

MINUTES

March 28, 2000
NEWPORT NEWS, VA 23607

The regular monthly meeting of the Marine Resources Commission was held on March 28, 2000 with the following present:

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon M. Birkett)	
Lake Cowart, Jr.)	
Sheppard H. C. Davis)	
Laura Belle Gordy)	Members of the Commission
Henry Lane Hull)	
John W. White)	
Kenneth Wayne Williams)	
Carl Josephson)	Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		MIS Director
Kevin Curling		Sr. Programmer Analyst
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance and Administration
Jane McCroskey		Assistant Chief-Finance and Administration
Debbie Brooks		Executive Secretary
Steven G. Bowman		Chief-Law Enforcement
Lewis Jones		Deputy Chief-Law Enforcement
Bruce Ballard		First Sergeant
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Ray Jewell		Northern Area Supervisor
T. E. Moore		Marine Patrol Officer
Steve Pope		Marine Patrol Officer
Dr. Gene Burreson		Virginia Institute of Marine science
Tom Barnard		Virginia Institute of Marine Science
Lyle Varnell		Marine Scientist, Sr.

Commission Meeting**March 28, 2000**

Dr. Jim Wesson	Head-Conservation and Replenishment
Jack Travelstead	Chief-Fisheries Management
Rob O'Reilly	Deputy Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics
Ellen Cosby	Fisheries Management Specialist
Jim Peters	Fisheries Management Specialist
Tiny Hutcheson	Fisheries Management Specialist
Bob Grabb	Chief-Habitat Management
Tony Watkinson	Deputy Chief-Habitat Management
Chip Neikirk	Environmental Engineer
Jay Woodward	Environmental Engineer
Randy Owen	Environmental Engineer
Traycie West	Environmental Engineer
Heather Wood	Environmental Engineer
Ben Stagg	Environmental Engineer
Hank Badger	Environmental Engineer
Gerry Showalter	Head-Engineering and Surveying
others present:	
Ed Call	B. H. Hubbard
Ed Nealon	Billy Garrington
Nellie D. Greouser	E. P. Aldrich
Bruce DeGinder	Inge Snead
Elizabeth Hedlund	Dimitrios Hionis
Lawrence Volz	Stephen M. High
Paul Applin	Thomas A. Burcher
Randy D. Abbitt	Kristen Scherzer
Chris Sabold	Lawrence Fuccella
R. E. Hunt	Winfrey Dibbg
Nicole Claiborne	Rick Stilwagen
Ricki & Jack Shoudt	Alor Grantham-Traywick
Larry Williams	Danny Tyler
James B. Hall, Jr.	Siles Hugate
Pete Terry	Tom Walker
Bob Pride	Chris Judy

March 28, 2000

Commission Meeting

Warren Cosby
Tom Powers
Josha Merritt
William Jenkins
Tommy Mason
Jacques Von Montraus
Marcel Montane
Douglas F. Jenkins
Linda Crewe
Russell Gaskins
Eric Jones
Jeff Hammer
Wanda Cohen
Roger Mann

Frances Porter
Rom Lipcius
Kevin Mason
Tommy Kellum
Bob Brumbaugh
Billy Moore
Jeffrey Crockett
W. Bokelaar
Dale Taylor
Mark Luckenbach
Charles Williams
Patrick & Danielle Parks
Brian J. Maloney
Kelly V. Place

and others.

Commissioner Pruitt opened the March meeting at 9:30 a.m. Associate Commission Members present were Birkett, Cowart, Davis, Gordy, Hull, White and Williams. Commissioner Pruitt noted that Associate Commission Member Ballard would be a few hours late. Associate Member Hull gave the invocation. Associate Member Gordy led the Pledge of Allegiance.

1. Approval of the Minutes from the previous meeting.

Associate Member White made a motion to adopt the minutes as drafted. The motion was seconded by Mrs. Gordy and adopted unanimously.

**** APPROVAL OF AGENDA**

Mr. Davis moved to adopt the agenda as drafted. The motion was seconded by Associate Member Birkett and approved unanimously.

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

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

2A. SHENANDOAH UNIVERSITY, #99-1905, requests authorization to construct roadway bridges at two (2) locations crossing over Abrams Creek in the City of Winchester and Frederick County. Recommend an annual royalty of \$334.40 at a rate of \$0.10 per square foot for encroachment over 3,344 square feet of State-owned subaqueous bottom.

Annual royalty for encroachment over 3,344 sq. ft. of State-owned subaqueous bottom @ \$0.10 per sq. ft.....	\$	334.40
Permit fee.....		<u>100.00</u>

Commission Meeting

March 28, 2000

Total \$ 434.40

2B. BLAND COUNTY, #99-2372, requests authorization to cross Wolf Creek in nine (9) locations, Hunting Camp Creek in seven (7) locations and a tributary to Wolf Creek in one (1) location with a concrete-encased sewer force main which will be buried a minimum of two (2) feet below the natural creek beds, and install a treated wastewater outfall structure and concrete splash apron which will extend four (4) feet channelward of ordinary high water into Wolf Creek in conjunction with the Bastian Wastewater Project. Recommend approval with the inclusion of our standard in stream work conditions for the construction activities.

Permit Fee..... \$ 100.00

2C. CITY OF PORTSMOUTH, #00-0014, requests authorization to install four (4) 7-pile mooring dolphins and five (5) 13-pile mooring dolphins along the Southern Branch of the Elizabeth River adjacent to Portsmouth City Hall for use during OpSail 2000.

Permit Fee..... \$ 100.00

2D. CITY OF VIRGINIA BEACH, #96-0083, requests authorization to modify their existing permit to allow for the reconfiguration of three (3) timber open-pile tending piers, resulting in a 25-foot net reduction in length, at the *Lynnhaven Boat Ramp and Beach Facility* proposed for construction along Crab Creek in Virginia Beach. Recommend approval with a revised time-of-year dredging restriction which precludes dredging during the period of March 1 through September 30 to protect shellfish spawning periods and juvenile summer flounder recruitment.

