

MINUTES

APRIL 25, 2000
NEWPORT NEWS, VA 23607

The regular monthly meeting of the Marine Resources Commission was held on April 25, 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)

- Fred Fisher) Assistant Attorney General

- J. Paul Woodley Secretary of Natural Resources
- D. Nick Rerras State Senator - Norfolk
- Dr. Phil Larrabee State Delegate - Hampton

- 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
- Warner Rhodes Middle Area Supervisor
- Kenny Oliver Southern Area Supervisor
- Ray Jewell Northern Area Supervisor
- Jeffrey Stonehill Marine Patrol Officer
- Adam Friend Marine Patrol Officer

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Dr. Gene Burreson	Virginia Institute of Marine science
Tom Barnard	Virginia Institute of Marine Science
Lyle Varnell	Marine Scientist, Sr.
Dr. Jim Wesson	Head-Conservation and Replenishment
Jack Travelstead	Chief-Fisheries Management
Rob O'Reilly	Deputy Chief-Fisheries Management
Lewis Gillingham	Fisheries Management Specialist
Jim Peters	Fisheries Management Specialist
Tiny Hutcheson	Fisheries Management Specialist
Tracey Patton	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
Jeff Madden	Environmental Engineer
Gerry Showalter	Head-Engineering and Surveying
Debra Jenkins	Program Support Technician
others present:	
Winfrey Diggs	Ray Koyle
Alan Burgess	Dick Disharow
Kelly Place	Paige Hogge
Jerry Boother	Aaron Brickhouse
Douglas F. Jenkins	Rick Robins
Miles Zimmerman	Tim Daniels
Edward McKay	Bruce Deginder
Alor Grantham Traywick	Richard Welton
Scott Hardaway	Jeannie Butler
Edward E. Kellam	Charlie Sledd

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Roy Davis
Shelby J. Green
James Hall
Charles Williams
Paul Ridel
Bert Kelly
Inge Snead
Elizabeth Hedlund
Bill Jenkins
Annette Christian
George B. Little
Mike Eeigh

John Partin
Robert L. Cunningham
Tom Powers
Ed Nealon
Paul Steele
Randy Abbitt
Dennis Gryder
Susannah A. Warner
William Treakle
Jack Miles
Nate Custer

Commissioner Pruitt opened the April meeting at 9:30 a.m. Present for roll call were Associate Members Ballard, Birkett, Cowart, Davis, and Hull. Mr. Pruitt established that there was a

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quorum. It was noted that Associate Members Gordy and White would be arriving late because of an accident on the Bay Bridge Tunnel. Associate Member Williams was absent. Mr. Gerry Showalter gave the invocation. Associate Member Cowart led the Pledge of Allegiance.

1. Approval of the MINUTES from the previous meeting.

Associate Member Davis moved to approve the Minutes as distributed. The motion was seconded by Associate Member Ballard and adopted unanimously.

** APPROVAL OF AGENDA.

Commissioner Pruitt announced that the General Assembly had passed legislation that would allow the Commission to designate "free fishing days." He said there would be a ceremony at 1:30 p.m. attended by Secretary Woodley, the patrons of the Bill, and representatives from the Game Commission. There being no further changes to the agenda, Associate Member Hull moved to approve the agenda with the modification. The motion was seconded by Associate Member Birkett and carried 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 six, page two items for projects that were over \$50,000 and not contested.

2A. NORFOLK NAVAL SHIPYARD, #00-0345, requests authorization to construct two (2) 42-foot long by 42-foot wide heavy weather mooring platforms and to install two (2) 150-foot long subaqueous electrical power cables adjacent to Piers #3 and #5 at their facility situated along the Southern Branch of the Elizabeth River in Portsmouth.

Permit fee.....\$ 100.00

2B. J. H. MILES & COMPANY, #99-0035, requests authorization to modify an existing permit to include the placement of three (3) timber pilings to anchor a previously authorized 145-foot long outfall pipe at their facility situated along the Elizabeth River in the City of Norfolk.

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Modification - Permit fee not applicable

- 2C. **CITY OF ALEXANDRIA, #99-1482**, requests authorization to modify a previously issued permit related to the rehabilitation of seven existing culvert tunnels within Cameron Run, a tributary to the Potomac River, specifically to revise the stream diversion and erosion and sediment control plan. Recommend approval under all conditions of the previously issued permit.

Modification - Permit fee not applicable

- 2D. **JOE MORRIS, ET AL, #00-0158**, requests authorization to hydraulically dredge approximately 6,111 cubic yards of subaqueous bottom material to provide maximum project depths of minus five feet (-5) at mean low water with a six-inch overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at property situated along Cheswick Lane in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$2,749.95 for the dredging of 6,111 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty for dredging 6,111 cu. yds of State-owned subaqueous bottom @ \$0.45 per cu. yd.....	\$2,749.95	
Permit fee.....	<u>100.00</u>	
		Total
		\$2,849.95

- 2E. **STEPHEN TOBIAS, ET AL, #00-0159**, requests authorization to hydraulically dredge approximately 5,305 cubic yards of intertidal and subaqueous bottom material to provide maximum project depths of minus four and one-half feet (-4.5) at mean low water with a six-inch overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at property situated along Villier Court in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$2,137.50 for the dredging of 4,750 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty for dredging of 4,750 cu. yd. of State-owned subaqueous bottom @ \$0.45 per cu. yd.....	\$ 2,137.50
Permit fee.....	<u>100.00</u>

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Total \$ 2,237.50

2F. VIRGINIA POWER, #00-0065, requests authorization to place 1,000 cubic yards of Class II riprap over an exposed portion of an 18-inch natural gas pipeline crossing the James River near the Chesterfield Power Station in Chesterfield County. A time of year restriction from mid-March through June 30 to protect anadromous spawning species similar to the previous conditions on the time of year restrictions in their permit.

Permit fee.....\$ 100.00

There being no comments from the audience, pro or con, Commissioner Pruitt placed the matter before the Commission. Associate Member Davis asked staff if they were satisfied with the dredge depths in Items 2D and 2E. Mr. Randy Owen responded that the depths were appropriate for the two different cases and in accordance with Commission policy.

Associate Member Davis moved to approve the page two items. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

3. EXECUTIVE SESSION

4. DISCUSSION: Subcommittee report on consent procedures and civil charge matrix.

Commissioner Pruitt noted that the subcommittee he had appointed and consisting of Associate Commissioners Davis and White, Assistant Attorney General, Carl Josephson, and Bob Grabb had met via audio-conference. Assistant Attorney General Fisher indicated that he had a confidential statement from Mr. Josephson that he wanted to present to the Commission in executive session later in the meeting.

Commissioner Pruitt indicated that Associate Member Hull had commented that Item 7, George Little, might also require an executive session. However, he would rather seek counsel's advice in an executive session before making a statement, if that was possible.

Commissioner Pruitt stated that it was his understanding that there was a court case pending regarding, George Little. He then asked counsel if they should proceed with the question or was an executive session necessary to discuss it. Mr. Fisher responded that he would need to know something about the court case. Mr. Grabb indicated that he believed the court case involved the Gaskins Pond ownership issue. Mr. Grabb said he did not believe the property involved in this case concerned the issues pending in the Gaskins Pond court case. Mr. Fisher

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then stated that because the Gaskins Pond issue was not involved with Item 7, there was no need for an executive session on that issue. Comments are a part of the verbatim record.

There was a short discussion on whether the report on the consent order process should be heard before the next items were considered. It was determined that the report would not have an effect on the cases and could be discussed in an Executive Session held later in the meeting.

5. **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. Continued from the March 28, 2000, Commission meeting.

