot license. In addition, Mr. Gordon was an employee of Ampro's Fisheries which closed over a year ago. He said Mr. Gordon had an allergy problem and it was difficult for him to find employment. Mr. Hull then requested reconsideration by the Commission, since Mr. Gordon did not deliberately miss the meeting last month. Associate Member Hull said he also had Mr. Richard Hesterburg who filed his papers and did not get a reply and he did not know to be here last month.

Commissioner Pruitt then took a poll of other persons seeking consideration for hardship from the audience.

Associate Member Cowart commented that he understood, from the last meeting, that the crab pots issued last month were from taken from the previous cap which used all the available pots. Mr. Travelstead responded that if everything was summed up that was distributed last week, they were approximately 4,000 pots over the 35,000 quota set last year.

Commissioner Pruitt commented that if consideration was given to the motion made this morning regarding not looking at the number of pots, but the amount of catch, the Commission could consider additional exception. Other comments are a part of the verbatim record.

Associate Member Goodell said they had a motion that extended the number of crab pots by 35,000, now that number had been exceeded, and in essence they had broken the regulation by

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3,750 pots. He said unless the Commission wanted to extend further beyond 35,000 crab pots, he said they had no legal way of extending the number.

Assistant Attorney General Fisher asked if this was affecting someone else's rights or was it just affecting how the Commission wanted to conduct its business. Mr. Fisher said the Commission could issue a certain amount of pots and that would be it. A discussion followed.

Associate Member Hull commented that most of the watermen at the last meeting stated that they were not going to fish all the 400 peeler pots.

Associate Member Cowart commented that he thought the scientific community did agree that they had an overcapitalized industry. He did not know the long term answer was as to the effort in the fishery, and he felt the effort should be capped at this point. He felt the exceptions were handled at the February meeting according to the regulation, and he did not think additional exceptions should be handled today.

Associate Member Ballard commented that he supported Mr. Cowart's position, and he felt they had exceeded the quota. He said the whole crab fishery needed to be examined, and he felt Mr. Cowart was correct in his statement.

Commissioner Pruitt requested Associate Member Ballard to repeat his motion. Mr. Pruitt also explained the motion for those persons not present at the morning session. He said that Associate Member Davis had to leave early, but Mr. Davis had addressed the Commission on advertising for more regulations to cap the crab fishery. The Commission had agreed to delay their vote until the public had an opportunity to address the Commission.

Associate Member Goodell then moved to untable Mr. Ballard's motion and take the motion up at this time. Associate Member Cowart seconded the motion.

Associate Member Ballard repeated his motion. He said his motion was that an item be placed on the April agenda to consider the Blue Crab Management Plan, and to hear presentations by staff to provide data on the status of the blue crab stock, which would include the most recent data. In addition, the Commission would hear presentations by VIMS' scientist, as well as other scientists, on the status of blue crab stock. In addition, comments would also be heard on the current regulatory regime on the status of the stock by both watermen, packers, and other interested members of the public.

Commissioner Pruitt commented that the motion was seconded by Associate Member Davis,

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who had left the meeting, but left his proxy with Mr. Ballard. Mr. Pruitt did ask for comments from the audience on the motion.

Charles Forrest commented that he felt they were comparing apples to oranges. He said the quota was for 35,000 hard crab pots, and it didn't include the peeler pots. He felt that now the gears had been shifted to include the peeler pots. He said staff presented information that the cap would be 35,000 hard crab pots. Other comments are a part of the verbatim record.

Associate Member Goodell commented that he understood that, but his motion at the end of the last Commission meeting was to include peeler pots, which passed unanimously. Dr. Goodell also stated that if you went back further, the motion was 35,000 crab pots which included peeler crab pots and hard crab pots.

Donnie Thrift commented that he did not feel the Commission knew how much of a problem they really had. Mr. Thrift gave comments regarding his hardship and he didn't know about the hardship exceptions consideration at the last meeting. He said he felt the Commission should find out what the problem was and if there was a problem. Other comments are a part of the verbatim record.