Modification - fee not applicable

2E. U. S. ARMY CORPS OF ENGINEERS, #95-0110, requests authorization to modify a previously issued permit for the material generated during the hydraulic maintenance dredging of the two (2) Federal Project Channels at Tangier Island. The material will be deposited along the western shore of the island, south of the existing seawall. Recommend a one-time change in condition #18, which imposes a time-of-year restriction from May 1 through September 30, be lifted between May 1, 2000, and June 20, 2000, to accommodate the upcoming dredging.

Modification - fee not applicable

Commission Meeting**March 28, 2000**

Commissioner Pruitt asked whether the Corps disposal site (Item 2E) was located south of the Tangier Island airstrip in an overboard area along the beach. Mr. Grabb said yes and indicated that the placement of the material had been discussed with Tangier officials and watermen had been deemed acceptable in regard to Spring crabbing. Comments are a part of the verbatim record. Mr. Davis made a motion to accept the Page Two items as presented. The motion was seconded by Associate Commission Member Williams and adopted unanimously.

3. CONSENT ORDERS: (Commission approval of consent agreement).

Mr. Grabb indicated that there were five Page Three items and asked if the Commissioners would like to consider the items one at a time or as a group. Associate Commission Member Hull asked that they be covered one by one. Associate Commission Member Davis commented that he felt these types of after-the-fact permits were illustrative of an ongoing problem and he would like to see them considered one at a time too. Comments are a part of the verbatim record.

- 3A. HARBOR VIEW MARINA, #99-0493**, requests after-the-fact authorization to retain a previously constructed 24-foot long by 16-foot wide fuel pier extension and two (2) fuel pumps in addition to two (2) 34-foot long by 6-foot wide L-head pier extensions at their facility situated along Deep Creek in the City of Newport News. The applicant has agreed to a civil charge in the amount of \$1,200.00 in lieu of any further enforcement action.

Continued until April

- 3B. GEORGE B. LITTLE, #99-0350**, requests after-the-fact authorization to retain 18 existing low-profile timber groins of various lengths, constructed and continually maintained since 1972, adjacent to his property situated along the western shore of the Chesapeake Bay in Northumberland County. The applicant has agreed to the payment of a \$600.00 civil charge, triple permit fees and royalties in lieu of any further enforcement action.

Continued until April

- 3C. JAMES B. DALTON, #00-0043**, requests after-the-fact authorization to retain 12 existing low-profile timber groins of various lengths which have been continually maintained since their construction prior to 1980. Additional authorization is sought to construct two (2) low-profile timber groins which will extend 48 feet channelward of

Commission Meeting**March 28, 2000**

mean low water adjacent to his property situated along the western shore of the Chesapeake Bay in Northumberland County. The applicant has agreed to the payment of a \$600.00 civil charge, triple permit fees and royalties in lieu of any further enforcement action.

Continued until April

- 3D. CARTER FILER, #99-1739**, requests after-the-fact authorization to retain a 66-foot long riprap crown reinforcement with a spur over a previously permitted groin and a similar 50-foot riprap crown reinforcement over the top of a previously permitted low-profile timber groin. Additional new installation to include the riprap crowning of three (3) existing low-profile timber groins of various lengths with spurs, the installation of three (3) 68-foot long, spurred low-profile riprap groins with an 8-foot base and a 50-foot long, low-profile riprap groin with a 30-foot T-head and a 10-foot base width, and install 80 feet of riprap revetment which may extend 7 feet channelward of mean low water, adjacent to his property situated along Ingram Bay in Northumberland county. The applicant has agreed to the payment of a \$1,200.00 civil charge and triple permit fees in lieu of any further enforcement action.

Continued until April

- 3E. DIMITRIOS HIONIS, #00-0214**, requests after-the-fact authorization to retain approximately (ten) 10 cubic yards of State-owned subaqueous bottom material mechanically dredged from the Lynnhaven River adjacent to Bubba's Marina in Virginia Beach. The applicant has agreed to a civil charge in the amount of \$1,200.00, triple permit fees and royalties in lieu of any further enforcement action.

Continued until April

Mr. Grabb began with Item 3A and stated that the applicant had submitted a request for modification to an existing project and during the staff review of the request was determined that been unauthorized construction had occurred at the marina facility. He noted that staff considered the extent of non-compliance moderate and the degree of environmental impact minimal. Comments are a part of the verbatim record. Associate Commission Member Davis questioned how the applicant could not have known that a permit was necessary to put in a fuel dock. He also commented in general that the after-the-fact consent order procedure was making a mockery of the process, was not fair to the other citizens that followed the process, and that the civil charge amounts being assessed were too low. Comments are a part of the

Commission Meeting**March 28, 2000**

verbatim record. Mr. Hull then asked to see the slides relating to Item 3A. Commissioner Pruitt said that he was concerned whether the applicants were present. Mr. Grabb indicated that staff was prepared to provide a full briefing, but normally they would pull an item like this when the applicant was not present and provide a full Page 1 briefing at the next meeting. Assistant Attorney General Josephson commented that he had not been working with the Commission at the time the consent order process was developed, but that in general, he thought the applicant should have an opportunity to speak if the Commission did not agree with the proposed consent order. Comments are a part of the verbatim record.

Mr. Grabb then suggested pulling all five of the consent orders being considered and providing a full briefing at the next meeting. He also commented that changes to the Commission's penalty matrix for consent orders, such as increasing the maximum penalties, should be treated as a change in regulation.

Associate Commission Member Cowart asked about the three consent orders in Northumberland County and how staff went about reaching the consent agreements. There was a general discussion between the Commissioners and staff concerning the length of time that had passed since the unauthorized work had occurred in some of the Northumberland cases (some were done as far back as the mid 1970s), the confusion over whether a permit had been required at that time, and whether or not the applicants understood that they did not necessarily have to agree to a consent order. Comments are a part of the verbatim record.

Associate Commission Member Hull made a motion to postpone consideration of Items 3A through 3E to the next meeting. The motion was seconded by Mr. Williams and adopted unanimously.

Associate Commission Member Davis then requested that the Commission revisit the civil charges being assessed. Mr. Pruitt appointed Mr. Davis, Mr. White, Mr. Grabb, and Mr. Josephson meet as a subcommittee to meet before the next meeting to formulate recommendations on a revised matrix.

4. EXECUTIVE SESSION (if necessary).

Associate Commission Member Davis moved that the meeting be recessed and that the Commission immediately be reconvened in executive session for the purpose of consultation with legal counsel and briefings by staff pertaining to actual or probable litigation, or other

Commission Meeting**March 28, 2000**

specific legal matters requiring legal advice by counsel as permitted by subsection (A), Paragraph (7) of Section 2.1-344 of the Code of Virginia, pertaining to legal issues related to permits in general and other legal matters. The motion was seconded by Associate Commission Member White and adopted unanimously.

When the regular session was restarted, Mr. Davis moved:

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, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia Law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Commission.

The motion was seconded by Associate Commission Member Williams. Commissioner Pruitt asked for a roll call on the vote. Associate Commission Member Davis, Williams, Birkett, Gordy, White, and Hull voted yes. Associate Commission Member Ballard and Cowart were not present for the vote.

5. **GUM POINT OYSTER CO., #99-1596**, requests authorization to install 12 pilings and deploy a maximum of 60 oyster floats to establish three (3) 60-foot by 60-foot commercial aquaculture sites near Blundering Point along Carter Creek and the York River in Gloucester County. The project is protested by the owners of two nearby parcels of property.

Mr. Chip Neikirk, Environmental Engineer, briefed the Commission. He showed slides of the three areas in Carter Creek and the adjacent York River where the applicant wanted to develop nursery, growout, and depuration areas for an oyster tray culture project. He indicated that there would be a maximum of 20 trays at any one of the three sites and commented that the

Commission Meeting

March 28, 2000

proposed project areas should not affect navigation. He said the project was protested by a Mr. Grieves and a Mrs. Aldridge.

Mr. Neikirk commented that the sites had been selected over natural oyster guts that had high flow, good growth rates, good substrate and were protected from the wind. He said staff had made some recommendations on changing the sitings somewhat to accommodate the protestants. He said staff recommended the project with the recommended site adjustments be approved. Comments are a part of the verbatim record..

Mr. White asked how the staff's recommendations affected the complaint from one of the protestants concerning a driveway and pier adjacent to the project. It was indicated that this was out of the Commission's jurisdiction. Comments are a part of the verbatim record.

Mr. Paul Applin, President of Gum Point Oyster Company, spoke in favor of the project. He said he had been growing oysters in the creek since 1983 and had started with tray culture in 1991. Comments are a part of the verbatim record.

Mr. E.H. Hubbard, spoke on behalf of the protestants, Mr. and Mrs. Grieves. He indicated that the Grieves had reached an agreement with the applicant on the dock and they now felt that the staff recommendation was okay. Comments are a part of the verbatim record.

Mr. Davis moved to approve in accordance with the staff recommendation. The motion was seconded by Associate Commission Member Gordy and was adopted unanimously.

Annual royalty for encroachment of 10,800 sq. ft. @ \$0.005 per sq. ft.....	\$	54.00	
Permit Fee.....			<u>25.00</u>
Total	\$	79.00	

- 6. **STEPHEN M. HIGH, #98-1364**, requests authorization to construct a 30-foot long by 14-foot wide, open-sided boathouse adjacent to his property situated along Herberts Creek in the City of Hampton. The project is protested by an adjacent property owner.

Mrs. Traycie West, Environmental Engineer, briefed the Commission and showed slides. She indicated that the project was protested by Mr. Vannice who thought the shallowness of the creek in the area of the proposed boathouse would result in prop dredging. Mrs. West

Commission Meeting

March 28, 2000

commented that the boathouse should not have an affect on that situation since there was already a pier there that could be used for boating. Comments are a part of the verbatim record.

Mr. Thomas Burcher, attorney representing the applicant, asked for approval of the project.

Mrs. West stated that Mr. Vannice was unable to attend the meeting and had asked her to relay his concerns to the Commission. Comments are a part of the verbatim record.

Associate Commission Member Gordy made a motion to approve the project. The motion was seconded by Mr. Birkett and adopted unanimously.

Permit fee.....\$ 25.00

- 7. **BOB SASSER, #00-0077**, requests authorization to install a 32-foot long by 14-foot wide private, non-commercial, open-sided boathouse at the channelward end of a proposed 220-foot long pier at his property situated along the Western Branch of the Lynnhaven River in Virginia Beach. The project is protested by an adjacent property owner.

Mr. Randy Owen briefed the Commission and showed slides. He said the proposed boathouse was opposed by the owner of an adjacent vacant lot. Mr. Owen said the L-head pier at the site had already been built under the personal pier exemption provided in Code. He noted that the applicant had recently purchased a 26-foot boat that he wished to protect. He said no oyster grounds were impacted and that there were no adverse comments from any other state agencies. Mr. Owen said staff recommended approval. Comments are a part of the verbatim record.

Mr. Billy Garrington, agent for the applicant, was available for questions.

Associate Commission Member Gordy moved to approve the project. The motion was seconded by Mr. Birkett and adopted unanimously.

Permit fee.....\$ 25.00

- 8. **LAWRENCE FUCCELLA, JR., #99-2290**, requests authorization to construct a 60-foot by 20-foot enclosed boathouse addition to an existing 60-foot by 25-foot

Commission Meeting**March 28, 2000**

boathouse at his property along Urbanna Creek in Middlesex County.

Mr. Chip Neikirk, Environmental Engineer, briefed the Commission. He presented slides of the project area on Urbanna Creek and drawings of the proposed boathouse addition. He commented that the applicant had a 30-foot and a 34-foot boat moored at the present boathouse and had recently purchased a 43-foot boat that he wanted to build the boathouse addition to accommodate. Comments are a part of the verbatim record.

Associate Commission Member Williams asked where the property line was. Mr. Neikirk indicated that the proposed addition should not go over the property line extended.