Mr. Randy Owen, Environmental Engineer, presented the Commission with a letter that had been received from Senator Marty Williams in support of Mr. Hionis' application. Mr. Owen provided a copy to each Commission member. Mr. Owen then provided background information on the location and the type of business Mr. Hionis operated. Comments are a part of the verbatim record. Mr. Owen stated that the Virginia Beach Planning Department had discovered the violation and filed a complaint with VMRC staff. Staff then inspected the site and determined that unauthorized dredging had occurred in the absence of a VMRC permit. Mr. Owen said the actual property owners, Ms. Elizabeth A. Hedlund and Ms. Susan Warner, were notified of the violation and given a "Notice to Comply." The Notice to Comply directed Ms. Hedlund and Ms. Warner to submit an "after-the-fact" Joint Permit Application for the unauthorized dredging. Mr. Owen said that on or about December 17, 1999, Mr. Hionis contacted the agency and admitted that he had performed the dredging himself. Ms. Hedlund later indicated in both a telephone conversation and in writing that she was unaware of the unauthorized activity until she was notified by staff on December 9, 1999. The lot where the unauthorized dredge material was deposited was leased by Mr. Dimitrios Hionis. Mr. Owen then stated that staff sent a second Notice to Comply, dated February 3, 2000, to Ms. Hedlund. On February 10, 2000, Mr. Hionis filed the after-the-fact Joint Permit Application.

Mr. Owen said that the Virginia Institute of Marine Science had indicated that the unauthorized dredging activity resulted in minimal adverse impacts to the marine environment.

Mr. Owen then indicated that Mr. Hionis had a history of non-compliance with VMRC. On July 2, 1992, Mr. Hionis received an after-the-fact permit to retain fuel lines and dispensers that had been installed without a VMRC permit. On June 28, 1994, Mr. Hionis again appeared before the Commission requesting after-the-fact authorization to retain an open-pile, marginal wharf

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that had been constructed without VMRC authorization. Mr. Owen said Mr. Hionis was specifically advised by the Commission at that time they did not want to see him before the agency in violation again.

Mr. Owen indicated that staff was satisfied that Ms. Hedlund and Ms. Warner played no role in the current violation. He said staff recommended that Mr. Hionis' after-the-fact application be approved to retain the dredged material on site. However, given Mr. Hionis' role and previous involvement with the Commission in the past, staff considered the degree of non-compliance in this matter to be significant. Mr. Owen further stated that should the Commission elect to assess civil charges in lieu of pursuing further enforcement, that the degree of non-compliance should be considered. Additionally, staff recommended that any approval should include the assessment of triple permit fees totaling \$75.00, and triple royalties of \$18.00 for the dredging of the 10 cubic yards of State-owned subaqueous bottom material at triple the rate of \$0.60 per cubic yard.

Acting Chairman Birkett requested that Mr. Hionis provide his statement concerning the allegations.

Mr. Hionis addressed the Commission. He gave testimony regarding the circumstances surrounding his unauthorized dredging. He said that heavy rains and runoff had filled the boat of his customer and that the boat could not be moved due to shoaling. He said he did not think he needed a permit to save the boat. Comments are a part of the verbatim record.

A brief discussion followed between the Commission members and Mr. Hionis regarding his past violations and a letter he had received from the Virginia Beach Planning Department. Comments are a part of verbatim record.

Associate Member Ballard commented that he was confused about how the dredging saved the boat. Mr. Hionis gave comments regarding the rain and runoff entering the boat. Comments are a part of the verbatim record.

Assistant Attorney General Fisher explained that the letter that Mr. Hionis made reference to did speak to his record.

Mr. Richard Welton, a recreational fisherman and resident of Virginia Beach, gave comments in support of Bubba's Marina and its operations. He said he saw the boat and the water was coming over the side of the bulkhead along with the sand into the boat. Mr. Welton gave comments regarding the history of what Bubba's Marine had done for Virginia Beach. He also felt that there was no intent and malice on Mr. Hionis' part to save the boat. Comments are a part of the verbatim record.

Elizabeth Hedlund, the property owner, addressed the Commission. She said they had inherited this land and it had been in their family since 1929. She made reference to a letter from her attorney that stated her position on this matter. She said after receiving the certified letter from VMRC, her brother went with her to see Mr. Hionis. They gave Mr. Hionis the application and he promised her he would take care of the situation. She said after being served by officers of VMRC, she retained an attorney, Mr. Donald Clark, to help her resolve the matter. Comments are a part of the verbatim record.

There being no other comments, pro or con, Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis commented that he agreed that the sand and debris had to be removed from the boat. Mr. Davis said he visited Mr. Hionis at the site and discussed the matter with him. However, he was concerned about the considerable dredging that was done beyond getting the boat out. He also was concerned about this being Mr. Hionis' third violation. Comments are a part of the verbatim record.

Associate Member Birkett commented that in 1994 or 1995 a severe northeaster occurred that affected his marina almost identically to Mr. Hionis' situation. He said he sympathized with Mr. Hionis on this case. He said he thought there was a law somewhere in the Code that in an emergency situation allowed a property owner to take action to protect property. Mr. Birkett said he would deem this an emergency situation because the boat was locked into the slip and being inundated with water and debris from the highland; he thought this should be taken into consideration when making a ruling on this case.

Commissioner Pruitt commented that he thought Mr. Welton outlined the situation very well when he acknowledged that staff had a job to do and they did it very well. He also agreed that the Commission had the latitude to use common sense and leniency. Mr. Pruitt also agreed that Ms. Hedlund and Ms. Warner did not appear to be at fault regarding the dredging violation.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Davis moved to approve the project and assess a civil charge of \$900. Mr. Ballard said he would second the motion, if it was amended as follows: the civil charge of \$900 would be in lieu of further enforcement and the permit would contain triple permit fees and triple royalties of \$75.00 and \$18.00 respectively. He also wanted it clear that the Commission had found that Mr. Hionis had committed a violation under 28.2-1203 of the Code based on the evidence presented. Mr. Davis was amicable to the amendments. Associate Members White and Gordy requested that the record show that they would not vote on the

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issue because they were not present for all of the testimony. Motion carried 3 to 2.

Civil charge	\$	900.00
Dredge 10 sq. yds. @\$1.80 sq. yds.....		18.00
Triple permit fee of \$25.00.....		<u>75.00</u>
	\$	993.00

- 6. **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. Continued from the March 28, 2000, Commission meeting.

Ms. Heather Wood, Environmental Engineer, briefed the Commission on the location of the marina; she showed the two L-head extensions and the two fuel pump platforms that were illegally constructed. Comments are a part of the verbatim record. Ms. Wood said that she talked with Mr. Abbitt and that he indicated that the L-head extension and the fuel pier extension had existed when he purchased the property from his former partners in 1999. She said Mr. Abbitt informed her that Jones & Frank, the pump installers, told him that they had all the necessary permits and authorizations to install the fuel lines and the pumps. Ms. Wood stated that VIMS indicated that the environmental impacts were minimal. She also said that Mr. Abbitt had relied on his contractors to obtain the necessary permits and was unaware of the pier violation when he purchased the property. As a result, Ms. Wood said staff considered the degree of noncompliance to be moderate in this situation. Should the Commission elect to approve the after-the fact permit and accept a civil charge in lieu of further enforcement, staff felt that those factors should be considered.

Associate Member Davis asked if a letter had been received from the contractor indicating that all the permits were obtained. Ms. Wood responded that she had received a fax from Jones & Frank that listed an inspection from the City of Newport News and approval of the drawings from the City of Newport News' Department of Planning and Development on the Chesapeake Preservation Ordinance.

Mr. Burt Kelly, an attorney with the law firm of Jones, Blechman, Wilson and Kelly and representing the applicant, addressed the Commission. Mr. Kelly explained that Mr. Abbitt was a minority owner of the marina prior to purchasing it. Once he purchased the property, he became a 90 percent owner and was involved in the management and improvement of the marina. Comments are a part of the verbatim record.

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A brief discussion followed regarding who was responsible for the non-compliance, the contractor or the applicant. Comments are a part of the verbatim record. Commissioner Pruitt then placed the matter before the Commission.

Associate Member Davis said this was a non-compliance issue and moved to grant the after-the-fact permit with a \$600.00 civil charge in lieu of further enforcement. Associate Member Cowart seconded the motion. Motion carried 4 to 3.

Civil charge.....	\$600.00
Royalty for additional encroachment over State-owned bottom 968 sq. ft. @ \$0.50 per sq. ft.....	<u>484.00</u>
Total	\$1,084.00

- 7. **GEORGE B. LITTLE, #99-0350**, requests after-the-fact authorization to retain 18 existing low-profile timber groins of various lengths, and two (2) existing timber jetties, constructed and continually maintained since 1974, adjacent to his property situated along the western shore of the Chesapeake Bay in Northumberland County. Continued from the March 28, 2000, Commission meeting.

Mr. Jeff Madden, Environmental Engineer, briefed the Commission and presented slides on the location and description of the property. Comments are a part of the verbatim record. Mr. Madden said staff became aware of the violation as a result a telephone call from Captain Bill Jenkins around January 25, 1999. He said Captain Jenkins informed staff that Mr. Little was conducting work on a jetty at the mouth of Gaskins Pond. Captain Jenkins was concerned that the jetties would close off the mouth of the pond. Staff conducted a site visit on February 5, 1999, and noted 18, low-profile timber groins with total lengths ranging from 65 to 104 feet and spaced at approximately 60-foot intervals along the entire length of the applicant's property. Mr. Madden also noted that there was a 202-foot long timber jetty on the north side of the inlet to Gaskins Pond, located on the south side there was some new construction where Mr. Little had recently repaired a 106-foot long timber jetty. Mr. Madden said he requested that Mr. Little submit evidence of prior authorization or an after-the-fact permit for permission to retain the structures that were built around 1974.

Mr. Madden said on March 4, 1999, Mr. Little submitted a Joint Permit Application requesting authorization to retain, repair, and rebuild portions of the groins and jetty as currently configured. Mr. Madden said the Northumberland County Wetlands Board conducted a hearing on April 4, 1999. At that hearing, Captain Jenkins reiterated his objection to the groins,

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maintaining that the movement of sand was closing off the mouth of the pond. In light of Captain Jenkins' concerns, the Northumberland County Wetlands Board continued the hearing until VIMS could provide further comment.

Mr. Scott Hardaway, a Marine Geologist with VIMS, and Mr. James Davis-Martin, a shoreline Engineer with the Department of Conservation and the Recreation's Shoreline Erosion Advisory Service (SEAS) provided information that the jetties were apparently maintaining the mouth of Gaskins Pond. VIMS also indicated that the cumulative and adverse impacts resulting from this project should be minimal and their belief that the jetties were functioning to keep the inlet open. The Department of Conservation and Recreation's Division of Soil and Water Conservation had commented that the jetties were continuing to maintain the opening of the inlet, and if removed, would cause the inlet to close up. No other agency had commented on the project.

Mr. Madden said staff was concerned that construction activities were undertaken without the benefit of review prior to construction. However, staff believed that Mr. Little's intention was to continue the maintenance of structures which were installed some 26 years ago. As such, staff felt the degree of non-compliance in this matter was minimal. Therefore, staff recommended that the Commission approve the applicant's request with the assessment of an appropriate civil charge in lieu of further enforcement action.

Associate Member Ballard asked if the applicant built the groins or if he purchased the property with the groins already there. Mr. Madden responded that it was his understanding that the applicant built the groins because he believed his property would be destroyed by storms given the fact that his house was almost right on the beach. A brief discussion followed regarding the groins. Comments are a part of verbatim record.

Ed Nealon, a Marine Consultant, addressed the Commission. He said he agreed with what Mr. Madden said and he was prepared to answer any questions.

A discussion followed between Mr. Nealon and the Commission members regarding the construction of the groins and the civil charge. Comments are a part of the verbatim record. Commissioner Pruitt asked if he agreed to the civil charge. Mr. Nealon responded no, but in lieu of the alternatives, he did.

George Little, applicant, addressed the Commission. Mr. Little gave comments supporting the jetties. Comments are a part of the verbatim record. Mr. Little also commented that he would like a general permit for repairs to the jetties, because he did not want to have to continue coming back for a permit every time a couple of boards turned bad.

Commissioner Pruitt requested that Mr. Grabb address Mr. Little's point.

Mr. Grabb said that under Section 28.2-1210 of the Code of Virginia the statute compelled that a structure be maintained and repaired or that it be removed. Mr. Grabb also stated that if the structure was not maintained and repaired, the Commission had the authority to direct removal or undertake removal and seek reimbursement. He also explained that if a structure was illegally constructed, it did not carry with it the guarantee of authorization for maintenance and repair. Mr. Grabb further stated that maintenance and repair per se did not require a permit.

Mr. William Jenkins from Reedville addressed the Commission. He said he owned property on Gaskins Pond. Mr. Jenkins said that the channel was blocked and you could not get in and out of the creek. He presented pictures to the Commission to show his boat and the creek. He also gave comments regarding the sand going over the top of the jetty. Other comments are a part of the verbatim record.

Dr. Scott Hardaway from VIMS addressed the Commission. He gave comments regarding the report he wrote concerning the situation on Gaskins Ponds. He specifically addressed the issue of the removal of the two jetty groins and the impact that would have on the creek. He then presented slides that illustrated the mouth and shoreline of Gaskins Pond in 1937. He also presented an aerial that showed the creek in 1961. A 1973 aerial showed where some of the groins were installed. A 1987 aerial showed the affects of the groin and jetties on the mouth of Gaskins Ponds. Mr. Hardaway also presented an aerial from 1999 that showed the sand beginning to choke up the mouth of the creek; he indicated there was a possible need to maintain the jetties. Comments are a part of the verbatim record.

Ed Nealon readdressed the Commission in rebuttal. He said they would like to have the application approved as submitted with no civil charge.

Associate Member Hull commented that approximately a month ago, he walked the entire length of the beach. He said he was hesitant to apply a civil charge in lieu of further enforcement in this case. Mr. Hull said he had talked with Captain Jenkins on several occasions and he had seen the pictures he presented this morning. However, he also stated that the Commission was required by law to use the advice received from VIMS because they were our scientific advisors by Code. He said the groins obviously had an impact from the pictures they had seen and that they had preserved the beach. Mr. Hull said he did not think Mr. Little should be penalized for things they could not be determined. Therefore, at the appropriate time, he wanted to make a motion to approve the after-the fact permit without any charges.

Commissioner Pruitt declared this was the appropriate time for a motion and accepted the motion. Motion was seconded by Associate Member Cowart.

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Associate Member Cowart commented that he thought the Commission had over the years instructed staff to take situations that were out of compliance through the page three procedure in an effort to bring them into compliance. He said he thought staff should be given the ability to determine the intent in those cases in trying to come up with a civil penalty and to be sure applicants were aware of their rights to come before the Commission.

Commissioner Pruitt said, "for the record," the alternative to come back to the Commission had always been there. After a short discussion, Commissioner Pruitt placed the matter before the Commission. Motion carried unanimously.

Permit fee..... \$ 100.00

- 8. 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 mean low water adjacent to his property situated along the western shore of the Chesapeake Bay in Northumberland County. Continued from the March 28, 2000, Commission meeting.

Mr. Jeff Madden, Environmental Engineer, gave a brief description of the project. He also passed out color pictures to replace the black and white pictures in the evaluation.

Commissioner Pruitt commented that this case was almost identical to the previous one, and since there had already been a detailed briefing on the area and the factors involved, staff could go directly to the recommendation.

Mr. Madden said that Dr. Dalton's property was contiguous to Mr. Little's property. He said Dr. Dalton was very cooperative in every aspect of the staff review. He said staff acknowledged that the initial construction may have been done without a permit and the structures were in place since May 1980 when Dr. Dalton purchased the property. It was also his understanding that the contractor went straight up the beach and installed the groins. Mr. Madden said based on comments received from VIMS, the environmental impacts appeared to be minimal, and the degree of noncompliance also appeared to be minimal. Therefore, staff recommended approval of the after-the-fact request, with the assessment of an appropriate civil charge in lieu of further enforcement actions.

Edward Nealon said he represented Dr. Dalton and he was prepared to answer any questions.

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Associate Member Hull asked if Mr. Tebbs installed the groins at Dr. Dalton's property too. Mr. Nealons responded yes he thought so. A brief discussion followed.

Associate Member Hull commented that the only difference between the two properties was that Dr. Dalton did not own the property when the groins were constructed. He also noted that the contractor that did the project was dead. Therefore, he felt that since the Commission could not get the contractor's input or any information on the installation of the groins, he would move to approve the after-the-fact permit without any civil charges. Motion was seconded by Mr. Cowart. Motion carried unanimously.

Permit fee..... \$ 100.00

- 9. CARTER FILER, #99-1739, requests after-the-fact authorization to retain a 66-foot long riprap crown reinforcement with a spur and a similar 50-foot riprap crown reinforcement over the top of two previously permitted low profile timber groins. 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, adjacent to his property situated along Ingram Bay in Northumberland County. Continued from the March 28, 2000, Commission meeting.

Mr. Jeff Madden, Environmental Engineer, briefed the Commission and presented slides on the project. Comments are a part of the verbatim record. He said staff became aware of the violation during a telephone conversation on August 24, 1999, with Ms. Alor Grantham-Traywick, the applicant's agent. He said he also learned that the Northumberland County Wetlands Board had made a site visit of the Filer property to determine the danger imposed by the failing timber groin. Mr. Shirley from the Northumberland Wetlands Board had inappropriately authorized Ms. Filer to install riprap over the existing timber groin. Mr. Shirley based that authorization on his mistaken belief that the Board's staff could authorize emergency work. However, Mr. Shirley assured staff that Ms. Filer was made aware of the fact that his authorization was only for the 66-foot long groin. Subsequently, Mr. Mal Ransone, Ms. Filer's contractor, installed an additional 50 linear feet of riprap over a second groin. Mr. Madden said staff verified that the riprap over the two groins had been installed without authorization.

Mr. Madden said that on November 4, 1999, the Northumberland County Wetlands Board reviewed the after-the-fact application, but tabled the matter until the next meeting to allow the

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contractor to be present and to review certain modifications suggested by the DCR Shoreline Erosion Advisory Service. He said at a subsequent public hearing on February 9, 2000, the Wetlands Board approved the proposal for the suggested modification that included the installation of three new 68-foot long spurred riprap groins, a new 50-foot T head riprap groin, and the installation of spurs to groins #3, #5, and #8. Mr. Madden stated that VIMS had indicated that the individual and cumulative adverse impacts resulting from the project should be minimal.

Mr. Madden then summarized the project and said that although the installation of the riprap over the existing groin was done without the Commission's authorization, it was clear that Ms. Filer had received inaccurate information from the Wetland Board staff. However, Mr. Ransone was an experienced contractor and he should have been aware of the need for a subaqueous permit before performing the work on the groin at the point where it extended channelward of mean low water. As such, staff considered the degree of noncompliance in this particular case to be moderate. VIMS, however, said the environmental impacts were minimal. Therefore, based on the foregoing, staff recommended that the Commission approve the after-the-fact portion of the project and the remaining new construction, with the assessment of an appropriate civil charge in lieu of further enforcement action.

A discussion followed between staff and the Commission regarding the degree of noncompliance. Comments are a part of the verbatim record.

Malcolm C. Ransone, contractor for the applicant, addressed the Commission. He said the violation really resulted from a two-fold situation. He said the groin was failing and the storm was coming. He said he asked Mr. Shirley from the Wetlands Board to come down and inspect the site. Mr. Shirley looked at the site and Mr. Ransone placed flags on it, and Mr. Shirley took some pictures. Mr. Ransone said Mr. Shirley returned a call to him and gave him the authorization to go ahead with the project. Mr. Ransone then said he had been out of town due to a family emergency and his foreman had received Mr. Shirley's message to proceed with the groin. Comments are a part of the verbatim record. He said he had no intent to break the law, it was just a miscommunication. He said he had been in business 30 years and this was his first time appearing before the Commission. Mr. Ransone said when he returned to town, he had immediately stopped work on the project and he still had not done any additional work.

Commissioner Pruitt commented that this was a unique situation compounded by the fact that the local government had authorized the project.

Associate Member Cowart commented that he had looked at the project and talked with Mr. Shirley. Mr. Shirley indicated to him that he gave permission to do the first groin because he

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thought it was within his authority to authorize the work because it appeared to be an emergency situation. Mr. Cowart said Mr. Shirley also stated that he called the Assistant Zoning Administrator and asked his opinion, and the Zoning Administrator told him, "yes we have the authority to do that." It was at that point, that he called Mr. Ransone and gave him the authority to do the work on the groin. Mr. Cowart felt that it was a miscommunication in the first groin situation. However, the second groin was a different case.

A brief discussion followed between Commission members regarding who should accept the responsibility for the violations. Comments are a part of the verbatim record.

Associate Member Hull gave comments in support of all the parties involved. He said as soon as Mr. Ransone came back into town, he took steps to stop the work. His foreman misunderstood, and Mr. Shirley misunderstood what his responsibilities were with respect to the Wetlands Board. Mr. Hull further commented that he was absolutely positive that no one involved in this situation intentionally did anything that was wrong.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull moved to approve the after-the-fact portion of the project along with the remaining new construction without the assessment of the civil charge. Motion was seconded by Associate Member Birkett. Motion carried 5 to 2.

Permit fee.....\$ 100.00

- 10. BRUCE DEGINDER, #97-1469, requests authorization to construct a 34-foot long by 28-foot private, 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. Continued from the March 28, 2000, Commission meeting.

Mrs. Traycie West, Environmental Engineer, informed the Commission that a full briefing of this case was done last month and if the Commission agreed, the slides could be skipped. Commissioner Pruitt said he thought the Commission was up to date on this matter. The Commission members agreed.

Ms. West said there was one correction in the introductory paragraph on the application. The application had previously stated that it was protested, but the project was no longer being

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protested as the result of the meeting staff had with the Homeowners Association as directed by the Commission.

Ms. West then proceeded with the summary and recommendation. Ms. West said staff met with the Association on April 12 and a consensus was reached between all the members of the Association. The members of the Association said the pier and the boathouse should be at least 20 feet from the property line. Dr. Deginder had agreed to reposition the structure 20 feet from the property line. Dr. Deginder also agreed to only construct one storage shed. Ms. West stated that staff continued to recommend that the storage shed be deleted because they felt a dock box was more appropriate. As such, staff recommended approval of the boathouse structure provided that it was a minimum of 20 feet from the property line and that the storage shed was deleted.

Dr. Bruce R. Deginder said he thought the Homeowners Association meeting was very successful and he appreciated Traycie West taking the time to attend the meeting. He further indicated that he would ask the Commission to approve the revised plan he submitted that had the one upright storage shed for the following reasons: to keep the boathouse electrical connection out of the rain and elements, to allow for minimal storage of life vest, first aid kits, etc. because of the long length of pier and access to get to those items. He said he put the shed behind the steps that went up to the upper deck so that it would have minimal obstruction of the view or any impasse of that nature. Dr. Deginder said there was already one upright storage shed on one of the piers in that subdivision.

There being no further comments, pro or con, on this case, Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to approve the staff recommendation with the condition to delete the storage shed and replace it with a single dock box. The motion was seconded by Associate Member Hull. Motion carried unanimously.

Permit Fee.....\$ 25.00

- 11. **FEDERAL HIGHWAY ADMINISTRATION, #00-0489**, requests authorization to conduct archeological investigations at three (3) 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 Wetlands Board.

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Mr. Ben Stagg, Environmental Engineer, said that the Commission would be acting as the Wetlands Board in this case because Alexandria had not adopted the ordinance.

Commissioner Pruitt commented that King and Queen was operational with their Wetlands Board. He said Mr. Tim Hayes, a former Commission Member, was a member of the new board.

Mr. Stagg said the slides were available for viewing, but they were the same as shown last month. Commissioner Pruitt agreed that showing the slides was not necessary.

Mr. Stagg said the only difference between this case and the one considered at the March meeting was that previously there were soil borings, but now they would be soil cores that would be used on the three sites. He said the Federal Highway Administration was proposing to do archaeological investigations because there had been some comments that there might be some structures or vessels below the surface in the area. Mr. Stagg said staff had some concern with the access to the site and any additional work they may have to do for archeological excavation because it would involve the wetlands. Mr. Stagg then explained how they planned to do the work. Comments are a part of the verbatim record.

Mr. Stagg noted that a public hearing was held in the locality on April 20, 2000, no one attended the hearing except for the agent and a representative from City. VIMS had indicated that the exploratory aspect of the project should have minimal impacts. However, if there was excavation, a restoration plan might be required. DEQ had indicated that no water protection permit was required and no other comments had been received from other agencies. Mr. Stagg said that the exploratory aspect of the project should have minimum long term impacts. However, if excavation was required, the applicant would be required to submit a plan describing the proposed method of action and a plan for restoration of the disturbed area and the replanting of any disturbed vegetation. Therefore, staff recommended approval of the project with the above conditions.

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

Associate Member Davis moved to approve the project with the above noted conditions. Motion was seconded by Associate Member White. Motion carried unanimously.

Permit fee.....\$ 10.00

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12. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-0303, requests authorization to conduct investigations to evaluate subsurface conditions including test borings, penetration soundings, and dilatometer soundings in tidal wetlands adjacent to Hunting Creek, a tributary to the Potomac River, near the Route 1 and I-95 interchange, in Alexandria (related to the Woodrow Wilson Bridge Project). VMRC is acting as Wetlands Board.

Mr. Ben Stagg, Environmental Engineer, noted that this project was also related to the Woodrow Wilson Bridge Project, it was another bore application, and the Commission would be acting as the Wetlands Board in this situation.

Mr. Stagg briefed the Commission and presented slides. He gave detailed background information on the location, the proposed samplings, and soil borings. Comments are a part of the verbatim record. Mr. Stagg also provided information on how the applicant proposed to access the sites: place plywood mats on the ground surface and then drive a drill rig equipped with low pressure ATV tires to access the drill sites; if necessary, temporary causeways would be constructed in very wet soils; all temporary causeways would be removed upon completion of the investigations and the areas would be restored to their original conditions; in areas of tidal flats, the drill rig would be deployed on a barge and floated into position during high tides to avoid the need for any dredging. In addition, any fluids used for the standard soil borings would be containerized and disposed of at an appropriate offsite disposal facility.

Mr. Stagg said a public hearing was held on April 20, 2000 in Alexandria. No one attended the hearing except the agent for the applicant and a City representative. VIMS reported that this project would have minimum impact. DEQ stated no water protection permits were required. Therefore, staff believes this project would have minimal, long term impacts to the wetlands and that the public and private benefits outweigh the potential public and private detriment. As such, staff recommended approval of the project as proposed.

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

Associate Member Hull moved for approval of the project as proposed. Motion was seconded by Associate Member White. Motion carried unanimously.

Permit Fee..... \$ 10.00

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**11180
APRIL 25, 2000**

Meeting recessed for lunch at 12:00 .

Return from lunch at 1:00 p.m.

13. APPLICATION FOR REASSIGNMENT OF OYSTER PLANTING GROUND.

Edward E. and Edward T. Kellam, Lease Number 7335, have applied for the reassignment of their leased ground, which contains 34.97 acres in The Gulf in Northampton County. The renewal is protested by Ms. Yvonne Bagwell.

Associate Member Ballard informed the Commission that he would not participate in this matter because of his company's involvement.

Mr. Gerry Showalter, Head-Engineering Surveying, briefed the Commission. Mr. Showalter stated that Ms. Yvonne Bagwell protested the renewal of the lease because Mr. Kellam had not sufficiently used the oyster ground. Mr. Showalter said he could dispense with showing the slides that showed the location of the oyster ground, if the Commission was agreeable. The Commission agreed. Mr. Showalter stated that he requested the Kellams to submit more detailed information and to document the work they had done on the oyster ground. Mr. Showalter said Mr. Kellam contended that he had used the lease and had provided some information on how he had utilized the lease. Comments are a part of the verbatim record.

Edward E. Kellam addressed the Commission. Mr. Kellam said he had leased the oyster ground in the Gulf for approximately 30 years. He then pointed out that in 1998 he placed 500 bushels of shells on parts of the leases. He also said that he planned to put another 500 bushels on the ground this year if he could get them hauled from Norfolk.

Commissioner Pruitt asked Mr. Kellam if the clams were used for personal use. Mr. Kellam responded yes.

Associate Member White commented that Mr. Kellam had leased oyster ground for approximately 35 or 40 years. He said he had personally reviewed the records that Mr. Kellam had and he had seen him at the courthouse. He said he was a man of good character and he felt his lease should be renewed.

Associate Member Cowart asked if he had planted shells on the ground in years past. Mr. Kellam responded yes.

Associate Member Davis asked if it was possible for the two parties to reach some type of agreement for an amicable settlement. Comments are a part of verbatim record.

James Thomas Hall stated he was present to verify that he did plant shells and clams for Mr. Kellam.

Commissioner Pruitt asked if Mrs. Bagwell was present. After checking the waiting area, she was not present.

Mr. Showalter approached the Commission. He stated that he had a written statement from Mrs. Bagwell, along with three pages of petitions that had been sent to him this morning. Commissioner Pruitt suggested that Mr. Showalter read the letter into the record. In the statement, Mrs. Bagwell expressed several concerns regarding her opposition to the renewal of Mr. Kellam's lease: 1) there had not been any significant production of shellfish within the past 10 years; 2) the lease had not produced commercial quantities of oysters or clams; 3) the statement referred to copies of receipts that were not related to the most recent lease period. Other comments are a part of the verbatim record. Mr. Showalter then presented the written statement to the Commission to be included as part of the record.

Associate Member Hull asked Mr. Hall if he worked for Mr. Kellam. Mr. Hall responded no, but he helped him. Mr. Hull asked Mr. Hall when did he plant the seed. Mr. Hall responded that he helped plant shells in 1998. He said he did not remember the exact year for planting the clams, but it had been approximately four years.

Associate Member Davis pointed out that there was great concern for hundreds of acres of ground that have not been worked; he noted it took the opportunity away from others that wanted to use the ground.

Commissioner Pruitt called again for Mrs. Bagwell. She was not present. Mr. Pruitt then placed the matter before the Commission.

Associate Member Cowart moved to renew the lease to Mr. Kellam based on the fact that Mr. Kellam had done work on the lease in the past; and that Mr. Kellam had historically done work, which was evidenced by his receipts. Mr. Cowart commented that Mr. Kellam's situation was not different from most oyster shore leases in the State because there were only a few acres of good bottom. Mr. Cowart also commented that it was commendable that Mr. Kellam was continuing to work the lease in a polluted area. Motion was seconded by Associate Member Gordy.

Associate Member Hull gave comments supporting the motion because he felt that Mr. Kellam and Mr. Hall testified under oath regarding the work they had done on the leased ground.

Associate Member Davis commented that he could not support the motion because the law required significant use. Mr. Davis said he did not see any significant use in this situation, Mr. Kellam had only spent \$2400 over 10 years and had 20 years with no production, which in his mind, was not significant use. Mr. Davis also stated that Mr. Kellam had substantial acreage elsewhere.

Associate Member Gordy called the question.

Commissioner Pruitt indicated that he had a unique situation in that Mrs. Bagwell had entered the room. Mr. Pruitt then explained to Mrs. Bagwell that her statement was read into the record. Mrs. Bagwell apologized and indicated that she thought the Commission would reconvene at 1:30 p.m. Commissioner Pruitt then gave Mrs. Bagwell two minutes to address the Commission.

Mrs. Yvonne Bagwell addressed the Commission. Ms. Bagwell presented a statement from Dr. Mike Pearson, President of the Virginia Shellfish Growers Association, who had made comments on behalf of the Association. Mrs. Bagwell indicated that the Shellfish Growers Association felt very strongly that there was too much ground in the State of Virginia being "tied up" that was not being used for commercial purposes. She said the Association also had commented that they would hope the Commission would consider very carefully "significant production" as a criteria for the renewal of leases.

Commissioner Pruitt then called for the vote. Motion carried with Associate Member Davis voting no, and Associate Member Ballard abstaining.

15. DISCUSSION: Use of Commercial Hook-and-line at the Chesapeake Bay Bridge Tunnel.

Mr. Rob O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission. He said this issue went back to the February Fishery Management Advisory Committee (FMAC) meeting when Mr. Reynolds, a member of the Eastern Shore Waterman's Association, and a commercial hook-and-line fisherman, requested a 30-hour extension for fishing for striped bass near the Chesapeake Bay Bridge Tunnel. Mr. O'Reilly indicated that at the FMAC meeting in March they

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reviewed the request and voted to approve the recommendation to go forward to the Commission along with the extended hours. However, the recommendation would not apply during the week of Thanksgiving. Mr. O'Reilly stated that staff had looked at the potential impacts from the commercial hook-and-line fishing near the Chesapeake Bridge Tunnel. He then provided information showing the comparison of the striped bass harvest by year and area and the commercial hook-and-line harvest of striped bass by area. He also gave data from the 1998 and 1999 commercial hook-and-line harvest of striped bass in pounds, with a percent of the total for the commercial hook-and-line. Comments are a part of the verbatim record.

Mr. O'Reilly mentioned there were other issues concerning the multi-species limited entry commercial hook-and-line fishery including a Coastal Conservation Association's request to establish an equivalent minimum size limit for the harvest of the summer flounder for both the recreational and commercial hook-and-line fishery and the issue relating to limiting the number of crew members for the commercial hook-and-line fishery. Mr. O'Reilly stated that staff recommended no change to the current regulation governing the use of commercial hook-and-line fishing near structures such as the Chesapeake Bay Bridge Tunnel. Mr. O'Reilly said staff also recommended that a Hook-and-Line Task Force be convened to discuss the issues relating to the commercial hook-and-line fishery, and that the Task Force provide the Commission with recommendations at their August meeting.

The Commission was agreeable to establish the Task Force Committee. Staff then requested that the Commission provide some ideas on the membership.

Associate Member Davis questioned if there would be scientists, recreational and commercial persons appointed to the Committee. Mr. O'Reilly said staff recommends three members from the recreational community, and three persons from the commercial industry, and one Commission member and staff.

Commissioner Pruitt asked for volunteers from the Commission. Associate Member Birkett was agreeable to attend the meetings.

Commissioner Pruitt requested Associate Member White to act as temporary chairman.

Commissioner Pruitt then read the Proclamation regarding the Free Fishing Days into the record.

PROCLAMATION

**By Virtue of the authority vested by the Code of Virginia
in the Commissioner of Marine Resources of the Commonwealth of Virginia,
there is hereby officially recognized:**

Free Fishing Days

WHEREAS, members of the recreational fishing community of the Commonwealth of Virginia have desired for a number of years to have days set aside for free fishing within the saltwaters of the Commonwealth; and

WHEREAS, Senator Nick Rerras of Norfolk and Delegate Phil Larrabee of Hampton were patrons of bills in the Virginia Senate and House of Delegates to authorize the designation of such days; and

WHEREAS, the appropriate bills were approved by the Virginia General Assembly and signed by the Governor of the Commonwealth of Virginia giving the Commissioner of Marine Resources the authority to designate free fishing days in the salt waters of the Commonwealth;

NOW, THEREFORE, I, William A. Pruitt, Commissioner of Marine Resources of the Commonwealth of Virginia, hereby proclaim Free Fishing Days this year for June 2, 3 and 4 as provided by Chapters 110 and 142 of the 2000 Acts of the Virginia General Assembly and in conjunction with the Governor's Angling Extravaganza as part of Virginia Naturally 2000.

Given under my hand and the seal of the Virginia Marine Resources Commission at Newport News, this twenty-fifth day of April, in the year of our Lord, two thousand and in the two hundred and twenty-fourth year of the Commonwealth.

Resources

**William A. Pruitt
Commissioner of Marine**

Commissioner Pruitt then introduced members from the Department of Game and Inland Fisheries, Mr. Charlie Sledd and Mr. Ray Davis.

Mr. Pruitt welcomed Senator D. Nick Rerras and Delegate Phil Larrabee as new members of the General Assembly and said that he had enjoyed working with them during this session.

Commissioner Pruitt then introduced the Secretary of Natural Resources, John Paul Woodley, Jr. and complimented him on his dedication to the natural resources of the Commonwealth. Mr. Pruitt then acknowledged Ms. Jeanne Butler from DEQ along with other members of their staff.

The Honorable John Paul Woodley thanked the members of the Commission and expressed his appreciation to Governor Gilmore for his selections to the Commission. Mr. Woodley then gave comments regarding Governor Gilmore's Proclamation and the possibility of the "Free Fishing Days" becoming a tradition that would encourage recreational fishing for generations to come in Virginia. He also gave comments regarding the first week of June being the Governor's Angling Extravaganza. Mr. Woodley indicated that the Governor was inviting all Virginians and visitors to the State to participate in one of the special programs that would be a part of the extravaganza. He said there would be various businesses, organizations, and other groups that would be offering educational programs, fishing opportunities, tournaments, and equipment promotion and more. Everyone who attended a registered program for the extravaganza would receive a "memo of participation" from the Governor. In addition, special recognition lapel pins would be given to anyone who caught a trophy or citation fish, either from fresh or saltwater during the extravaganza. Mr. Woodley also indicated that a website had been established, (www.getfishing.state.va.us), which would have all the details of the scheduled events and details on how any particular group could participate in scheduling and registering for events as part of the Governor's Angling Extravaganza for 2000.

Mr. Woodley then thanked Senator Rerras and Delegate Larrabee for sponsoring Senate Bill 750, and House Bill 1277 during the past General Assembly Session that made this Proclamation possible. He emphasized that the Bill received unanimous support from the committees, and in the Senate and House, of the General Assembly. Mr. Woodley indicated that this Bill had an emergency clause that would allow the special event to take place immediately and not have to wait until the normal legislation would take effect on July 1. Mr. Woodley then thanked the members of the General Assembly and Commissioner Pruitt for the leadership that brought the Proclamation for the "free fishing days" to the Commonwealth of Virginia.

Senator Rerras gave supportive comments regarding the "three free fishing days." He said he thought fishing was something people should get hooked on because it was healthy and exciting. He then thanked Secretary Woodley, Commissioner Pruitt, members of the Commission, and staff for their outstanding work to ensure that Virginia was a good steward of

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the natural resources. In closing, Senator Rerras said he hoped people would get back into fishing for enjoyment, and that would hopefully bring more visitors to Virginia.

Delegate Larrabee thanked Secretary Woodley, the Commissioner, and the Commission for all their help during this legislative session. He said 13 of his 14 precincts bordered on the Chesapeake Bay or its tributaries and he was very interested in the resources of the Chesapeake Bay. Comments are a part of the verbatim record.

The Commission recessed for 10 minutes.

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 items, 4 and 19 as well as pertaining to flounder issues. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

The Commission returned from executive session and Associate Member Ballard moved that;

WHEREAS, the Marine Resources Commission 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, 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 he motion convening the executive meeting were heard, discussed or considered by the Commission.

Motion was seconded by Associate Member White.

By a show of hands, all the Commission members voted in the affirmative.

16. DISCUSSION: Results of Crab Management Advisory Committee Meeting; request for public hearing.

Mr. Rob O'Reilly, Assistant Chief- Fisheries Management, briefed the Commission on the cull ring regulation adopted by the Commission last month; he said the regulation would be effective July 1, 2000, unless replaced with the adoption of a crab sanctuary. Mr. O'Reilly indicated all 13 representatives from the different Virginia Watermen's Associations, including the Chair, Mr. Davis, attended the April 17, 2000, meeting to discuss the crab sanctuary, as outlined by Dr. Lipcius' of VIMS. Mr. O'Reilly mentioned that there was much discussion regarding a 35-foot depth contour corridor and how it could protect the spawning stock in the sanctuary. Mr. O'Reilly said they discussed the possibility of relaxation of some of the regulations once the sanctuary was deemed effective. However, staff recognized that this process could take several years. He said the Committee also discussed license transfers, the establishment of the apprentice programs, and definitions of active licenses. Mr. O'Reilly indicated that there would be public hearings on those issues at three different meetings in May. Mr. O'Reilly also mentioned that the committee looked at the different ways that those issues could be addressed, such as, the establishment of a review board, give the individuals an additional 30 days regarding their eligibility, and not granting any exceptions at all; but taking the amount of pots and funnelling them back to individuals that had low pot amounts. Mr. O'Reilly then recommended that the Commission encourage full attendance at the next Crab Management Advisory Committee meeting. He said the final results would be presented at the Commission's May and June meetings.

Associate Member Davis gave comments regarding the initial sanctuary location proposals. He said he felt that consideration should be given to an unbroken sanctuary that went from the ocean to the Maryland line. Mr. Davis also commented that a vote was taken at the meeting regarding whether the use of the cull rings should be continued. He said he was concerned that there was a double standard in the use of cull rings because they did not apply equally throughout the Bay. He said the proposed apprentice program and easing the restrictions before the sanctuary proves that it would go against the fundamental problem regarding too much effort.

Associate Member Gordy requested staff to provide more information to the Commission on the cull ring vote referred to by Mr. Davis.

Mr. O'Reilly informed the Commission that on the cull ring vote, only 10 of the 13 members voted. The vote was 6 to 4, and he was unsure whether some members had abstained. Comments are a part of the verbatim record.

Mr. Ballard commented that the fishery had too much gear, and he was unsure why the advisory committee should be spending time developing recommendations on any actions that would put more gear in the water. Comments are a part of the verbatim record.

No action was taken since further work by the advisory committee was scheduled, and public hearings had already been authorized.

REPEAT OFFENDER.

William J. Matelyan, 148-46-1068

Colonel Bowman briefed the Commission on Mr. Matelyan's four violations regarding the possession of hard crabs while peeler scraping, setting illegal crab trap(3 counts), failure to display crab trap license (3) counts. He said this was Mr. Matelyan's first appearance before the Commission.

Mr. Matelyan gave testimony that the crab scrap charges were dismissed and he had never paid a fine. Colonel Bowman explained to him that according to the court records he was found guilty on those charges. A discussion followed.

Acting Chairman White placed the matter before the Commission.

Associate Member Gordy moved to give Mr. Matelyan probation for a year. Motion was seconded by Associate Member Birkett. Motion Carried unanimously.

17. PUBLIC HEARING: Consideration of amendments to Regulation 4 VAC 20-310-10 et. seq., "Pertaining to the Relaying of Shellfish" to establish procedures for the depuration of shellfish raised by aquaculture methods in condemned waters.

Dr. Jim Wesson, Head-Conservation and Replenishment, briefed the Commission on the

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Tidewater Oyster Gardeners Association request for a simple procedure for the non-commercial relaying of shellfish. Dr. Wesson said a few changes were made to 4 VAC-20-310-10 et. seq., to describe the floats that would be used. No negative comments were received on the procedure.

Alan Burgess, President of the Oyster Gardeners Association, said they had approximately 400 members and an extended group of 2,000 who were raising oysters in their back yard waters and creeks. He gave comments of appreciation to Dr. Wesson for simplifying the Code in order to move oysters to clean water and to ensure they were healthy when harvested.

There being no further comments, Acting Chairman White closed the public hearing.

Associate Member Hull moved to adopt the changes to 4 VAC 20-310-10 et. seq. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

18. WILLY BOKELAAR: Review of elver harvest/aquaculture permit.

Mr. Douglas Jenkins addressed the Commission. Mr. Jenkins said eeling in Northern Neck, the Potomac River, and the Tributaries was a very important fishery to them. Mr. Jenkins requested information on the status of the case.

Jack Travelstead, Chief-Fisheries Management, addressed the issue. Mr. Travelstead informed Mr. Jenkins that the permit that Mr. Bokelaar had was good for five years. Mr. Travelstead also explained that Mr. Bokelaar was not harvesting anything this year. He said Mr. Bokelaar's case, for legal reasons, was continued until June 27, 2000. Mr. Jenkins said he misunderstood the purpose of this hearing. Comments are a part of the verbatim record.

19. DISCUSSION: ASMFC Horseshoe Crab Fishery Management Plan.

Jack Travelstead, Chief-Fisheries Management, said this was a legal issue and the Commission had already been briefed on the particulars. He said staff was requesting that the Commission adopt a resolution that would request the Atlantic States Marine Fisheries Commission to allow the Commonwealth of Virginia sufficient time for the Virginia General Assembly to consider authorizing implementation of the provision of addendum one to the Horseshoe Crab Fishery Management Plan. Mr. Travelstead read the Resolution into the record.

RESOLUTION

VIRGINIA MARINE RESOURCES COMMISSION

The Virginia Marine Resources Commission hereby requests the Atlantic States Marine Fisheries Commission (ASMFC) to allow the Commonwealth of Virginia sufficient time for the Virginia General Assembly to consider authorizing implementation of the provisions of Addendum I to the Horseshoe Crab Fishery Management Plan.

WHEREAS, the ASMFC has adopted Addendum I to its Horseshoe Crab Fishery Management Plan (Addendum I); and

WHEREAS, Addendum I requires each coastal state to establish a cap on horseshoe crab bait landings at 25 percent below the reference period landings by May 1, 2000; and

WHEREAS, the ASMFC Stock Assessment Peer Review Plan found that there is a lack of informative baseline stock abundance data on horseshoe crabs; that there is no informative stock abundance data available on the response of the coastwide horseshoe crab population to recent increases in catch and effort in the fishery; that effort data are not available coastwide; and that biological reference points, fishing mortality rates, recruitment indices, and estimates of spawning stock size are not presently available; and

WHEREAS, as a result, Addendum I fails to consider the impacts of its measures upon the Atlantic coastal conch fishery; and

WHEREAS, Section 28.2-203 of the Code of Virginia requires (1) that any regulation promulgated to implement a fishery management plan be based upon the best scientific, economic, biological, and sociological information available; (2) that any such regulation prevent overfishing while achieving optimum yield from each fishery; and (3) that optimum yield means the amount of fish or shellfish which will provide the greatest overall benefit to the Commonwealth; and

WHEREAS, the 152,495 horseshoe crab quota imposed on Virginia by Addendum I is substantially less than the 1.4 million horseshoe crabs previously estimated as the quantity needed to sustain Virginia's conch industry; and

WHEREAS, the Virginia Marine Resources Commission, in recognition of sharp increases in

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catch in recent years and the fact that horseshoe crabs take many years to mature making the population less resilient to fishing, has already established 710,000 horseshoe crabs as Virginia's optimum yield; and

WHEREAS, the Virginia Marine Resources Commission's legal counsel has advised that the Addendum I quota, for reasons stated above, does not need the standards of Section 28.2-203 of the Code of Virginia, also stated above; and

WHEREAS, Article IV of the Compact creating the Atlantic States Marine Fisheries Commission requires that the Commission, more than one month prior to any regular meeting of the legislature of any signatory state, present to the governor of that state its recommendations relating to enactments needed to be made by the legislature of that state in furthering the intents and purposes of the compact;

NOW, THEREFORE BE IT

RESOLVED by the Virginia Marine Resources Commission, that the ASMFC delay its consideration of Virginia's compliance with Addendum I and allow the Virginia General Assembly to consider authorizing adoption of regulations implementing Addendum I during its regular year 2001 Session.

Acting Chairman White placed the matter before the Commission.

Associate Member Ballard moved to approve the Resolution as read. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Associate Member Davis commented that he would oppose the motion, because the scientific data was not clear and they should err on the side of conservation. He then regretfully opposed the motion. Motion was carried 5 to 1.

20. CONSIDERATION of draft agreement with the City of Virginia Beach concerning a Lynnhaven Boat ramp project.

Jack Travelstead, Chief, Fisheries Management, stated that on December 21, 1999, based on a recommendation from the Recreational Fishing Advisory Board, the Commission approved funding for a project for \$332,150.00 for the Lynnhaven Boat Ramp in the City of Virginia

Beach. The funding approval also included the approval of six conditions to be met by the City of Virginia Beach.

Jack Travelstead stated that the city found five of the six conditions acceptable, but proposed that the condition that read, "that the City enact an ordinance requiring only trailer parking in designated spaces and enforce a ticketing and towing policy" be amended as follows:

"Grantee agrees to enforce 'Boat Trailer Only Parking' in the parking areas for boat ramp use and further agrees that only vehicles without boat trailers in the boat ramp area will be towed or ticketed as allowed in Sections 21-2 and 21-380 of the City Code of Virginia Beach related to regulation of parking. In addition, the Grantee will provide signs in the boat ramp parking area which will prohibit any parking other than vehicles with boat trailers."

Mr. Travelstead commented that staff did not think there was any significant difference from the language in the original recommendation. Since the Commission, by vote, approved the exact language for the six conditions, the Commission's approval was needed to make this change.

Acting Chairman White placed the matter before the Commission.

Associate Member Davis stated that persons had approached him about the changes, and he felt it made good sense. He then moved to approve the change. Motion was seconded by Associate Member Gordy. Associate Member Cowart noted for the record that he would not be voting because he was not present for the discussion. Motion carried 7 to 1, with Mr. Cowart abstaining.

21. FAILURE TO REPORT AS REQUIRED BY REGULATION 4VAC 20-610-10 ET. SEQ. "PERTAINING TO COMMERCIAL FISHING AND MANDATORY HARVEST REPORTING."

David F. Chafin - not present. Commercial Registration Number: 349493 2113

Mr. Peters, Fishery Management Specialist, briefed the Commission regarding Mr. Chafin's failure to report in 1997. Mr. Peters said that staff recommended suspension of license for six months followed by six months probation. He said Mr. Chafin was notified by law enforcement to appear at this meeting for failure to report. Mr. Chafin had a previous violation related to

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mandatory reporting.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to adopt staff's recommendation. Motion seconded by Associate Member Hull. Motion carried unanimously.

Anthony Ferguson - not present. Commercial Registration Number: 421193 1278

Mr. Peters stated that Mr. Ferguson had previous problems in 1993 and 1994 and had taken a job elsewhere. He said staff recommended 6 months suspension with 6 months probation. The Commission voted to approve staff recommendation unanimously.

Mr. Carlton Haywood - not present. Commercial Registration Number: 1553932362
Mr. Peters indicated that Mr. Haywood had moved out of the area and asked that his case be delayed until the next meeting, so that he could be served with a letter by a Law Enforcement Officer.

Mr. Patrick Johnson - Commercial Registration Number: 8847931911

Mr. Peters said that Mr. Johnson had been a previous repeat violator and had been put on one year's probation in 1997. He explained that staff had evidence of his fishing activity in the Fall of 1999 without reports being submitted.

Mr. Johnson was present and explained that this was his livelihood and that he had been waiting for the daily tickets from his buyer and then forgot to follow up on it.

Mr. Davis made a motion to suspend his licenses for one month followed by 11-month probation. The motion failed for lack of a second. Associate Member Gordy made a motion to impose a one year probation. The motion was seconded by Dr. Hull and was passed 6-1.

22. Black drum permit transfers.

Ms. Tracy Patton, fisheries management specialist, said they had a single "one in one out" request to allow Mr. Warren Trusch to transfer his license to Mr. Jamie Greene. She said staff recommended the transfer.

Associate Member Ballard made a motion to approve the staff recommendation. The motion was seconded by Mr. White and adopted unanimously.

23. SUMMER FLOUNDER: Request for public hearing on amendments to set recreational fishing measures for the Potomac River Tributaries.

Mr. Lewis Gillingham, Fisheries Management Specialist, explained that the Potomac River Fisheries Commission (PRFC) original summer flounder proposal had been delayed by the Atlantic Marine Fisheries Commission, resulting in their revised regulations not being adopted until April 14, 2000. He said the new PRFC regulations would go into effect on May 15 and in order for the Commission to adopt consistent measures in the Potomac River tributaries they would have to take emergency action this month, followed by a public hearing at the May meeting to make it a permanent regulation. Comments are a part of the verbatim record.

Commissioner Pruitt commented that the recreational fishing community in the Northern Neck supported this action.

Mr. Doug Jenkins, Twin Rivers Waterman's Association, spoke in favor of the proposed regulation. Comments are a part of the verbatim record.

Associate Member Ballard made a motion to adopt the required changes as an emergency regulation, followed by advertisement for a public hearing at the May meeting. The motion was seconded by Mr. Birkett and was adopted unanimously.

24. PUBLIC COMMENTS

Mr. Tim Daniels, Old Point Packing, made a request to transfer some of the fourth quarter flounder quota to the second quarter. He said the second quarter quota had been used up and to avoid discarding bycatch they should consider an emergency action.

Commissioner Pruitt asked what was industry's support for his request. Mr. Daniels said he had contacted other dealers and asked them to call Jack Travelstead to voice their opinion.

Mr. Charlie Amory spoke in favor of the proposal and suggested moving 15% of the fourth

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quarter quota.

Mr. Jack Travelstead, Chief - Fisheries Management, said that moving the quota was an option, but that he had only heard from Mr. Daniels and Mr. Amory about the request. There was a discussion about the potential impact of the change and how it would affect instate and out of state boats. Comments are a part of the verbatim record.

Mr. Tom Powers, Coastal Conservation Association, spoke in favor of the change, stating that it would avoid the discard and waste of bycatch.

Mr. Travelstead said if the Commission was inclined to deal with this request there were two other related issues that could also be addressed. He explained that one reason the second quarter quota had been exceeded was that buyers had failed to provide timely data. He submitted revised regulatory language that would help with the problem. After some discussion, it was decided that striking the clause "before securing to dock" would allow the boat to tie up, but not unload before reporting to the appropriate officer. Comments are a part of the verbatim record.

Mr. Travelstead said there was also a problem with the disposition of catch confiscated after the season had been closed. He said that normally the catch would be confiscated and distributed to the food bank. There was a discussion about ways of confiscating and selling catch. Comments are a part of the verbatim record.

Associate Member Ballard made a motion to adopt an emergency regulation to move 15% of the fourth quarter quota to the second quarter and to approve the regulatory changes discussed to correct the other two problems raised by staff. The motion was seconded by Mr. Cowart and was adopted unanimously.

Mr. Winfrey Diggs, appeared before the Commission to request that his peeler pot license be reinstated. He said he had appeared at several meetings and needed to have this resolved. It was explained that this issue still was not resolved and an exception could not be granted. After some discussion, Associate Member Cowart asked Mr. Diggs to contact him about potentially using one of his company's unused peeler pot licenses.

Mr. Ford Kelly appeared before the Commission to ask why his permit application for a

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boathouse was delayed. Staff explained that the applicant had not yet provided all required information. Comments are a part of the verbatim record.

There being no further business to come before the Commission, the meeting was adjourned at 4:40 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary