

MINUTES

June 22, 1999
Newport News, Virginia 23607

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

William A. Pruitt)	Commissioner
Gordon M. Birkett)	
Lake Cowart, Jr.)	
Sheppard H. C. Davis)	Associate Members
H. Grant Goodell)	
Laura Belle Gordy)	
Henry Lane Hull)	
John W. White, Sr.)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance and Administration
Jane McCroskey		Assistant Chief-Finance and Administration
Linda Hancock		Human Resources Manager
Sandi Austin		Office Services Specialist
Gloria Daniel		Fiscal Technician
Margaret Fonner		Business Manager
Donna Bean		Grants Manager
Jim Uzel		Sr. Programmer/Analyst
Steven G. Bowman		Chief-Law Enforcement
Lewis Jones		Assistant Chief-Law Enforcement
Randy Widgeon		Eastern Shore Area Supervisor
Ray Jewell		Northern Area Supervisor
John Croft		Southern Area Supervisor
Warner Rhodes		Middle Area Supervisor
David R. Drummond		Marine Patrol Officer
Russell Andy Dunton		Marine Patrol Officer

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Tom Barnard
Eugene Burreson

Virginia Institute of Marine Science
Virginia Institute of Marine Science

Dr. Jim Wesson

Chief-Conservation and Replenishment

Jack Travelstead
Rob O'Reilly
Ellen Cosby
Jim Peters

Chief-Fisheries Management
Assistant Chief-Fisheries Management
Fisheries Management Specialist
Fisheries Management Specialist

Bob Grabb
Tony Watkinson
Chip Neikirk
Jay Woodward
Jeff Madden
Randy Owen
Ben Stagg
Tracy West

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

Gerald Showalter

Head/Engineering Surveyer

others present:

Lee Rosenberg
Steve Walls
Todd Loney
Captain Bob Jensen
Philip Thatch
Z. R. Lewis
Tom Powers
Peter R. Cummings
Bob Merten
Everett Lewis
Roger McKinley
Cindy Hall
Bill Bush
Robert Boot

R. G. Sharples
Castle Craddock
Bill Judy
David Marshall
Freeland Mason
Bill Matelya
Hutch
William C. Reid
Donna Roeske
Wayne Lewis
Robert Walston
Beverlee Peters
Mike Hall
Alan V. Monette

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Charles Williams
Paul a. Galloway
Berkley Mitchell
Jimmie Massie
Robert Crisher
Robert Hagge

Neville Reynolds
Rick Woody
Stuart Grattan
Ken Stolle
Doug Reid

and others.

The meeting was called to order by Commissioner Pruitt. Members present: Gordon M. Birkett, S. Lake Cowart, Sheppard H. C. Davis, Laura Bell Gordy, Henry Lane Hull, H. Grant

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Goodell, and John W. White. Associate Member Ballard not present.

Associate Member Cowart gave the invocation.

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

Copies of the Minutes of the meeting held May 25, 1999, had been sent to the Associate Members prior to this meeting. Associate Member White had a correction regarding the spelling of Oberman, it should be Overman. Associate Member White then moved that the Minutes be approved with the correction as distributed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Approval of the Agenda. Commissioner Pruitt commented that staff had been requested to bring a report on the crab issue within 60 days. However, staff needed more time and they were requesting that it be heard in August or September. Commissioner Pruitt then placed the matter before the Commission. Associate Member Davis moved that the crab report be given in August. Associate Member Hull commented that Freeland Mason, President of the Virginia Watermen's Association, was requesting a public hearing in July regarding the peeler pot permit enabling legislation authorized by the General Assembly. Commissioner Pruitt commented that the legislation said it could be interchangeable, but the Commission still would have to address the issue through a public hearing. Commissioner Pruitt said that would be item 15A on the agenda. Commissioner Pruitt then placed the amended agenda before the Commission. Associate Member Goodell moved to accept the amended agenda. Motion was seconded by Associate Member Birkett. Associate Member Hull requested the Commission address the issue on the difference between a commercial and a recreational gill netter, whereas the recreational gill net user had to stay with the net, and the commercial user did not have to stay with the net. Commissioner Pruitt stated that would item be 15B. Motion carried unanimously.

Mr. Grabb, Chief Habitat Management, briefed the Commission on 12 page two items. Mr.

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Grabb explained that those projects involved applications for permits for projects over \$50,000 in cost, for which a public interest review had been conducted and there were no objections or concerns raised about the projects. Staff, therefore, recommended approval for the projects.

LONG BAY DEVELOPMENT, LTD, #99-0640, requests authorization to dredge by clamshell method approximately 10,880 cubic yards of bottom material, of which 6,250 cubic yards is State-owned subaqueous bottom, to provide maximum project depths of minus six (-6) feet at mean low water with a six-inch overdredge tolerance at their existing marina situated along the Lynnhaven River in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$3,750.00 for the dredging of 6,250 cubic yards of new material at a rate of \$0.60 per cubic yard.

Dredging of 6,250 cu. yds. of new material at a rate of \$0.60 per cu. yd.....	\$	3,750.00
Permit Fee.....		<u>100.00</u>
Total	\$	3,850.00

TAZEWELL COUNTY BOARD OF SUPERVISORS, #99-0694, requests authorization to construct an 80-foot long by 35-foot wide concrete bridge with support pier across the Bluestone River immediately south of the intersection of State Routes 721 and 818 in Tazewell County. Recommend approval with our standard instream permit conditions.

Permit Fee.....	\$	100.00
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LEVEL 3 COMMUNICATIONS, LLC, #99-0144, requests authorization to install a fiber optic cable within VDOT R/W along Route 301 from Henrico County north through Hanover, Caroline and King George Counties to the Governor Harry Nice Memorial Bridge at the Virginia/Maryland State line. Recommend a royalty of \$2,075.00 for the encroachment over 2,075 linear feet of State-owned bottom at a rate of \$1.00 per linear foot.

Permit Fee.....	\$	100.00
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LEVEL 3 COMMUNICATIONS, LLC, #99-0601, requests authorization to install by directional boring method, fiber optic cable crossings under Miles Creek in Mecklenburg County and Shining Creek, Great Creek, Sturgeon Creek, Wagua Creek and the Meherrin River in Brunswick County and Buckskin Creek, Gravelly Run, Hatcher Run, Picture Branch, Cattail Run and the Nottoway River in Dinwiddie County. Recommend a royalty in the amount of \$510.00 for the encroachment over 510 linear feet of State-owned bottom at a rate of \$1.00 per

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linear foot for encroachment under each waterway.

Encroachment over 510 ln. ft. of		
State-owned bottom @ \$1.00 per ln. ft.....	\$	510.00
Permit Fee.....		<u>100.00</u>
Total	\$	610.00

HOPE SPRINGS MARINA, LLC, #99-0474, requests authorization to extend two existing commercial docks with associated mooring piles to create 48 new wetslips at their existing marina facility situated along Aquia Creek in Stafford County. Recommend a royalty in the amount of \$3,260.00 for the encroachment over 6,520 square feet at a rate of \$0.50 per square foot.

Encroachment over 6,520 sq. ft. @ a rate		
\$0.50 per sq. ft.....	\$	3,260.00
Permit Fee.....		<u>100.00</u>
Total	\$	3,360.00

SUFFOLK DEPARTMENT OF PUBLIC UTILITIES, #99-0579, requests authorization to install a 16-inch diameter potable watermain to the Route 17, S. B. Hazelwood, Sr., bridge in Suffolk. The watermain will span 2,535 linear feet of State-owned bottom within Chuckatuck Creek.

Permit Fee.....	\$	100.00
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SUFFOLK DEPARTMENT OF PUBLIC UTILITIES, #99-0580, requests authorization to install a 24-inch diameter 1,013 linear foot weatherman to the Route 17. Bennett's Creek bridge in Suffolk.

Permit Fee.....	\$	100.00
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ARMY CORPS OF ENGINEERS, #99-0553, requests authorization to install a 145-foot long by 20-foot wide riprap spillway apron at the Goshen Dam, Lake Merriweather, in Rockbridge County. Recommend standard instream construction conditions.

Permit Fee.....	\$	100.00
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KINGSMILL RESORT, #99-0861, requests authorization to replace an existing floating dock

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with a 200-foot long by 10-foot wide main pier, a 200-foot long by 10-foot wide adjoining pier with ten (10) finger pies, a 66-foot long by 10-foot wide T-head with two (2) fuel pumps and a 5 x 10 roofed cashier's booth and 24 mooring piles adjacent to their property situated along the James River in James City County. Recommend an annual royalty of \$263.00 for the encroachment over 5,260 square feet of State-owned bottom at a rate of \$0.05 per square foot.

Annual royalty for encroachment over 5,260 sq. ft. of State-owned bottom @ a rate of \$0.05 per sq. ft.....	\$	263.00
Permit Fee.....		<u>100.00</u>
Total	\$	363.00

WASHINGTON AND LEE UNIVERSITY, #99-0784, requests authorization to construct a pedestrian bridge crossing of Woods Creek in the City of Lexington. Sixty-eight feet of the 432-foot long span will cross State-owned submerged lands. Recommend our standard instream construction conditions.

Permit Fee.....	\$	100.00
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RICHMOND DEPARTMENT OF PUBLIC UTILITIES, #99-0593, requests authorization to install 325 linear feet of riprap revetments with associated backfill at three (3) locations along a 54-inch water conduit near Powhite Parkway on the James River in the City of Richmond.

Permit Fee.....	\$	100.00
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MOON ENGINEERING CO., INC., #95-1021, requests reactivation and a three-year extension of their permit to perform maintenance dredging to restore maximum depths of -36 feet at mean low water adjacent to their facility situated along the Elizabeth River in the City of Portsmouth. All dredged material will be transported to Craney Island for disposal.

Permit fee not applicable

Associate Member Goodell asked where the spoil would go in 2A, Long Bay Development, LTD. Mr. Grabb responded that the spoil would be placed on the upland, and the applicant would allow it to be watered and used for back fill. He said that was one of the reasons why they had gone to the higher limit on the dredged royalty because the applicant would be making a commercial use of the spoil. Mr. Grabb responded that the square foot and per cubic yards

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charges were calculated differently. Other comments are a part of the verbatim record. Associate Member Goodell then asked why a permit was necessary if the directional boring was going underneath the bottom and not touching the bottom. Mr. Grabb responded it was the same as an aerial crossing of the waterway and a permit was required for encroachment in, on, or over State-owned bottom.

Associate Member Birkett asked if item 2A, Long Bay Development, LTD, had any shellfish involved in the project. Mr. Grabb responded there were none involved in the Long Creek area.

Commissioner Pruitt asked for comments from the audience, pro or con, there being none, the page two items were placed before the Commission. Associate Member Davis moved to approved the page two items. Motion was seconded by Associate Member Goodell. Motion carried unanimously.

DAVID STEARNS, #99-0234. Commission review on appeal by 46 freeholders of property within the City of Norfolk of the April 14, 1999, decision of the Norfolk Wetlands Board to approve an application to replace and backfill 82 feet of existing bulkhead adjacent to the Stearns' property situated along the Lafayette River. Continued from the May 25, 1999, Commission meeting.

