

**MINUTES**

**JANUARY 23, 2001  
NEWPORT NEWS, VA 23607**

The regular monthly meeting of the Marine Resources Commission was held on January 23, 2001 with the following present:

- |                     |   |                                |
|---------------------|---|--------------------------------|
| 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                       |
| Kathy Leonard       |   | Acting Commission Secretary    |
| Bob Craft           |   | 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       |
| Robert Simmons      |   | Marine Patrol Officer          |
| Jeff Copperthite    |   | Marine Patrol Officer          |

**VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF**

- Dr. Eugene Burreson
- Tom Barnard
- Lyle Varnell

**COMMISSION MEETING**

11429  
**JANUARY 23, 2001**

David O'Brien

Jack Travelstead  
Rob O'Reilly

Chief-Fisheries Management  
Assistant-Chief Fisheries Management

Dr. Jim Wesson

Head-Conservation and 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:

Chuck Roadley  
Genia Phillips  
LCDL W. R. Prulette  
Preston Smith  
Jeannie Butler  
John Melza  
Jim Vaughn  
Robert Tupper  
Susan Goode & Andrew Fink  
Jon Paulson  
Jay Taylor

Doug DeBerry  
James Pimblett  
Rob Brumbaugh  
Warren M. Cosby, Jr.  
Wayne Rammell  
Kevin Dubois  
Veremdell Hudnall  
Heather Wood  
Marina Phillips  
Lea Resenberg  
Cherryl Barnett

**COMMISSION MEETING**

11430  
**JANUARY 23, 2001**

CDR R. James Orr  
Dan Garlick  
Charles Quinlan  
Michael Buss  
Greg Humble  
Robert L. Smith  
Pete Freeman  
Chris Ludford  
H. Massie Burger  
Peter Nixon  
Kelly Place  
Bob Hutchinson  
William L. Scott

Mike Andrews  
Larry Sapp  
Wayne Hatcher  
Joe Bramlett  
Joe Wilson  
Sid Glass  
Rick Stilwagen  
Roger Hill  
Douglas F. Jenkins, Sr.  
Jim Deibler  
Russell Gaskins  
Ronnie Jett  
William S. Reynolds

and others.

Acting Chairman John White opened the January meeting at 9:30 a.m. Members present were Associate Member Hull, Gordy, Williams, Ballard, Birkett, Cowart and McLeskey. Mr. White

**COMMISSION MEETING**

established that there was a quorum. Mr. Showalter gave the invocation and Associate Member Ballard led the Pledge of Allegiance to the Flag.

**APPROVAL OF MINUTES**

Associate Member Hull moved that the Minutes be approved as provided. Motion seconded by Associate Member Gordy. Motion carried unanimously.

\*\*\*\*\*

**APPROVAL OF AGENDA**

Associate Member Ballard moved to accept the agenda as printed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

\*\*\*\*\*

**EXECUTIVE SESSION - not necessary.**

\*\*\*\*\*

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

Tony Watkinson, Deputy Chief - Habitat Management, briefed the Commission on the location and description of the page two items listed below: Comments are a part of the verbatim record.

**2A. MARINE RESOURCES COMMISSION, #00-2039.** The Fisheries Management Division requests authorization construct a triangular shaped subtidal oyster reef sanctuary with three 60-foot wide sides measuring 320 feet, 365 feet and 440 feet long, constructed of oyster and clam shell at 37°34'39.0" North Latitude and 76°19'10.0" West Longitude in the Rappahannock River between Sturgeon and Broad Creeks in Middlesex County.

PERMIT FEE NOT APPLICABLE

**2B. MARINE RESOURCES COMMISSION #00-2040.** The fisheries Management Division requests authorization to construct a 500-foot long by 40-foot long wide subtidal oyster reef sanctuary constructed of oyster and clam shell at 37°05'35.7" North Latitude,

COMMISSION MEETING

76°20'38.0" West Longitude in Back River near Langley Air Force Base in Hampton.

PERMIT FEE NOT APPLICABLE

**2C. MARINE RESOURCES COMMISSION, #00-2041.** The Fisheries Management Division requests authorization to construct a 600-foot long by 60-foot wide subtidal oyster reef sanctuary constructed of oyster and clam shell at 37°36'59.0" North Latitude 76°18'21.0" West Longitude near Fleets Island in the Rappahannock River on Public Ground No. 1, in Lancaster County.

PERMIT FEE NOT APPLICABLE

**2D. MARINE RESOURCES COMMISSION, #00-2042,** The Fisheries Management Division requests authorization to construct a 658-foot long by 60-foot long wide subtidal oyster reef sanctuary constructed of oyster and clam shell at 36°50'14.0" North Latitude, 76°14'f5.0" West Longitude near the Ford Motor Company Norfolk Assembly Plant in the Eastern Branch of the Elizabeth River in Norfolk.

PERMIT FEE NOT APPLICABLE

**2E. ELIZABETH RIVER TERMINALS, #00-2029,** requests authorization to maintenance dredge, on an annual basis, by mechanical method, up to 10,000 cubic yards of State-owned submerged lands from the Southern Branch of the Elizabeth River to maintain maximum depths of -35 feet below mean low water adjacent to their facility in Chesapeake.

PERMIT FEE.....\$ 100.00

**2F. AQUA MARINE, #00-1491,** requested authorization to construct a 36-foot long by 8-foot wide fixed pier and a 236-foot long by 8-foot wide floating pier, two 50-foot by 10-foot finger piers, and a 48-foot by 10-foot finger pier supporting a total of 21 wet slips and associated mooring piles adjacent to property situated along Chisman Creek in York County.

PERMIT FEE.....\$ 100.00

**2G. CITY OF NORFOLK, #96-1807,** requests a modification to their previously issued permit to allow for the dredging of 34,600 yards of State-owned subaqueous bottom to create a 1,300 foot long by 75-foot wide construction access channel in lieu of the 800-foot long by 75-foot wide channel previously authorized to facilitate the installation of a 1,870 foot water main in Edgewater Haven in Norfolk.

COMMISSION MEETING

JANUARY 23, 2001

MODIFICATION - PERMIT FEE NOT APPLICABLE

2H.E. CLAIBORNE ROBBINS, JR., #00-1199, requests authorization to rebuild and extend an existing pier to a total length of 400 feet channelward of mean high water with a 30-foot by 30-foot pier-head and to construct two (2) 100-foot long riprap channel jetties, 350 linear feet of timber bulkhead, 270 linear feet of riprap revetment, eight (8) 12-foot wide riprap breakwaters totaling 575 linear feet, a 250-foot by 12-foot marginal wharf with an attached 20-foot by 35-foot open-sided boathouse, a 12-foot by 50-foot concrete boat ramp in place of a smaller ramp, and to maintenance dredge approximately 1500 cubic yards of subaqueous bottom material from a 20-foot wide by 675-foot long channel to restore depths to minus six (-6) at mean low water and place the dredged material behind the proposed breakwaters as beach nourishment at their property along the Ware River in Gloucester County. Recommend approval with our standard dredging conditions and a condition that any dredged material containing more than 20 percent fines by volume not be used for beach nourishment, but rather be properly contained within an upland disposal site.

Encroachment of 9,900 sq ft. of beach nourishment @ 0.05 per sq. ft.....	.....\$	495.00
Permit Fee.....		<u>100.00</u>
Total	\$	595.00

2I. ATT/PFNET, #00-1469, requests authorization to install a coaxial fiber optic cable along VDOT/R/W and within existing easements crossing numerous streams and rivers between Richmond and the North Carolina/Virginia State Line.

Mr. Watkinson also stated that item 2I, ATT/PF NET, #00-1469, would include a royalty assessed at a rate of \$1.00 per linear foot of encroachment.

Royalty of \$1.00 per ln. ft. for 18,079.00.....	\$18,079.00
Permit fee.....	<u>100.00</u>
Total	\$ 18,179.00

Associate Member Williams commented on Item 2A, Marine Resources Commission, #00-2039, regarding the oyster reef in the Rappahannock River between Sturgeon and Broad Creeks in Middlesex County. He said he had a problem with the construction because he felt it was a waste of time, oyster shells, and etc. because the wave action from the northeast and northwest winds would destroy the reef. He said he lived there and he had worked that area all his life. However, he did not have any problems with the construction of the other three reefs.

**COMMISSION MEETING****JANUARY 23, 2001**

Associate Member Hull commented that Mr. Williams was extremely perceptive on matters regarding the Rappahannock River, and he concurred with Mr. Williams' judgement.

Associate Member Ballard moved to approve 2B through 2I, and then debate 2A. The chairman was amenable to the suggestion. Motion was seconded by Associate Member Birkett.

Motion carried unanimously to approve 2B through 2I.

Associate Member Birkett stated that if 2A was eliminated, he would like to see other possible sites considered, rather than just eliminating the site. Mr. Travelstead suggested that Dr. Wesson address the issue.

Associate Member Gordy stated that she would like to hear Dr. Wesson's comments on the issue.

Dr. Jim Wesson commented that he was aware of Associate Member Williams' concerns when he chose the site. He said the reef was not intertidal. The reef was subtidal in 18 to 20 feet of water, which was a sufficient depth to protect the reef from wave action. Dr. Wesson stated that they had experimented with reefs that were subtidal and they had not seen any damage. He said this particular reef was specifically designed in a triangle so that it was not too long or too exposed to any one direction of wind fetch. Dr. Wesson further explained the different plateaus and changes in water depths in the of the Rappahannock River. Comments are a part of the verbatim record.

Dr. Wesson said they tried to put all the reefs in the Rappahannock River in depths ranging 10 feet to 25 feet to avoid anoxia. He said this reef was sited from the beginning to be wind resistant, it was small and compact, and in a triangle shape.

Associate Member Williams stated that he was familiar with what Dr. Wesson had said, and he knew this was a natural bar and the oysters there were flat on the bottom and were not being covered. Mr. Williams said in a 3-dimensional reef you would have problems because of the wave action. Associate Member Williams then requested the matter be tabled until the next meeting to gather more information.

The Commission concurred.

\*\*\*\*\*

**4. ATCIC, INC., #99-1996, requests authorization to dredge, by mechanical method, 1,943**

**COMMISSION MEETING**

cubic yards of State-owned subaqueous bottom material to create a 910-foot long by 30-foot wide channel possessing maximum depths of minus five (-5) feet at mean low water and two ancillary channels, one 220-foot long by 15-foot wide and the second a 90-foot long by 15-foot wide, both possessing maximum depths of minus four -4 feet at mean low water, in Tanners Creek in Norfolk. The project is protested by the Citizens of the Preservation of Norfolk's Wetlands.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides of the location and description of the project. Comments are a part of the verbatim record. Mr. Neikirk said the proposal was to dredge 14,755 cubic yards of material from a 1300 foot long main channel and eight ancillary channels to restore navigable access to Tanners Creek. He indicated that only 910 feet of the main channel and two ancillary channels closest to the mouth of the creek involved State-owned submerged land. The other portions of the proposal included intertidal land or shallow subtidal bottom which was previously dredged from upland (i.e. marsh or intertidal land). Mr. Neikirk indicated that the dredging would be done mechanically, with the spoils being transported to Craney Island for disposal. He said the dredged material consisted primarily of fine silt and sandy clay. This project was previously dredged in 1955. Mr. Neikirk said there were 30 lot owners around the creek and 17 of them were participating financially.

Mr. Neikirk indicated that the project was protested by the Citizens for the Preservation of Norfolk's Wetlands. The citizens group was concerned that the project would severely impact the intertidal wetlands. They were also concerned that the dredging might impact the natural flushing of the creek and increase shoreline erosion. The Citizen group also questioned the calculations used to determine the volume of material to be dredged. Mr. Neikirk said most of the wetland impacts associated with the project were to intertidal mudflats. Only a small amount of vegetated wetlands were involved.

Mr. Neikirk also stated that VIMS made several recommendations to reduce the impacts on tidal wetlands that were considered by the Norfolk Wetlands Board. VIMS also proposed that the channel be connected to the same depth contour as the proposed dredge depth.

Mr. Neikirk stated that staff believed that the proposed dredging was reasonable to restore navigable access to a previously dredged creek. He said the applicants, through numerous revisions, had attempted to minimize the adverse impacts associated with the project. The southern terminus was not projected to encroach on Public Ground Number 7. Accordingly, staff recommended approval with the following special conditions:

- VMRC standard dredging conditions which require a pre-dredging conference and a post-dredging bathymetric survey should be included in the permit.

**COMMISSION MEETING**

- The southern boundary of the dredge cut should be staked and inspected prior to any dredging to confirm that no dredging would encroach into Public Ground Number 7.
- A royalty of \$0.45 per cubic yard for the dredging of State-owned subaqueous bottom would be assessed.

Associate Member Ballard asked if staff had evaluated the project taking into account the subaqueous guidelines of the Commission, and if we had determined if the project was in substantial compliance with those guidelines, as well as the standards found in §28.2-1205 of the Code. Mr. Neikirk responded yes.

Steve Ramine, representing the Algonquin-Tanners Creek Improvement Committee (ATCIC), gave an overview of the project and talked about the modifications. Mr. Ramine agreed that the proposed maintenance dredging would improve navigation, promote recreational use, and enhance the property values which have been impacted by the lack of navigability.

Mr. Ramine said they were proposing a small maintenance dredging project. He said the 30 property owners around Tanners Creek would be most directly affected, but this project would improve the property values and enhance recreational access. Mr. Ramine said their modifications to the application were in response to the Norfolk City Planning staff, state and federal agencies and conservation groups. He said they decreased the impacts on the regulated wetlands, decreased the length of the proposed maintenance dredge channel, and relocated channels to decrease their impacts on the wetlands.

Mr. Ramine said that they clarified the fact that the dredged channel would extend into the Lafayette River to reach a controlling depth appropriate to the tidal flushing of Tanners Creek and decreased the number of channels going to the piers by having the property owners pier out, where possible, and shorten the channels adjacent to the bulkheads on lots 8 and 18. In addition, they eliminated the channel to the second pier on lot 28, obtained professional surveyors to confirm the mean low water mark, and reduced the width of proposed channels, 9 and 28.

Mr. Ramine then addressed the issue of environmental impact. He said it was their opinion, that this was a small maintenance dredge project, which would result in a short-term temporary disruptions of the benthic organisms and an increase of suspended solids. He said this project would be similar to boating activity, that would involve churning of the bottom. He also noted that the shoreline around Tanners Creek would be hardened and this would decrease the likelihood of future erosion, and hopefully minimize the frequency between maintenance dredge cycles. Mr. Ramine also indicated that while this maintenance dredging would slightly modify the activities and the subaqueous organisms, overall the balance of the ecological

system that exists would remain unchanged.

Mr. Ramine then addressed the concerns outlined in Mr. Taylor's letter of opposition. Comments are a part of the verbatim record.

Mr. Ramine further stated that the proposal would have benefits to all citizens of Norfolk's with only minimal impact on the subaqueous soils and wetlands. He then requested the Commission approve the proposed dredge project for Tanner's Creek.

Assistant Attorney General Josephson asked if the Corps of Engineers was requiring mitigation. Mr. Ramine responded yes, but stated that since Mr. Andrew Fink was more familiar with that matter, and he would request that Mr. Fink address that issue.

Andrew Fink, a part of the ATCIC group, addressed the Commission and responded to the mitigation question. Mr. Fink said the Corps of Engineers was requiring them to mitigate for the loss of both vegetated and non-vegetated wetlands. He said the method the applicant chose was to pay money to them to restore the oyster reefs.

Lewis J. Taylor, who lived at 516 Oak Grove Road in Norfolk and represented the Citizen Group for the Preservation of Norfolk's Wetlands, addressed the Commission. He thanked the group for the modifications that were made to the original application over the past year.

Mr. Taylor then provided rebuttal comments to the issues Mr. Ramine had mentioned. Comments are a part of the verbatim record. He said that homeowners around the creek already had boating access from the creek at a medium tide. Mr. Taylor felt that since this was the first dredging in 45 years, this proposal did not truly constitute maintenance dredging. Rather, it was more like new dredging as far as impacts were concerned. He reminded the Commission that 50 percent of the wetlands in Hampton Roads had been lost over the past 40 or 50 years. Mr. Taylor also stated that if the project was approved, they would like to see the channels made shallower and shorter, with no wake zones implemented, compensation for the loss of wetlands, and a request for monitoring plans from DEQ to evaluate the consequences of this dredging. He also requested that the dredging be postponed for a brief period of time for them to obtain funding and to prepare a plan to start the process of monitoring. He said in order to benefit scientifically from the proposal, pre-dredge data should be obtained.

Cynthia Hall, Deputy City Attorney from Norfolk, representing the City Council of Norfolk, addressed the Commission. Ms. Hall presented to the Commission Resolution 1082 from the City of Norfolk that was adopted by the City Council on January 15, 2001. She then read it into the record as follows:

**COMMISSION MEETING**

11438  
**JANUARY 23, 2001**

A resolution to support Efforts to restore, enhance and maintain the navigability of Tanners Creek and Crab Creek.

WHEREAS, the City affords many citizens the opportunity to live on tidal waters with major tributaries to the Chesapeake Bay including: Little Creek, Lafayette River, Elizabeth River and Broad Creek; and

WHEREAS, these waterways provide direct benefits to all citizens and the City in the form of recreational opportunities, enhanced property values, and increased tax base; and

WHEREAS, THE historical processes of erosion and sedimentation in these tributaries has resulted in many of these waterways silting in and restricting navigational access for waterfront property owners and the general public; and

WHEREAS, restricted access has a determined impact on the public's use of these waterways and negative impact on property values and the City's overall tax base; and

WHEREAS, the City is currently dredging Little Creek and a number of property owners have formed associations to pursue the dredging of other waterways, including Crab Creek and Tanners Creek; and

WHEREAS, the aforementioned dredging projects incorporated environmental safeguards as required by existing federal, state and local regulations; now, therefore,

BE IT RESOLVED by the Council of the City of Norfolk:

Section 1: - That City Council encourages and supports efforts to restore, enhance and maintain the navigability of Tanners Creek and Crab Creek because such efforts will increase recreational opportunities, enhance property values and increase the tax base.

Section 2: - That this resolution shall be in effect from and after its adoption.

Adopted by Council January 16, 2001

Effective January 16, 2001

TRUE COPY  
TESTE:

---

R. Breckenridge Daughtrey, City Clerk

**COMMISSION MEETING**

11439  
**JANUARY 23, 2001**

BY \_\_\_\_\_  
Deputy City Clerk

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

Associate Member Ballard moved that in the case of ATCIC, Inc., VMRC #99-1996, that based on the Commission having considered all the documents and materials in the Commission's agenda package, the briefings and recommendations that the Commission had heard from staff, the evidence that had been presented on behalf of the applicant, and on behalf of the protestants by Mr. Taylor, and further, considering the comments of other State and Federal agencies consulted in this matter and those items specifically identified under Code of Virginia Section 28.2-1205 for the Commission's consideration when determining whether to grant or deny a permit for the use of State-owned bottom land, and taking into account the Commission's subaqueous guidelines which we have heard testimony on, finds that this project is in substantial compliance and that this project meets the standards of §28.2-1205 of the Code of Virginia and qualifies for a permit. Therefore, this Commission adopts the staff recommendation as presented, including the special conditions. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Royalty for dredging 1943 cys @		
\$0.45 per sq. yd.....	\$	874.35
Permit Fee.....		<u>100.00</u>
	Total	974.35

\*\*\*\*\*

Mr. Grabb requested the Commission's approval to continue items 5 and 6.

**ITEM 5: CRAB CREEK IMPROVEMENTS, L.L.C., #00-2197.** Commission's review on appeal by 25 or more freeholders of property within the City of Norfolk of the December 13, 2000, decision by the Norfolk Wetlands Board to approve, in modified form, an application to dredge navigation channels within Crab Creek, a tributary of the Lafayette River.

Chip Neikirk stated that staff had received a request from the City of Norfolk to defer action on this item until the next meeting. Mr. Neikirk said the lengthy transcript was not received until Friday and staff was unable to thoroughly review the project. All parties were in agreement to the request.

## COMMISSION MEETING

Associate Member Hull moved to postpone Item 5 until next Commission meeting. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

\*\*\*\*\*

**ITEM 6: KENNETH D. WILKINS, #00-0650.** Commission's review on appeal of the December 18, 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.

Bob Grabb, Chief-Habitat Management Division, indicated that a letter had been received from counsel of the appellant, Mr. Croshaw, and due to conflicts he was requesting that the hearing be continued until the February meeting.

Associate Member Hull moved to grant the continuance until the next meeting. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

\*\*\*\*\*

**ITEM 7: BARBARA GROFF, #99-0046.** Restoration hearing to consider the unauthorized construction and backfilling of 154 linear feet of wooden bulkheading up to 5.2 feet channelward of mean low water and encroaching on 420 square feet of State-owned subaqueous bottom in Chincoteague Bay.

Hank Badger, Environmental Engineer, briefed the Commission and presented slides on the location and description of the project. Comments are a part of the verbatim record. Mr. Badger stated that the unauthorized bulkhead structure was noticed on a site visit to inspect wetlands applications in the area. The wooden bulkhead constructed at the Groff property extended up to 5.2 feet channelward of mean low water. Mr. Badger indicated that Mrs. Groff had previously applied for a bulkhead permit, but in her final revised drawing, the structure had been relocated above the mean low water line.

Mr. Badger said a Notice to Comply from VMRC was issued and received by Ms. Barbara Groff on September 30, 2000. The Notice to Comply directed the removal of the illegal structure and restoration of the area to its pre-existing conditions within 60 days. The Notice stated that if it was not complied with, the matter would be brought before the full Commission as an enforcement action. As of today, the illegal structure had not be removed.

Mr. Badger then summarized the situation. He stated that on January 5, 1999, the Accomac County Wetlands Board received a Joint Permit Application from Mrs. Groff to construct 152 linear feet of bulkhead. Staff requested new drawings showing horizontal distances, and the

location of the proposed bulkhead in relation to the mean low water mark and the two existing bulkheads. Mr. Badger said he contacted Mr. Raymond Britton, the authorized agent for Mrs. Groff, and requested that he provide information on what the proposal involved. Mr. Britton informed Mr. Badger that it was a straight bulkhead from the existing bulkhead on the Savage property to the existing bulkhead on the other property. He said a field review was conducted on January 7, 1999, which revealed that a portion of the proposed bulkhead as proposed would fall up to 6 feet channelward of the mean low water mark. That meant the bulkhead would fall within VMRC's jurisdiction.

A public hearing was held on January 28, 1999, and the Accomac County Wetlands Board approved their portion of the bulkhead that fell within the Wetland Board's jurisdiction. The Wetlands Board's based their decision on the original application because the Board did not have the revised drawing from Mr. Britton at that time.

Mr. Badger further stated that on January 19, 1999, in a shoreline application report, VIMS stated that the individual and cumulative adverse impacts resulting from the bulkhead would be minimal provided the bulkhead was placed landward of the subaqueous bottom.

Mr. Badger said on February 9, 1999, staff discussed the VIMS report with Mr. Raymond Britton. He said Mr. Britton was advised that staff would not likely be able to recommend approval as proposed. Mr. Britton then agreed to relocate or realign the proposed bulkhead landward of the mean low water mark. Mr. Badger said that staff again requested a new drawing showing tie down distances, the location of the realigned bulkhead in relation to the mean low water mark, and the two existing bulkheads.

Mr. Badger said on August 31, 1999, staff received a drawing from James Latimer, a licensed land surveyor, dated August 27, 1999, which showed the proposed bulkhead aligned landward of mean low water. Mr. Badger said based on that revised drawing, staff determined that the bulkhead was now outside VMRC's jurisdiction. A letter was then sent to Mrs. Groff stating that since the proposed bulkhead was landward of mean low water, no authorization would be required from VMRC. Mr. Badger said instead of the bulkhead being constructed behind the low water mark as depicted, the bulkhead had been constructed in a straight line which was the proposal in the original application and not what was sent to VMRC in the revised drawing.

Mr. Badger indicated that the Virginia Institute of Marine Science recommended removal and realignment of the bulkhead as shown on the drawing by Mr. Latimer, dated August 31, 1999. The impacted subaqueous bottom should be restored to its original grade. The backfill should be removed before realignment and prevented from re-entering the marine environment. Mr. Badger said that in most cases when a violation was discovered, the property owner would be given the option of applying for an after-the-fact permit or voluntarily restoring the area to

**COMMISSION MEETING****JANUARY 23, 2001**

preconstruction conditions. However, in this particular case, it was unlikely that staff would have been able to recommend approval of a bulkhead alignment channelward of mean low water. Therefore, restoration appears to be the only alternative. Additionally, although there may be some impacts associated with removal and reconstruction of the structure along the acceptable alignment, staff believes that the impacts would be relatively short-term when compared to the permanent loss of subaqueous habitat that will result from the unauthorized activity.

Mr. Badger said that staff was recommending that the Commission direct restoration of the area, and require the removal of all unauthorized fill material back to the high water line. The fill shall be removed within 90 days of the issuance of the Restoration Order and all excavated fill material shall be transported to an approved upland location. Once the fill was removed, the area should be inspected by staff prior to removal of the unauthorized bulkhead. If Mrs. Groff wishes to reconstruct the bulkhead, she should align it at or above the mean low water mark as shown on the revised drawing dated August 27, 1999, by James Latimer, II, Land Surveyor.

Jon Poulsen, attorney for both the applicant and agent, addressed the Commission. Mr. Poulsen presented nine exhibits for the record. Mr. Poulsen then provided comments and explanation for exhibits 1 through 5. Comments are a part of the verbatim record. Mr. Poulsen further indicated that he had requested that Mr. Britton provide a cost statement (exhibit 6) that showed removal of the old bulkhead and fill, and the cost for reinstalling and filling the new bulkhead. He said labor and material would be approximately \$14,000 to remove and to reinstall the bulkhead. Mr. Poulsen then commented about the net effect of trying to preserve 420 square feet of the subaqueous bottom, and due to erosion how the State had acquired many square feet over the past 30 years on this particular lot. Comments are a part of the verbatim record.

Mr. Poulsen indicated that if the bulkhead was authorized to remain as was, that it would be consistent with the subaqueous guidelines outlined in Section 4. Mr. Poulsen pointed out the following regarding the impacts of the bulkhead: that the bulkhead would not have any effect on other reasonable and permissible uses of State waters and State-owned bottomland; there was no adverse impact, insofar as use by others of this particular bottomland, the only use would be the property owners (because of the gabion baskets out front and no one could get between the gabion baskets and the bulkhead); the bulkhead would have no effect on marine and fisheries resources; the wetlands portion of the application were considered by the Accomac County Wetlands Board; adjacent and nearby property owners approved the bulkhead; the anticipated public and private benefits of the project (Mr. Britton's company would be out of \$14,200); the project would not have any adverse impact in any way on the water quality standards established by the State; the project was a water dependent structure.

## COMMISSION MEETING

Mr. Poulsen indicated that when the structure was looked at on balance, Mr. Britton would do it the way staff had requested, but by accident that it was not done in accordance with the drawing. Mr. Poulsen said there was no loss of benefit to the public. In addition, the State had gained approximately 60 feet over the years which became subaqueous bottom and it would seem fair and reasonable to permit the bulkhead to stay there, to permit Mrs. Groff to keep the 45 feet in the middle and the 50 feet on the sides.

Acting Chairman White asked each one to state their name and if they affirmed the statement.

Raymond Britton affirm. Shelly Mason affirm. Mrs. Smith affirm.

Associate Member Gordy questioned Mr. Badger another case similar to this one in Captain's Cove. Mr. Badger responded that that particular property was on the eastern front of Captain's Cove, which was one canal away. Mrs. Gordy also commented that the lot seemed to be small, and asked if making the bulkhead straight increased the size of the lot to give Mrs. Goff more building room. Mr. Badger responded that it gave four to five feet in the middle and Captain Cove's did not have a set back from the bulkhead on the Bay and the property owners could build their houses directly on the bulkhead. He said the lots were extremely small. Mr. Badger then explained how the bulkhead was built and increased the size of the lot. Comments are a part of the verbatim record.

Discussion then followed between the Commission and staff on erosion in the area. Comments are a part of the verbatim record.

Associate Member Hull asked if Mr. Britton had been before the Commission before regarding related matters? Mr. Britton responded no.

Associate Member Ballard commented that the bulkhead had to be set back to get approval, and it bothered him that suddenly there's a wrong drawing and the bulkhead built on the alignment they wanted to build on all along. Mr. Ballard said that seemed a little too coincidental.

Mr. Poulsen responded that one of the important things to consider was that back in January 1999 and through the summer of 1999, Mr. Britton and Mrs. Groff accepted what Mr. Badger had said. Secondly, almost a year goes by and Mr. Britton was away for a week and Mrs. Smith took the drawings (that had the approval of Wetlands Board and the Corps of Engineers approving the straight line). Mr. Poulsen said the third thing was that when the error was discovered, a stop work went into effect by Mr. Britton automatically, and he felt that Mr. Britton and Mr. Mason acted in "good faith."

**COMMISSION MEETING**

11444  
**JANUARY 23, 2001**

Assistant Attorney General Josephson asked if contact was made with the Marine Resources at that time? Mr. Poulsen responded that the Marine Resources was in the area quite often and they just waited for Mr. Badger.

Mr. Josephson asked how much time had elapsed between when they stopped work and VMRC's visit? Mr. Poulsen responded that approximately a week or two had past.

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

Associate Member Gordy commented that she had a problem with the project, because she felt it was odd that Mr. Britton was in Baltimore and had this special project done while he was gone. A brief discussion followed between the Commission and Mr. Poulsen regarding the drawings. Comments are a part of the verbatim record.

Associate Member McLeskey said he felt an honest mistake had been made and the damage had been done and to take the bulkhead out would only aggravate it more. He then moved that an appropriate fine for environmental damage and improper permits be assessed. He felt that would send the proper message to other people to keep them from thinking they could get away with installing unauthorized structures. Mr. McLeskey also moved that a \$6,000 fine be assessed for environmental damage and installation without proper permits. Motion was seconded by Associate Member Gordy.

Associate Member Ballard requested that the makers of the motion change the terminology from "fine" to "civil charge in lieu of further enforcement actions." After a brief discussion regarding the matrix and the amount of the civil charge, Associate Member Ballard commented that according to the matrix, the civil charge should be \$5500. Associate Member McLeskey and Associate Member Gordy were amenable to the \$5500 civil charge.

Associate Member Gordy acknowledged that she thought the bulkhead looked better straight across than as recommended.

Associate Member Hull asked Mr. Poulsen if he had documentation that Mr. Britton was in Baltimore for that week. Mr. Poulsen responded that he had not brought any documentation with him, but he knew, personally, that Raymond, Jr. had major health problems for many years and it was not unusual for Mr. Britton to go to Baltimore.

Assistant Attorney General Josephson indicated that civil charges had to be agreed to by both parties. If the civil charge was not accepted, the alternative was to refer the matter to the Office of the Attorney General for enforcement action.

Mr. Poulsen indicated that his client would accept the civil charge and they appreciated the Commission's consideration.

Acting Chairman White then placed the matter before the Commission for a vote. Motion carried unanimously.

Associate Member Cowart asked if there was any requirement of a contractor when they started a job, to certify that the job they would be doing was approved by VMRC or the Wetlands Board. Mr. Cowart commented that this would avoid this type of instance from occurring again.

Bob Grabb said the Commission tried to address this issue regards to re-dredging requirements through the pre-dredge conference. He said this would help the contractor arriving on the scene, who may be the property owner, or the agent, but would make them aware of what the conditions of the permit were. Staff would also take those steps if a permit had a time of year restriction or something regarding the construction that would require minimization of potential impacts. Mr. Grabb said in this particular instant, the modification that had been proffered and agreed to, effectively removed the matter from the Commission's jurisdiction leading to a "no permit necessary letter" being sent.

\*\*\*\*\*

Commission recessed for five minutes.

**ITEM 8 - DEPARTMENT OF THE NAVY, #01-0001**, proposes to install approximately 12,000 linear feet of a floating physical barrier supported by 18 fixed dolphins to serve as a protective waterfront barrier system and line of demarcation for the western boundary of the Naval station (NAVSTA) Norfolk restricted waters situated along Hampton Roads.

Randy Owens indicated that he would like to brief the Commission, with their concurrence, simultaneously on both of the Navy's projects (Items 8 and 9) because of the similar design and similar issues.

Mr. Owen then briefed the Commission and presented the slides. Comments are a part of the verbatim record. Mr. Owen said the Navy proposed to erect a physical barrier along the entire length of the Naval Station waterfront to prevent small boats from entering the Navy's restricted waters and approaching the piers and berthed Naval vessels. He said the barriers would consist of a floating structure tethered between eighteen timber-pile cluster dolphins

**COMMISSION MEETING**

located approximately 150-feet off the end of the Navy piers. The floating barrier system would utilize one or more designs including dredge spoil pipeline, floating logs and foam fenders, commercial wave barriers and/or foam-filled large diameter plastic piles. These barriers would function as operable gates that the Navy could open and close to allow the movement of ships in and out of the restricted area.

Mr. Owen pointed out that one of the issues of disagreement between VMRC and the Navy was whether any of the proposed structures required a permit from VMRC. Mr. Owen said VMRC maintained that the proposal needed VMRC authority. However, the Navy had already installed a floating buoy line along the Naval Station and at Little Creek. Mr. Owen indicated that he spoke with the legal counsel for NIT yesterday, and they had no objection to the Navy's proposal.

Mr. Owen mentioned that the Naval Base determined that after the USS COLE incident, additional measures for anti-terrorism/force protection were necessary to comply with a directive from the Chief of Naval Operations (CNO). On November 21, 2000, the Naval Base installed a temporary barrier in advance of any VMRC authorization. Mr. Owen said the Naval Base maintained that Federal law did not subject the Navy to State regulatory jurisdiction under Virginia Code Section 28.2-1203. Mr. Owen said that on November 14, 2000, a joint permit application was received at VMRC, but it was subsequently withdrawn from consideration on November 20, 2000. Therefore, the temporary floating buoy structure remains in violation of Section 28.2-1203 of the Code of Virginia.

Mr. Owen further stated that on January 3, 2001, the Navy submitted the current application along with a cover letter. The cover letter requested an expedited review of the application and also advised VMRC on the issue of whether the Navy was obliged by federal law to obtain a VMRC permit. The letter also stated that it was forwarded up the Navy chain of command for review. In addition, the letter also stated that the application was submitted on the grounds of comity, principally for the purpose of informing the Commission and the potentially affected parties of the project, but also to facilitate permitting by the U. S. Army Corps of Engineers.

Mr. Owen said staff initiated the public interest review process immediately upon receipt of the subject application. Staff placed a public notice in the local newspaper and, sent letters requesting comments on the temporary and permanent barrier systems to the VMRC Clam Committee members. No comments, either pro or con, had been received from the Clam Committee, other State agencies, or the general public.

In summary, Mr. Owen stated that VMRC still maintained that the existing temporary barrier and the proposed permanent barrier both required VMRC authorization pursuant to Section 28.2-1203 of the Code of Virginia. Mr. Owen also stated that the Navy maintained that their

**COMMISSION MEETING**

proposed action was consistent with the Coastal Zone Management Act of 1972 and implementing federal regulations. Mr. Owen said that should the Navy continue to maintain that compliance with the Virginia Coastal Resource Management Program was prohibited, staff believes that the Navy must provide the statutory provisions, legislative history or the legal authority which limits the Navy's discretion to comply with the Commonwealth's Management Program.

Mr. Owen also stated that VMRC was charged with the proprietary and public trust responsibility for managing the Commonwealth's submerged lands. Therefore, it was imperative that the Commission carefully weigh the Navy's desires for a passive protection system against the public's rights to use the Commonwealth's submerged lands and overlying waters. Mr. Owen further stated that given the Navy's anti-terrorism/force protection requirements and directive from the Navy CNO, staff had no objection to the project. The Navy's disagreement with the permitting requirement aside, as well as the fact that the buoy lines had been established without the required VMRC permits, staff was recommending approval of both projects as submitted. In addition, staff believed that the physical barrier should be installed within the current restricted area set forth in the Code of Federal Regulations. Mr. Owen stated that staff had no objection to the Little Creek project provided that the Little Creek Cove remained opened to the public for navigable access.

Associate Member Cowart asked if Perdue would still have access to move their barges in and out in writing, and if they had the right to move in and out with the Navy's cooperation. Assistant Attorney General Josephson commented that the federal regulations that addressed the use of restricted zones established use in a restricted area to the maximum extent possible for the public use.

Associate Member McLeskey asked if the Coast Guard had commented on this application. Mr. Owen responded that the Navy provided an adjacent property owner form that indicated that they had no objection to the project. Mr. McLeskey indicated that there was a lot of traffic in Little Creek and he wondered if illumination of the barriers was planned. Mr. Owen responded that the plans were submitted with lighting requirements consistent with the Coast Guard Program. He said at one point they were discussing lighting every 100 feet to ensure the barriers could be properly lighted and seen by the public.

Associate Member Williams asked if the project had any affect on clam bottom in the area. Mr. Owen responded that staff had not heard any comments from the Clam Committee members.

Mr. Pruitt also commented that the matter had been placed before the Clam Committee and they had not heard from them at this time. Mr. Owen indicated staff had sent a letter to the

Clam Committee, but the Clam committee had not had a meeting yet. Mr. Owen said the letters were sent on November and January 5, and to date, he had not heard any comments from that group.

Lt. Commander Robert J. Orr, Staff Judge Advocate for the Commander of Navy Regional Mid-Atlantic, and Lt. Commander William Paulette, the Regional Security Officer and Ms. Cheryl Barnett, head of the Environmental Group, were introduced.

Lt. Commander Robert J. Orr addressed the Commission. He said the staff's presentation accurately set forth what the Navy was attempting to do and the measures they had taken to balance the interest of the Community. He then addressed a couple of issues that had been discussed earlier on the federal and state jurisdiction. Commander Orr said when they were preparing to submit the permits, it came to their attention that the particular statute that the permits were grounded on, Virginia Subaqueous Land Act, were statutes that the Navy could not find a clear and unambiguous waiver of sovereign immunity on behalf of the federal government. Commander Orr stated that put them in a difficult position because no one in the Hampton Roads area had the authority to waive sovereign immunity on behalf of the federal government. He said the Navy's policy in such cases was to ensure that they submitted to the appropriate state agency all of the same documentation that they would be made by providing if they were subjected to the permitting process. He said they were continuing that examination and the final position would be the Department of Navy or the Department of Defense. The issues were briefed and are being reviewed and coordinated within the chain of command. He said on January 15, they submitted to the Army Corps of Engineers proposals to revise the restricted areas in the Code of Federal Register. He said they met with the permit writers and representatives from the Coast Guard Marine Safety Office last week and discussed their concerns. He said he understood those packages were being forwarded, with the support of the local Coast Guard and the Local District Commander for the Army Corps of Engineers.

Commander Orr said the Navy did recognize that the general public and the businesses had a legitimate right of access to some parts of those waters. In both cases, they were committed to ensure that access was continued. He said the expansions of the restricted areas would give the Navy a way to control access to those that they knew would have a legitimate need. Commander Orr stated that barriers were a necessary part of the Navy force protection posture. He said the final barrier system was one that the Chief of Naval Operations' staff was working on to determine the most effective system. He said they believed all the options being considered would be encompassed within the documents already provided. Should there be any change to the information provided, the amended information would be provided to the Commission.

COMMISSION MEETING

There being no comments from the public, pro or con, Commissioner Pruitt placed the matter before the Commission. Mr. Pruitt said Item 8 would be taken first.

Associate Member Gordy moved to approve the Navy's application with the understanding that the Perdue company would be given the right away for the barges to move in and out. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Permit fee.....\$ 100.00

\*\*\*\*\*

Commissioner Pruitt placed item 9 before the Commission.

**ITEM 9: DEPARTMENT OF THE NAVY, #00-002,** proposed to install an anchored/floating buoy line and two single lines of floating dredge pipe from east and west banks of Little Creek harbor in the vicinity of Piers 35 and 19 respectively, to the eastern and western lines of the harbor access channel to serve as a temporary protective waterfront barrier system for the Naval Amphibious Base (NAVPHIBASE), Little Creek.

Associate Member Cowart moved to approve the application as presented to approve the barriers as presented by the Navy in Little Creek. Motion seconded by Associate Member Hull. Motion carried unanimously.

Permit fee.....\$ 100.00

\*\*\*\*\*

**ITEM 10: ERLING ENGELSEN, #99-1991,** requests after-the-fact authorization to retain 120 linear feet of vinyl bulkheading and authorization to install 915 linear feet of new replacement bulkheading at Marina Cove Boat Basin situated along the Harris River in Hampton.

Tracy West, Environmental Engineer, briefed the Commission and presented slides on the location and description of the property. Mrs. West stated that when the unauthorized installation of the bulkhead was discovered, the Hampton Wetlands Board informed Mr. Engelsen that a Joint Permit application would be required in order to obtain after-the fact authorization. Ms. West said she met with Mr. Engelsen on October 18, 1999 to inspect the bulkhead and to discuss completing the application, as well as the procedures involved with any attempt to obtain after-the-fact authorization. Mr. Engelsen submitted the joint permit application at the end of that meeting. The application requested authorization to retain the

150 linear feet of bulkhead he had already installed.

Mr. Englesen proposes to continue the current bulkhead alignment on the other side of the pier. She said after talking with Mr. Englesen yesterday, he no longer wanted to do that, he just wants to tieback at the end of what he has now.

Mrs. West said the VIMS' Shoreline Advisory Report stated that the project warranted careful consideration. However, the VIMS report was written over a year ago and some of the discussions as to where the bulkhead would go and whether it would extend under the pier were still in negotiation. VIMS also stated that the remaining section of the bulkhead should be installed as close to the bulkhead and shoreline as possible and filter cloth was recommended in order to minimize the seepage backfill through the bulkhead.

Ms. West said staff would not normally recommend approval of a bulkhead 3.5 feet in front of the existing bulkhead. However, given the construction constraints imposed by the recently replaced boathouse roof and the length of the vinyl bulkhead sheets, it did not appear that the structure could be installed any closer to the shoreline. Therefore, it appeared that no other reasonable alternative was available other than to allow Mr. Englesen to place the bulkhead 3.5 feet in front of the existing bulkhead for that portion that was under the boathouse only. Mrs. West then stated that staff recommended approval of the project with the following conditions:

(1) Filter cloth should be installed behind the unauthorized portion of the bulkhead where it had not already been backfilled, and that filter cloth should be placed behind all portions that were yet to be installed. She said if Mr. Englesen had already decided to drill weep holes into the bulkhead, staff would find it acceptable for him to glue pieces of filter cloth behind the weep holes, rather than lining the entire bulkhead structure.

(2) Staff also recommended that the portion of the bulkhead that was already installed and backfilled up to 12 feet from the shoreline be allowed to remain. However, staff did not believe Mr. Englesen should be allowed to continue that alignment either now or in the future. Rather, the portion of the bulkhead that had not yet been backfilled, should be removed. The bulkhead should be angled back to the shoreline and the remaining portion of the proposed bulkhead should be aligned as close to the upland as possible.

(3) Ms. West further stated that Mr. Preston Smith of the Health Department was present and had just informed staff that Mr. Englesen was not currently in compliance with the Sanitary Regulations for marinas and other places where boats were moored. She indicated that it was her understanding that Mr. Englesen and the Health Department had been in negotiations until this morning.

She also indicated that due to the size of some of Mr. Englesen's boats, the Health Department regulations would require Mr. Englesen to install a pumpout system. Ms. West said that she believed the negotiations were in good faith and an agreement between Mr. Englesen and the Health Department could be reached within a week or two. Ms. West said that according to Section 28.2-1205 (C) of the Code of Virginia, ***"no permit for marinas or boat yards for commercial use shall be granted until the owner or other applicants present to the Commission a plan for sewage treatment or other disposal facilities, which had been approved by the State Department of Health."***

(4) Therefore, Ms. West said staff would like to make an additional recommendation that the Commission not issue the permit until Mr. Englesen and the Health Department had reached an agreement, and that Mr. Englesen's marina had come into compliance with the Health Department's requirements.

Al Schlim, attorney for the applicant, addressed the Commission. Mr. Schlim thanked the staff for cooperating with the applicant in an effort to come up with a reasonable solution to the problems at the marina. Mr. Schlim indicated that they agreed with staff's recommendation that the placement of the bulkhead under the boathouse should be at 3.5 feet because of the angle of the roof and the length of the sheet piling. Then once you leave the boathouse, and come out in the open, it would go back to within two feet of the existing bulkhead. Mr. Schlim said they also agreed that on the south end of the existing bulkhead, to use the tieback into the shore near pier "Y" in order to prevent further siltation, erosion and dirt from coming into the water at that end of the bulkheading. Mr. Schlim said they also agreed that the existing bulkhead should remain and would tie in when the south end was cleaned off. Mr. Schlim also indicated that at the north end of the shed, they would come back within two feet of the existing bulkheading. He said as for the filter cloth, they would be using weep holes to relieve the hydrostatic pressure, (if, where, when and how many that would be required) and they would accept the staff's alternative recommendation of securing glued filter cloth over those holes to prevent siltation through the holes.

Mr. Schlim said that the applicant wanted to prevent further erosion by putting in the proper bulkheading to prevent the collapse of the bulkhead. He said they also wanted to prevent siltation and further erosion as depicted in the slides and to improve the serviceability and longevity of the marina while protecting the environment from any abuse of any kind. Mr. Schlim stated that he felt those goals could be accomplished with the permit that was requested, and he asked that the Commission approved the application with staff's recommendations.

Mr. Schlim said he had been in contact with the Health Department in Richmond regarding the

COMMISSION MEETING

pumpout requirements and he would continue to work with the Health Department to make sure the requirements were met that affected this particular marina.

Associate Member Cowart commented that he did not think the Commission had the ability to grant the permit today because of Section 28.2. 1205 of the Code of Virginia, which stated that the Commission could not grant a permit until the Health Department permits were in place.

Mr. Josephson commented that the Commission could authorize the project, and make the granting of the permit by the actual signature of the Commissioner and the staff contingent upon the satisfaction of the Health Department's requirements.

There being comments, pro or con, on the project, Commissioner Pruitt then placed the matter before the Commission.

Associate Member Birkett moved to approve Mr. Englesen's permit, with staff's recommendations, pending approval from the Health Department. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Upland creation @ \$2.00 sq. ft.....	\$	5160.00
Permit fee.....		<u>100.00</u>
	Total	\$ 5260.00

**ITEM 11: ATT/PF NET, #00-0082**, requests authorization to install a coaxial fiber optic cable along VDOT R/W and within existing easements crossing numerous streams and rivers between Chesterfield County and Loudoun County. The project is protested by numerous landowners along the proposed alignment.

Ben Stagg, Environmental Engineer, indicated that this was the other half of the project that had been previously approved as a page two item this morning. Mr. Stagg said this portion was non-tidal and the southern portion had considerable tidal impacts. He said the applicant was proposing to place six conduits to house fiber optic cables along the route as mentioned from Arlington to Richmond as an upgrade to the fiber optic network. Mr. Stagg then briefed the Commission and presented slides on location and background information of the proposed project. Comments are a part of the verbatim record. Mr. Stagg indicated that the applicant proposed to install the conduits by either coffer dam, directional drilling and/or bridge attachment methods where appropriate.

Mr. Stagg said staff would recommend our standard instream conditions for coffer dams where they would not block more than 50 percent of the streams and return the area to its natural

COMMISSION MEETING

contours. He said any material that was removed should be contained upland in such a manner that it did not re-enter State water.

Mr. Stagg indicated that nine letters of protest (four in Fauquier County and the others from individual counties Stafford, Gouchland, Spottsylvania and Loudon) had been received. Mr. Stagg said most of the letters of protest were concerned over upland issues of access. Some of the letters addressed stream crossings and that the areas be restored to their natural conditions upon completion of the projects.

Mr. Stagg said that the Department of Environmental Quality (DEQ) indicated that the project would probably satisfy the Army Corps' requirements for one of its nationwide or regional permits, and as such no addition a permit would be required from DEQ. Department of Historic Resources found the proposal and the Department of Transportation had issued a Land Use Permit for the areas of the proposed work within their right of way. No other agencies had expressed any comments.

Mr. Stagg said that based on the methods of installation proposed by the contractor, it appeared that placement of the conduits could be conducted with minimal impacts to State-owned subaqueous bottom. Mr. Stagg further indicated the VMRC did not have any jurisdiction over the access issues raised in several of the letters of protest. Staff, therefore, recommended approval of the project with our standard instream permit conditions.

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

Associate Member Williams moved to approve staff recommendation on the project including the permit special conditions. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Encroachment on 10,458 ln. ft.	
@ \$1.00 per ln. ft.	\$10,458.00
Permit fee.....	<u>100.00</u>
Total	\$ 10,558.00

\*\*\*\*\*

**ITEM 12: PUBLIC HEARING:** Proposed management measures for the 2001 striped bass commercial and recreational fisheries.

Mr. Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission. He indicated that the primary difference between the 1999 and 2000 seasons had been the creation of the recreational slot limit and the eight-day commercial closure. These measures were required by ASMFC in 2000 to protect older striped bass age groups, but are no longer deemed necessary. He said the Fisheries Management Advisory Committee (FMAC) had voted 10-2-1 to remove the restrictions for the 2001 season, as allowed by ASMFC. Mr. O'Reilly said staff agreed with the FMAC recommendation on removing the unnecessary ASMFC restrictions. He then reviewed the draft regulatory language, including recommendations for 2001 to create conformity between the Potomac River Fisheries Commission (PRFC) rules for the mainstem Potomac River and the Potomac River tributaries that are under the jurisdiction of the Commission. Comments are part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Mr. Doug Jenkins, Twin River Waterman's Association, asked if the proposed Potomac River size changes applied only to recreational fisheries. Mr. O'Reilly said they did. Comments are part of the verbatim record.

Mr. Jim Diebler, Charter Boat Association (CBA), recommended going back to the 1999 regulations as had been proposed. He said the fewer regulations there were the easier it was. Associate Commission Member Hull commended Mr. Diebler for recently completing three years as the CBA president.

Mr. Ernie Bowden, spoke in support of going back to the 1999 regulations as proposed. He also asked the Commission to consider doing something about the quota under-runs that had occurred in last several years; he said it had been as much as 100,000 pounds which to him was just lost revenue. Comments are part of the verbatim record.

Associate Commission Member Cowart moved to go back to the 1999 regulatory format for the 2001 season, including the changes for the Potomac River tributaries, as indicated in version 2 of the draft regulation provided by staff. The motion was seconded by Associate Member Hull and adopted unanimously.

**ITEM 13: PUBLIC HEARING:** Proposed regulatory amendments allowing for exceptions to the Commercial Hook-and-Line limited entry program.

Mr. Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission. He handed out new draft language with the proposed changes as had been suggested by Mr. Josephson,

## COMMISSION MEETING

Assistant Attorney General. He said the proposed language would allow for exceptions to the commercial hook-and-line limited entry program on a case-by-case basis. He noted that there were 37 licensees in jeopardy of losing their license because of the criteria requiring fisherman to have sold 1000 pound of seafood in the previous two years. He said that the July 2000 task force meeting minutes supported the 1000 pound sales criteria that had been incorporated into law since 1000 pounds over two years was a fairly minimal requirement that could be expected to be met despite medical or other hardships during a two year period. Mr. O'Reilly said that FMAC voted unanimously to recommend the addition of the exceptions process to the regulation. He said staff strongly recommended restricting exceptions only to medical or military leave hardships; staff also suggested allowing the Commissioner or his designee to approve exceptions. He reviewed the specific draft language proposed by staff. Comments are part of the verbatim record.

Commissioner Pruitt opened the public hearing.

There were no public comments.

Associate Commission Member Williams moved to approve the recommendations presented by staff. The motion was seconded by Associate Commission Member Birkett and adopted unanimously.

\*\*\*\*\*

Mr. O'Reilly introduced Ms. Karyn Atkinson, a new fisheries management employee.

\*\*\*\*\*

**ITEM 14: DISCUSSION:** Recommendations of the Bi-State Blue Crab Advisory Committee and VMRC Crab Management Advisory Committee. Request for Public Hearing to establish 2001 crabbing regulations.

Mr. O'Reilly showed a power point presentation, entitled Threshold and Targets, that had been developed for the Chesapeake Bay Commission's public forums on crabs. He noted that thresholds are where you don't want to be and targets were where you wanted to be. He said the three Bay jurisdictions had adopted the "overfished" threshold of 29 million pounds and the "overfishing" threshold of fishing mortality no higher ( $F=1.02$ ), as well as the fishing mortality target of  $F_{20}$  which would require a 15% reduction in current fishing mortality. Mr. O'Reilly then reviewed possible harvest reduction strategies related to day of week closures, seasonal closures, work day closures (favored only in MD/PRFC), and bushel or barrel limits for the pot fishery and dredge fisheries. Comments are part of the verbatim record.

Mr. Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the Bi-state Blue Crab Committee recommendation to reduce harvest by 15%, based on 1997-99 harvests and phased in over the next three years. He said the recommendation had been discussed at a recent Crab Advisory Committee (CAC) meeting; the group had discussed three motions: 1) phase in reductions over three years at 5% per year (motion was withdrawn after discussion), 2) delay consideration of the proposed reductions until February 2001 (motion failed), and 3) delay implementation of any part of the proposed 15% reduction until 2002 in light of 2000 actions imposing peeler pot limits and increasing the mainstem Bay crab sanctuary (motion passed by the CAC). Mr. Travelstead said he was concerned that the other two Bay jurisdictions were moving ahead, and if Virginia waited a year, we may have to reduce harvest more than we wanted; he said he recommended pursuing proposals to cut harvest 5% this year.

He also endorsed getting credit for the 2000 peeler pot limit, not restricting the peeler fishery further in 2001, and focusing any new restrictions on the hard crab fishery. He asked the Commission to send the matter back to CAC requesting them to come up with management measures to meet a 5% reduction of the 2001 harvest, based on the 1997-1999 harvest period. Comments are part of the verbatim record.

Associate Commission Member Williams asked about all of the other measures taken by Virginia in the last five years, including cull rings, dark sponges, license limits, etc. He also expressed concern over the high potential for predation by croaker and rockfish on juvenile crabs. He suggested we look at creating sanctuaries in SAV areas to protect small crabs. Comments are part of the verbatim record.

Mr. Travelstead acknowledged Virginia's efforts, but said harvest should not be allowed to go beyond the threshold or the fishery could collapse.

Associate Commission Member Cowart asked what the makeup of the Bi-state Blue Crab Committee was and what was their reaction or inaction would be? Commissioner Pruitt described the committee membership and noted that there had been several public forums. He suggested that at the next meeting, Mr. Von Montfrans from VIMS make his presentation on crab status. Mr. Pruitt also noted that the General Assembly was not acting on crabs this year, but they were waiting to see what the Commission would come up with; he recommended getting CAC to explore harvest reduction options for this year as had been suggested by Mr. Travelstead. Comments are part of the verbatim record.

Mr. Cowart asked again how Virginia would be perceived if 5% was not done this year. Commissioner Pruitt said he felt something had to be done this year.

Mr. Cowart stated that he agreed with Mr. Williams that Virginia had already taken the lead in

## COMMISSION MEETING

cutting fishing effort for crabs. He said he would like to see staff push hard to get credit for recent efforts. Mr. Cowart then made a motion to refer the matter back to CAC asking them to devise management measures to meet a 5% harvest reduction for 2001. The motion was seconded by Associate Commission Member Gordy. The motion carried 6-1 with Associate Commission Member Williams voting no.

**ITEM 15: DISCUSSION:** Request for public hearings to establish 2001 management measures for the summer flounder, scup, and black sea bass fisheries.

Mr. Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said that this item had been on last month's agenda but had been postponed because ASMFC had not completed their deliberations. He said ASMFC still had not completed their recommendations, but that he felt the Commission could still consider advertising the proposed regulations based on the likely outcome of the ASMFC process. He then reviewed some of the specific measures being proposed for each species:

**Summer Flounder:** There were four ASMFC options, but since Virginia had met the fishing mortality objectives, no further reductions would be required for 2001. New rules, although the same as for 2000, would have to be advertised for public hearing for the 2001 season.

**Sea Bass:** The ASMFC recommended moving the minimum size limit from 10 inches to 11 inches, decreasing the bag limit from 50 fish to 25 fish, and establishing a closed season from March 1 to May 9. The proposed seasonal closure would have a significant impact on Virginia fishermen. All items should be advertised for public hearing.

**Scup:** No specific measures had been developed by ASMFC yet, but were due in by Monday, January 29. Since scup were a nuisance species not targeted in Virginia, advertise any measures as recommended by ASMFC.

Associate Commission Member Williams moved to approve the staff recommendation. The motion was seconded by Mr. Birkett and adopted unanimously.

\*\*\*\*\*

**ITEM 16:** Recommendations of the Recreational Fishing Advisory Board.

Jack Travelstead, Chief-Fishery Management, said the Recreational Fishing Advisory Board met on January 8 and started the five-month review of proposals for 15 different projects that were submitted to the Board. Mr. Travelstead said they would not come before the Commission until May meeting. However, there were three recommendations made by the

**COMMISSION MEETING**

11458  
**JANUARY 23, 2001**

Board on an emergency basis, that the Committee was requesting approval today. The Board emergency recommendations are listed below:

- 1) Virginia's American Shad Restoration Project: \$70,000.00 for the 2001 program.

Mr. Travelstead said the federal money was previously available for that program was no longer available. He said the entire program cost approximately \$290,000 to run Mr. Travelstead said the remainder of the necessary monies would have to be made up from other sources.

- 2) Provide travel cost for board members and the recreational fishery representatives to specific fishery management meetings, in accordance with state travel regulations, \$10,000.00
- 3) Administration of Recreational Project Grants and Contracts, \$42,000.00 (50% to be available now, and 50% to be available in June).

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

Associate Member White moved to approve recommendations of the Recreational Fishing Advisory Board. Motion was seconded by Associate Member Hull. Motion carried unanimously.

\*\*\*\*\*

**ITEM 17: DISCUSSION:** Request for public hearing to modify fish pot closed areas in the James River.

Jack Travelstead, Chief-Fishery Management, briefed the Commission. He said the purpose of the regulation was to prevent certain crab pot fishermen from circumventing the closed crab potting season by using fish pots to take crabs. Mr. Travelstead said to stop that problem, the Commission prohibited the setting of fish pots during the five days preceding the opening of crab season in the Chesapeake Bay and in a portion of the tributaries. However, the regulation impacted legitimate catfish pot fishermen in the Chickahominy River and portions of the James River from March 27 through March 31.

**COMMISSION MEETING****JANUARY 23, 2001**

Mr. Travelstead said this issue was reviewed by the Fishery Management Advisory Committee and it was unanimously recommended that moving the James River boundary downstream from its current location to a line connecting Hog Point and the downstream point at the mouth of College Creek. Therefore, this line would accommodate catfish potters in the Chickahominy River and the adjacent portions of the James River.

Associate Member Cowart motioned that the line be moved as recommended by staff. Motion seconded by Associate Member Cowart. Motion carried unanimously.

\*\*\*\*\*

**ITEM 18:** Report of the Assistant Attorney General concerning crab dredging/clam dredging issues.

Assistant Attorney General Josephson indicated that this was in response to Mr. Ernie Bowden's question from the last meeting regarding 4VAC 20-70-100, which prohibit more than 250 clams on board of any licensed boat to catch crabs by dredging. He said Mr. Bowden's concern was that if a waterman was licensed to do both, the regulation should not be applicable. He said after careful consideration of the regulation and a discussion with Mr. Travelstead, they agreed that this regulation was not intended to prohibit, and it should not be applied to any particular watermen who would otherwise be authorized to harvest both crabs and clams at the same time, and at the same place. It would only apply when a boat was licensed to catch crabs with a dredge that would not also be authorized to harvest clams.

Commissioner Pruitt commented that based on those comments, no action was required.

\*\*\*\*\*

Commissioner Pruitt requested Mr. Deibler to approach the Commission. Mr. Pruitt stated that he had received some telephone calls from charter boat captains regarding concerns with Maryland boats coming down to Virginia, and Virginia charter boats could not go up to Maryland without a guide license. Mr Pruitt asked if his association would like the Commission to proceed with another public hearing.

Mr. Jim Diebler said they did have a problem because in Maryland a guide license was necessary in order to fish there and in Virginia that license was not necessary. Mr. Diebler said that in Virginia charter boats were considered recreational fishermen and in Maryland because of the guide license, they were considered commercial fishermen. He said their saltwater license allowed them to fish in Maryland provided they had a commercial guide license. He said that guide license was necessary in order to record their catches in Maryland on the

**COMMISSION MEETING**

11460  
**JANUARY 23, 2001**

commercial side.

Mr. Diebler said approximately half of the people in the Reedville area had the Maryland and the Potomac River guide licenses. He said people that did not have that guide license could not go up to Maryland and fish.

Mr. Diebler said that if a guide license in Virginia was implemented, and the Maryland watermen were required to have the license, that could possibly cut the cost of the Charter Boat license which would compensate them for purchasing Maryland's guide license.

Commissioner Pruitt commented that Delegate Bloxom's Bill gave the Commission the authority to establish a guide license.

Mr. Diebler said the watermen in the southern area were hesitate to want another license.

A discussion followed regarding limiting entry and guide licenses. Comments are a part of the verbatim record.

Commissioner Pruitt advised Mr. Diebler that Mr. Travelstead and he would try to attend their next charter boat association meeting to discuss the issue.

\*\*\*\*\*

Massey Burger, home owner and a member of the Board for Hudgins Point States Condominium Owners Association, addressed the Commission. Mr. Burger said he was requesting that the owners of this property be allowed to submit a new application to VMRC for the construction of seven additional boat slips to an additional pier. He said their application of March 1999 was denied by staff. Mr. Burger then gave background information on why the Hudgins Point Condominium Owners Association should be allowed to submit their application. Comments are a part of the verbatim record.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Williams moved to accept the application for the Hudgins Point Condominium Owners Association. Motion seconded by Associate Member Hull. Motion carried unanimously.

\*\*\*\*\*

Chris Ludford, from the Lower Chesapeake Bay Watermen's Association and a member of the

**COMMISSION MEETING**

11461  
**JANUARY 23, 2001**

Hook and Line Committee addressed the Commission . Mr. Ludford asked if the harvest of 1000 pounds of seafood in two years applied to those watermen entering the lobby. Mr. Travelstead responded no, that was the only place that the requirement did not apply. Mr. Travelstead said in order for that license to be transferred, the person who intends to get that license, as a result of the transfer, must meet the 1000 pounds harvest requirement.

A discussion followed regarding persons already in the fishery having to harvest 1000 pounds within the last two year, and people entering the lottery were not required to harvest the 1000 pounds. Comments are a part of the verbatim record. Mr. Travelstead explained that once the watermen entered the fishery, they too would have to meet the 1000 pound harvest within a two-year period.

Mr. Ludford said that part time watermen were getting the licenses to circumvent the bag limits and he felt that would open up a new window for new lottery members that were allowed in the fishery without 1000 pound harvest requirement.

Mr. Ludford also felt that an apprentice program should be looked into because there were less and less younger watermen.

Mr. Ludford also expressed his concern for the proposed budget cuts and the effect it would have on VMRC. He said he was willing to send a message that a lot of the programs that were just getting started could be cut. Comments are a part of the verbatim record.

\*\*\*\*\*

Bill Reynolds, Working Watermen's Association from the Eastern Shore, addressed the Commission. Mr. Reynolds indicated that he was also concerned about the 1000 pound limitation regarding the lottery members. Mr. Reynolds said there were approximately 100 persons that did not report this past year, he said they wanted them out of the fishery and to get their licenses into the commercial watermen's hands.

Mr. Travelstead said there were around 39 persons that had not reported and they would be dropped from the fishery, unless they obtained an exception. He said those licenses would be available through a lottery in February.

A discussion followed regarding persons entering lottery without meeting the necessary requirements for the fishery. Comments are a part of the verbatim record.

After the discussion, Mr. Travelstead suggested that a public hearing be held for changing the regulation that would require anyone applying for the commercial hook and line license meet

**COMMISSION MEETING**

11462  
**JANUARY 23, 2001**

the 1000 pounds requirement as stipulated in the regulation.

Associate Member Williams was agreeable with Mr. Travelstead's suggestion and moved that a public hearing be held. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Commissioner Pruitt stated that the public hearing would be held in February, with the understanding that this would delay staff from establishing the lottery until sometime in March.

\*\*\*\*\*

Kelly Place mentioned that there were persons who received the hook and line license in 1993, 1994 and 1995 and for whatever reason did not have them in 1996 and 1997, and he felt it might be something the Commission would consider allowing those person to enter the lottery on an equal basis.

Mr. Place gave other comments regarding the budget cuts and suggested that persons contact their legislators and ask them to urge the Governor not to cut VMRC's funding. Mr. Place also commented on House Bill 2484 regarding revenue from the sale of saltwater fishing gear, primarily recreational and some commercial not being utilized by the people that generated the funds. He felt it was unfair marine resources revenue was being used by Game and Inland Fisheries. He said it was the constituents of VMRC that was generating the funds and the monies should go to VMRC. Other comments are a part of the verbatim record.

Richard Stillwagen, Virginia Watermen's Association, said there were two bills in the legislature that should concern the Commission. The first Bill was by Delegate Albert Pollard regarding adding eels pots to recreational fishing. Secondly, was Delegate Harvey Morgan's Bill regarding placing ads in newspaper concerning proposed regulation that affect the watermen. Mr. Stillwagen said he would like to ask the Commission to withdraw that request because there was only 10 percent of members in his association that had computers.

Commissioner Pruitt commented that they were not eliminating the posting.

\*\*\*\*\*

Warren Cosby, from the Upriver Watermen's Association, addressed the Commission. He asked if Game and Inland Fisheries were going to do the shad program this year. Mr. Travelstead said not likely, because of the loss of federal funding. Mr. Cosby said if the program was not done, they would like to have a recreational fishery in the Upriver to collect scientific data to support what the watermen had been saying for a long time.

**COMMISSION MEETING**

11463  
**JANUARY 23, 2001**

\*\*\*\*\*

Charles Rowe wanted to know why his peeler pot license was cut? Mr. Travelstead said he could provide the paperwork on the issue, but the crab effort had increased from 1994 to 1999.

Mr. Rowe further expressed his concerns that when additional peeler pots were issued, the new licensees were told they would be the first ones to get cut.

Commissioner Pruitt commented that the Commission did an across the board cut for everyone and they were requesting a credit for those cuts so that they would not have to cut any more. Mr. Pruitt said the Commission elected not to cut persons out of the fishery, but to reduce everyone.

\*\*\*\*\*

Dale Taylor addressed the issue of the oyster rocks in the Rappahannock River on the reef. He said he was concerned about the reefs going into the Rappahannock River especially the one reef that was going into Broad Creek to Sturgent Bar.

Staff responded that reef was put off until next month.

Mr. Taylor then questioned the one that was across the Rappahannock on Fleets Island and Butlers Hole. Mr. Taylor said these were old oyster rocks and they were all had natural oysters, and they had been there before the State thought about planting shells on these areas. He said once reefs were placed there, it would close the oyster rock and they did not want to see that happen.

Mr. Taylor also mentioned his concerns regarding placing oyster reefs in the Chesapeake Bay. Comments are a part of the verbatim record.

\*\*\*\*\*

Veremedell Hudnall said he was concerned about the change in black sea bass size limits for harvesting from 10 inch to 11 inches. Mr. Travelstead said there would be a public hearing next month on the black bass issue.

\*\*\*\*\*

Associate Member Gordy requested Mr. Travelstead to explain to the watermen about the dogfish issue.

Mr. Travelstead said he had received a lot of phone calls regarding the dogfish. He said there was a federal management plan for dogfish that established a harvest quota for the commercial fishery. He said until six months ago, there were no quotas in State waters and they were free to harvest dogfish in their states without any quota, except the total catch did count against the federal quota. He said last year the federal quota was 4 million pounds and the State of Massachusetts alone harvested 7 million pounds from their own waters, which resulted in a closure of the federal fishery. ASMFC acted with an emergency measure that required all of the states to close their waters to dogfishing when the federal quota was caught. Currently, all the states are closed to dogfishing because the federal quota was taken and the fishery would not open again until May. Mr. Travelstead said that ASMFC closure for state waters would expire next month and ASMFC was meeting next week to decide whether to extend the state closure. Mr. Travelstead said he would have a decision on that issue next month. Mr. Travelstead said dogfishing was not a directed fishery, only a bycatch fishery. He said in this current fishing year, the federal government set aside 500,000 pounds dogfish for an experimental fishery on the male species.

Ernie Bowden addressed the Commission and stated that the north east dogfishery was not closed. He said they were landing an average of 9,000 pounds a trip, instead of the 600 pounds. The quota was divided now 54:46. Mr. Bowden said those people in north east were clearly out of compliance. Mr. Bowden said he would take the information to Arlington next week.

\*\*\*\*\*

Commissioner Pruitt explained the legislative process to Mr. Place's issues regarding Bill 2484. Comments are a part of the verbatim record.

Associate Member Cowart commented that the fourth Tuesday in March was the Boston International Seafood Show and two of the Commissioners were affected. Mr. Cowart requested that March's meeting date be changed to March 20, 2001. There being no objections from the Commission, Commissioner Pruitt set the March meeting date to the third Tuesday, March 20 2001.

No further business came before the Commission and the meeting was adjourned.

---

William A. Pruitt, Commissioner

**COMMISSION MEETING**

11465  
**JANUARY 23, 2001**

---

LaVerne Lewis, Commission Secretary