

## MINUTES

**October 24, 2000**  
**NEWPORT NEWS, VA 23607**

The regular monthly meeting of the Marine Resources Commission was held on October 24, 2000.

|                     |   |                                       |
|---------------------|---|---------------------------------------|
| William A. Pruitt   | ) | Commissioner                          |
| C. Chadwick Ballard | ) |                                       |
| Gordon M. Birkett   | ) |                                       |
| Lake Cowart, Jr.    | ) |                                       |
| Laura Belle Gordy   | ) | Members of the Commission             |
| Henry Lane Hull     | ) |                                       |
| F. Wayne McLeskey   | ) |                                       |
| John W. White       | ) |                                       |
| Kenneth W. Williams | ) |                                       |
| Carl Josephson      |   | Assistant Attorney General            |
| Wilford Kale        |   | Sr. Staff Adviser                     |
| Erik Barth          |   | Head-MIS                              |
| LaVerne Lewis       |   | Commission Secretary                  |
| Andy McNeil         |   |                                       |
| Bob Craft           |   | Chief-Finance & Administration        |
| Jane McCroskey      |   | Deputy Chief-Finance & Administration |
| Debbie Brooks       |   | Executive Secretary                   |
| Steven Bowman       |   | Chief-Law Enforcement                 |
| Lewis Jones         |   | Deputy Chief-Law Enforcement          |
| Warner Rhodes       |   | Middle Area Supervisor                |
| Kenny Oliver        |   | Southern Area Supervisor              |
| Randy Widgeon       |   | Eastern Shore Supervisor              |
| Ray Jewell          |   | Northern Area Supervisor              |
| James T. Parks      |   | Marine Patrol Officer                 |
| Bryan Tittermary    |   | Marine Patrol Officer                 |

VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF  
Dr. Eugene Burreson

## COMMISSION MEETING

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Tom Barnard  
Lyle Varnell  
Walter Priest

Jack Travelstead  
Rob O'Reilly

Chief-Fisheries Management  
Assistant-Chief Fisheries Management

Dr. Jim Wesson

Head-Conservation & Replenishment

Roy Insley  
Lewis Gillingham  
Ellen Cosby  
Tina Hutcheson

Head-Plans & Statistics  
Fisheries Management Specialist  
Fisheries Management Specialist  
Fisheries Management Specialist

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

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

Gerry Showalter

Head-Engineering & Surveying

others present:

Chris Dodson  
Graham Blake  
Virginia Bolton  
Dean N. McDowell  
Steven Bullelre  
Tim Hayes  
James Brawley  
Rodney Rollins

Ben Thorpe  
Leonard & Linda Lawson  
J. T. Bolton  
Michael Wing  
Beck Pare  
Billy Mills  
Craig Palulinski  
George W. Bone

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Gerry Seeley  
Tyla Matteson  
Jue Bieri  
Chris Ludford  
W. Peabody  
Richard Seay  
Pete Freeman  
Joe DelCampo  
Amy McDonald  
Rick Thomas  
Frank Harksen  
Barbara Rose  
Yvonne Wellford  
Glenn Croshaw  
Doug Wilkins  
Henry Broaddus  
Jim Haydon  
Charles Williams  
Rich Robins  
Kurt Qest  
H. J. Diebler  
Robert Cabral  
Yvonne Peabody  
Tom Powers  
K. Jenkins

Alan Brockenbough  
Carrie Rouse  
Mike Clower  
A. D. Murphy  
William Mullis  
Douglas F. Jenkins  
Tom Mikrut  
Rob Brumbaugh  
Tommy Leggett  
Alfred C. Fisher, Jr.  
Ron Taylor  
Steven Herzog  
Jan Frost  
James Watt  
Bill Ellis  
Frances Broddus-Crutchfield  
George H. Marshall  
Kelly V. Place  
Jim McQuillan  
William Reynolds  
Rodney M. Avila  
Harry Doernte  
Robert Hollowell  
Lee R. Smith

and others.

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Commissioner Pruitt opened the October meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White, and Williams. Mr. Robert Craft, Chief of Administration and Finance Division, gave the invocation and Associate Member Ballard led the Pledge of Allegiance. Commissioner Pruitt established that there was a quorum.

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**1. MINUTES** of previous meeting.

Associate Member White moved to approve the Minutes as distributed. Motion was seconded by Associate Member Hull and adopted unanimously.

**\*\* APPROVAL OF AGENDA**

Commissioner Pruitt commented that on Item 21, Mr. Mike Clower, Director of the Chesapeake Bay Local Assistance Board, would be attending the meeting and he would like to hear Mr. Clower's presentation either just before or just after the lunch break. Associate Member White moved to approve the agenda as discussed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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

Mr. Bob Grabb, Chief-Habitat Management Division, briefed the Commission on the following three page two items for projects that were over \$50,000 and not contested.

**2A. NORFOLK SHIPBUILDING AND DRYDOCK CORP., #00-1347**, requests authorization to maintenance dredge, by mechanical method, 57,777 cubic yards of subaqueous bottom material to maintain depths of -40 feet at mean low water adjacent to their Berkley Plant situated along the Southern Branch of the Elizabeth River in Norfolk.

Permit Fee.....\$100.00

**2B. MR. AND MRS. CONRAD C. HYLTON, #00-1157**, request authorization to construct 515 linear feet of riprap revetment, 190 linear feet of riprap marsh toe sill, five (5) 14-foot

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wide riprap breakwaters totaling 285 linear feet, place 750 cubic yards of sand as beach nourishment landward of the breakwaters, a 12-foot by 75-foot boat ramp, and a 26-foot by 46-foot open-sided boathouse at the channelward end of a 450-foot long private pier proposed to replace a similar length pier adjacent to their property along the North River in Gloucester County.

|                                  |               |
|----------------------------------|---------------|
| 5350 sq. ft of beach nourishment |               |
| @\$0.05 sq. ft.....              | \$267.50      |
| Permit Fee.....                  | <u>100.00</u> |
| Total                            | \$ 367.50     |

**2C. CITY OF SUFFOLK, #00-0893**, requests authorization to install, by directional bore method, a 150 linear foot submerged water main and to construct a 960 linear foot concrete replacement bulkhead, a 52 linear foot fixed pier and five (5) 52 linear foot floating piers to create a 24-wetslip community marina along the Nansemond River at Constant's Wharf in Suffolk.

|                 |          |
|-----------------|----------|
| Permit Fee..... | \$100.00 |
|-----------------|----------|

There being no comments from the audience, pro or con, Commissioner Pruitt placed the matter before the Commission. Associate Member Ballard moved to approve the page two items. Motion was seconded by Associate Member Birkette. Motion carried unanimously.

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**3. EXECUTIVE SESSION**

Associate Commission Member Ballard moved that the meeting be recessed and that the Commission immediately be reconvened in executive session for the purpose of consultation with legal counsel and briefings by staff pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by subsection (A), Paragraph (7) of Section 2.1-344 of the Code of Virginia, pertaining to legal issues related to Items 6. The motion was seconded by Associate Commission Member White and adopted unanimously.

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

WHEREAS, the Commission has convened an executive meeting on this date pursuant to

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an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, §2.1-344.1 of the Code of Virginia requires a certification by this Commission that such executive meeting was conducted in conformity with Virginia law;

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

The motion was seconded by Associate Commission Member Williams and adopted unanimously.