Warren Cosby commented that the watermen had seen on the upper river for the past five or six years, experiments on the rockfish using electric shock. He said the rockfish had travelled through the York River, Chesapeake Bay to get to the spawning reaches. The rockfish were regurgitating thousands of baby crabs. He said some research should be done to determine what type of detrimental impact was going on in the environment that was forced on Virginia by the Northern States through the ASMFC to keep Virginia as a spawning reach, and producing large rockfish. He said we were feeding them at other native species, which was putting the watermen out of business. Other comments are a part of the verbatim record.

Commissioner Pruitt commented that he understood the comments made by Associate Member Cowart, Associate Member Hull, and Associate Member Goodell, but he felt that the individuals should be heard separately. Mr. Pruitt said after the Commission heard from the individuals, they could vote their cases up or down. He said some individuals had travelled long distances and the Commission should hear from them.

Richard Welton, from the Coastal Conservation Association, addressed the Commission. He gave comments on the pressure of pre-spawning crabs versus actual spawning crabs. He said he felt it was an agreement to freeze everything the way it was, good and bad, or it was not an agreement. Mr. Welton said that it was set forth in the regulation that if a person wanted an

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exception on getting a crab pot permit, persons should apply in writing in January, and it would be heard by the Commission in February. He said the regulation clearly stated that it was once a year when hardship exceptions would be granted. Other comments are a part of the verbatim record. A discussion followed regarding the regulation and exceptions. Comments are a part of the verbatim record.

Mr. Travelstead indicated that there were four other applications similar to the two cases presented by Associate Member Hull.

Larry Gordon addressed the Commission. He said he had a 100-pot license and he crabbed in the evenings. He said on the job he was working now, he would break out in allergies from the chemical used from the paints used, and he was on medication. He said the doctors told him if it continued to happen, he would have to leave the job.

Commissioner Pruitt asked why he was not here last month. Mr. Gordon responded that he had the flu and he then presented his doctor's excuse to the Commission. He said he would like a 200 crab pot license and at least 150 peeler pots if possible.

Associate Member Birkett asked would he rather have crab pots or peeler pots? Mr. Gordon responded that he rather have the crab pots.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull moved to give Mr. Gordon an additional 100 crab pots. Motion seconded by Associate Member Birkett. Motion carried 4 to 3.

Richard Hesterberg addressed the Commission. He said he worked with Mike Croxton. He said he had a 100-crab pot license and he was requesting a peeler pot license. He then gave copies of his letter to all the Commission members. He said he did not receive a notice to appear. Other comments are a part of the verbatim record.

Commissioner Pruitt asked Mr. Hesterberg if he had any other source of income. Mr. Hesterberg responded no.

Associate Member Goodell asked if he wanted the crab pots as a convenience? Mr. Hesterberg said he did this full time.

Commissioner Pruitt placed the matter before the Commission.

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Associate Member Hull commented that he knew Mr. Hesterberg very well and he was an active member of the Virginia Watermen's Association and he was full time watermen. He filed his letter on time, but did not get his notice. Mr. Hull then moved to grant Mr. Hesterberg a peeler pot license. Motion seconded by Associate Member White.

Ms. Cosby, Fisheries Management Specialist, informed the Commission that staff never received Mr. Hesterberg's letter.

Motion carried 3 to 3. Commissioner Pruitt voted to break the tie. Motion carried 3 to 4 to deny the license.

Charles Forrest

Associate Member Ballard stated that he would be abstaining because he did business with Mr. Forrest.

Ellen Cosby asked Mr. Forrest if he had sent a letter. Mr. Forrest responded no, he called in and they told him to be here today.

Mr. Forrest addressed the Commission. He said he was active in the aquaculture business for Mr. Ballard. He said he was active on the water for 20 years. He then gave comments about the economic reasons for his exception request. Comments are a part of the verbatim record. He said he was trying to move from being 100 per cent active in the aquaculture business to fishing hard crab pot and peeler pots. Other comments are a part of the verbatim record.