Associate Member Davis informed the Commission that his wife was a partner in the law firm of Williams, Mullen, Park and Dobbins, but he had no knowledge of them being involved in this particular case. Mr. Davis also stated that he had no personal interest in the case and thought he could cast an independent vote. Mr. Josephson responded that it was okay.

Mr. Grabb briefed the Commission regarding the discussion at the last meeting on opening the record for submittal of additional information, and the Commission agreed to open the record to allow the parties to submit additional information today. He then suggested that the case be turned over to the applicant in accordance with staff's normal procedure.

Commissioner Pruitt stated that they left off with a request to hear new evidence and they should start at that point. A brief discussion followed regarding the necessity for an executive session.

Eric Schwartz, with the law firm of Mays and Valentine, addressed the Commission. He said his co-counsel, Mr. Ken Stolle, an environmental consultant, and Steve Walls were also

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present. He said they were representing the petitioners, who were appealing the decision of the Norfolk Wetlands Board. Mr. Schwartz distributed a brief that contained all the petitioners position on the Stearns application. Mr. Schwartz said the 46 freeholders that appealed the decision contend that the Norfolk Wetlands Board erred in voting to grant the permit to the Stearns because; 1) no permit was necessary because there was no erosion; 2) even if erosion was found on the property, the proposed means of preventing the erosion was not the least destructive means of preventing the erosion; 3) the Stearns did not own the property on which they proposed to construct a bulkhead.

Steve Walls, with the local firm of a Environmental Specialist Group, addressed the Commission. He said he had been doing wetlands work in Virginia for 22 years, and he had worked for the Corps of Engineers from 1977 to 1990. Mr. Walls then presented slides that showed the bulkhead location, and supportive data for the project. Comments are a part of the verbatim record.

Cynthia Hall, from the Norfolk City Attorney's Office representing the Norfolk Wetlands Board addressed the Commission. Ms. Hall requested an objection to the submission of all the new information being presented today, and that she understood that the evidence that was going to be presented was evidence that could not have been presented to the Local Wetlands Board for their consideration. However, the information being presented today could have been presented to the Wetlands Board, but she stated that she did not think the information was relevant. Ms. Hall also stated that she did not think it was relevant to view property that was not the site they were dealing with in this case. She further stated that she wanted the record to reflect that they objected to this evidence being admitted into the record.

Associate Member Davis asked why she objected to this information being made a part of the record when it was the Commission's position to protect the wetlands. Ms. Hall stated that she objected from a procedural standpoint. She said that the Commission was charged with what the Wetlands Board did based on the record before them at the time the Wetlands Board made its decision. A brief discussion followed. Comments are a part of the verbatim record.

Commissioner Pruitt stated that his interpretation was that the Commission vote to open the record to allow the new information did not differentiate between what they could have given the local Wetlands Board or what they could have submitted later. In addition, the Commission also had at its disposal the ability and the power to remand the matter back to the local wetlands board. However, Mr. Pruitt stated that Ms. Hall's objection would be noted in the record.

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Steve Walls readdressed the Commission. He presented and explained a chart regarding the Virginia Wetlands Guidelines Section on "Criteria for Evaluating Alterations of Wetlands." He said the general criteria B stated "the alteration of the shoreline is ordinarily not justified when there are viable alternatives which can keep and achieve the given purpose without adversely affecting marshes, oyster grounds, or natural resources." Comments are a part of the verbatim record. He said it was clear that VIMS recognized that there was a less damaging alternative that did not require the filling of wetlands. That information was available to the Board, and by the Board's own guidelines, they saw no way that they could have approve the permit. He said if the upland should be protected, the easiest way would be the placement at the interface between the upland and the wetlands, and not make this a project for squaring off a piece of property and to get additional upland. In addition, Mr. Walls said there were other alternatives that would allow the wetlands to stay and function without it being permanently filled in. Mr. Walls then presented a copy of the old plat. Comments are a part of the verbatim record.

Commissioner Pruitt asked Mr. Walls if he said the bulkhead had failed. Mr. Walls responded that he thought it was a freestanding bulkhead all the time.

Mr. Davis asked how many feet of wetlands were at risk on the property. Mr. Walls responded that he thought it was more than 400 square feet.

Eric Schwartz, commented that Mr. Pruitt had indicated that the record was open and there was no restriction on the evidence which could be considered. Mr. Schwartz stated that he believed Section 28.2-1312 (B) clearly allowed the Commission to take such additional evidence as may be necessary to solve any controversy as to the correctness of record. The Commission in its discretion may also receive such other evidence as the ends of justice require. He also said that from the presentation by Mr. Walls, there was no erosion problem in the boat basin, therefore, the application should be denied on that basis. He said title to the boat basin, as stated in the plat, was reserved to the Corporation that developed the neighborhood, which was the Belvedere Corporation, and was now defunct. Other comments are a part of the verbatim record. He said based on all the reasons given, the application should be denied and the decision of the Norfolk Wetlands Board should be reversed.

Ken Stolle addressed the Commission. He gave additional comments on the ownership of the property. Mr. Stolle then addressed the issue of persons coming before the Wetlands Board and asking for permits to build on property where the deeds were not clear. He said because the property owner did not express an objection, it did not give the applicant the right to do something to that property. The applicant did not have a right to do anything to the property unless the legal title had been transferred to them. He said the process had not been followed

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in this situation to deed over the property.

Eric Schwartz readdressed the Commission and informed them that there were procedures in the Virginia Code to accomplish the transfer of properties from a defunct corporation.

Associate Member Goodell asked if the bulkhead was reestablished, squared off and filled, would an easement be established on the property. Mr. Eric Schwartz responded that an easement would have to be conveyed by the property owner. Mr. Stolle also responded that probably what Dr. Goodell was referring to was establishing an easement or adverse possession, but that was an issue that could only be established in the Circuit Court.

Commissioner Pruitt responded that he would agree to the point that the Commission was reviewing whether the Local Wetlands Board had that information on which to base their decision.

Beverly Peters, attorney for Deborah and Peter Stearns, addressed the Commission. She gave comments regarding the title issue and the defunct Belvedere Corporation. Ms. Peters stated that she checked with the State Corporation Commission and they had no record that the Belvedere Corporation had ever existed. She said a prescriptive easement is established by the nature of use of property. She said adverse possession contained five elements; exclusivity, openness to the use, hostile, notorious, and continuous. She then gave comments about justice and fairness of the issue. Comments are a part of the verbatim record. She said the applicants were private owners that wanted to repair their bulkhead. She said the applicants prepared an application in October 1998, and went before the Wetlands Board. The applicants modified their permit in every way that they were asked. The wetlands involved were now 300 square feet. Ms. Peters stated that she had appeared four times to represent the Stearns. She said there was a point where it would become unreasonable and unjust when more money was spent on consultants and legal fees than it took to repair the bulkhead. Ms. Peters stated that the Stearns just wanted to repair the existing bulkhead along the identical line. She said the wetlands affected were not virgin wetlands, they were recolonized due to failure of the bulkhead. She said this was not a freestanding bulkhead. She further stated that the Stearns met all the adverse possession requirements.

Commissioner Pruitt questioned Ms. Peters regarding the recolonized area between the upland and the bulkhead. Ms. Peters responded that land was there before. Mr. Pruitt asked if they were wetlands. Ms. Peters responded no, it was drylands because the bulkhead had originally been adequately protected. Mr. Pruitt asked when did the bulkhead fail. Ms. Peters responded that it had been failing over a period of years.

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Associate Member Davis commented that there were wetlands at the site, but the issue was how long they had been there and how they got there was an issue.

Associate Member Goodell asked if the Stearn's built the bulkhead. Ms. Peters responded no. Dr. Goodell further commented that you had to establish adverse possession by a fence line, dam, or bulkhead. Ms. Peters continued to state that the Stearns had used the bulkhead for 17 years. A discussion followed. Comments are a part of the verbatim record.

Associate Member Hull asked if a survey was done when the Stearns bought the property. Ms. Peters said she had a copy and would provide the Commission with it as soon as she located the copy.

Edwin L. Rosenberg, Manager of Environmental Services, City of Norfolk, and staff member on the Norfolk Wetlands Board, addressed the Commission. He said in some cases they recommended that a new bulkhead be built no higher than the existing marsh if that was a viable alternative and a larger marsh that could be saved. He said it was the City's contention that the area was filled with dredged spoil. He said the Wetlands Board felt there were some alternatives, but after further investigation and looking at the site, it was their assessment that there really was not anything that could be done to minimize the impacts on these wetlands. He then explained the different alternatives such as, marsh toe stabilization, and putting the bulkhead behind the wetlands.

Associate Member Hull asked why the bulkhead could not be replaced in the same footprint. Mr. Rosenberg responded that was the proposal. He said the Stearns's proposal was modified to put it in the same alignment as the old bulkhead. Mr. Hull asked when the bulkhead was put in. Mr. Rosenberg responded that all the records they had were prior to the site being bulkheaded, and there were no records of a building permit.

Ms. Peters readdressed the Commission. She stated that the earliest survey that she had in her file was dated 1982. She then presented the survey to the Commission for their review. She then summarized in rebuttal. She said she wanted to underscore Mr. Rosenberg's comments regarding the preservation of the wetlands. She said by denying the Stearns the right to repair the bulkhead along the existing alignment, a situation would be created where the unprotected soil immediately adjacent would erode. She then asked the Commission to approve the Wetlands Board decision. She also felt that the Wetlands Board took into account all of the evidence.

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Cynthia Hall, Deputy City Attorney with the Norfolk City Attorney's Office, representing the Norfolk's Board, addressed the Commission. She then explained that the Commission's review today of the Wetlands Board's decision was to determine if the Wetlands Board failed to fulfill its responsibilities under the Wetlands Ordinance. Ms. Hall said that Mr. Rosenberg had adequately addressed the criteria that the Wetlands Board considered in deciding whether or not to grant the Wetlands permit and whether the standards in the wetlands law had been complied with. She then explained the title issue regarding the property where the permit would be done is simply not a criteria that could be found in the law that the Commission was charged with enforcing. She said they reviewed the Norfolk Wetlands Law and it was an exact copy of what the model ordinance was from the State law. Ms. Hall then explained that under Section 4 (A) of the Model Ordinance, it did not require that the owner of the property had to get a permit, it stated that any person may obtain a permit. Also under Section 4(A) of the Model Ordinance it set out information for the application that should be in the permit. In addition, Ms. Hall stated that local wetlands boards were not set up to decide title issues.

Ms. Stearns addressed the Commission. She indicated that when they submitted their application for a permit, all they wanted was to replaced the bulkhead in the exact footprint in which it currently existed. She said she had attended seven hearings within the past eight months. She then asked the Commission to take their application into consideration, apart from all the technical and significant data presented today. She said she could not see any evidence that the environmental consultant here today had any basis for representing to the Commission, that it was anything other than what they had found. She said when they moved to this site 17 years ago, the land was dryland. She said every other neighbor fronting the inlet had signed the petition that was submitted to the Norfolk Wetlands Board in support of the application. She said they contacted one of the petitioners, and after talking with her, she withdrew her protest. However, the other 46 petitioners, had never been in her backyard. She then asked the Commission to uphold the decision of the Norfolk Wetlands Board, and she had hope that the Board would recognize the reasonable nature of the request to repair the bulkhead.