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There was a short ceremony recognizing the contributions of recently retired MPO Al "Junior" Fisher, Jr. Commissioner Pruitt commended him for his spotless career and seventeen and a half years of service to the Commission. Associate Commission Member Hull commented that he and Mr. Fisher had been friends and neighbors for over 32 years and praised Mr. Fisher's integrity, courtesy, honesty and contributions to his community. Captain Ray Jewell, Northern Area supervisor, presented a Certificate of Recognition to Mr. Fisher.

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4. **KENNETH D. WILKINS, #00-0650.** Commission review on appeal of the August 21, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct and backfill 1,050 linear feet of steel sheetpile bulkheading involving a coastal primary sand dune and beach in Virginia Beach. Continued from the September 26, 2000, meeting.

Associate Commission Member Ballard commented that he would be abstaining on this item. Mr. Randy Owen, Environmental Engineer, briefed the Commission on the appeal of the Virginia Beach Wetlands Board case in the Sandbridge area. Mr. Owen showed two slides to provide board members an orientation to the project location and then presented a number of other slides that had been seen by the wetlands board at its meeting. Mr. Owens said the project involved a proposed 690 foot bulkhead with two 180 foot return walls; he noted that the location of the primary and secondary dune systems that could be potentially impacted. Mr. Owens stated that the VIMS report had described the project as undesirable because of potential impacts on the beach and dune systems. He said their recommendation had been to either eliminate the bulkhead from the project or move it further landward of the beach and

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dune systems. Mr. Owen reviewed the wetlands board's proceedings. He commented that the wetlands board's staff recommended denial of the project. He said Mr. Glen Croshaw had represented the applicant at the Wetlands Board's hearing and had provided two exhibits presented by Dr. Basco and Mr. Watts. Mr. Owens said the Board debated the project at length, discussing other existing bulkheads in the vicinity, the General Assembly exemption regarding bulkheads in the Sandbridge area, and other factors. He said a motion was made at the hearing to approve the project with a modification to have the bulkhead extended northward to meet other existing bulkheads. He said the motion failed on a vote of 3-4 and therefore the project was not approved. He stated that VMRC staff had received the appeal from the applicant as required by law. He said staff found no procedural errors on the part of the Wetlands Board, but that they recommended remanding it back to the Virginia Beach Board in light of legal issues related to other existing bulkhead permits granted in the area. Comments are part of the verbatim record.

Mr. Glen Croshaw, attorney for the applicant, spoke in support of the appeal. He commented that the proposed project was part of a five mile strip of developed area; 62% of which was bulkheaded. He asked permission to submit additional information not considered at the Wetlands Board's hearing. Associate Member McLeskey made a motion to accept the additional information. The motion was seconded and approved unanimously. Mr. Croshaw submitted a letter indicating that two permits for bulkheads in the vicinity of the proposed project had been granted in April 2000 without public hearing. He then reviewed the testimony and evidence that had been submitted on his client's behalf at the Wetlands Board's hearing. Comments are part of the verbatim record.

Commissioner Pruitt asked if there were any speakers in opposition of the project. None were present.

Mrs. Kay Wilson, Assistant City Attorney, representing the Wetlands Board, spoke in defense of the Board's decision on the case. She commented that it had not been an easy case, that the Board had struggled with the public and private benefits and detriments, but they had lived up to their responsibilities under the Coastal Sand Dune Act. Mrs. Wilson said the Board had discussed the VIMS report and the alternatives it suggested, and had questioned VIMS and Wetlands Board staff present at the hearing. She noted that any bulkhead exemptions ended in 1991 and also ended geographically at White Cap Lane (north of the proposed project). Mrs. Wilson indicated that there was no need to remand it back to the Board because they had fulfilled their responsibility. Comments are part of the verbatim record.

Mr. Pruitt asked Mrs. Wilson if, after the motion to approve failed, had there been another motion to deny the project. She said it was unnecessary, and there had not been another motion

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on the case. Mr. Carl Josephson, Assistant Attorney General, asked where the beach and dune systems were in regard to the two permits referenced in the letter handed out by Mr. Croshaw. No one present was able to answer the question.

Dr. Donaldson Wright, Director of VIMS, spoke on the VIMS comments regarding the case. He emphasized that he was only speaking to reinforce and reiterate the positions taken by VIMS staff (Mr. Walter Priest and Mr. Scott Hardaway) on the matter. He said that he had been asked for his opinions by his staff based on his expertise with coastal systems. Mr. Croshaw asked that the record note that he considered Dr. Wright's testimony as new evidence. Commissioner Pruitt responded that the record had been opened and that Dr. Wright's comments were related to the testimony of his staff at the Wetlands Board's hearing. Dr. Wright then reviewed an overhead and some slides related to the project. Comments are part of the verbatim record.

Associate Commission Member Williams commented that this was a confusing issue. He said he had read the record at home and had a lot of questions, but in his opinion it should be sent back to the Wetlands Board. Associate Commission Member McClesky made a motion to remand it back to the Wetlands Board. The motion was seconded by Mr. Williams. Mr. Pruitt noted that divided votes such as had been made on this case by the Wetlands Board often indicated that they were close to a compromise. The matter was then placed before the Commission. The motion was adopted unanimously, with Associate Commission Member Ballard abstaining.

Remanded back to Wetlands Board

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5. **WILLIAM McDONOUGH, #00-1107**, requests after-the fact authorization to retain 128 linear feet of vinyl bulkhead, constructed two feet channelward of an existing deteriorated bulkhead at his property situated along Chincoteague Channel in the Town of Chincoteague. Continued from the September 26, 2000, meeting.

Mr. Hank Badger, Environmental Engineer, showed slides and briefed the Commission on the after-the-fact application. Mr. Badger said that the applicant had been asked to submit the application by the Chincoteague zoning administrator. He said that the applicant had been working on the project for about three years before being asked to submit an application. Mr. Badger said there had been no opposition to the project and VIMS had indicated that there would be minimal impact. He said that there was some confusion over whether this was a repair or replacement and whether a permit had been necessary. He said staff's recommendation

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was to approve the project with triple royalties and a civil penalty if the Commission thought it was appropriate.

Mr. McDonough, applicant, stated that he had started the work in 1995 and was doing it all himself. He said he did not think he needed a permit and was pleading ignorance. Comments are part of the verbatim record.

Associate Commission Member Gordy asked if he was within two feet of the existing bulkhead. He responded that he was within 9 or 10 inches of the original bulkhead.

Associate Commission Member Gordy made a motion to approve the staff recommendation. The motion was seconded by Mr. White. Mr. Ballard commented that they had to take a stand on after-the-fact applications by sticking to their policy of assessing a civil penalty. He said the penalty matrix for cases with minor environmental impact and minor compliance problems suggested a \$600 civil charge be assessed. Associate Commission Member Gordy and White accepted this as part of the motion. The motion was adopted unanimously.

|   |           |
|---|-----------|
| Civil penalty (after-the-fact application)..... | \$        |
| 600.00  |           |
| Triple fee (royalties).....                     |           |
| 624.00  |           |
| Triple permit fee.....                          |           |
| <u>75.00</u>                                    |           |
| Total   | \$1299.00 |

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6. **HANOVER COUNTY DEPARTMENT OF PUBLIC UTILITIES, #99-1877**, requests authorization to install a treated wastewater diffuser structure in the Pamunkey River. The project is protested by the adjacent property owner and others. Continued from the August 29, 2000, meeting.

Mr. Tony Watkinson, Deputy Chief-Habitat Management, briefed the Commission. He stated that the case had been continued from the August meeting when the Commission had heard from staff, Hanover County staff, and opposing parties. He said that at the meeting the Commission had requested that staff meet with VIMS and DEQ staff to further discuss water quality impacts on fisheries. Mr. Watkinson said staff had met with VIMS and DEQ on September 19. He indicated that the results of the meeting were summarized in the follow-up correspondence from VIMS and DEQ that had been included in their notebooks as Item 3A(2)

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and 3B. He also went over the highlights of new information from Hanover County and the protestants. Comments are part of the verbatim record.

Commissioner Pruitt stated, for the record, that the public hearing on this matter had been held at the August meeting and that the Commission only wanted the report from staff that had been requested. He said the Commission did not intend to have another hearing at this meeting.

Mr. Watkinson continued to describe some of the items in their notebooks. He specifically mentioned a letter from Mr. Carl Custalow, Deputy Chief of the Mattaponi Indian Reservation, and a letter with extensive backup material from Mr. Ellis, attorney for the protestants. He said that the initial proposed discharge would be 5 million gallons per day (mgpd), the DEQ permit was for up to 10 mgpd and that the diffuser structure could handle up to 15 mgpd. He said VIMS had some concerns about the effects of development as if the discharge went beyond 5 mgpd; he indicated that staff felt that future growth would require DEQ permit changes which would afford the opportunity for additional public review. Mr. Watkinson said, based on the VIMS comments, staff did not anticipate impacts on fisheries resources from the project as proposed and recommended approval of the project. Comments are part of the verbatim record.

Associate Commission Member Cowart asked what was the flow of the river? Mr. Watkinson provided the following statistics from DEQ reports: 42.1 mgpd (7 day 10 year low flow), 38 mgpd (1 day 10 year low flow), 52 mgpd (30 day 10 year low flow), and 211.6 (mean flow). Mr. Cowart also asked what other discharges were in the area. Mr. Watkinson said there were three downstream discharges (1) New Kent County (0.5 mgpd), (2) a hospital (0.03 mgpd) and (3) King William County (0.025 mgpd). Comments are part of the verbatim record.

Mr. Pruitt reiterated the Commission's intent to not hear additional public testimony. Mrs. Tyla Madison, audience member, asked if the threatened species, sensitive joint vetch, had been considered. Mr. Watkinson stated that the Department of Conservation and Recreation would have provided this type of information, and that in his recollection of their correspondence there was no sensitive joint vetch in the immediate area. Mr. Pruitt swore in Mrs. Madison and allowed her to submit a letter that indicated that sensitive joint vetch had been observed in the Pamunkey River. Mr. Bill Ellis, attorney for the protestants, stated for the record his objection to the Commission's decision to not hear additional public testimony.

Associate Commission Member Hull asked that the information in the VIMS letter regarding the case be further amplified. Mr. Lyle Varnell, VIMS, stated that for this case there was not a lot of information upon which to give the best professional decision. He said the VIMS comments stated that they did not expect a significantly greater impact on anadromous fish from

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the project, but that there was some concern about additional development impacting water quality. Comments are part of the verbatim record.

Associate Commission Member Ballard made the following motion: after considering the documents in the packets from both the August and October meetings, hearing staff and public testimony and comments from other state agencies, the Commission finds (1) substantial public benefit, (2) the project conforms with standards in Section 28.2-1205 of the Code of Virginia, and (3) the project meets subaqueous guidelines, and approves the issuance of the permit subject to the conditions included in the staff recommendation. The motion was seconded by Mr. Birkett. Associate Commission Member Hull commented that he could not support the motion. He mentioned the ongoing moratorium for shad fishing in the Pamunkey River. He stated that he recognized the benefits of the project, but his concern had to be for the marine resources, and he had not heard an assurance that there would not be an impact.

Commissioner Pruitt noted that consideration of the public benefit was an important part of their charge. The matter was placed before the Commission. The motion passed on a vote of 6-2, with Associate Commission Member Hull and Cowart voting no.

Permit fee..... \$100.00

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7. **SHOW CAUSE HEARING:** Commission consideration of Mr. Roger McKinley's failure to remit the civil charges agreed to in November 1999 given his performance as the agent and contractor responsible for permit violations associated with an authorized dredging project (Mr. Willie E. Bush/#99-0340) conducted within Old House Cove, a tidal tributary to Dividing Creek in Northumberland County.

There was a short discussion about the ongoing problem of collecting the civil charge that had been imposed on Mr. McKinley. Associate Commission Member Williams made a motion directing staff to notify Mr. McKinley to start making payments within 30 days or the matter would be turned over to the Attorney General's Office. The motion was seconded and adopted unanimously.

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8. **BEVANS OYSTER CO., #99-1812**, requests authorization to modify an existing permit to construct a bulkhead up to 3.5 feet channelward of an existing deteriorated bulkhead adjacent to their seafood facility along the Northwest Yeocomico River in Westmoreland County. Current permit allows construction up to 2.5 feet of the existing bulkhead.

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Associate Commission Member Cowart stated that he would not be discussing or voting on this item.

Mr. Ben Stagg, Environmental Engineer, briefed the Commission and presented slides. He showed pictures of the loading dock and bulkhead area and said that the applicant preferred a straight alignment for the bulkhead that would require a 3.5 foot encroachment along some portions of the wall. Associate Commission Member Ballard asked what the additional encroachment would be over the 2.5 foot encroachment already authorized by permit. Mr. Stagg responded that the additional encroachment would be about 10 square feet. He said that staff recommended denial of the request. Comments are part of the verbatim record.

Buck Pace, agent for the applicant from Bayshore Design, spoke in support of the project. He asked the Commission to keep in mind that the request only involved an additional 10 square feet. He said that his client had previously agreed to the permitted alignment in order to get the permits necessary for part of the work associated with a pier, but that he favored the straight alignment of the bulkhead being requested. Comments are part of the verbatim record.

Mr. Ballard asked why the applicant preferred the straight alignment. The agent responded that Mr. Bevan's felt that the wall would be stronger and safer. Comments are part of the verbatim record.

It was noted that Dr. Wesson, Head-Conservation and Replenishment, had used the facility. Mr. Pruitt asked Dr. Wesson to comment. Dr. Wesson stated that they had used the facility since Mr. Bevan's provided several hundred thousand bushels of shells to the program each year. He said they worked around the crook in the wall, but it would be nicer straight.

Associate Commission Member Gordy made a motion to approve the permit as proposed. The motion was seconded by Mr. Birkett and adopted unanimously, with Mr. Cowart abstaining.

Royalties for encroachment of  
10 sq. ft. @ \$2.00 per sq. ft.....\$ 20.00

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9. **CHESAPEAKE BAY FOUNDATION, #00-1653**, requests authorization to deploy a maximum of three hundred (300) 3-foot wide by 3-foot long by 2-foot high oyster aquaculture cages within a 100-foot by 570-foot area along the Northeast Branch of Sarah Creek in Gloucester County. The aquaculture structures are proposed to be located within 100 feet of the shoreline, in waters which are approximately 2 feet deep at mean low water.

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The oysters are being grown for restoration purposes and are intended to be transplanted to established sanctuary oyster reefs. The project is protested by a nearby property owner.

Mr. Chip Neikirk, Environmental Engineer, briefed the Commission and provided slides of the proposed aquaculture project. He said the oysters grown in the proposed facility would be used for restoration on sanctuary reefs. Mr. Neikirk showed pictures of the racks that would be used to hold the culture trays for the project. He said the project was opposed by an adjacent landowner, Mr. Fred Blake, who was concerned about navigation and impacts to the view and property values. Mr. Neikirk said that generally staff expected benefits from aquaculture projects, but that sometimes siting could be difficult. He said in this case the project was in shallow water, but that if the area was further developed that the project area may have to be transited by boat traffic. He said there had been no opposition or comments from other agencies. He said staff felt in this case that public benefits outweighed the detriments and recommended approval with four conditions, (1) approve for three year period then reevaluate, (2) require that all structures be removed if project is not renewed, (3) require that the project be removed or relocated if further development occurred in the area, and (4) require construction to minimize visual impacts.

Mr. Tommy Leggett, oyster aquaculture manager for the Chesapeake Bay Foundation and former Associate Commission Member, spoke in support of the project. He stated that he agreed with the staff recommendation. He said that in addition to the environmental benefits from the oyster restoration, the facility would also provide positive benefits for student and citizen education programs. He made a request that the project be approved for a period that extended through July 2004. Comments are part of the verbatim record.

Commissioner Pruitt asked Mr. Leggett to comment on the potential navigation problems. Mr. Leggett said they were putting the racks as close to shore as possible while still keeping the trays underwater. He said he had been using the site since 1997 and had seen very little boat traffic in the proposed project area, with the exception of a few small boats without motors. He said he did not think navigation would be a problem.

Mr. Graham Blake, leaseholder of a portion of the area to be used for the project, spoke in support of the project. He stated that the creek had filled-in quite a bit and larger boats could no longer navigate in that area. He said his daughters owned some of the adjacent land and that they did not have a problem with the project. Comments are part of the verbatim record.

Associate Commission Member White made a motion to approve the project as recommended by staff with the modification that the permit go through July 2004 as requested by CBF. The motion was seconded by Mr. Cowart and adopted unanimously.

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Permit fee.....\$100.00

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There was a brief ceremony to recognize Dr. Grant Goodell, former Associate Commission Member, for his contributions to the Commission. Associate Commission Member Ballard presented Dr. Goodell a Certificate of Recognition in appreciation for his three years of service to the Commission.

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**21. BRIEFING** by Michael D. Clower, Executive Director of the Chesapeake Bay Local Assistance Department.

As requested by Mr. Pruitt at the outset of the meeting, this item was heard after the Commission reconvened from lunch. Mr. Clower stated that he had been the Director of the Assistance Board since 1996 and that from the start of his tenure with the Agency he had recognized the need to educate citizens and decision makers about the Board's activities and regulations. He indicated that there had been problems where individuals were permitted to perform certain activities by local government or local wetlands boards sometimes did not abide by the regulations administered by the Local Assistance Board. He said his agency wanted to contact local governments, wetlands boards, and put informational inserts in the Joint Permit Applications. Comments are part of the verbatim record.

Associate Commission Member Hull commented that he had worked with Mr. Clower for about three years while working on the Chesapeake Bay Program's Local Government Advisory Committee and that he had been an excellent resource.

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**10. PARKER'S CRAB SHORE, INC., ET AL, #00-1498**, requests authorization to construct a 42-foot by 44-foot commercial pier platform with a 12-foot by 16-foot covered area and four (4) temporary mooring spaces adjacent to an existing pier for the purpose of serving food and beverages at their restaurant situated on Monroe Bay in the Town of Colonial Beach.

Mr. Mark Eversole, Environmental Engineer, briefed the commission and showed slides of the proposed project in Monroe Bay. He indicated that the Town of Colonial Beach and Mr.

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Rollins, owner of the restaurant, were co-applicants on the project. He said they wanted to add the proposed platform to the existing pier to allow for a waiting area for restaurant customers. Mr. Eversole said the VIMS report estimated that 1048 square feet of subaqueous bottom would be shaded by the project and that they recommended putting the waiting facility onshore.

He said staff also questioned the water dependency of the project, and were recommending denial of the permit; staff suggested that the adjacent land area be used for the project. Comments are part of the verbatim record.

Mr. Ballard asked if there would be any cooking equipment on the proposed platform. Mr. Eversole indicated that there would not be, it was proposed only as a serving area.

Mr. Roger Rollins, restaurant owner and co-applicant, spoke in favor of the project. He said he had taken over the restaurant two years ago and was having trouble having an area for people to wait. He reiterated that no cooking would occur on the platform. Comments are part of the verbatim record.

Mr. Pete Bones, Town Manager of Colonial Beach, stated that the project was supported by the Town, Planning Commission, and Town Council. He said all activities in Colonial Beach were water dependent. Comments are part of the verbatim record.

Mr. Craig Palulanski, Bayshore Designs, agent for the applicants, provided pictures of a similar structure in Monroe Bay that had been approved by the Commission in January 1995 as an after-the-fact permit. Comments are part of the verbatim record.

There was no other public comment on the project.

Associate Commission Member Hull commented that he was very familiar with Parkers Restaurant and thought the applicant Mr. Rollins was doing a good job of managing the facility.

He said he thought that Colonial Beach was a water dependent area, and that although he understood the staff's concerns, he felt that the applicants could pull a barge in without a permit and have the same impact; he felt it would be safer for patrons to have access to the pier with the improvements as proposed. Mr. Hull then made a motion to approve the project. The motion was seconded by Mr. White and adopted unanimously.

|  |               |
|--|---------------|
| Encroachment of 1848 sq. ft. @ \$0.050 sq. ft..... | \$924.00      |
| Permit fee.....                                    | <u>100.00</u> |
| Total  | \$1024.00     |

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- 11. NOVA TURF FARM, INC., 99-1980**, requests authorization to install a 6-inch water intake pipe in Cedar Run, a tributary to the Occoquan River in Prince William County, for use in their commercial sod farm operation. The project is protested by a number of local residents.

Mr. Ben Stagg, Environmental Engineer, briefed the Commission and provided slides of the proposed water intake. He said he had been notified of the intake by the Department of Game and Inland Fisheries. He said he had visited the site, met with the applicant and determined that the intake would require a permit. Mr. Stagg indicated that the project was opposed by area residents. He also stated that part of the applicants requirements for water could be met by onsite storage ponds which he was developing for that purpose. Mr. Stagg said that DEQ did not require a permit. He then reviewed other agency comments. He said staff was sensitive to the concerns of the protestants but that the Commission did not regulate instream flow, water withdrawal or upland land use, and in this case they recommended approval of the project with several conditions: (1) screen intake, (2) use of a coffer dam, (3) stockpile removed water, and (4) revegetate cleared areas. Comments are part of the verbatim record.

Mr. Tim Hayes, attorney for the applicant, spoke in favor of the project. He said he agreed with the staff recommendation and conditions and would reserve final comment for after those in opposition spoke.

Mr. Julian Bolten, Isaac Walton League, spoke in opposition to the project. He said he opposed withdrawing water without limits or monitoring. He said the turf farm had pumped the stream dry two years earlier and they were being protected by a gap in the law concerning water withdrawals. Comments are part of the verbatim record.

Mr. Dave McDowell, owner of about two miles of shoreline along Cedar Run, spoke in opposition to the project. He said he had called DEQ, SWC, DGIF, ACOE and none wanted to take action. He finally found Ben Stagg at Marine Resources because the Commission had some legal jurisdiction. He complained that water withdrawals from the creek were causing problems for the fish and wood ducks. He said he supported denial of the permit. Comments are part of the verbatim record.

Mr. Leonard Lawson, owner of about one mile of shoreline of Cedar Run across from the intake, spoke in opposition to the project. He described how the creek had been pumped dry in the past. He also noted that the applicant had a large diesel fuel tank near the creek and that the pump he was using had no muffler. Comments are part of the verbatim record.

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Mr. Hayes, stated that the opposition's complaints had been addressed by staff. He said his client would not pump the creek dry and was investing in a holding pond to help get through low flow periods. He stated that DEQ had not designated this a surface water management area and therefore under Virginia law his client could withdraw all the water he wanted. Comments are part of the verbatim record.

Associate Commission Member White commented that he would abstain from this vote since he had not been present for all of the testimony.

Associate Commission Member Cowart said that he had withdrawn water for agricultural purposes and that well water was not always a good alternative because it was not as good for irrigation and also depleted ground water. He said he thought the protestants recourse was to get the DEQ to designate this as a surface water management area. He also noted that there were thousands of intakes like this throughout Virginia and that this was more a DEQ issue than a MRC issue. He also questioned the Commission's jurisdiction. Mr. Carl Josephson, Assistant Attorney General, indicated that they did have proper authority to act on this case.

Associate Commission Member Ballard said he agreed with Mr. Cowart and was sympathetic to the protestants, but that they had to take it up with DEQ. Mr. Cowart made a motion to approve the project with the conditions recommended by staff. Mr. Ballard seconded the motion. Associate Commission Member Hull commented that he did not think there was enough information yet to make a decision. Mr. Williams stated that he agreed with Mr. Hull. The matter was placed before the Commission. The motion was approved on a vote of 4-3, with Mr. White abstaining.

|  |              |
|--|--------------|
| Encroachment of 15 ln. ft @ \$1.00 per ln. ft..... | \$ 15.00     |
| Permit Fee.....                                    | <u>25.00</u> |
| Total  | \$ 40.00     |
| *****  |              |

**12. PUBLIC HEARING:** Consideration of the proposed Submerged Aquatic Vegetation (SAV) Transplantation Guidelines.

Mr. Jay Woodward, Environmental Engineer, briefed the Commission. He said the only written comment on the proposed guidelines had been two letters faxed the previous day that had been included in their packets. Mr. Woodward said staff recommended adoption of the guidelines as drafted. Comments are part of the verbatim record.

Commissioner Pruitt opened the public hearing. There were no public comments.

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Associate Commission Member Ballard made a motion to adopt the draft regulation. The motion was seconded by Associate Commission Member Birkett and adopted unanimously.

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**PUBLIC HEARING:** ASMFC-mandated amendments to 4 VAC 20-110-10 et. seq., "Pertaining to Lobsters."

Rob O'Reilly, Deputy Chief-Fisheries Management, updated the Commission on the language to comply with ASMFC requirements for lobsters. Mr. O'Reilly stated that there were five separate amendments advertised to regulation 4 VAC 20-110-10 et. seq. as follows:

1. 4 VAC 20-110-30 Possession prohibitions regarding the V-notched female lobster. The prohibition of possession V-notched female lobster applies to all persons, but not limited to: fishermen, dealers, shippers, and restaurants).
2. 4 VAC 20-110-40 Marking of Lobsters. It shall be unlawful for any person to notch, cut, scrape, pierce, or in any like manner provide for the marking of lobster, except for scientific purposes and with the expressed written consent of the Commissioner of Marine Resources.
3. 4 VAC 20-110-Lobster parts. It shall be unlawful for any person to possess aboard any vessel or to land picked or cooked meat separated from the lobster.
4. 4 VAC 20-110-55. Gear Requirements. All lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel. The opening in a trap to be covered by the ghost panel must be rectangular and shall not be less than by 3 3/4 inches (9.5cm). The panel must be constructed of or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/32 inch (0.25cm) in diameter. The door of the trap may serve as the ghost panel, if fastened with a material specified in this section. The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.
5. 4 VAC 20-110-65. Landing Limit. Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be

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limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer.

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

Associate Member Ballard moved for the adoption of Regulation 4 VAC 20-110-10 et. seq. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

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**PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC-20-540-10 et. seq., "Pertaining to Spanish and king mackerel."

Lewis Gillingham, Fisheries Management Specialist, informed the Commission that Commissioner Pruitt had received a letter from the National Marine Fisheries Service (NMFS) Regional Administrator William Hograth indicating that the recreational Spanish and king mackerel segment had not taken its share of the harvest quota in recent years. Therefore, NMFS proposed to increase the recreational fisheries daily bag limit from 10 to 15 Spanish mackerel per angler in Federal waters. Mr. Gillingham stated that because the bag limit had increased in the Federal waters, Virginia should also increase its recreational possession limit to 15 Spanish mackerel.

Mr. Gillingham also indicated that the bag limit and size limits had changed in Federal waters for the king mackerel. He stated that in Federal waters, the recreational anglers were restricted to a three-fish possession limit, but in Virginia waters the recreational possession limit was five king mackerel. Therefore, staff recommended that Virginia reduce its king mackerel possession limit to three king mackerel. In addition, the minimum size limit in Federal waters for the King mackerel was 24 inches (fork length) and Virginia should adopt a comparable total size limit length of 27 inches.

Mr. Gillingham further indicated that since both king and Spanish mackerel were caught in Virginia and Federal waters off the Virginia coast, the difference in the possession and size limit for Federal and State waters were confusing and unwarranted. Accordingly, staff recommended that the changes to Regulation 4 VAC 20-540-10 et. seq., "Pertaining to Spanish and king mackerel be adopted. Also, staff recommended delaying the effective date of any changes approved by the Commission until 1 January 2001.

Mr. Gillingham said staff had not received any telephone calls or input from the public regarding

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these changes.

Acting Chairman White opened the public hearing.

Jim Diebler, member of the Virginia Charter Boat Association, addressed the Commission in favor of the proposed changes. However, he indicated that he was concerned about some information he had received about the Federal government opening the territorial waters to international fisheries.

Mr. Travelstead responded to the statement that Mr. Diebler made referring to the Federal government's opening up the territorial waters to international fisheries. He indicated that the Federal government was looking at establishing limits on foreign fishing for a different Atlantic mackerel and not the Spanish and king mackerel.

Acting Chairman White closed the public hearing and placed the matter before the Commission.

Associate Member Hull moved to adopt the changes to Regulation 4 VAC 20-540-10 et. seq., "Pertaining to Spanish and king mackerel" effective January 1, 2001. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

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**PUBLIC HEARING:** Proposals pertaining to management of the Fourth Quarter 2000 Offshore Summer Flounder Fishery, as established by Regulation 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder."

Lewis Gillingham, Fisheries Management Specialist, briefed the Commission on the historical landings for the opening of the Fourth Quarter Summer Flounder fishery. Comments are a part of the verbatim record. Mr. Gillingham then explained the different proposals offered by several industry members regarding possession limit and changing the Fourth Quarter scheduled opening date as follows; (1) increasing the possession limit from 5,000 pounds to 10,000 pounds and delaying the scheduled November 1 opening for the Fourth Quarter; (2) shifting the remaining 2000 quota to the First Quarter of 2001. In addition, there was some industry support to adopt a similar system like the one used in North Carolina, where vessels are allowed to possess and land up to 10,000 pounds of summer flounder in a 10-day period. Mr. Gillingham also indicated that a letter was received from Mr. Amory that offered a compromise proposal, which would keep the November 1, opening date and raise the trip limit to 7,500 pounds because of the increase in gasoline prices. Mr. Amory also suggested using a 10,000 pounds per 10-day landing scenario when the first quarter was open. He further indicated that a fax had been received from Preston Pate from North Carolina fisheries stating that they

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planned to open their summer flounder fishery on November 13. Mr. Gillingham said that North Carolina could open their fishery by proclamation authority with a 48-hour notice.

Mr. Gillingham said staff recommended maintaining the November 1 opening for the Fourth Quarter because of the small amount of quota available.

Commissioner Pruitt opened the public hearing.

Frankie Peabody addressed the Commission and said he supported the 100 boxes, transferring the quota to the first of year beginning January 4. He also felt that they would not get any more money for fish now than later.

Ronnie Avila, commercial fisherman, addressed the Commission. He said he was from New England and had been landing summer flounder in Virginia for ten years. He also stated that if the season was postponed until January 1, every State up and down the coast would be open January 1 for summer flounder. He also stated that if a trip limit was imposed, a five or ten day layover limit should be used because the larger boats could catch the quota when the smaller boats could not get out in bad weather.

Tim Daniels from Old Point Packing addressed the Commission. He said he took a vote from outside boats that packed at his facility, and there were mixed feelings on all the changes. Mr. Daniels also felt that the thing to help all the fish plants and packing areas was to have so many pounds in a certain amount of days like the North Carolina system does. He favored opening the fishery on December 1 because the boats would not have far to go out.

Commissioner Pruitt closed the public hearing and placed the matter before the Commission.

Colonel Bowman commented about NMFS providing landing data with a lag time. He was also concerned about the enforcement prospect, the legal prespective, and management of manpower to ensure that all the customers were served in the best manner possible.

A discussion followed among Commission members regarding a certain number of poundage being used within a specified number of days. Comments are a part of verbatim record.

Associate Member Ballard moved to modify the trip limit from 5,000 pounds to 7,500 pounds (because of the increase in fuel prices) with a opening date of November 1. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Commissioner Pruitt suggested that a committee of staff and industry get together and fine tune

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the issue regarding certain poundage landings within a specified period of time (5-day, 10-day) for the first quarter 2001 fishery.

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**PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4 VAC 20-995-10 et. seq., "Pertaining to Commercial Hook-and-line Fishing," Regulation 4 VAC 20-252-10 et. seq., "Pertaining to Striped Bass," and Regulation 4 VAC 20-755-10 et. seq., "Pertaining to Artificial Reefs." The amendments incorporate the recommendations of the Commercial Hook-and-Line Task Force.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the 10 regulatory proposals recommended to the Commission by the Commercial Hook and Line Task Force. Mr. Travelstead presented a summary of all the public comments as follows: 72 total written comments were received, one comment supported no change in any of the regulations; 8 comments supported all the measures, except for one that supported number nine; 44 comments were specific to the fishing time at the Bay Bridge Tunnel and were opposed to allowing additional time; one comment supported all of the changes except the fishing time at the Bay Bridge Tunnel and the proposal to close all the artificial reefs; 11 comments were in support of the fishing time at the Bridge Tunnel, plus one petition that contained 27 signatures in support of additional hours at the Bridge Tunnel, 6 of the comments opposed the provisions that dealt with requiring commercial hook-and-line fishermen to register their crew members, and opposed the landing requirements that you harvest 1000 pounds of seafood over the previous two years to maintain eligibility for a license.

Mr. Travelstead presented the 10 recommendations submitted by the Commercial Hook-and-Line Task Force as follows:

- (1) Establish the maximum number of general commercial hook-and-line licenses at 200.
- (2) Allow for the replacement of general commercial hook-and-line licenses annually by random drawing when the numbers falls below the maximum number allowed.
- (3) Limit the sale of commercial hook-and-line licenses to registered commercial fishermen who have documented, through the Commission's mandatory harvest reporting program, the sale of at least 1000 pounds of seafood over the previous two years.

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- (4) Provide for the transfer of general commercial hook-and-line licenses only to registered commercial fishermen who have documented, through the Commission's mandatory harvest reporting program, the sale of at least 1000 pounds of seafood over the previous two years. Transfer of licenses between family members shall be exempt from this requirement.
- (5) Require each commercial hook-and-line vessel to display identifying license plates, provided by the Commission, on the port and starboard sides of the vessel when on a commercial fishing trip.
- (6) Prohibit recreational fishing on any commercial hook-and-line vessel during a commercial fishing trip.
- (7) Require commercial hook-and-line fishermen to register their crew member with the Commission annually, in advance of any fishing. Allow for changes to the registration list twice per year and provide that one crew person per vessel need not be registered.
- (8) Prohibit the harvest of black drum by commercial hook-and-line within 300 yards of the Chesapeake Bay Bridge Tunnel at any time.
- (9) Increase the time period (midnight Sunday through midnight Wednesday) during which striped bass may be harvested by commercial hook-and-line within 300 feet of the Chesapeake Bay Bridge-Tunnel during the open recreational striped bass fishing season to a 30-hour longer period of midnight Sunday through 6:00 a.m. Friday.
- (10) Prohibit all commercial fishing on the following artificial fishing reefs:
  - a) Back River Reef centered at Latitude 37 08.2N, Longitude 76 13.9W.
  - b) Cabbage Patch Reef centered at Latitude 37 10 15N, Longitude 76 02 33W.
  - c) Cherrystone Reef centered at Latitude 37 19 04N, 76 02 33W.
  - d) East Ocean View Reef centered at Latitude 36 56 32.5N, Longitude 76 12 11.5W.

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- e) Middle Ground Reef centered at Latitude 36 56 32.5N, Longitude 76 23.5W.
- f) Nassawadox Reef centered at Latitude 37 29 33N, Longitude 76 00 57W.
- g) Occohannock Reef centered at Latitude 37 34.35N, Longitude 76 00.70W.

Mr. Travelstead indicated that staff recommended adoption of the above amendments to the three regulations, and this would incorporate fully the recommendations of the Commercial Hook-and-Line Task Force.

Commissioner Pruitt opened the public hearing.

Les Richman, commercial hook-and-line fisherman, addressed the Commission in support of the Hook-and-Line Task Force. Mr. Richman specifically stated that he wanted to address Item 5. He said he felt they were properly identified at the present time. He said the requirement to register their crew was difficult because they depended upon young kids for help and they would come and go. Mr. Richman also indicated that if item nine was not given to them, he did not support any of the other proposals.

Jim McQuillan, commercial fisherman from Hampton, addressed the Commission. He said he was against proposal five, regarding displaying addition signs and opposed the registering of crew members. He also felt there was no gear conflict with hook-and-line.

Kurt Ostein, commercial fisherman, addressed the Commission. He said he was opposed to number 5, 7. He supported number 9.

Jim Diebler, President of the Virginia Charter Boat Association, spoke on behalf of the Association. He said the Association supported all the proposals, but had some concerns with three areas, item 5, 7, and the amount of time spent at the Chesapeake Bay Bridge Tunnel.

Harry Doernte, commercial hook-and-line fisherman from Poquoson, addressed the Commission. He said eight proposals were agreed to by the Task Force, but it was contingent on approval of number 9 being accepted. He said updating the crew list twice a year was not a realistic approach, because you can't run a small business and only be able to hire people twice per year. He also commented that he felt the additional large plates on both sides of the boat

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were unnecessary.

Alvin B. Murphy, commercial hook-and-line fisherman, spoke in opposition of number 5, and 7, because it was difficult to find enough crew members to register them.

Tom Powers, representing the CCA, addressed the Commission. He said they supported the majority of the changes. He said the Association was concerned about increasing the number of fishing days near the Chesapeake Bay Bridge Tunnel for the commercial hook-and-line fisherman. He felt the fishery could be better managed with a more natural distribution increase in larger size fish. He said allowing additional time to fish the Chesapeake Bay Tunnel for 550 holders of striped bass tags during the time of the year when the primary target was large fish was contrary to the long-term goal.

Associate Member Ballard questioned the regulatory regime on the large fish and the closed regulatory season the last week of the commercial season. Mr. Travelstead responded that the last 8 days were closed. Mr. Travelstead also stated that the ASMFC was looking at erroneous data when they demanded that the States adopt those regulations. He said next year they would be able to lift those regulations because the fishing mortality on the larger fish was not as great as they once believed.

Associate Member Ballard asked Mr. Powers if his primary concern was conservation? Mr. Powers responded yes. A discussion followed. Comments are a part of the verbatim record.

Chris Ludford, an appointed member of the Task Force presented a signed petition by 500 individuals who supported the proposals passed by the majority of the Hook-and-Line Task Force to extend fishing time at the Chesapeake Bay Bridge Tunnel for the commercial hook-and-line fishery from midnight Wednesday until Friday at 6:00 a.m. on a one year trial basis. He said the Task Force did their best job in trying to put something together for both the commercial hook and line fishermen and the recreational fishermen' interest.

Bill Reynolds, representing the Eastern Shore Working Watermen Association, said they were just seeking some relief from the three-day restraints. He said the proposal for registering crew members would be unworkable for them and would place more of a burden on staff. He said he felt that they gave back to the recreational fishermen the black drum fishery.

Associate Member Ballard commented that he felt the intent of the issue to register the crew for the Commercial Hook-and-Line Fishery was good, but he questioned if that was a workable solution. Mr. Reynolds responded that it would be hard for the commercial watermen to register all their crew because it was difficult to keep crew members especially in the waterfront environment.

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Kelly Place, a commercial hook-and-line fisherman, provided information on the formation of a Virginia Commercial Hook-and-Line Fishermen's Association. He said he had been contacted by marine biologists, and a sister organization in Massachusetts, the Cape Cod Commercial Angler's Association, who suggested forming a coastwide alliance from Canada to Florida with the different commercial hook-and-line associations. Mr. Place indicated that their mission statement was similar to the Cape Cod organization which pertained to sustainability, working with management, working with science, and working with law enforcement to hopefully enhance the resource for all members. Other comments are a part of the verbatim record.

Doug Jenkins thanked Dr. Jim Wesson and Associate Member Birkett for attending the Board of Supervisor's meeting. Mr. Jenkins then spoke in opposition to numbers 5, 7, and 10 of the proposed amendments.

Commissioner Pruitt closed the public hearing.

Associate Member Birkett asked Colonel Bowman if enforcing the crew size would be a problem for Law Enforcement. Colonel Bowman said that Law Enforcement could manage receiving the data, keeping the data on file and conveying the information to the marine patrol officers. He also stated that the complaints received regarding the charter boats was very infrequent.

Associate Member Gordy commented on the fine job Associate Member Birkett and his committee did and they were appreciative for their efforts.

Associate Member Birkett also commented on the hard work the committee and staff did to come up with the conclusions to the issues before the Committee.

Associate Member Ballard commented that he was really concerned and bothered by the statement made by CCA's major objection to number 9, that additional hours of commercial hook-and-line fishing at the bridge tunnel was a conservation issue. Mr. Ballard indicated that he thought the Commission had dealt with the conservation issue earlier and that staff had eluded to the fact that there was no conservation issue involved.

Commissioner Pruitt commented that he could see where the recreational fishermen were concerned about the extension. However, on the other hand, if the commercial fishermen were willing to go along with item 10, it would seem that would mitigate their concern and he felt they had come to a middle ground.

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Commissioner Pruitt then placed the matter before the Commission.

Associate Member Birkett requested clarification on the statement mentioned by one of the commercial fishermen that the commercial hook-and-line fishermen were willing to give up Thanksgiving week as part of the draft regulation. Mr. Travelstead responded that statement was not a part of the draft regulation. A discussion followed.

Associate Member Cowart commented that the CCA felt strongly about seeing additional time at the Bay Bridge and if additional time was given, it appeared that there would be additional conflicts. Mr. Cowart said he did not feel he could support any changes at this point, and therefore, felt everything should remain the same and take no action on the proposed changes.

Associate Member Williams commented that a lot of time and effort had been put on the proposed changes, but he also had concerns. He said the watermen that contacted him wanted to know how the Finfish Committee reacted to the issue.

Mr. Travelstead indicated that the Finfish Committee had not seen the report of the Commercial Hook-and-Line Task Force, other than through the Public Notice process. He said prior to the adoption of the Task Force the Finfish Committee looked at the Bay Bridge Tunnel issue, and that issue was transferred to the Task Force.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Birkett moved to accept the recommendations of the Task Force Committee, with an added amendment for the Thanksgiving week issue. Motion was seconded by Associate Member White. Motion carried 5 to 3 to accept the Task Force recommendations along with the Thanksgiving amendment.

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**RECOMMENDATION** of the Commercial Fishery Advisory Board.

Jack Travelstead, Chief-Fisheries Management, informed the Commission that the Board had a quorum and they had a meeting yesterday afternoon. He then presented the Board's agenda as follows:

- A. Alternative Baits and Bait Bags in the Channeled Whelk Fishery, Bob Fisher, VIMS, \$5,500.00.

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The Board recommended unanimously that the Commission approve funding for that project.

- B. American Shad Restoration, Mattaponi Heritage Foundation, Carl Custalow, \$20,000.00.

The Board voted unanimously to table the item until January or February 2001 and would reconsider the item when 2001 license monies were available.

- C. Estimating Relative Abundances of Y-O-Y- American Eel, Patrick Greer, VIMS, \$14,230.00.

The Board recommended unanimously for funding.

- D. Finfish Aging for Virginia Catches. VMRC and ODU, Jack Travelstead, \$20,303.00 (10% of total project).

The Board recommended unanimously for funding. Mr. Travelstead indicated that was \$200,000 project and 180,000.00 had already been committed by the Recreational Licenses fund.

- E. Legal Expenses, Foreign Crab Meat Trade Sanctions; \$25,000.00.

The Board recommended approval on a vote of 5 to 1 for funding. Mr. Travelstead indicated that there was an understanding by the Board that approval of the legal expenses must also be approved by the Attorney General's office.

Commissioner Pruitt asked for comments from the public on the above programs.

Johnny Graham, representing Graham and Rollins and the Virginia Seafood Processing Industry, also a member of the NBCI National Blue Crab Industry addressed the Commission. Mr. Graham stated that they had been involved in a court case involving foreign crab meat. He said they went before the International Trade Commission and they were unsuccessful in persuading the Court on whether they were being injured by the foreign crab meat industry. He said the legal fees involved more than \$300,000, and they had received a \$100,000 from the State of Louisiana and \$100,000 from North Carolina, and that Virginia so far had managed to secure \$25,000 from the Virginia Marine Product's Board, however, they were trying to get matching funds from the Commercial Fishery Fund. Mr. Rollins indicated that there were a lot

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watermen involved and the industry was still strong and viable, but they would like the support of the Commission.

Rick Robins, representing Chesapeake Bay Packing, addressed the Commission. Mr. Robins thanked VIMS and Bob Fisher for their hard work on the initial phase of the bait bag research and the early return on the earlier investment was fantastic.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams moved to approve projects A, C, D, and E, with the approval of the Attorney General's office. Motion seconded by Associate Member Ballard. Motion carried unanimously.

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**DISCUSSION:** Proposed revision of the patent tong seasons in the York River and Poquoson River Shellfish Management Areas and the time-of-day restriction in the Newport News Shellfish Management area.

Tina Hutcheson, Fisheries Management Specialist, indicated that at the October 11, 2000 of the Hard Clam Management Advisory Committee meeting, two motions were passed: (1) alter the seasons in the York River and Poquoson River Shellfish Management Areas so that the effort could be more widely distributed; (2) the Committee voted 6-0 to have the York River Shellfish Management area season changed to August 15 through November 30 and the Poquoson River Shellfish Management Area season changed to March 15 through May 1. She also indicated that there was a discussion at the October 11, meeting regarding shellfish management area harvesting time limits from sunrise until 1:00 p.m. However, a motion was made at the October 11, 2000 Hard Clam Management Advisory Committee that the harvest time in the Newport News Management area would be from sunrise until 2:00 p.m. Ms. Hutcheson said staff was recommending advertising the amendments to 4 VAC 20-560-10 et. seq., "Pertaining to Shellfish Management Areas, at a public hearing at the November 15, Commission meeting.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to advertise for a public hearing at the November meeting. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

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Commissioner Pruitt requested that Mr. Wilford Kale, staff adviser, read a statement from Secretary Paul Woodley, who was unable to attend the meeting today.

Mr. Wilford Kale read Secretary Woodley's statement for the record as follows:

"To the Commissioner of Marine Resources and all Members of the Virginia Marine Resources Commission:

I wish I could be with you today to convey to you in person my thanks and congratulations, along with those of Governor Gilmore, on the successful conclusion of the recent controversy regarding regulation of the harvest and landing of horseshoe crabs.

In fact of enormous pressure from many powerful interests, you stood firm in favor of a management plan which would, while fully protecting the horseshoe crab, still permit a reasonable level of horseshoe crab availability for Virginia's watermen. I know it has not been easy for you to withstand the name-calling and threats on the part of some involved in this controversy.

Because some misinformed reports have circulated on the matter, I think it is appropriate to set the record straight. Last Tuesday the Atlantic States Marine Fisheries Commission voted unanimously to approve our proposal to allow interstate transfer of quotas in the horseshoe crab management Plan. It was well understood by all concerned that this action would permit Virginia to come into full compliance with the horseshoe crab management plan, and that the Virginia Marine Resources Commission would act to come into compliance at today's meeting. Commissioner Pruitt gave formal written assurance of our intention to the National Marine Fisheries Service.

Under these circumstances, the imposition of a federal ban on possession of horseshoe crabs in Virginia waters would be at best unnecessary, and at worst arbitrary and oppressive. We asked the federal authorities to postpone the effective date of the ban, to avoid this unjust action.

When it became apparent that, contrary to prior assurances, the U. S. Department of Commerce did not intend to postpone imposition of its horseshoe crab ban on Virginia, the Attorney General prepared to seek a federal court injunction against the moratorium. Our attorneys suggested to me that our litigation posture would be stronger if we took immediate action to amend our horseshoe crab regulation to reflect the recent action of the Atlantic States Marine Fisheries Commission.

At my request, and to strengthen our litigation posture, the Commission met on Friday in an

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emergency session to adopt the amendments to Virginia's horseshoe crab regulations. In the meantime, I sent a letter to Secretary Mineta, formally advising him that Virginia would seek an injunction against his horseshoe crab ban on Monday, October 23, 2000, unless he took immediate action to issue that the ban did not go into effect on that day.

Late on Friday, we received notice from the National Marine Fisheries Service that the horseshoe crab ban had been stayed, and that subsequent action would be taken to rescind the ban entirely. Based on this information, I advised the Attorney General that legal action would not be required at this time.

Thanks to your efforts, Virginia now has a horseshoe crab management plan in force which allows for conservation of the species while at the same time allows the important conch and eel fisheries of Virginia to meet their bait needs. Without your wisdom and resolution, this conclusion would not have been possible, and the Governor and I applaud you for it."

John Paul Woodley, Jr.

Jack Travelstead, Chief-Fisheries Management, thanked the Commission members for attending the emergency Commission meeting on Friday afternoon. He also complimented the Commission members for their response and cooperation in getting to the meeting by 4:00 p.m. on such a short notice. Mr. Travelstead then presented a copy of the resolution that was adopted at the emergency meeting.

Commissioner Pruitt asked counsel if a reaffirmation of the vote was necessary. Mr. Carl Josephson, Assistant Attorney General, commented that the action taken at the emergency meeting was consistent with the statute and the Commission's authority.

Although Commissioner Pruitt decided that reaffirmation was not necessary, he felt the emergency regulation should be ratified by all the Commission members. He then requested that the motion maker and the seconder restate the motion.

Rick Robins, representing Chesapeake Bay Packing and Bernie's Conchs, also thanked the Governor, Secretary Woodley and the Commission for their support and the conch industry was very grateful for that support. He also thanked Mr. Pruitt and Mr. Travelstead for their diplomacy at the ASMFC meeting on Tuesday.

Associate Member Cowart said he had heard from several different sources that Mr. Travelstead did an exemplary job at the ASFMC in forwarding the issue and getting the

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Commission to where they were now.

Associate Member Gordy then moved that Emergency Regulation 4 VAC 20-900-10, et. seq., be approved. Motion was seconded by Associate Member Hull. Motion carried unanimously, with the Chairman also voting "aye."

Commissioner Pruitt then stated that the Emergency Regulations must be acted on within 30 days. After a discussion between Commission members, it was decided that the regular meeting of the VMRC meeting would be changed from November 28, 2000 to November 15, 2000, at 9:30 a.m.

The Commission also agreed to change the scheduled VMRC December meeting to December 19, 2000 at 9:30 a.m.

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**REPEAT OFFENDERS CONTINUED:**

Thomas N. Freeman - present.

LT. Colonel Lewis Jones, Deputy Chief-Law Enforcement, briefed the Commission on Mr. Freeman's probation violation. Lt. Colonel Jones indicated that Mr. Freeman was before the Commission in February 2000 as a first time repeat offender. At that time, Mr. Freeman was placed on probation for 12 months. On June 29, 2000, Mr. Freeman received a summons and was found guilty for possession of dark sponge crabs, which was in violation of his 12 month probation.

After receiving testimony from Captain Oliver, a discussion between Commission members followed. Comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Gordy moved to extend the 12-month probation until February 2002. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

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**PUBLIC COMMENTS.**

Pete Freeman addressed the Commission on behalf of his son, Robert Freeman, who was trying

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to get his crab dredge license. Other comments are a part of verbatim record

Mr. Travelstead explained to the Commission the circumstances surrounding the purchase of the boat. Comments are a part of the verbatim record.

Commissioner Pruitt suggested that Mr. Freeman provide documentation of the circumstances and then the Crab Dredge Committee could make a decision.

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Associate Member Hull suggested that Mr. Pruitt pass the gavel to Associate Member White. All present then wished Commissioner Pruitt a Happy Birthday.

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Meeting adjourned at 5:05 p.m.

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William A. Pruitt, Commissioner

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LaVerne Lewis, Commission Secretary