Commissioner Pruitt asked how many pots did Mr. Forrest have? Mr. Forrest said he had 100 pots. Mr. Pruitt asked how many pots did he fish last year. He said he had just received his license at the last meeting.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Goodell informed Mr. Forrest that the other alternative to get a peeler pot license would be to pursue someone that had a license to sell or give it to him. Mr. Forrest responded that if he would give him a name he would pursue it.

Associate Member Birkett asked Mr. Forrest if he requested a peeler pot license last month? Mr. Forrest responded no, because of the other activity that went on.

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Associate Member Hull commented that the Commission had scarce means to distribute and Mr. Forrest had received something at the last meeting. Therefore, he felt Mr. Forrest should establish what he received, and he could not support giving him more pots at this time. Mr. Hull then moved to deny Mr. Forrest a peeler pot license. Motion seconded by Associate Member Goodell. Motion carried 3 to 2 to deny.

Donnie Thrift addressed the Commission. He said in the early 90s he held a peeler pot license. He had ruptured two disks in his back and he didn't work for a while. He later applied for a license and only received the 100-pot license. When he went to get his license back for a peeler pot license, he was unable to do so. He said he had a shedding operation at home and that was all he did. Other comments are a part of the verbatim record.

Commissioner Pruitt asked Mr. Thrift if he had any other source of income. Mr. Thrift said only worked on the water.

Associate Member Goodell asked what other fisheries he was involved in? Mr. Thrift responded that he had striped bass tags, shed soft crabs, eel pots, but crabs was his biggest thing. He said he also used his father's 100-pot license. He was requesting 500-pot license to crab in the Bay.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull asked exactly what Mr. Thrift was requesting? Ms. Cosby responded that he was requesting an upgrade from 200 to 500 pots. Associate Member Hull moved to upgrade Mr. Thrift from 200 to 300 crab pots. Motion seconded by Associate Member Birkett. Motion carried 3 to 2 to deny.

George Marshall addressed the Commission. He said at the last meeting, he was out sick and he had talked to Mr. Travelstead. He said he would like a 200 peeler pot license.

Commissioner Pruitt asked if he had a hard crab pot license at the present time. Mr. Marshall responded he had a 300-pot license. He said he was a full time waterman 45 years. Ms. Cosby said Mr. Marshall had a four-year history of a 300-pot license.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Goodell moved to deny. Motion seconded by Associate Member Cowart.

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Motion carried 5 to 1. Associate Member White abstained because he was not present for the testimony.

Edward Kellum addressed the Commission. He said he was from Eastville, Northampton County. He said he wrote a letter to the Commission, dated February 19, 1999, to Mr. Pruitt for 20 peeler pots to start a small shedding business. Other comments are a part of the verbatim record.

A discussion followed regarding issuing less than 400 peeler pots. Comments are a part of the verbatim record.

Acting Chairman White informed Mr. Kellum that a motion was before the Commission to address the situation of issuing a lesser number of pots. Mr. White suggested that Mr. Kellum wait until the Commission had taken action on that motion, which might benefit his request.

Acting Chairman White placed the matter before the Commission.

Associate Member Goodell moved to deny. Motion seconded by Associate Member Ballard. Motion carried to deny.

Benjamin Tolson - not present.

Leroy Turner addressed the Commission. He said he had been working soft crabs all his life for different people. He also worked in a shedding house. He said when he purchased the shedding house, he thought the gentleman was going to sell his license also, but he has to buy the peelers to use in his shedding business. Other comments are a part of the verbatim record.

Associate Member White asked what license did he have? Mr. Turner said he had a gear license.

Ms. Cosby stated that Mr. Turner did not send a letter. Mr. Turner responded that he had sent a letter for the past two years and he was denied through the mail. Therefore, he never showed up because he did not think he had a chance.

Associate Member Goodell asked Mr. Turner if he was a full time shedder? Mr. Turner responded yes. Associate Member Goodell asked what was his reason for wanting a peeler pot license. Mr. Turner responded that he wanted to get his own crabs, because he was buying peelers from the man he purchased his rig from.

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Acting Chairman White placed the matter before the Commission.

Associate Member Hull asked if he had any paperwork in for this year. Mr. Turner responded no.

Associate Member Goodell moved to deny. Motion seconded by Associate Member Ballard. Motion carried to deny.

Timothy Pruitt addressed the Commission. He said he was requesting a peeler pot license. He said he was present last month, but became ill and had to leave.

Ms. Cosby said Mr. Pruitt did not submit any paperwork. Mr. Pruitt said he had worked on the water all his life full time. He held a 300-hard crab pot license at the present time. He said he was in business with someone else and he needed his license to be able to shed crabs together.

Acting Chairman White placed the matter before the Commission.

Associate Member Ballard commented that he saw no hardship, and moved to deny. Motion was seconded by Associate Member Goodell. Motion carried to deny.

Herbert Thom addressed the Commission. He said he sent a letter in January, and he was present for the February meeting. He said the agenda changed and it got dark, he had to leave prior to it getting dark because he has cataracts and he can't drive in the darkness. Mr. Thom requested a peeler pot license.

Ms. Cosby said Mr. Thom did submit a letter in time and he had a history of two years with a 100-pot license.

Commissioner Pruitt asked if he had any other source of income? Mr. Thom responded no. He said he could not help his friend peeler pot because he did not have peeler pot license. He said his friend was willing to share his 400 peeler pots.

Associate Member Goodell commented that perhaps Mr. Thom could wait for action on Mr. Ballards's motion, and the Commission could delay making a decision until the regulation changed.

Commissioner Pruitt said the Commission would postpone the decision.

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Associate Member Ballard commented that the peeler run was in May and everyone was anticipating that something would be done in April to modify the peeler license. Mr. Ballard said if the Commission decided in April to change the regulation, the regulation would have to be advertised and heard in May. Therefore, the earliest something could be done would be June, and he did not feel the proposal would help those persons. A discussion followed regarding splitting the 400 peeler license and the regulation. Comments are a part of the verbatim record.

Ms. Cosby requested clarification on Mr. Herbert Thom's decision because the Commission did not vote.

Associate Member Goodell then moved to deny Mr. Thom. Motion seconded by Associate Member Ballard. Motion carried to deny.

Daniel Dodge addressed the Commission. He said he was requesting a 300-crab pot license.

Ms. Cosby said Mr. Dodge had not submitted a letter and staff had no background information on him. Mr. Dodge said he had a 100-pot license now and he had been working on the water every since he graduated from high school three years ago. He did not know about the meeting in February and he lived on Tangier and there was not anything else he could do.

Associate Member Birkett moved to grant Mr. Dodge a 100-crab pot license. Motion seconded by Associate Member White. Motion carried to deny.

Shawn Boggess addressed the Commission. He said he currently held a 100-crab pot license and he had worked with his father since he was large enough to go crabbing. He graduated from High School two years ago. Mr. Boggess requested 300 pots.

Commissioner Pruitt asked how many pots did his father have.? Mr. Boggess responded 300 crab pots.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to deny because he felt there was no hardship. Motion seconded by Associate Member Goodell. Motion carried to deny.

Ms. Cosby called the names of persons that sent in letters for hardship exceptions.

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Benjamin Tolson - not present.

Larry P. Williams - not present.

Kenneth W. Jenkins - not present.

John A. Wood - not present.

Lewis Ewell - not present.

Danny Pennington - not present.

Associate Member Cowart commented that serious consideration should be given to a mechanism to allow individuals that would like to sell their licenses, and individuals that wanted to purchase a license.

Commissioner Pruitt said his idea of a hardship would be that staff would evaluate the application, and if there was a serious health problem that would be clearly a hardship. Staff would then bring them, along with others to the Commission, and the others that did not come close to meeting criteria would not reach the Commission.

A discussion followed regarding giving staff a criteria in order to be able to judge by a written criteria. Commissioner Pruitt said he agreed with that proposal.

Associate Member Cowart moved that the Commission request staff to draft hardship criteria. Commissioner Pruitt suggested amending the motion to include Commission Members to meet with staff. Associate Member Cowart rephrased the motion that staff draft criteria for hardship exceptions for crab and peeler pots, and that two Commission members be included within that realm in order to develop that criteria. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Commissioner Pruitt then appointed Associate Member White and Associate Member Cowart to that Committee. Associate Member Goodell said he would like to participate, if he could do so electronically. Associate Member White said he would yield to Dr. Goodell.

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**WILLY BOKELAAR:** Request for additional elver quota.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the background information regarding the taking of eels. Comments are a part of the verbatim record. Mr. Travelstead said ten per cent of the eels raised were supposed to go back into Virginia waters. He said a state of the art facility was built near Hopewell, Virginia which cost approximately one million dollars. Mr. Bookelarr was issued a permit to harvest 1300 pounds of elvers. However, Mr. Bokelaar was now requesting an additional 700 pounds of elvers, in order to effectively operate his elver grow-out facility, Anguilla Culture Technology, Inc. Mr. Travelstead said Mr. Bokelaar had planned to supplement his elver harvest quota by importing elvers from other states and Canada. In addition, the Asian market had collapsed.

Associate Member Goodell asked why had the Asian market collapsed? Mr. Bokelaar said there was never a genuine Asian market for American eels. He said the American baby eel had been abused in Asia and was being mixed with the domestic baby eel harvest. He said the baby eel market in Asian once was worth a lot of money. He said this year the Asian market for Asian eels and also the European market have a record harvest for baby eels. The value of eels was very low now that it was not worthwhile for anyone to import American eels to mix because there was no gain in it. In addition, the Chinese government made some rules and changes which made it harder for the importers to do the mixing. Other comments are a part of the verbatim record.

Associate Member Cowart commented that based on the opposition at the December meeting, a public hearing should be held. In addition, they were into the second year of the project and Mr. Bokelaar had not start catching eels. Mr. Bokelaar said he had just completed his facility, and the investment had been made, and there was no turning back. He said he had just started harvesting the eels. Associate Member Cowart said he felt uncomfortable increasing the limit at this point, without a public hearing. Mr. Bokelaar then requested a permit to import eels.

Commissioner Pruitt suggested that any Commission member that had the time, should go and see the facility. He said the Board of Supervisors of the County were excited about the facility.

Mr. Bokelaar requested the Commission to help him increase his production by allowing him to import eels from Canada or the State of Maine, if the quota could not be increased.

Associate Member Cowart moved to go to public hearing. Motion seconded by Associate member White. Motion carried.

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Associate Member Hull commented that the Chairman and himself attended the funeral of Clifford O. Dameron, and Mr. Cowart attended the wake. He said Mr. Dameron was a distinguished citizen of the Northern Neck and spent most of his career in the employment of the VMRC. Mr. Hull then moved that the following Resolution be given to the family:

WHEREAS, the Commonwealth of Virginia has sustained a great sorrow in the passing of Clifford O. Dameron, and

WHEREAS, the Virginia Marine Resources Commission particularly mourn his passing,

and

WHEREAS, the late Clifford O. Dameron spent twenty-three years serving the people of the Commonwealth as a Virginia Marine Resources Commission marine patrol officer, lastly, as a boat captain of the patrol vessel, "Wicomico," and

WHEREAS, the late Clifford O. Dameron consistently exemplified the highest standards of integrity, professionalism and courtesy in both his professional and private life, and

WHEREAS, the Commonwealth of Virginia greatly benefited from his distinguished service to the people and the Virginia Marine Resources Commission,

BE IT HEREBY RESOLVED, that the Virginia Marine Resources Commission hereby expresses its profound sorrow over the passing of Clifford O. Dameron and its highest esteem for his many years of faithful service, and directs Colonel Steven G. Bowman, the Chief of the Law Enforcement Division, to convey this expression of sympathy to Mrs. Clifford O. Dameron and her family.

Moved by Henry Lane Hull, seconded by S. Lake Cowart, Jr., this 23rd day of March, in the year 1999.

APPROVED UNANIMOUSLY.

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William A. Pruitt  
Commissioner

Commissioner Pruitt directed Colonel Bowman to execute the Resolution.

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**PUBLIC COMMENTS:**

Warren Cosby addressed the Commission. He said at the last Finfish Committee Meeting they voted unanimously to bring this issue before the Commission. He said the drift nets in the Chickahominy River for herrings had a standard mesh size of 2 1/2 inches. He said the regulation now is 2 7/8 or 3 inches mesh size. He said there was a different type labadore herring in the Chickahominy which was smaller and the current mesh size was not suitable. He said the Finfish Committee had voted unanimously to have a public hearing at the April meeting.

Mr. Jack Travelstead said it was unanimously recommended by the committee. Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved for a public hearing at the April meeting. Motion seconded by Associate Member Cowart. Motion carried unanimously.

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Neil Reynolds addressed the Commission. He said he was seeking an exception from the Commission to obtain a commercial hook and line permit. He said he had his commercial registration permit, but all the fisheries were closed. He said having the blue card served no purpose at all for him. He said he wrote a letter to staff, and Mr. Travelstead suggested he come to the Commission meeting.

Jack Travelstead responded that the Commercial Hook and Line Regulation did not allow for hardships exemptions, it was a closed fishery. There were approximately 280 licenses in the fishery. The only way one could get into the fishery was to purchase someone's license that was getting out of that fishery. He said staff did make available a list of the current licensees.

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He said without an amendment to the regulation, you could not get into the fishery.

Commissioner Pruitt suggested that Mr. Reynolds continue to try to get a licensee from someone that was getting out of the fishery.

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Billy Parks addressed the Commission. He said he was requesting an appeal of the Commission's decision regarding his license suspension for a year, and his probation for twelve months for not reporting. He said he reported, but the reports were incomplete. He said his mother filled out his reports and, he did not realize that April and May were left off the report.

Jim Peters, Fisheries Management Specialist, responded that Mr. Parks was brought before the Commission at the October meeting for failure to report. This was his second time before the Commission, and Mr. Parks did not appear before the Commission. The Commission voted to suspend his license for a year, followed by a one year probationary period.

Commissioner Pruitt asked if his records were up to date, and if that was all he did for a living was work on the water? Mr. Parks responded yes. Mr. Peters said he brought all his records up to date today.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Birkett moved to rescind the suspension order of the prior ruling and reinstate his license and place Mr. Parks on probation for 18 months beginning today. Motion seconded by Associate Member White. Motion carried.

Commissioner Pruitt advised Mr. Parks not to come back before the Commission on that issue.

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Joshua Merritt addressed the Commission. He said he would like for oyster aquaculture to be exempted from the laws that govern the wild oyster fishery.

Dr. Jim Wesson addressed the Commission. He said he prepared a draft that would change the regulation. He said they did not intend to cause problems for aquaculture, and they would incorporate that into the permit for private grounds that they already had. He said staff would

go out and check the facility, and if they were really doing aquaculture, the permit would show they had been exempted from the 3" inch cull law.

Associate Member Cowart requested an explanation of the exemption from the 3" cull law. Dr. Wesson explained that on Seaside it was different from the Bayside. He said there was a 3" cull law on all oysters for human consumption private or public. Mr. Cowart asked if that got into non-native species. Dr. Wesson responded no.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to go to public hearing. Motion seconded by Associate Member Cowart. Motion carried unanimously.

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There being no further business to come before the Commission, the meeting was adjourned at 5:20 p.m.

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William A. Pruitt  
Commissioner

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LaVerne Lewis  
Commission Secretary