Mr. Neikirk indicated that there were no oyster grounds, nor protests, and no negative comments from other agencies. He stated that staff does review structure sizes, and that in this case while the proposed addition was appropriately sized for the applicant's three boats, the overall 2700 square foot structure appeared to be too large and the benefits did not outweigh the public detriments (covered subaqueous bottom and aesthetic impacts). He also noted that covered mooring space was available in Urbanna. As a result, he said staff recommended denial of the request. Comments are a part of the verbatim record.

Mr. Birkett reaffirmed that these were the applicant's private boats and not commercial craft. Comments are a part of the verbatim record.

Mr. Hull asked Mr. Williams if there were any county ordinances on boathouses; Mr. Williams indicated there were none.

Mr. Lawrence Fuccella, applicant, spoke in favor of his project. He stated that there were two sewage outfalls on either side of him and he did not think his project would further impact water quality. He also indicated that aesthetic factors were important to him and he felt his design was good. Comments are a part of the verbatim record.

Mr. Hull asked what was the size of his lot; Mr. Fuccella said it was 10.5 acres.

Mr. Williams asked about the General Assembly exemption for boathouses that had been adopted a few years earlier. Mr. Neikirk explained that the exemption allowed for a roofed structure less than 700 square feet provided there were no protests from the adjacent landowners. Given the size, he said this project would qualify for the exemption. Mr. Williams asked how an application for a large private facility could be denied when larger public facilities were approved. Mr. Josephson indicated that projects which exceeded the exemption were

Commission Meeting

March 28, 2000

governed by Section 28.2-1205 and that required ran assessment of whether it was a reasonable use of state-owned bottom. Comments are a part of the verbatim record.

Mr. Birkett commented that there would be three boats at the pier/boathouse facility whether the boathouse addition was there or not. He said he felt the applicant had a right to protect the his boats. Mr. Hull commented that he could not vote for the project since he did not see any similarly sized structures in the aerial photos.

Mr. Birkett then made a motion to approve the application. The motion was seconded by Mr. Williams. The motion passed 3 to 2, with Associate Commission Members Birkett, Williams, Gordy voting, yes; and Associate Commission Members Cowart and Hull voting, no.

Permit Fee..... \$ 100.00

- 9. **BRUCE DEGINDER, #97-1469**, requests authorization to construct a 34-foot long by 28-foot non-commercial, open-sided, dual slip, two-story boathouse adjacent to his property situated along the Chickahominy River in James City County. The project is protested by a property owner in the vicinity.

Mrs. Traycie West, Environmental Engineer, briefed the Commission and showed slides. She indicated that the proposed project had been brought to the Commission in September 1997 and any action had been postponed. She said at the time of Dr. Deginder's original request, the Barrets Ferry subdivision was just starting and the developer was concerned about the proposed boathouse affecting a nearby unsold lot. She said that the applicant had received a Corps of Engineers permit and a no permit necessary letter from the Commission in September 1998 for the pier portion of the project. In September of 1999, he then reapplied for the boathouse and two shed structures on the pier. She said two neighbors were opposed to the project and that Mr. Terrell still had concerns that the structure was not appropriately sized. Mrs. West said that Dr. DeGinder's house had not yet been built at the site, but that construction was scheduled to start in May 2000. She said Dr. Deginder owned one 26-foot boat and he wanted to purchase a second boat as soon as the boathouse was built. Mrs. West stated that staff recommended denial of the project, since the applicant did not yet have a house on the lot and this would give more time for the homeowners association in the subdivision to review the proposal and resolve their differences with Dr. DeGinder. Comments are a part of the verbatim record.

Commission Meeting**March 28, 2000**

Mrs. West commented that should the Commission decide to approve the project, however, staff suggested the following conditions be imposed: relocate the pier and boathouse to the center of the property, not allow the sheds, and require approval of the homeowners association as a precondition to construction.

Dr. DeGinder, the applicant, spoke in favor of the project. He reviewed the history of his proposal. He commented that there were three nearby structures with similar deck structures on the second story of the boathouse. He stated that he thought it was an undue hardship to wait for three reasons: 1) he wanted to buy a second boat but wanted the boathouse built to protect it, 2) he lived five minutes from the site and wanted to use the pier/boathouse facility while constructing his new home, 3) he had a Corps permit that would expire in October 2000. He also indicated that he did not agree with Mr. Terrell's statement regarding the homeowners' association review of the project. Comments are a part of the verbatim record.

Mr. Lawrence Volz, a nearby property owner, spoke against the proposal. He thought the project was too large and too close to the property line. He said he thought the project should be reviewed by the subdivision's architectural review board. He indicated that he felt the homeowners association had met and agreed to the following in regard to the project: 1) move it closer to the center of the property, 2) require use of horizontal lockers not sheds, and 3) no second level to boathouse (roof okay). He wanted Dr. DeGinder to work with the homeowners association better. Comments are a part of the verbatim record.

Mrs. Ricky Schmidt, the only current resident of the subdivision, questioned the statements that were being made about the homeowners association position on the project. She said she had attended the initial meeting, but had not been invited to the more recent meeting referred to. She said she favored moving the project to the middle of the lot, no sheds, and allowing a second floor deck. Comments are a part of the verbatim record.

Mr. Davis commented that it sounded like the homeowners association needed a more formal process.

Dr. DeGinder explained his aesthetic reasons for wanting to have the project close to the edge of his property. He reiterated that he was under a time constraint given the expiration of his Corps permit. Comments are a part of the verbatim record.

There was a short discussion about the parties needing to work together. Comments are a part of the verbatim record. Mr. Davis then made a motion to postpone a decision on the matter until the parties had an opportunity to work together with staff. The motion was seconded by

Commission Meeting**March 28, 2000**

Mr. Hull and adopted 6-0 Mr. Ballard abstained since he was not present for the entire briefing.