Associate Member Goodell asked if the subdivision was registered. Ms. Stearns responded that it was called the West Belvedere Subdivision of Norfolk. Dr. Goodell asked if there was a home owners' association or property owners' association in the subdivision. Ms. Stearns responded no.

Eric Schwartz addressed the Commission in rebuttal. He gave comments in reference to the reasons there were a number of hearings. He said that sometimes there were not enough members present for a quorum, and another time the application was denied by the Board, and it came before the Commission. He also gave comments regarding the bulkhead as it related to

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the 1940 survey plat and the boat basin. He said at the present time, there was no erosion at this site and there were wetlands growing. He also gave comments regarding VIMS' alternate plan to move the bulkhead landward. Mr. Schwartz then gave comments regarding the title insurance company's report that stated conclusively that the owner of the boat basin was the Belvedere Corporation. Comments are a part of the verbatim record.

Ms. Peters addressed the Commission in rebuttal. She said it was true that Mr. Schwartz and Mr. Stolle had been involved for the last few hearings, but there were other attorneys involved before. In addition, she said the petition statement submitted by Mr. Schwartz did not contain Mrs. Castle Craddock's signature and she was not listed as a freeholder that requested this appeal.

Associate Member Goodell commented that he was confused with the permit. He then asked if the applicant wanted to establish a new bulkhead precisely in the same footprint as the existing bulkhead with no modification to the line. Ms. Peters responded that it was not to repair the entire bulkhead, it was to repair the failing portion. Mr. Grabb interjected that the applicant planned to replace the bulkhead along the existing alignment, the bulkhead that fronted on the canal. Mr. Grabb also stated that according to the application, the applicant would construct a 32 foot return wall.

Commissioner Pruitt asked if that plan was what the Wetlands Board approved. Mr. Grabb responded yes. Mr. Grabb further stated that the Wetlands Board approved 300 square feet of fill in wetlands and the 32-foot return wall because there was no permit required to replace the bulkhead along the existing alignment. Commissioner Pruitt stated that was what the Commission was charge with reviewing.

Ms. Peters said that the permit was approved, as modified, as required by the Wetlands Board Guidelines.

There being no other questions, the Commissioner placed the matter before the Commission.

Associate Member Davis commented that the Commission's primary charge was to protect the wetlands. He said he could not vote for something that would take away 300 plus feet of wetlands.

Associate Member Gordy asked what was the Commission's main charge. Commissioner Pruitt responded that the Commission's main charge was to review the Norfolk Wetlands Board's decision in this case as to whether they erred in any way in reaching their decision and the Commission should be guided by Section 28.2-1313 of the Code.

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Carl Josephson, Assistant Attorney General, commented that the Code gave various basis for the Commission's decision. The first one being, if the Wetlands Board, in reaching its decision, failed to fulfill its responsibilities under the Wetlands Zoning Ordinance. Secondly, if the substantial rights of the appellant or the applicant had been prejudiced because of the findings, the conclusions, or the decisions of the board, and if they were in violation of the Constitutional provisions, in excess of the statutory authority or jurisdiction of the Wetlands Board, made upon unlawful procedure, affected by other error of law, unsupported by the evidence on the record considered as a whole, or whether it was arbitrary, capricious, or an abuse of discretion.

Associate Member Goodell commented that he was troubled by the fact that VIMS was a competent authority that had given advice that the wetlands impact may be further reduced by placing a bulkhead landward of the wetlands. He said in the interest of the environment and conservation, the bulkhead should be aligned behind the wetlands to preserve that 400 feet of wetlands. For that reason, he would request that it be remanded back to the Norfolk Wetlands Board, and he had no objection to the rest of the application.

Associate Member White commented that he had not seen any indication that an erosion problem existed.

Associate Member Hull indicated that he had a problem with the survey and the work being done outside the survey without the deed indicating the applicant's ownership of this property.

Associate Member Davis stated that he supported Associate Member Hull's comments 100 per cent, because the Commission's focus was the wetlands issue.

Mr. Josephson suggested that the Commission not rely too much on the title and ownership issue, because the Virginia Supreme Court's opinion in Zappulla versus Crown was right on the point.

Associate Member Gordy moved to uphold the decision of the Norfolk's Wetlands Board in its present form. Motion was seconded by Associate Member Birkett. Motion failed 2 to 5.

Associate Member Goodell then moved that the application be remanded back to the Norfolk Wetlands Board for further consideration, in as much as VIMS had made an excellent suggestion that the toe of the bulkhead be realigned landward of the existing wetlands. Motion was seconded by Associate Member Birkett. A discussion followed.

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Associate Member Birkett commented about open ended bulkheads and how it could back wash and erode the land, and then the marsh and wetlands could invade the area. A discussion followed. Commissioner Pruitt then placed the matter before the Commission for a vote. Motion carried 6 to 1 to remand back to the Norfolk Wetlands Board.

ALAN V. MONETTE, #99-0338, requests authorization to install a 12-foot pier extension and a 1,080 square foot open-sided, double-slip boathouse with an 864 square foot octagonal lighthouse replica above on his existing 175 foot long private pier situated along the Pagan River in Isle of Wight County.

David Bower, Environmental Engineer, briefed the Commission and presented slides. Mr. Bower gave comments on the location and the proposed structure. Comments are a part of the verbatim record. Mr. Bower stated that no protest to the project had been received. VIMS had indicated there were no environmental issues relative to boathouse structure. The lower boathouse was acceptable, and was a replacement for a preexisting enclosed boathouse. However, the second story lighthouse replica was clearly a non-water dependent structure, and could easily be located on the adjacent upland where it would satisfy Mr. Monette's astronomical pursuits. Staff, therefore, recommended approval of the boathouse and denial of the second story structure.

Associate Member Goodell requested clarification of the picture that Mr. Monette presented. Mr. Bower stated that the picture was provided by the applicant, which was taken approximately five years ago. Comments are a part of the verbatim record. Associate Member Davis asked what was the applicant's objection to constructing the structure on the upland. Mr. Bower responded that it was Mr. Monette's preference to have it out on the pier and above the boathouse.

Associate Member White asked how tall would the second level structure be on the boathouse. Mr. Bower responded. A discussion followed.

Associate Member Birkett asked what was staff's main reason for the objection. Mr. Bower responded that it had been the policy of the Commission that projects that were non-water dependent should be located on the upland. A discussion followed regarding non-water dependent structures. Comments are a part of verbatim.

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Commissioner Pruitt stated in the past, that had been the policy of the Commission and the local wetlands boards.

Alan V. Monette, applicant from Isle Wight County, who lives at One Monette Lane, Smithfield, Virginia, addressed the Commission. He said his family had owned the property since 1942. Mr. Monette said his main reason for this request was to provide shelter for his two boats, and it would be something that was worthy, charming, and aesthetic pleasing for everyone. He said it would be a six-sided lighthouse, instead of the eight-sided one described on the agenda. Other comments are a part of the verbatim record.

Associate Member Hull asked how much acreage did Mr. Monette have. Mr. Monette responded that he had approximately 500 acres and 90 per cent of the north shoreline on the Pagan River. Mr. Hull asked how long was his shoreline. Mr. Monette responded several miles. Mr. Hull asked how wide was the river in front of the proposed construction. Mr. Monette responded that it was a big cove there and it was approximately a mile across the river to the other side.

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

Associate Member Davis commented that he was leery of precedence. He wanted Mr. Josephson to address the issue of establishing this precedence. Mr. Josephson responded that the Commission was determining whether the structure was a reasonable use of the subaqueous land. He said the Commission should take into account all the facts that were present. Mr. Josephson also stated that if the Commission approved this application, and a similar project came forward in a more congested area with protestants, he did not think this project should be used as a precedence because the factual situation was different.

Associate Member White commented that he thought it was a good use. Associate Member Cowart commented that he thought it was a good use, in this particular case, because it was in a remote area and he felt the lighthouse would enhance the Pagan River. Associate Member Hull commented that he did not see a detriment in what Mr. Monette wanted to do.

Associate Member Davis moved that the project be approved and that it not be used for any overnight or residential activities. Associate Member Goodell seconded the motion. Associate Member Gordy commented that she did not feel the Commission should put a limit on what the applicant could do with the structure. She said if Mr. Monette had guests or the family wanted to spend the night, she did not see anything wrong with that.

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Associate Member Davis readdressed Mr. Monette and asked if the motion was a problem for him. Mr. Monette responded that it was not a problem from him, but his family might want to use the facility overnight and requested that the Commission not put a limitation on it. A discussion followed.

Associate Member Davis restated the motion to approved the project and that there be no full time overnight use and the project not be used for commercial purposes. Associate Member Goodell accepted to the amended motion. Motion carried 6 to 1, Associate Member Goodell voting no.

JPM, INC., #96-1342, requests authorization to modify a previously issued permit for the construction of a 330-foot long bridge over Heartquake Creek and adjacent tidal wetlands at their property in King and Queen County. The project involves filling 3,060 square feet of vegetated wetlands for the construction of a 120 foot long causeway and the creation of a 7,675 square foot vegetated wetlands mitigation site.

Tony Watkinson, Assistant Chief-Habitat Management, briefed the Commission and presented slides. Mr. Watkinson gave comments regarding the location, and background information on the history of the project. Comments are a part of the verbatim record. Mr. Watkinson said the project had been considered by the Commission on March 25, 1997. At that time, the applicant was requesting a permit to construct a 120-foot long bridge and earthen fill causeway over 10,750 square feet of tidal wetlands. That proposal was denied. However, the Commission relented and approved a 330-long bridge which would span the creek and wetlands. After revised drawings reflecting that decision were received, a permit was issued to the JPM, Inc. for the bridge. JPM, Inc. later submitted a plan to modify the permit to reduce the bridge to a 180-foot long structure and fill 3,060 square feet of wetlands for a causeway. The applicant also proposed to bulkhead a portion of the filled causeway to eliminate the impacts associated with the side slopes of the fill. The applicant then offered to mitigate for the wetland impacts by creating twice the amount of wetlands lost from an upland area adjacent to the project site. The Commission considered the modification request at its November 23, 1998, meeting. At that time, the Commission denied the modification, but agreed to reconsider the request if a complete mitigation plan was submitted. JPM, Inc. has now provided a mitigation plan for the creation of 7,675 square feet of vegetated wetlands from an upland area adjacent to the proposed causeway. The approximate cost for a 330-foot long permitted bridge would be approximately \$150,000 compared to approximately \$106,000 for the filled

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causeway with a bulkhead, and a 120-foot long bridge and mitigation. Mr. Watkinson said although access to this property continues to be available through easements and rights-of-way, the applicant indicated that this route is inconvenient and maintenance access was difficult. The applicant, therefore, would like to construct a bridge and causeway from the mainland portion of their property to the peninsula at the site of a previous crossing. Although the old crossing has reverted to tidal wetlands, several of the old bridge pilings still remained.