Continued until April

- 10. FEDERAL HIGHWAY ADMINISTRATION, #99-2347**, requests authorization to conduct soil borings at two (2) locations in tidal wetlands on property owned by the National Park Service, adjacent to the Potomac River in Alexandria (related to the Woodrow Wilson Bridge Project). VMRC is acting as the Wetlands Board. The project is unprotested.

Mr. Ben Stagg, Environmental Engineer, briefed the Commission. He explained that the City of Alexandria had not yet adopted the model wetlands ordinance and that the Commission would be acting as the local wetlands board for this case. He said the proposed work was part of the Woodrow Wilson Bridge/I-95 expansion project. Mr. Stagg stated that he had conducted a public hearing on March 14, 2000 that was attended by seven members of the public and the project agent. He said there was some discussion at the hearing about delaying the start of drilling from 7 a.m. to 9 a.m. and whether or not the proposed work would affect an adjacent self-service recycling center. Comments are a part of the verbatim record.

Mr. Stagg indicated that there was some concern over the softness of the ground where the drilling was proposed. He said the contractor proposed laying down mats to protect the marsh. He said staff recommended approval of the project with the condition that access to the adjacent recycling center not be impacted.

There being no public input, Associate Commission Member Williams moved to approve the permit with the staff recommended conditions. The motion was seconded by Mr. White and was adopted unanimously.

The Commission adjourned for lunch at 11:50 a.m. After returning from lunch, Mr. Hull made a motion to modify the agenda to move Item 21 up. The motion was seconded by Mr. White and adopted unanimously.

- 21. REVIEW elver harvesting aquaculture permit of Willy Bokelaar.**

Commission Meeting**March 28, 2000**

Mr. Bokelaar requested that the Commission continue his case until the next meeting when his attorney could be present. Mr. Hull made a motion to continue the case until the next month. The motion was seconded by Mr. White and adopted unanimously. Mr. Bokelaar was told the next meeting would be held on April 25, 2000.

11. PUBLIC HEARING: Request for final regulation designed to eliminate circumvention of the crab fishing season via the use of fish pots.

Mr. Rob O'Reilly, Deputy Chief - Fisheries Management, briefed the Commission. He explained that this item had been discussed at the last meeting and that the proposed regulatory changes were intended to prevent the circumvention of the crab pot season starting date by use of fish pots. He addressed a complaint about the proposed regulation that had been in the newspapers suggesting that legitimate fish potting would be affected. He stated that eel potting was not affected at all, and that less than one tenth of a percent of the catfish harvest came from outside the upriver areas exempted from the proposed regulation during the period from March 27 to March 31. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Mr. Warren Cosby questioned the impact on the Chickahominy River fish potters. Comments are a part of the verbatim record.

The public hearing was closed.

Mr. Hull suggested an editorial change to the draft language in the proposed regulation. He then made a motion to adopt the permanent regulation as modified. The motion was seconded by Mr. Cowart and adopted unanimously.

12. PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-700-10 et seq., to modify requirements for the use of cull rings in crab pots.

Ms. Tina Hutcheson, Fisheries Management Specialist, briefed the Commission. She stated that the Commission had requested at the last meeting that staff sample crabs from various areas for comparison to the 1993/94 crab cull ring study. Ms. Hutcheson said staff had fulfilled the

Commission Meeting**March 28, 2000**

request, but noted that the original study used crabs caught in crab pots, whereas the staff's study had to be restricted to dredged crabs because of the time of year and therefore there were limitations to the comparisons. She then provided an overview of the data collected. Comments are a part of the verbatim record.

Ms. Hutcheson said that staff recommended delaying the start date for the cull ring in the mainstem Bay until April 1, 2001, and moving forward as soon as possible on the sanctuary proposal.

Dr. Rom Lipcius, VIMS, noted the reduced density of the spawning stock and the changing size structure of female crabs (smaller adult females). He indicated that without a reduction in fishing effort, cull rings were okay, but he favored the corridor sanctuaries. Comments are a part of the verbatim record.

Associate Commission Member Davis asked about the timing of the sanctuary area. Dr. Lipcius said that the idea was to extend the sanctuaries into deepwater areas along the Bay's mainstem during the spawning period (June 1 through September 15). He said he expected a final proposal next month and it would include areas deeper than 30 - 35 feet up to the Virginia/Maryland border. Comments are a part of the verbatim record.

Mr. Ballard asked Dr. Lipcius if the sanctuaries were a better idea than the mainstem cull ring. Dr. Lipcius said the extended sanctuaries were a good start, but other management strategies were possible; he suggested phasing out the cull ring while reducing fishing effort. Comments are a part of the verbatim record.

Commissioner Pruitt commented that VIMS was working with Maryland and the Bi-state Committee to develop coordinated proposals. Dr. Lipcius also indicated that he was interested in proposing a study on the York River where the cull ring requirement would be suspended, and that VIM's staff could then compare size composition to other areas where the cull ring was in effect. Comments are a part of the verbatim record.

Associate Commission Member Ballard asked about the timing of the sanctuary proposal. Dr. Lipcius indicated that he would be meeting with crabbers on proposed boundaries during April. Mr. Ballard suggested that the earliest the new sanctuaries could be established would be late May. Comments are a part of the verbatim record.

Mr. Davis commented that female biomass was down 70%, yet VIMS wanted to do the York River no-cull ring study bbut fishermen would catch more small crabs. Comments are a part of

Commission Meeting**March 28, 2000**

the verbatim record.

Mr. Roy Insley, Head - Plans and Statistics, commented that many crabbers voluntarily used cull rings which may have an impact on the study Dr. Lipcius had proposed for the York River. Comments are a part of the verbatim record.

Dr. John McConaugha, Old Dominion University, made a presentation on the possible causes of the reduced size of the female crabs; he indicated that growth, overfishing, genetics, and phenotypic plasticity were potential factors. He suggested that reduced abundance could be causing a population response where crabs were maturing at a younger age and were smaller in size. Comments are a part of the verbatim record.

Mr. Pruitt asked Dr. McConaugha what he thought about the heavy crab landings in North Carolina in the last several years. Dr. McConaugha responded that it could be a good recent recruitment but that he had not followed it very closely. Comments are a part of the verbatim record.

Mr. Davis asked if we were breeding a smaller race. Dr. McConaugha said no, this had occurred in the past and it was not a rare occurrence. Comments are a part of the verbatim record.

Mr. Pruitt asked Dr. McConaugha about his predictions on the Spring run. Dr. McConaugha only commented that the Fall had looked good, and maybe the Spring would be too. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Mr. Jeff Crockett, Tangier Waterman's Association, said that the VIMS proposals were promising. He thought the sanctuaries were a good idea and encouraged Dr. Lipcius to work with all of the watermen associations to develop the proposals. Comments are a part of the verbatim record.

Associate Commission Member Davis commented that he would like to see some linkage in any action taken by the Commission to delay the implementation of the mainstem cull ring, i.e., if the cull ring implementation was delayed then the new sanctuaries should be established by June 1, 2000. Mr. Crockett asked that they not rush into anything; he didn't think it would hurt to delay a sanctuary decision until July. Comments are a part of the verbatim record.

Commission Meeting**March 28, 2000**

Dr. Rob Brumbaugh, Chesapeake Bay Foundation, indicated he agreed with Mr. Crockett and thought that postponing the cull ring implementation in favor of developing sanctuaries or something more effective would be good. Comments are a part of the verbatim record.

Mr. Doug Jenkins, Twin Rivers Waterman's Association, said he was under the impression that the mainstem cull ring would be implemented. He said the peeler pot fishermen had been cut by 100 pots. He said he did not favor double standards. He thought the sanctuary idea would help, but favored baywide rules. Comments are a part of the verbatim record.

Mr. Pete Nixon, Lower Chesapeake Waterman's Association, said there had not been an abundance of small crabs yet, and they should implement the sanctuaries. Comments are a part of the verbatim record.

Mr. Dale Taylor, Virginia Waterman's Association, asked that the Commission postpone action until all the watermen associations had a chance to discuss the cull ring issue. Comments are a part of the verbatim record.

Mr. Billy Moore, crab processor, said he supported what VIMS was trying to do, but suggested that the Commission let the cull ring go into effect this year. Comments are a part of the verbatim record.

The public hearing was closed.

Associate Commission Member Cowart questioned when the new sanctuaries could be implemented. Mr. Jack Travelstead said that initial proposals would be considered in April and that he was hopeful that the sanctuaries could be established by summer. Comments are a part of the verbatim record.

Associate Commission Member Williams said the watermen associations needed to work with VIMS and staff to bring the proposals back. He said there were too many rockfish and not enough grasses, and a band-aid approach was not good. Comments are a part of the verbatim record.

Mr. Ballard said he thought they should put pressure on to get something done this season. He then made a motion to adopt the draft regulation with a change to delay mainstem cull ring implementation until July 1, 2000. He said his rationale was that they could advertise for a public hearing for the sanctuaries at the end of April, and adopt in May, and at the June meeting do away with the July 1 cull ring date. Comments are a part of the verbatim record.

Commission Meeting**March 28, 2000**

The motion was seconded by Mr. Davis.

After some comments from Drs. Lipcius and McConaugha, the motion was adopted 7-1, with Mr. Williams voting no. Mr. Pruitt commented that the next crab committee meeting was April 17, 2000 at 4:00 PM at the Commission office; he said all watermen associations presidents were invited and Associate Commissioner representatives also needed to be present.

13. PUBLIC HEARING: Virginia Seafood Council request to introduce non-native oyster, Crassostrea ariakensis to selected sites in Virginia for experimental purposes.

Associate Commission Members Ballard and Cowart noted that they were members of Virginia Seafood Council (VSC) and would not participate in the discussion or voting on this item. They asked that the record show that they were leaving the meeting and would remain only as private citizens.

Dr. Jim Wesson, Head - Conservation and Replenishment, briefed the Commission. Dr. Wesson reviewed the general VSC proposal to perform test growout of 3000 triploid, non-native *C. ariakensis* oysters in five or six sites in different salinity regions of the Bay. He said VIMS had been performing studies on triploid oysters since 1996 and generally had found the non-native *C. gigas* oyster unsatisfactory; however tests started in 1998 with *C. ariakensis* had been promising. He said the VIMS work had stimulated industry's interest in testing the potential of *C. ariakensis* in situations closer to the more traditional on bottom culture. Dr. Wesson displayed an example of the type of enclosed tray the VSC was proposing to use. He also indicated that a meeting had been held by VIMS at William and Mary on March 15, 2000 with representatives from other coastal states and industry to look at the project plan and its risks. He reviewed the recommendations of the group. Comments are a part of the verbatim record.

Commissioner Pruitt asked Dr. Wesson if he had seen the CEES letter and its recommendations.

He also asked if he considered this a joint proposal with the scientific community. Dr. Wesson said that in a way it was a joint proposal, and that there would be scientific monitoring of the results. Comments are a part of the verbatim record.

Dr. Gene Burreson, VIMS, said the two risks for the study were a reproductive event and a disease introduction. He said there were international protocols on experimenting with a non-native species. He said one of the primary safeguards was using second generation animals

Commission Meeting**March 28, 2000**

which was being done in this study. He also said VIMS' staff would be screening the animals used in the study for diseases. He said the risk of disease introduction or a reproductive event were acceptably low as long as all study animals were accounted for. Comments are a part of the verbatim record.

Dr. Stan Allen, VIMS, discussed the use of triploidy to prevent reproduction. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Mr. Chris Judy, Maryland Department of Natural Resources, spoke in opposition to the proposal. He said the State of Maryland did not support the introduction of any non-native oysters in their shared waters. Comments are a part of the verbatim record.

Mrs. Frances Porter, VSC, made a detailed presentation on the VSC proposal. She indicated their objectives were to learn about economic viability and consumer acceptance of *ariakensis*. She reviewed the history of the non-native oyster proposals in Virginia. Mrs. Porter then listed the individuals and areas proposed to be used for testing the oysters. She said they planned to follow the recommendations of the VIMS and VMRC staff. Comments are a part of the verbatim record.

Mr. Dale Taylor, speaking as an individual, said he was concerned about the potential loss of the study animals. When asked if his association had voted on the issue, he said they had not.

Dr. Rob Brumbaugh, CBF, handed out a written position statement. He said he was encouraged by the improved proposal after the VIMS meeting. He said he was more concerned about what would come after this study than the study itself. If the project was approved, he encouraged the Commissioners to require all of the recommended conditions. Comments are a part of the verbatim record.

Mr. Doug Jenkins spoke in support of the proposal. Comments are a part of the verbatim record.

Mr. Pete Nixon commented that he thought the risk of this experiment were minuscule when compared to the potential risks from ballast water introductions. Comments are a part of the verbatim record.

Mr. Jeff Crockett spoke in support of the proposal. Comments are a part of the verbatim

Commission Meeting**March 28, 2000**

record.

Mr. Tommy Mason, Chincoteague, stated that he had been growing oysters for 30 years. He said the ariakensis looked and tasted like our oysters, but they grew fast; he said he saw nothing wrong with the proposal. Comments are a part of the verbatim record.

Mrs. Linda Crewe, spoke in support of the proposal; she commented that the only way to see if something would work was to try it. Comments are a part of the verbatim record.

Mr. Tommy Kellam, spoke in favor of the proposal. He talked about the decline of the oyster industry and its bleak future. He mentioned the potential environmental benefit of ariakensis oysters. Comments are a part of the verbatim record.

The public hearing was closed.

Dr. Hull spoke in support of approving the proposal; he mentioned the daily risks associated with ballast water. He said he thought this study had adequate VIMS and VMRC controls and had the recommendation of VIMS. Comments are a part of the verbatim record.

Mr. Davis asked Dr. Burreson about the letter from Mr. Defur that was in their packets. Mr. Burreson said all Mr. Defur's comments had been addressed.

Dr. Hull made a motion to accept the VSC proposal. The motion was seconded by Mr. White and adopted unanimously.

14. REPEAT OFFENDERS.

Mr. Steve Bowman, Chief of Law Enforcement, briefed the Commission.

Associate Commission Member Williams stated that he thought the repeat offender process was double jeopardy and he planned to abstain from votes on those cases in the future. Comments are a part of the verbatim record.

Clarence Elborn - Mr. Bowman said that Mr. Elborn's licenses had been revoked last month and he was requesting an appeal, but he was not able to be present this month; he said the case would be carried over until he could appear.

Commission Meeting**March 28, 2000**

Eric D. Jones - Mr. Bowman said Mr. Jones had been convicted of four violations of possessing untagged striped bass without a permit. He said he was a second time repeat offender whose last appearance was in 1996. Mr. Jones testified that he had been entrapped and had only pleaded guilty to the rockfish violations to protect his father. Comments are a part of the verbatim record.

Mr. White asked if the other members of the Jones family had been convicted. Mr. Bowman said they had.

Mr. Cowart asked Mr. Jones if he had sold illegal rockfish. Mr. Jones emphatically denied selling illegal rockfish. It was noted that his guilty plea in the Isle of Wight Court proceedings had been made freely and with the advice of legal counsel. Comments are a part of the verbatim record.

Associate Commission Member Gordy moved to impose a 60-day probation with further violations resulting in license suspension. The motion failed for lack of a second.

Associate Commission Member Hull made a motion to suspend his licenses for 90 days followed by probation for the remainder of a two year period. The motion was seconded by Mr. Davis. The motion passed 6-1-0, with Associate Commission Member Gordy voting no and Associate Commission Member Williams abstaining.

Patrick Parks - Mr. Bowman said Mr. Parks was a first time repeat offender who had four unculled crab violations in 1999. Comments are a part of the verbatim record.

Mr. Hull moved to impose a six-month probation. The motion was seconded by Mr. Davis and passed 7-0-1, with Mr. Williams abstaining.

Mr. Ballard asked that the penalty guidelines be provided in their books.

Mr. Hull asked if the repeat offender process constituted double jeopardy. Assistant Attorney General Josephson said as a matter of law it did not. Comments are a part of the verbatim record.

15. DISCUSSION: Request for public hearing concerning extension of the crab fishery

Commission Meeting**March 28, 2000****license sales moratorium.**

Mr. Jack Travelstead, Chief of Fisheries Management, briefed the Commission. He said he was requesting a May public hearing to consider extending the moratorium on sales of new crab licenses. He said the moratorium expires on May 26, 2000, but that he saw continued need to control fishing effort in the crab fishery. He said there had been a crab advisory meeting on March 20, 2000 and the Committee was recommending modifying the transfer provisions to allow licenses that had been used to be transferred to another registered fisherman. He stated that the Committee was also interested in adding provisions to allow young people into the crab fishery. He said the initial recommendation had been to let applicants 25 and younger into the fishery and restrict transfers of their licenses. He commented that there would be another crab advisory committee meeting on April 17, 2000, to further work on proposals. Comments are a part of the verbatim record.

Associate Commission Member Hull made a motion to go to public hearing on all items at the May meeting. The motion was seconded by Mr. White. Mr. Ballard commented that he worried about encouraging young fishermen to get into the troubled crab fishery; if it were allowed he'd like to see them not be able to transfer licenses until they were 35. The motion was adopted unanimously.

16. FAILURE to Report Harvest.

Mr. Jim Peters, Fisheries Specialist, briefed the Commission.

Mr. Hall - Mr. Peters said Mr. Hall had some personal problems the previous year and had not wanted to report his harvests. Mr. Peters said he was now up to date on his reports. He said the standard recommendation would be six months suspension with six months probation. Mr. Davis moved to impose a six-month probation. The motion was seconded by Associate Member Birkett and adopted unanimously.

Carlton Haywood - Mr. Peters stated that Mr. Haywood had not picked up his registered letter, therefore, Law Enforcement would serve him personally this month.

17. BRIEFING: Request by the Potomac River Fisheries Commission to purchase seed

Commission Meeting

March 28, 2000

oysters from the Piankatank River.

Dr. Jim Wesson, Head - Conservation and Replenishment, briefed the Commission. He said the Commission had adopted the replenishment program for 2000 at the February 22, 2000 meeting. He said the Potomac River Fisheries Commission (PRFC) had held its replenishment meeting the next day and determined that they needed seed for the south side of the Potomac River. Dr. Wesson said had he known that he would have included it in his original program proposal, and even so, he recommended letting them have 5 to 10,000 bushels of seed and require that PRFC replace the shells the same as the private industry. When asked about the spat count in the Piankatank River, he said it had been running 700-1500 per bushel. Comments are a part of the verbatim record.

Mr. A.C. Carpenter, PRFC, spoke in favor of the request. Comments are a part of the verbatim record.

Associate Commission Member White moved to approve the request. The motion was seconded by Mr. Williams and adopted unanimously.

18. DISCUSSION: Request for public hearing to be held at the April meeting regarding proposed regulations for the relaying of non-commercial aquaculture shellfish from condemned shellfish growing areas.

Dr. Jim Wesson, Head - Conservation and Replenishment, briefed the Commission. He said there were two steps necessary to make the Tidewater Oyster Growers Association (TOGA) request work: 1) define normal oyster floats as depuration containers, and 2) develop a procedure for growers to notify MRC and VDH staff when working with shellfish from condemned grounds. Comments are a part of the verbatim record.

Associate Commission Member Cowart moved to take the proposal to public hearing at the April meeting. The motion was seconded by Mr. Birkett and adopted unanimously.

19. EXCEPTION request for black drum permit.

Ms. Tracy Patton, Fisheries Specialist, briefed the Commission. She said there were 171 permitted fishermen in the black drum fishery with a 120,000 pound annual quota that had not been exceeded since 1994. She said staff was recommending approval on two "one in, one out"

Commission Meeting**March 28, 2000**

exception requests for Mr. Joe Crum and Mr. Ronnie Reed. Mr. Davis made a motion to approve the two requests. The motion was seconded by Mr. Birkett and adopted unanimously. Ms. Patton said staff was recommending denial on three other exception requests:

Edward H. Bender - Associate Commission Member White made a motion to deny the request. The motion was seconded by Mr. Davis and adopted unanimously.

Edward M. Bender - Associate Commission Member White made a motion to deny the request. The motion was seconded by Mr. Cowart and adopted unanimously.

Douglas R. Parker - Associate Commission Member Birkett made a motion to deny the request. The motion was seconded by Mr. Davis and adopted unanimously.

20. LOUIS S. TAYLOR, JR. requests crab dredge license.

Mr. Taylor was not present, and the matter was remanded to the October 2000 Meeting of the Crab Dredge Exception Committee.

For the record: Item 21 was heard after the lunch break.

22. PUBLIC COMMENTS.

Mr. Winfrey Diggs appeared and requested that his crab pot license be reinstated. He said he did not buy his license in 1999, but did not realize this would cause him to lose the license in 2000. He stated that he had already invested thousands of dollars in gear and equipment. Comments are a part of the verbatim record.

Associate Commission Member Cowart asked Mr. Travelstead how many cases there were like Mr. Diggs', Mr. Travelstead said there were 250 similar cases.

Mr. Ballard asked Mr. Diggs why he did not fish in 1999. He responded that he did not have the time. Comments are a part of the verbatim record.

Mr. William Treakle, pound net fisherman, appeared and requested that his pound net license be

Commission Meeting**March 28, 2000**

reinstated. He explained that he had an injury in 1999 that prevented him from fishing the net after January 1999, and he was unable to get a patrol officer to certify that he had fished the net. Comments are a part of the verbatim record.

Associate Commission Member Ballard made a motion to reinstate his license. The motion was seconded by Mr. Williams and adopted unanimously.

Ms. Renee Tyler, speaking on behalf of Danny Tyler, requested that his registration license and crab pot license be reinstated. She explained that he had some personal hardships that kept him from obtaining his licenses since 1995. Comments are a part of the verbatim record.

Associate Commission Member Ballard made a motion to allow him to purchase a registration license. The motion was seconded by Mr. Birkett and adopted unanimously. It was noted that he would have to wait on the crab license.

Mr. Larry Williams from Eastern Shore appeared and requested that his peeler pot license be reinstated. He indicated that he had been in the campground business and had not commercially fished much lately. He said he came last year to ask for an exception and waited at the Commission meeting for twelve hours, but did not get a chance to be heard because the meeting ran late.

Associate Commission Member Gordy commented that Mr. Williams had faced some hardships.

Mr. Pruitt verified that he already had a registration license, and then told him he would have to wait for the outcome of the Commission's decision on the crab license freeze at the May meeting. Mr. Williams asked that he be notified of the Commission's decision. Comments are a part of the verbatim record.

The Commission then discussed Mr. Winfrey Digg's request again. Mr. Pruitt commented that there were 250 similar cases. Mr. Cowart said that they should decide on the other 249 cases too. Commissioner Pruitt remanded the matter to the Crab Committee meeting on April 17, 2000. Comments are a part of the verbatim record.

The Secretary for the Virginia Waterman's Association made a request that the size of the striped bass permit be reduced to a more convenient wallet size. Mr. Pruitt remanded the

Commission Meeting

March 28, 2000

matter to the Finfish Advisory Committee for a recommendation. Comments are a part of the verbatim record.

Mr. Doug Jenkins made a request on behalf of some of the watermen in his area to allow them to participate in the Replenishment Program's seed for shell exchange program. He said there had been some confusion the previous day where a few watermen were not allowed to plant seed on their personal ground that was originally intended for another buyer participating in the program. After some discussion, Mr. Cowart volunteered to give up some of the seed his company had contracted for, if necessary, to make room for the few cases like this that may occur. Dr. Wesson was asked to handle the matter from there. Comments are a part of the verbatim record.

There being no further business to come before the Commission, the meeting was adjourned at 4:45 p.m.

William A. Pruitt
Commissioner

Erik Barth
Acting Commission Secretary