Mr. Watkinson stated that a public hearing was held in the King and Queen County Courthouse on May 28, 1999, to accept public comment on this project and the mitigation plan proffered. No one attended to comment on the proposed modification. The proposed project with the bulkhead would result in the filling of approximately 3,060 square feet of a Type XII Brackish Water Mixed wetlands community. These wetlands are classified as Group I wetlands according to the Commission's Wetlands Guidelines, which are of the highest value for productivity and wildlife utility, and are closely associated with fish spawning and nursery areas. Therefore, according to the guidelines, Group I wetlands merit the highest order of protection. The Department of Conservation and Recreation had indicated that the wetlands in the area constitute a significant tidal freshwater community. He said VIMS expressed concerns about the habitat at the site and suggested that the applicant continued to use a access around the property.

Mr. Watkinson said the project was protested by Mr. R. Edward Rhodes on behalf of the Virginia B.A.S.S. Mr. Rhodes had indicated that the applicant should be required to have a plan to replace the wetlands and the habitat that would be destroyed.

Mr. Watkinson said staff felt that the least environmental damaging alternative would be to use the existing rights-of-ways to get to the property and not build anything, or build an open piled bridge. He stated that should the Commission decide that the modified plan was acceptable with the mitigation plan, staff would recommend that the Commission require that the applicant post a bond or a letter of credit in the amount \$8,000, which would ensure that the wetland restoration would be successful.

Associate Member Goodell asked if the mitigation plan called for 7,675 square feet vegetated wetlands, and how many feet of wetlands would be taken. Mr. Watkinson responded that the filled causeway would be 3,060 square feet, which was a little over 2:1 for mitigation.

Stewart Grattan, representing JPM, Inc., and a Civil and Environmental Consultant in Richmond, addressed the Commission. He said since he had appeared before the Commission three times before, he thought it best to just answer their questions. He said at the last

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Associate Member Davis asked if their reason for not doing the permitted bridge was the cost. Mr. Grattan responded yes.

Associate Member Goodell asked who did the mitigation plan for the firm. Mr. Grattan responded that he did. Mr. Goodell asked what were his credentials. Mr. Grattan responded that he was professional engineer and had been doing wetlands work for seven or eight years, and also wetlands consulting, delineating, and permitting in the Richmond area.

Associate Member Davis asked if he worked for someone or was he an independent consultant. Mr. Grattan responded that he worked for himself, Grattan Associates.

Associate Member Goodell asked if he knew the failure of attempted wetlands creation from former uplands. Mr. Grattan said not currently. Mr. Goodell said it was approximately 80 per cent failure. Associate Member Goodell said that much failure would be at least that much for the proposed project. Mr. Grattan said it might be so, he said in his opinion, it was the function of the grade. Dr. Goodell said he did not think \$8,000 would come close to the cost of mitigating and repairing that area.

Commissioner Pruitt asked Dr. Goodell if 80 per cent failure rate was current. Dr. Goodell responded that was Corps of Engineers' data. Mr. Pruitt asked if that included everything, non-tidal as well as tidal wetlands. Dr. Goodell respond that these were all tidal wetlands.

Commissioner Pruitt asked Mr. Barnard if any improvements had ben made over the recent years regarding the success of mitigation of wetlands. Mr. Barnard responded that there had been some improvement in the process over years, but he could not dispute the 80 per cent success rate.

Mr. Grattan said in the design of this proposal, he had direct contact with VIMS and he had talked with Kirk Havens. He said if the grade was right, demuck the impact site, stock pile the organic topsoil, and the natural sea stock would come up and give the proper hydrology. A discussion followed.

James P. Massey, Jr., addressed the Commission. He said he and his wife purchased this property a number of years ago because the children wanted it for outdoor activities and to enjoy what was there. He then responded to Associate Member Davis' question regarding the

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old crossing. He said when they purchased this property and saw the old pilings and causeway there and he thought they would only need a replacement at the old crossing. He said it never occurred to him that he would be doing what he was doing today. Other comments are a part of the verbatim record.

A discussion followed regarding the mitigation plan and easement. Comments are a part of the verbatim record.

Mr. Massey said they would consider using a conservation easement on this property. He said going through the permit process was making it more difficult for him to consider the easement matter, because this would put his children and future generations answerable to a body of people. Commissioner Pruitt asked how he felt about his son-in-law's mitigation proposal and asked if he was comfortable with the proposal. Mr. Massey responded that he was not a technician, he could not dispute Dr. Goodell's comments, but they would do the best that they could to mitigate.

Associate Member Hull asked what was the total acreage of his property. Mr. Massey responded that it was approximately 700 acres. Mr. Hull asked how far was the bridge site upstream from the Mattaponi River. Mr. Massey responded approximately half a mile.

Associate Member Cowart commented that Mr. Massey certainly had an appreciation for the land from the farm standpoint and the conservation easement idea was a very strong idea. Mr. Cowart said that although Mr. Massey had indicated that he was thinking about the conservation easement idea, but he did not want to commit himself, it was the best way to preserve this land. Mr. Cowart said he felt Mr. Massey was not putting in the causeway in order to develop the land, but was just trying to have access to something that he owned. Mr. Cowart said with some proof of performance on the mitigated area, he would be inclined to support his application at this point.

Associate Member White commented that Mr. Massey had appeared three times before the Commission and he felt he was a dedicated conservationist, and he planned on supporting the proposal.

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

Associate Member Davis commented that he was apprehensive about the proposal because of the wetlands involved, and because a permitted bridge had been approved which would avoid

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the problem. He did not feel money was an issue because they were substantial people.

Commissioner Pruitt commented that he disagreed that money was the issue.

Associate Member Birkett commented that the last time this proposal was before the Commission, JPM, Inc. was advised that if they brought back an approved mitigation plan, the Commission would approve this project. He said they had lived up to their part of the bargain and the Commission should live up to theirs. He said there had been no proof that the mitigation plan was unsatisfactory.

Associate Member Hull said he was in support of Associate Member Birkett's comments. Other comments are a part of the verbatim record.

Associate Member Gordy moved to approve the application. Motion seconded by Associate Member Hull.

Associate Member Goodell commented that staff had recommended an \$8,000 bond and he felt it was the Commission's obligation to make sure that the mitigation was carried out successfully. He also suggested that \$8,000 was not adequate to see that the mitigation plan would be carried out, and he, therefore, felt the amount should be raised to \$16,000 to insure the work was done and the mitigation plan was successful.

Associate Member Gordy asked if staff went back to reviewed the mitigation site to insure that they were carried out. Mr. Watkinson responded that they went back to all permitted projects and would check the mitigation site. He said JPM, Inc. had included a plan to monitor the mitigation site for the next five years to see if it was working. Motion carried 5 to 2 without a requirement for a bond.

Meeting convened for lunch.

Reconvened from lunch.

WILLIE E. BUSH, #99-0340, requests authorization to dredge a total of 280 cubic yards of State-owned submerged bottom to provide a channel with maximum depths of minus five (-5)

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feet (MLW) into "old House Cove," and embayment of Dividing Creek in Northumberland County. Protestants include the adjacent property owners and an oyster ground leaseholder.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Mr. Madden said Mr. Bush proposed to removed the sandbar and provide access to the area. He said the material would be moved to an upland disposal site, which was 4,000 square feet in sized. He said the project was protested by Mr. and Mrs. Archer Copley, who own land adjacent to the proposed dredge cut, and Mr. Melvin Frame, who owned the riparian property within the cove and leases oyster planting ground near his property. Mr. Madden indicated that Mr. and Mrs. Copley were concerned that the location of the dredge cut was not in the area of the natural channel, and located too close to their pier and boathouse. The Copleys were also concerned that the location of the dredged cut was too close to their dock. Mr. Madden said according to the best management practices handbook the minimum buffer distance was 15 feet to the wetland, and Mr. Copley was 34 feet from the site, which was twice the distance from the dredge cut.

Associate Member Cowart asked what was the total distance across the mouth of the creek. Mr. Madden responded that it was approximately 200 feet.

Mr. Madden said staff felt that the applicant had addressed the issues raised by the protestants concerning the potential impacts of off loading dredge spoil by moving the dredged placement site. Although Mr. Copley's pier and boathouse were located within 34 feet of the dredge cut, it appeared the proposed channel was properly located and there should not be any impact to a properly designed structure. Accordingly, staff believes that the project is consistent with the Commission's subaqueous guidelines and there should be minimum impacts on the marine environment, while providing needed navigable access to the upstream property. Staff recommended approval of the proposed dredging of 280 cubic yards of material to provide a maximum dredge depth of -5 feet of mean low water with the standard dredge conditions and the assessment of a royalty in the amount of \$126.00 at a rate of \$0.45 per cubic yard. In addition, staff would perform a pre-dredge site visit and a post dredge bathymetric survey would be required. He said the pre-dredge site visit would include the contractor, the applicant and staff.

Roger McKinley addressed the Commission. He said that when they first started the project, they chose a spot off the Copleys' pier because the bathymetric studies at the site showed the least amount of impact in the cove regarding the amount of material to be dredged and the amount of material to be handled. He said that was the reason for locating it 34 feet from their pier. He said they tried to take Mr. Copleys and Mr. Frames concerns into consideration by moving the spoil site and then having VMRC staff go out and ascertain that the site they had

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actually chosen was the best place for the channel and provided the least amount of impacts to the cove. Mr. McKinley then requested the Commission uphold staff's recommendation for approval.

Associate Member Hull asked if there was any opposition when Mr. McKinley appeared before the Northumberland Wetlands Board. Mr. McKinley respond none other than the two that were in the file. Mr. Hull asked what was the vote of the board. Mr. McKinley responded that the vote was 5 to 1 in favor.

Associate Member Goodell asked where the spoil would go from the maintenance dredging in the future. Mr. McKinley responded that the spoil material that was there would not remain. Once it had dewatered and the spoil was suitable to be removed. The spoil would be moved to another site already approved by the County.

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

Associate Member Hull asked if Mrs. Tribble had made any comments about the proposed project. Mr. Madden responded that they were notified by the regular advertising. Mr. Hull asked what was Mr. Frame's position at the present time. Mr. Madden responded that he still maintained his opposition to the project. He said Mr. and Mrs. Copley also still sustained their objection to the project because of the location of the dredge cut and the spoil site. Mr. Hull asked if Mr. Frame was concerned that his oyster shore would be affected. Mr. Madden responded that Mr. Frame eluded to that in his letter. Mr. Hull asked about VIMS' position on the project.

Thomas Barnard, from VIMS, then addressed the Commission. Mr. Barnard stated that the dredging was a temporary occurrence, therefore, the impacts should be short-termed. He said it was mainly dealing with sand-sized grain fractions, which settled out in the water column fairly quickly so that you did not get a great deal of turbidity. He said the only negative thing they saw was that there would be maintenance dredging in the future. Acting Chairman White requested Mr. McKinley address the issue. Mr. McKinley responded it was 900 feet to the oyster shore.

Mr. Barnard responded to the earlier question. He said as long as you were dealing with the sand fraction and the 900 feet, there should not be a problem. Also, as long as there was no appreciable silt fraction within the area to be dredged, the sand should settled out and not have any affect on the oyster beds. Mr. Hull asked what would happen if silt was found. Mr. Hull

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asked if Mr. McKinley had done any boring. Mr. McKinley responded that they had done grab samples, but not any deep mooring. He said in the area that they were digging it would only be three to four feet to get to the -5 feet. He said his experience had been in the past that they would only get sand there.

Associate Member Hull moved to approve the project pending additional borings to determine the exact nature of the material to be dredged. Associate Member Gordy seconded the motion. Motion carried unanimously.

Permit Fee.....\$ 25.00

RAPPAHANNOCK PRESERVATION SOCIETY, #99-0773, requests authorization to construct ten (10) 600-foot diameter oyster reefs composed of prefabricated concrete modules placed in the lower Rappahannock River from Urbanna to Windmill Point.

Jay Woodward, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. Mr. Woodward gave background information on the previous permit issued on February 22, 1994, to the Rappahannock Preservation Society (RPS) for construction of two 900-foot diameter artificial reefs. Comments are a part of the verbatim record. He also provided the Commission with information on the March 28, 1995, denial request by RPS to construct two additional artificial reefs in the lower Rappahannock River near Parrot Island and Sturgeon Bar. Mr. Woodward provided information on the May 27, 1997, Commission's decision regarding consideration and granting of a request by RPS for a three-year extension of the original permit for the two permitted sites until May 31, 2000. Comments are a part of the verbatim record. Mr. Woodward said the current request by RPS was to construct ten additional reefs in the lower Rappahannock River using prefabricated modules designed by Reef Technologies, Inc., a design agent for RPS. The proposed reefs would be located in water approximately 20 feet deep to provide a minimum of 12 feet of open water above the structures at low tide. All ten of the sites requested were located on public oyster grounds.

Mr. Woodward said on June 1, 1999, staff and Dr. Wesson, and the crew of the oyster Repletion Vessel, J. B. Baylor, inspected the proposed reef sites. SCUBA observations were also made of the existing reef at Steamer Rock to determine the status of oyster recruitment on the structures. These observations revealed the presence of live oysters and other fouling organisms. The live oysters were removed for analysis by VIMS. The histological analysis of oysters taken from the Christchurch reef site in April of this year and indicated that seven out

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of ten sampled oysters were infected with MSX. Samples of the oysters taken from Steamer Rock indicated one out of ten were lightly infected with dermo, and none of the oysters were infected with MSX. No other pathogens were found.

Mr. Woodward said Dr. Wesson felt that large pieces of concrete were not optimal substrate on which to build an oyster reef. Dr. Wesson estimated the density of oysters on Steamer Rock to be equivalent to the density found on natural 2-dimensional oyster bottom on the Baylor Ground. Dr. Wesson also did not believe that the horizontal surface, represented the best type of substrate for oyster settlement given the amount of siltation. He also felt the only site that might be appropriate for new oyster reefs would be Windmill Point and Towles Point. However, he recommended that RPS use the existing Steamer Rock and Christchurch Rock sites and they be built out to completion before permitting any additional areas.

Mr. Woodward said although VIMS could not quantify the potential for adverse environmental impact, they questioned whether the proposal was the best use of approximately 65 acres of State bottom. The Department of Conservation and Recreation indicated that there were natural heritage resources in the area, but the distance and activity to the resources should not result in adverse impacts. The Department of Environmental Quality indicated that they would waive their requirement for a Virginia Water Protection Permit, and the Department of Health found the project acceptable. Mrs. Vanlandingham, Division of Shellfish and Sanitation Field Director, indicated by fax that they would be willing to take samples from Steamer Rock and Christchurch and do heavy metal and pesticide analysis when they sampled that area in the fall. No other agencies have commented on the proposal to date.

Mr. Woodward said staff had contacted Omega Protein, as a representative of the menhaden industry, and did not hear any adverse comments from them. In addition, staff solicited comments from three independent watermen's associations in the area and the Chesapeake Bay Foundation, and no formal comments were received. Mr. Woodward said that Dr. Wesson was also currently in the planning stages for several new oyster shell reefs and traditional shell plantings in the area of the Lower Rappahannock which were in close proximity to several of the proposed RPS sites. Therefore, staff believed this could create a future management conflict for those areas. He said that there were approximately 11 acres of available bottom remaining at Steamer Rock, and staff felt it would be prudent to deploy the new reef modules at that site for evaluation prior to approving additional sites. Mr. Woodward said that the Christchurch Rock did not appear suitable for any additional rubble material at that site. However, the remaining 14 acres of bottom at that permitted site may be appropriate for the new reef design. Staff also believed that more information on the engineering specifications of the new design would be required before any of the units should be allowed to

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be deploy at the existing reef sites. Accordingly, staff continued to applaud RPS for their innovative ideas for habitat enhancement and oyster restoration in the Rappahannock River, but staff was unable to recommend approval of any new sites until the existing sites were built out to completion.

Mr. Bob Jensen presented a video that demonstrated fouling organisms were present on the permitted sites, and there was oyster recruitment on the structures. Comments are a part of the verbatim record.

Mark Reinhart, photographer in the United States Navy, gave comments regarding his two dives on the reefs. He said two years ago when he dove on the rocks, there was very little growth, but now the growth was quite thick on Steamer Rock. Other comments are a part of the verbatim record.

Mr. Jensen readdressed the Commission. He gave comments in support of habitat in the Rappahannock River and the RPS proposal. Comments are a part of the verbatim record. He then presented a two-page document to Commission members regarding science and technology of artificial aquatic reef design; assignment of 67 acres of state owned bottom in the Lower Rappahannock River; VMRC becoming a partner in the project costs; citizens of the Commonwealth and Lower Rappahannock River benefiting from this project; watermen and women working on the project; and management of the project.

Associate Member Davis commented that he was very supportive when the private sector came forward with positive ideas. Mr. Davis asked if his proposal could work in the additional land at the old permitted site, and just place the new modules down with a separation. Mr. Jensen responded that the new modules would attract oysters. He stated that he did not want to compromise his science theory. A discussion followed.

Associate Member Goodell commented that it seemed to him that there was plenty of room on the two existing sites.

Associate Member Davis asked Mr. Jensen what was his favorite site out of the 10 proposed sites. Mr. Jensen responded the ones below the bridge, starting with C and working up, but the Windmill Point site was his favorite because it was the one most seaward.

Associate Member Gordy asked why the Commission was considering this proposal for ten more sites, when the other two sites were not complete. Mr. Jensen responded that the first two reefs were finished as a gift from the McLean Corporation, who had the contract to repair

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the Norris Bridge. He said his bargain with McLean was that he would get the permits, and the design and they would construct it to his specification, which they did.

Associate Member Cowart asked Mr. Jensen where his funding was coming from for this project? Mr. Jensen responded that he was hoping his funding would come from a grant from the Department of Environmental Quality and he was working with Mr. Michael Murphy, the same person that Dr. Wesson had been working with. He said they were competing for 500,000 of NOAA money.

Commissioner Pruitt opened the public hearing.

Freeland Mason, President of the Virginia Watermen's Association, addressed the Commission. He said the Virginia Watermen's Association adamantly opposed any additional structures on Baylor ground.

Charles Williams, from Omega Protein, addressed the Commission. He said they were opposed to this project. However, they supported the oyster reef replenishment program. He said they had contributed personnel, vessel, and equipment to help build artificial reefs, but he did not feel any more obstructions were needed, particularly below the Rappahannock River Bridge.

There being no further comments, pro or con, from the public, Commissioner Pruitt offered Mr. Jensen the opportunity to rebut any negative comments.

Mr. Jensen addressed the Commission and said he appreciated the kind attention the Commission had given him, but he did not appreciate the professional discourtesy on numerous occasions. Commissioner Pruitt commented that he was not sure what Mr. Jensen was referring to, but explained to Mr. Jensen that he had requested use of State-owned bottom and the Commission was charged with granting or denying such permits or modifying the request. If it was a personnel matter, he could write a letter and send it to Mr. Pruitt's attention.

Commissioner Pruitt placed the matter before the Commission.

A discussion followed between Commission Members regarding the number of sites. Comments are a part of the verbatim record.

Commissioner Pruitt asked Dr. Burreson if building an oyster reef based on what was known from historic accounts of the 1800s was what was being done by the proposal.

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Dr. Bureson responded that based on VIMS' evidence from monitoring, the shell reefs that had been constructed, represented the way they were historically. He said they still felt the shell reefs were the optimal way to design a reef. He said he did not know if the structure Mr. Jensen proposed would collect oysters. He also said felt that the structure could be built on one of the existing permitted sites.

Associate Member Davis asked if Mr. Jensen could go back on the permitted site and build the structure he was proposing. Mr. Grabb responded no, because when the permit was modified the last time, the Commission had indicated that in keeping with the Chesapeake Bay Habitat guidelines, the chunks should be no larger than basketball size. A discussion followed. Mr. Grabb said that if the Commission thought the proposal had merit, and authorized the proposal to be placed at the two existing sites, staff would have to look at the modules and make sure that they could work at those sites.

Associate Member Goodell felt that this proposal was a fishing expedition. He suggested Mr. Jensen prove that the 10 sites would work before the Commission approves the proposal. Associate Member Goodell then asked Dr. Bureson if the two sites that Mr. Jensen had chosen had a normal fouling community that existed with a hard substrate, and if there was any indication that the sites had a different ecology as opposed to an oyster reef ecology. Dr. Bureson responded that Dr. Jim Wesson could better answer that question because he dove on the reef, but it was his understanding that it was a normal hard substrate fouling community there, and it was no richer than adjacent hard bottom areas.

Dr. Jim Wesson responded that they did dive on the reef and they could see six or more feet and the community there was the same as you could see on any sort of solid hard structure. Other comments are a part of the verbatim record.

Associate Member Davis asked if he had any objection to the Windmill Point Rock site. Dr. Wesson responded no, and he had recommended that site in his briefing.

Associate Member Hull commented that in April, the Virginia Watermen's Association hosted Mr. Murphy from DEQ to give a presentation on the proposed Virginia Oyster Heritage program. Mr. Hull said in his view, he felt this proposal would, in a sense, become a preemptive strike against what DEQ was planning. In addition, Mr. Murphy made it clear, he wanted the watermen's input and he wanted the watermen to help select the sites. He said if the Commission were to approve Mr. Jensen's proposal, they would be cutting off other avenues being opened. Therefore, he could not approved any of the proposal at this time.

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Associate Member Davis said he disagreed with the comments made by Mr. Hull and he felt it was bureaucratic and it would shut down the free market.

Commissioner Pruitt commented that he thought Mr. Jensen should be allowed to continue with the two existing reefs.

Associate Member Davis moved to amend the permit and allow placement of the new modules on the two existing rocks at Steamer and Christchurch. Motion was seconded by Associate Member Goodell.

Associate Member Hull asked why the motion was necessary since the sites were already approved. Mr. Grabb responded that in 1994, after the Norris Bridge was replaced and the full buildout had not been completed. Mr. Jensen was looking for material from the Ford plant. He said there was some discussion of the nature of the material and the size. The Commission modified the permit and authorized additional placement at the Christchurch and Streamer Rock sites, provided the pieces were no larger than basketball size. The new modules are larger, therefore, they would not be consistent with the previous condition. Mr. Grabb said the motion would be amending the original permit.

Associate Member Goodell requested an amendment be added that this would be done with on-site by VMRC's staff and VIMS. The amendment was acceptable to Mr. Davis. Commissioner Pruitt called for the vote. The motion carried unanimously.

PUBLIC HEARING ON VGP#1: Commission consideration of changes proposed by the Virginia Department of Transportation (VDOT) to Virginia General Permit VGP#1 for projects which conform to certain criteria and are undertaken by VDOT in, on or over State-owned subaqueous lands anywhere within the Commonwealth.

Commissioner Pruitt commented that the Commission had review the information in their packages and a detail briefing was not necessary.

Jay Woodward, Environmental Engineer, gave background information on the Virginia General Permit # 1 (VGP#1). Comments are a part of the verbatim record. He said that staff had requested a public hearing several months ago regarding changes proposed by the Virginia

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Department of Transportation to the General Permit for projects undertaken by VDOT on State-owned bottom. Mr. Woodward informed the Commission of the one change he felt should be brought to their attention that dealt with the deletion of the natural trout water review requirement. He said staff's recommendation was that the Commission accept the proposed changes, as modified and presented in the current draft, and authorize staff to conclude the formal regulatory adoption process, with the effective date to coincide with the conclusion of that process.

Ricky Woody, the Aquatic Ecology Program Manager for the Department of Transportation, addressed the Commission. He thanked the Commission for considering the modifications and the Habitat Advisory Committee for their thoughtful discussions in review of their proposed changes. He said the General Permit benefited both agencies and would help to ensure that the General Permit was available for VDOT to use in the future. Mr. Woody then requested the Commission's positive consideration of the proposed General Permit changes. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Philip Thatch, of the Sierra Club, addressed the Commission. Mr. Thatch requested clarification on the staff's recommendation dealing with Section 4 (f) 2 regarding the trout water review requirement. Mr. Woodward responded and explained the reason for trout review requirement. He said VDOT had requested that part be deleted in light of the review through the Game Department and the Federal Agency but they felt it was better to leave the condition in. He said in Section 4 (f) 6, he said he felt "historical" should not be removed. Mr. Woodward responded that "historical" could be fixed because it referred to architectural structures.

There being no further comments, the public hearing was closed. Mr. Pruitt then placed the matter before the Commission.

Associate Member Goodell moved to accept staff recommendations as modified, and authorized the staff to conclude the former regulatory adoption process, with the effective date to coincide with the conclusion of that process. Motion was seconded by Associate Member White. Motion carried unanimously.

FINAL DECISION: Chesapeake Bay Bridge-Tunnel, setting fishing devices proximate to the

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Bridge-tunnel and the prohibited net fishing zone.

Commissioner commented that at the last Commission Meeting, a Committee was established and chaired by Associate Member White and staffed by Mr. Travelstead.

Associate Member White commented that there was a good repertoire manifested by both each side.

Jack Travelstead, Chief-Fisheries Management, gave the Commission an overview of the proposed changes presented to the Commission from last month. He then explained to the Commission the recommendations of the appointed committee. The Committee was chaired by Associate Member White and consisting of Richard Welton, Bob Merten, Pete Nixon, and Ernie Bowden through a conference call. He said the committee reviewed 42 letters opposing the granting of any exception for the setting of gill nets next to the CBBT. He said the ad hoc committee recommended that the exempted area for drift gill nets be established with the following provisions:

1. The designated area for gillnetting shall be on the north side of the new span and stretch from the middle of the "Inner Middle Ground Shoal" to the low water line on Fisherman's Island. (A marker will be placed on the span identifying the boundary of the area).
2. Only drift type gill nets will be permitted in the designated area.
3. Gill netting will not be permitted within 200 feet of the new span within the exempted area.
4. Gill nets may be set in the designated area only from 1/2 hour before sunrise to 1/2 hour after sunset and only from Monday to Wednesday from November 1 through December 31.

The committee further recommended that the exemption be reviewed by the Commission in one year to determine whether safety problems have occurred as a result of the exemption.

Mr. Travelstead also presented a packages of approximately 227 faxes, letters, and e-mails that came in from all over the State which were opposed to the proposed exemption. He said before the Committee met staff had received 130 comments also opposed to the granting of any

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type of exemption. Mr. Travelstead said based on the comments received, he had some concerns with going forward with the exemption. He said his main concern was that he had not heard from the commercial fishermen that fished in that particular area. Mr. Travelstead also gave comments regarding the striped bass fishery in this area. Comments are a part of the verbatim record. He said he did not think the commercial fishermen would suffer economically by not being allowed to fish in this area.

Associate Member Davis asked if the World Striped Bass Tournament had been considered. Associate Member White commented that the Committee had discussed the issue at length.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis commented that the recreational fishermen in the State were very concerned about the safety issue involved with using a large net full of fish and if the net would be caught by a recreational boat, the boat would probably go down.

Commissioner Pruitt made the decision to allow a member of the public address the issue, because that person understood that the meeting would be continued until today.

Peter Cummings, recreational fishermen, addressed the Commission. He said he had fished the Chesapeake Bay for nights and days for years. He said everyone knows that the Eastern Shores has the best striped Bass and the largest striped bass. He was concerned that if nets were placed in the channel, when the fish were migrating from up north down into the Bay, would scoop all the fish up before they reached the Bay. He said he felt that was a rape of mother ocean.

Commissioner Pruitt commented that the ASMFC Plan took that issue into consideration, and he said it should not affect the overall abundance of the stock.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Davis moved that there be no exempted area from drift nets for two reasons. (1) the World Striped Bass Tournament and the thousands of people that were participating in the tournament; and (2) safety reason because of the great risk involved. The motion was seconded by Associate Member Goodell.

Associate Member Gordy commented that this area was not the place that had the large tournament and everything was not closed for the tournament and that would not be her reason

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for supporting Mr. Davis's motion.

Associate Member Hull asked what was the division in committee on this particular issue.

Associate Member White commented that there was very little strong desires on the part of the commercial fishermen that used that area.

Associate Member Goodell requested Mr. Travelstead to readdress the Commission regarding the economic hardship and safety issue for setting the nets. Mr. Goodell asked what would be the consequence of accepting mr. Davis's motion.

Jack Travelstead said the motion was not clear and he asked clarification. Mr. Travelstead said the intent of Mr. Davis's motion was not to adopt Section 40 on page 2 of the draft regulation, entitled "Drift Gill Net Exemption." Mr. Travelstead explained that if the Commission did not want the exception, paragraph 40 should not be adopted. Mr. Travelstead said he felt the potential for conflict was too high, and there would be minimal or no impact to the commercial fishermen if the exempted area was not adopted.

Associate Member Davis accepted the clarification as par of his motion. Mr. Goodell then moved to accept 4 VAC 20-80-10 et. seq. with the exception of 4 VAC 20-80-40 for one year, and at the end of one year review the consequences. A discussion between Commission members followed.

Associate member Davis said he was willing to shorten the span from 300 to 250 and taking out the gill net exception, with a review in one year.

The question was called and Commissioner Pruitt called for the vote.

Associate Member Davis restated the motion which was to pass the regulation without paragraph 40. Associate Member Goodell was agreeable. Motion carried unanimously.

RECOMMENDATIONS of the Recreational Fishing Advisory Board and the Commercial Fishing Advisory Board.

Jack Travelstead, Chief Fisheries Management, briefed the Commission on the 10 projects recommended for approval by the Recreational Fishing Advisory Board from A - J and A - C

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from the Commercial Board as follows: Mr. Travelstead stated that two of the three projects recommended by the Commercial Board were also recommended by the Recreational Board and the Recreational Board agreeing to provide 90 per cent of the funding and the Commercial Board agreeing to fund the remaining 10 per cent. Mr. Travelstead explained that with the exception of item C under the Commercial projects were multi-year projects that the Commission had approved before. He said all the projects were subject to public hearing and recommended by staff. Mr. Travelstead said the funding would not be available until September or October, and a motion to approve should include a provision that the fund were not available no earlier than September 1, 1999.

- A. Seagrass Habitat Restoration: Implications for the enhancement of recreational important finfish species. Virginia Institute of Marine Science, Robert J. Orth. June (1999)-May (2000); \$141,011
- B. Support of Facilities to Provide Finfish Ageing for Virginia Catches and Application of Virtual Population Analysis to Provide Management advice. Old Dominion University, Cynthia Jones; VMRC, Jack Travelstead; \$207,307. Recommend funding at 90%: \$186,576.30
- C. Stock Structure and Age-Specific Migration Patterns of Weakfish along the US Atlantic Coast. Old Dominion University, Simon Thorrold; \$97,804 Recommend funding at 90%: \$88,023.60
- D. Spawning of Red Drum in Chesapeake Bay and Virginia's Seaside Inlets. Virginia Institute of Marine Science, John Olney; \$80,860
- E. Continuing Investigation of Mycobacteriosis in Striped Bass: Pathology, Epizootiology, Microbiology, and Development of Rapid Probes for Bacterial Identification. Virginia Institute of Marine Science, Wolfgang Vogelbein; \$74,013.
- F. Management Options for the Cobia Fishery in Chesapeake Bay: Size Regulations and Fishing Effort. Virginia Institute of Marine Science, John Olney and John Hoenig; \$91,638.
- G. Life History of the Spadefish from the Chesapeake Bay and Nearshore Virginia Waters: Age and Growth, Feeding, and

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Reproduction. Year 2. Hampton University, Deborah Bodolus; Virginia Institute of Marine Science, Herb Austin and Donald Seaver; \$56,869

- H. Updating Educational Tools and Outreach Efforts to Foster More Effective Use of Catch and Release: Maximizing Benefits for the National Symposium on Catch and Release in Marine Recreational Fisheries. Virginia Institute of Marine Science. Jon Lucy: \$26,250
- I. 1999 Children's Fishing Clinic. The Denbigh Rotary Club and Coastal Conservation Association, Rob Cowling; \$6,500
- J. Hampton Roads Kids Fishing Day. Coastal Conservation Association/VA Tidewater Chapter, Bill Dieffenbach and Rob Holtz: \$6,500

The Commercial Fishing Advisory met on Tuesday, June 15 and recommends funding of the following projects:

- A. Support of Facilities to Provide Finfish Ageing for Virginia Catches and Application of Virtual Population Analysis to Provide Management Advice. Old Dominion University, Cynthia Jones; VMRC, Jack Travelstead; \$207,307. Recommend funding at 10%: \$20,730.70
- B. Stock Structure and Age-Specific Migration patterns of Weakfish along the US Atlantic Coast. Old Dominion University, Simon Thorrold; \$97,804. Recommend funding at 10%: 49,780.40
- C. Biological Control of Blue Crab Abundance: The Impact of Fish Predation in Seagrass Nursery Habitats. VIMS, Jacques van Montfrans; \$37,500.00

Commissioner Pruitt asked for comments from the public, there being no comments, pro or con, the matter was placed before the Commission.

Associate Member Davis moved the projects be approved with funding available in September of October. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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Failure to Report as Required by Regulation 4 VAC 20-610-10 et. seq. "Pertaining to Commercial Fishing and Mandatory Harvest Reporting."

Jim Peters, Fisheries Management Specialist, briefed the Commission on the five cases. However, he said one person had already solved their mandatory reporting requirements after the packages were sent out.

Donald G. Broadwell - present.

Mr. Broadwell was identified as having harvested seafood from the waters of the Commonwealth of Virginia for the months of April through December of 1998 by two separate field audits.

In 1999, a field audit revealed that Mr. Broadwell reported that he did not work January through March. Staff did not received any reports for the months following during that year.

In 1999, the field audit revealed that Mr. Broadwell stated again that he did not work from January through March. Staff did not receive any reports for the months following during that year.

Mr. Broadwell was sent a certified letter on April 5, 1999, informing him of his non-compliance and was given an opportunity to correct his deficiency. The certified letter was accepted on April 10, 1999, and as of June 3, 1999, Mr. Broadwell had not contacted staff. Mr. Broadwell in 1998 possessed a 100 crab pot license, and in 1999 he also possessed a 100 crab pot license. Mr. Broadwell was notified to appear before the Commission by first class and certified letters mailed June 4, 1999. Mr. Peters said that yesterday he received a call from Mr. Broadwell's mother saying that the mail came to her house.

Mr. Peters said staff's recommendation was suspension of the Commercial Registration License and all licenses and permits issued by VMRC beginning June 22 to December 22, 1999. In addition, probation beginning December 23, 1999 until June 23, 2000 or beginning in the year 2000 upon registration. If during this time, this regulation was violated all licenses and or permits issued by VMRC should be immediately revoked. Mr. Broadwell should also surrender the 1999 Commercial Registration license to the Commission immediately, and return all licenses, permits, tags or other such VMRC items to the nearest Law Enforcement office within 24 hours.

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Mr. Broadwell said it was just negligence on his part on the 1998 season, but this year he had everything up-to-date. He said when he received the letter he put together all the forms he could find with the time that he had from the 1998.

Commissioner Pruitt explained to Mr. Broadwell how important it was to report his catch and it was now the law. The matter was then placed before the Commission.

Associate Member Davis moved to place Mr. Broadwell on probation for 12 months, and suspension of licenses until all data was up-to-date. Associate Member Gordy seconded the motion. Motion carried unanimously.

Braxton R. Jenkins - matter resolved after as data was received.

James W. Hunley - not present. A member of the audience informed the Commission that Mr. Hunley had an accident recently and may still be recuperating.

Associate Member Davis moved that Mr. Hunley's licenses be suspended until the reports were received and he be placed on one year probation. Motion seconded by Associate Member Cowart. Motion carried unanimously.

David A. Marshall - present

Mr. Peters briefed the Commission. He said Mr. Marshall was identified by a field audit that he was harvesting seafood from the waters of the Commonwealth for the months of August, September, October and November of 1998. Mr. Marshall's commercial registration license was not issued until 9/25/98, but no reports were received in October 1998. No reports have been received for 1999. He said Mr. Marshall was mailed a certified letter on April 5, 1999, informing him of his non-compliance and he was given an opportunity to correct his deficiencies. The letter was accepted on April 8, 1999. He said staff received a statement from Mr. Marshall stating that he was working public clamming grounds. On May 24, 1999 staff confirmed by a Law Enforcement officer that Mr. Marshall was working the water and he had the following gear licenses in 1998 a gill net license less than 600 feet and a clam by hand rake license. In 1999, Mr. Marshall only had a commercial registration license. Mr. Peters said Mr. Marshall called him on June 8, 1999 concerning his appearance before the Commission. Mr. Marshall said he had received the statement and working in 1999, and he had called the 800 line asked that forms be mailed to him. On June 14, 1999 mandatory reports were received from Mr. Marshall for the months of August through December of 1998 and January through June 1999. Mr. Peters said staff recommended a month suspension, starting June 22 through December 22, and probation beginning December 23, 1999 to December 23, 2000 or when he

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purchases his license. If Mr. Marshall violates this regulation, all licenses and or permits issued by the VMRC shall be immediately revoked. He said Mr. Marshall should surrender his commercial registration license to the Commission at this time, and all permit, tags or other VMRC items to the nearest Law Enforcement office within 24 hours.

David A. Marshall - present.

Mr. Marshall said when his license was first issued in December 1998, he called VMRC office and asked for folders, and he never received anything after calling twice and he was not sure how he was suppose to do it and it was not an intentional thing.

Acting Chairman White asked how many times did he see the MPOs out on the water or where his products were sold..

Associate Member Davis asked if he had records of sending out those forms. Mr. Marshall said he sent all the information in and Mr. Peters has a record of everything he had ever harvested.

Associate Member Davis then moved to give Mr. Marshall one year probation. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

William J. Matelyan - present.

Mr. Peters briefed the Commission. He said Mr. Matelyan was identified from a field audit from he water of the Commonwealth May through August of 1998. He said staff had not received any reports for 1998 or 1999. Mr. Matelyan was notified by certified letter on April 30, 1999, of his non-compliance and given an opportunity to correct his deficiency. Mr. Peters said Mr. Matelyan contacted staff and requested information on how to complete the forms. He said he had problems with the mail because he had mailed his reports the same day he received the certified letter. Mr. Matelyn also requested additional time to complete the report.

Mr. Peters said the expectation date was changed to May 20, 1999. Mr. Matelyan in 1998 had the gear licenses for 28 crab traps, crab peeler pot, crab hand scrape - double, and in 1999 28 crab traps. On June 15, Mr. Matelyan contacted staff concerning and explained that he had mailed the fishermen's copy, but had no way of recreating his reports because his computer which he kept his invoices on was stolen. Mr. Peters informed Mr. Matelyan of the months and days delinquent and Mr. Matelyn faxed the estimate of his harvest. Mr. Matelyan also informed staff that he had mailed a package Friday and mailed one yesterday, but Mr. Peters had not received it. Staff recommended suspension of commercial registration license for six

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months beginning June 22, and probation beginning 'December 23, until June 23, 2000, or upon registration. If this regulation be violated, all licenses and or permits issued by the VMRC shall be immediately revoked. Surrender of the 1999 commercial registration license must be returned to the Commission at this time, and the return all licenses, permits, tags or other VMRC items to the nearest Law Enforcement office within 24 hours.

Acting Chairman White asked Mr. Matelyan if he registered the packages mailed to the Commission. Mr. Matelyan responded that he had been mailing the packages. Mr. White suggested that in the future register his packages. A discussion followed.

Associate Member Davis moved to place Mr. Matelyan on one years probation. Motion seconded by Associate Member Gordy. Motion carried unanimously.

DISCUSSION: Suitability of inshore (Virginia waters) conch-pot permitting system.

Rob O'Reilly, Assistant-Chief Fisheries Management, briefed the Commission on the experimental conch-pot permit system. He said in 1991 there was one permit issued, and at this time, there were 43 permitted conch-pot fishermen. Mr. O'Reilly said that in 1995 there were 79 registered commercial fishermen interested in obtaining a conch-pot permit and all 79 registered commercial fishermen have now had a chance to hold a permit. He said the revocation system began in 1996, and that system allowed those next in rank on the waiting list to obtain an inshore permit. He said the experimental conch-pot fishermen were required to set and fish no more than 200 pots and they were allowed no by-catch.

Mr. O'Reilly then presented tables that provided the listing of permittees, compliance reporting summary, and harvest data for inshore areas. Comments are a part of the verbatim record. In addition, Mr. O'Reilly gave background information on fishery management measures, and fishery-dependent data. He also cited a memorandum from Captain Kenny Oliver that provided information regarding the difficulty in enforcing the experimental fishery. Mr. O'Reilly said staff felt that a licensed limited entry fishery of 50 permittees would allow for more effective enforcement in this fishery. He said staff recommended abolishing the experimental conch pot fishery; that the limited entry fishery waiting list should be abolished and the transfers of licenses should be allowed by the limited entry system, similar to what was adopted for the commercial hook and line fishery, and it would be free market enterprise. He said they also recommended the continuation of the management measures and reporting requirements. Mr. O'Reilly said that staff had received complaints regarding Section 35,

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Possession and Landing Limits, of the regulation. Therefore, staff was recommending that exception requirement from the regulation and make it a uniform 60 bushel landing limit per vessel. Mr. O'Reilly then requested a September public hearing on the measures outlined in the recommendations, and those adopted would become effective January 1, 2000.

Associate Member Goodell asked how staff came up with the number of 50 permittees. Mr. O'Reilly responded that with 43 already in the fishery and taking into account the poaching that was going on, it would also be a safe number which would allow some individuals the opportunity to come off the waiting list.

Associate Member Gordy moved that staff's recommendation go to public hearing in September. Associate Member Hull seconded the motion. Motion carried unanimously.

DISCUSSION: Request for emergency action to adjust the scup quota for the summer period.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on Atlantic States Management Fishery Commission (ASMFC's) modified scup fishery management plan because of a Federal lawsuit. He said it was a minor issue because we were not a big player in scup. It was important because staff was requesting adoption of an emergency regulation because ASMFC had amended their scup management plan by emergency in response to a federal lawsuit. He said it was a change to the quota system up and down the Atlantic coast, and everyone's quota was being modified as a result of the lawsuit. He said Virginia's "summer" quota would decrease from 3,167 to 1,629 pounds. Mr. Travelstead said this emergency action was necessary to be in compliance with ASMFC's Management Plan. Mr. Travelstead said the public hearing should be held next month.

There being no comments from the public, Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis moved to approve the emergency regulation on scup. Motion seconded by Associate Member White. Motion carried unanimously.

Appeals of Commercial Fisherman Registration License Denial.

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Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the appeals of denial of a two year waiting period for a commercial fisherman's registration license.

Charles A. Snellings, Bloxom, VA - not present.

John K. Reid, Hayes, VA - not present.

Robert N. Hogge, Newport News, VA- present.

Mr. Hogge addressed the Commission. He said he had appeared before the Commission before to have his card reinstated in 1992. He said he had been involved in some trouble and went to jail; an all his licenses were current at that time, but he needed to get back to work on the water and he needed his license. A discussion followed.

Commissioner Pruitt asked Mr. Hogge what type of work was he planning to do on the water. Mr. Hogge responded that he was planning on oystering in the fall. He was fishing and crabbing with Mr. Lee Parker.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to grant the commercial waterman's license since he had a record of being a commercial waterman and he had the license prior to 1994. Motion was seconded by Associate Member Gordy. A discussion followed. Motion carried unanimously.

A brief discussion followed regarding the two individuals appealing the decision. Comments are a part of the verbatim record.

Associate Member Goodell commented that he met electronically on the blue crab issue and the decided that VMRC was not in a position to investigate whether a person was financially strapped because he did not have a particular number of pots. Therefore, the committee thought unanimously there would never be a hardship given for financial reasons.

Commissioner Pruitt explained that those two individuals were appealing the two-year delay and the Commissioner's decision that they did not meet the criteria of the regulation for a commercial card. Commissioner Pruitt then placed the individuals that were absent before the Commission.

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Associate Member Goodell moved that Mr. Charles A. Snellings and Mr. John K. Reid be denied an exception to two-year waiting period for the commercial fisherman's registration license. Associate Member Gordy seconded the motion. A discussion followed. Motion carried 7 to 1, Associate Member White voting no.

Item 15a concerning postponing the crab issue until the August meeting , rather than the July meeting.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the Notice that was advertised for public hearing in July. Mr. Travelstead requested that the Commission look over the Notice to make sure it was what they wanted to advertise. He said there were three items the Commission requested for public hearing: Item A - the peeler pot fishery, regulation designed to achieve a 200,000 pot limit in that fishery by reducing the number pots per person, vessel, or seasonally, or reduce the number of licenses in the fishery, including eliminating licenses that were not used. Item B - was consideration of large cull ring in hard crab pots, which required that cull right to be open in pots fished in the mainstem of the Chesapeake Bay. Item C- general reduction in effort of the hard crab pot including limiting the number of pots and eliminating unusual licenses.

Associate Member Cowart commented that those items would affect a number of people working this year and the regulation would not be put in place until next year. Therefore, he felt this matter could be postponed until October. He said for the peeler pot and hard crab pot industry, this was the time of year, April through September and October, when they made money. He said it was difficult for them to leave their jobs and come to the meetings. He said he had a problem with adopting regulation during the season. He felt there was time to adopt the regulation before next year, and said maybe waiting until the fall to consider the regulation was a better choice. Associate Member Cowart then moved that the public hearing in October. Associate Member White seconded the motion. Motion carried unanimously.

Item 15 b, House Bill 2279, Enabling Legislation.

Freeland Mason addressed the Commission. He said the enabling legislation would go into effect in July, which would allow someone with a peeler pot to add regular escape rings and

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classify it as a crab pot. There would be no additional pots authorized, you would have two licenses for both peeler pot and crab pots and be able to identify by float what you had in your possession. If you were using it as a peeler pot, you would close it up, and if you open it up, it would be used as a crab pot. He said this would cut down on the expenses, because they could use one pot for two purposes. Mr. Mason then requested a public hearing for July.

A discussion followed between staff and Commission members regarding the cull rings, and implementation of the new tagging system next year. Comments are a part of the verbatim record.

Associate Member Davis commented that in view of what the Commission had gone through with the changes in crab regulations, he moved that this issue be considered in November after the other crab items in October. Associate Member Cowart seconded the motion. Motion carried.

Item 15b Associate Member Hull requested that the Commission address the issue at the July meeting regarding recreational users of gill nets being able to leave their nets overnight, the same as commercial watermen. He said he had been borrowing a friend's license in order to leave the net overnight. Commissioner Pruitt commented that the requirement was part of an existing regulations and it would have to go to a public hearing. Associate Member Hull moved to have a public hearing in July. Motion seconded by Associate Member White. Motion carried unanimously.

PUBLIC COMMENTS:

Commissioner Pruitt commented that there were several concerns regarding the flounder issue on the Seaside of Eastern Shore. He then open the public hearing.

Donna Ray Roeske, designated speaker with Captain's Bob Marina, addressed the Commission. She said they had an economic problem on the Eastern Shore. She said a lot of her customers told her they were going to take their fishing dollars to Maryland because they could catch the 15 1/2-inch flounder. She said a 16-inch flounder was a hard catch. Her customers complained about catching 20 to 30 flounders at 15 to 15 1/2 inches and could only keep two or three. Ms. Roeske also stated that she felt the Eastern Shore should be evaluated

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differently than the rest of Virginia. She said she was seeking an emergency regulation that would reduce the 16-inch flounder to 15 1/2 inches just for the remainder of the season. Other comments are a part of the verbatim record.

Commissioner Pruitt explained that the reason for his response was because of the ASMFC's potential closure if Virginia violated the management plan.

Associate Member Davis commented that he had fishermen working with him on the Eastern Shore and they loved to fish for the 16-inch flounder. Mr. Davis said he felt the weather may cause some of the problems on the Eastern Shore, which had an affect on flounder fishing.

Mr. Travelstead commented that if they went to a 15 1/2 inch flounder, you would have to close the season from July 13 to September 15.

Tom Powers, representing himself, addressed the Commission. He asked what were the possibilities of opening the limit north of the Cape Charles light on Seaside-Eastern Shore, and leave the rest of the Virginia waters south and west at 16 inches. Mr. Travelstead responded that area would also have to be closed July and August. A discussion followed regarding the statewide limits. Mr. Travelstead said they had the opportunity to set different limits for different areas, but they choose the best option because of the closed seasons involved.

Commissioner Pruitt asked how did New York go with the 16 inch flounder and 8 fish possession limit, with no closure. Mr. Travelstead responded that it was called conservation equivalency, and it was based on a master set of standards. Each state was required to use their own data on what they had harvested the prior year to set the current year's measures. He said that was the reason there were hodgepodge regulations up and down the coast. However, the target reduction was 40% for recreational fishing for everyone. A discussion followed regarding setting size limits for different areas in the State. Comments are a part of the verbatim record.

Randy Lewis, a charter boat captain from Wachapreague, gave comments regarding the season on the Eastern Shore and the charter boat fishing. He said he felt it was time to sue the federal government for the rights of the people for the State of Virginia. He also thought that Virginia should not be saddled by something put on them by the northern people.

Associate Member White asked what was the mortality rate for the 15 1/2-inch flounder that was thrown back. Mr. Lewis responded that according to the Federal government, their test showed approximately a 20% mortality rate. However, Virginia had done a good study by

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John Lucy out of Wachapreague which indicated a 10% mortality rate of the thrown back flounder.

Associate Member Cowart asked if there was anything that could be done this year to change the ASMFC framework without going out of compliance. Mr. Travelstead responded no. A discussion followed regarding compliance and non-compliance. Comments are a part of the verbatim record.

Ms. Roesky readdressed the Commission. She said no one had been on her dock to collect data regarding future quotas. She then asked who was collecting data and how was it being extracted from the anglers because she had checked with others and no one had been collecting data on the island. Mr. O'Reilly responded that the subcontractor for the National Marine Fisheries Services had been Quantech and they were currently using Macro International. He said staff had been in contact with them on the data sent, but they would contact them again.

Commissioner Pruitt placed the matter before the Commission.

A discussion between Commission members followed regarding options for the current regulations for the recreational flounder fishery. Comments are a part of the verbatim record.

Associate Member Davis attempted to make a motion to continue with the current regulations, but Commissioner Pruitt said a motion was not necessary to continue with the current regulation. However, he would call for a motion three times to amend the current regulation, if there was no motion, the issue would be dead. There being no motion, the current flounder regulation would remain in effect throughout this year.

Commissioner Pruitt commented that the Commission would fight hard next year with ASMFC to try and improve the flounder situation.

Freeland Mason addressed the Commission. He was concerned about the questions he brought to the Commission's attention a couple of months ago. He said he had requested that the Minutes reflect on the Internet what action was taken at the Commission meetings. A response from the audience explained that it was on the web page under "agenda." Mr. Mason was appreciative of the response.

Mr. Mason requested the status of his suggestion regarding a study being done on the

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recreational crabbing fishery. Mr. O'Reilly responded that a study had been conducted in Maryland and Virginia and the next step would be to determine where the funding would come from a full-fledged study. Maryland was planning to use some of their recreational crabbing license money to fund their portion of the study. However, Virginia still did not know what they were going to do. He said one avenue may be the Chesapeake Bay Stock Assessment Committee with funding from NOAA. Mr. Mason asked if it would be a joint study. Mr. O'Reilly responded that he did not think it would be a joint study. Commissioner Pruitt said Mr. Travelstead was on the Joint Committee.

Mr. Mason asked if anything was being done about the education for the watermen. Commissioner Pruitt said they put it in the budget proposal for discussion, however, he thought it was a legislative issue.

Mr. Mason commented on the statement that appeared on the agenda stating, "fishery agenda items would be considered by the Commission at approximately 12:00 noon and followed by the remaining habitat permit cases." He was concerned that when you came at noon, the Commission was at recess, and when they returned they continued with the habitat items. Mr. Carl Josephson responded that it was the Commission's choice.

Mr. Mason said a waterman asked why the rock fish permit had to be the size it was, and if it could be the size of the commercial watermen's license. Commissioner Pruitt responded that he would look into that.

Mr. Mason read his personal comments regarding the crab pot issue discussed at the February Commission meeting. His comments included issues relating to the press' impression regarding the crab pot issue, strategies on managing the crab fishery, spawning of crabs, watermen catching and shedding crabs, and the Commission's adherence to Code Section 28.2-203 (2), regarding conservation and management measures. He also gave comments regarding licenses for the crab fishery and the freezing of transfers. He then requested the Commission reconsider the transfer rule. Other comments are a part of the verbatim record.

Commissioner Pruitt commented that Mr. Mason's comments were appropriate for the public hearing scheduled for October on the crab issue.

Mr. Mason again expressed his concerns regarding the transfer of licenses, and stated that he felt transfers should be open to everyone, not just within families. A discussion followed.

Associate Member Hull commented that Mr. Travelstead gave statistics in May that indicated

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there were 486 active licensees. He felt that since the licenses did have a value, as Mr. Mason stated, and could be exchanged, the Commission was not totally fair to those people, because the Commission had given them something of value that others were not able to benefit from. Mr. Hull also stated that had he been a part of the Commission when the issue was voted on, he probably would not have voted for it, but once it was given he was concerned about taking it back.

Commissioner Pruitt said he agreed with the statement of looking at the comprehensive crab situation. A discussion followed on the peeler and sponge crabs. Comments are a part of the verbatim record.

Associate Member Hull commented that he supported the inactive licenses not being transferred. However, Mr. Mason continued his debate regarding the transfer of licenses. Comments are a part of the verbatim record.

Commissioner Pruitt said the Commission had heard Mr. Mason's comments, and they could make a motion.

Associate Member Hull said he agreed with the thrust of Mr. Mason's comments.

Associate Member Cowart commented about the cownose rays and the damage they did to oysters and other species in Virginia. He also presented sample shells to the Commission that showed the damage done by the cownose rays to the recently planted oysters in the Coan River. Mr. Cowart said he thought the Commission should be thinking along the lines of what could be done to help the shellfish industry against the cownose rays. He said VIMS was requested to look into that problem last year, but he was unsure of what had been done since that time. He then suggested that a meeting be set up with Bill DePaul and Don Wright to discuss the problem again.

Associate Member Hull commented that Mr. Kale had given him a message from Mr. E. E. Delano who called today and left the message. Mr. Delano expressed his concerns regarding the high mortality occurring with his oysters. He felt it was an emergency situation and action needed to be taken immediately, not next year.

Dr. Burreson responded that VIMS had processed a number of oysters for Mr. Delano, but they had not been evaluated the data, but the results should be available any day.

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Commissioner Pruitt adjourned the meeting at 5:35 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary