

MINUTES

February 23, 1999
Newport News, VA 23607

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

| | | |
|----------------------|---|--|
| William A. Pruitt |) | Commissioner |
| C. Chadwick Ballard |) | |
| Gordon M. Birkett |) | |
| Lake Cowart, Jr. |) | |
| Sheppard H. C. Davis |) | Associate Members |
| H. Grant Goodell |) | |
| Laura Belle Gordy |) | |
| Henry Lane Hull |) | |
| John W. White, Sr. |) | |
| | | |
| Fred Fisher | | Assistant Attorney General |
| | | |
| LaVerne Lewis | | Commission Secretary |
| | | |
| Bob Craft | | Chief-Finance and Administration |
| Jane McCroskey | | Assistant Chief-Finance and Administration |
| | | |
| Steven G. Bowman | | Chief-Law Enforcement |
| Randy widgeon | | Eastern Shore Area Supervisor |
| Ray Jewell | | Northern Area Supervisor |
| Warner Rhodes | | Middle Area Supervisor |
| John Croft | | First Sergeant |
| Bryan Tittermary | | Marine Patrol Officer |
| James T. Parks | | Marine Patrol Officer |
| | | |
| Dr. Gene Burreson | | Director of Research |
| | | Virginia Institute of Marine Science |
| Tom Barnard | | Virginia Institute of Marine Science |
| Helen Woods | | Virginia Institute of Marine Science |
| Malcolm Scully | | Virginia Institute of Marine Science |
| | | |
| Dr. Jim Wesson | | Chief-Replenishment and Conservation |
| | | |
| Jack Travelstead | | Chief-Fisheries Management |

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Newport News, Virginia 23607Rob O'Reilly
Roy Insley
Ellen Cosby
Tina HutchinsonAssistant Chief-Fisheries Management
Head-Plans and Statistics
Fisheries Management Specialist
Fisheries Management SpecialistRobert Grabb
Tony Watkinson
Jay Woodward
David Bower
Bennie StaggChief-Habitat Division
Assistant Chief -Habitat Division
Environmental Engineer
Environmental Engineer
Environmental EngineerGerald Showalter
Hank Badger
Randy Owen
Jeff Madden
Heather Wood
Chip Neikirk
Robert ButlerHead-Engineering /Surveyor
Engineering-Surveyor
Environmental Engineer
Environmental Engineer
Environmental Engineer
Environmental Engineer
Engineering Technician

Others Present:

Jeff Deem
R. Wayne Nunnally
Garrett England
Dan Bacot
Tom Hawksworth
George C. Harris, Jr.
J. M. Anderson
Helen Woods
Robert E. Croonenberger
Steve Lawson
Dorothy Hitchcock
Tommy Dyson
Fred Siebert
Walter Johnson, Sr.
Joseph A. Neale
Alexander Hunt
Marshall B. Cox, Sr.Ricky Woody
Roger McKinley
Breck Ingles
Bob Reid
Marty Hawksworth
Sherry Hamilton
Betty G. Waring
Raymond W. Edwards
John Hawksworth
N. B. Theberge
Barbara Sites
Freeland Mason
Celeste To Hu
Wayne Johnson, III
Phillip Green
Jimmie Crockett
Rodney E. Miller

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Charles Parks, Jr.
David Bell
Everett Watson, Jr.
Stanley Redcross
Bobby King
Paul Andrew Hargrove
Rudy Shores
Donna Roeske
Bobby C. Aueaek
Ben Raugh
Randy Birch
Rick Robins
Robert J. Arnold
Joe Stickle
Steve Boske
Charles Pruitt
Calvin Hawkins
Lee Hawthorn
Tim Wivell
Harry H. Johnson, Sr.
Galen Owen
Will. L. Parker
Walt Meyer
H. J. Deibler
Derek Orner
Ben R. Tate
Jerome Bonnaville
Dave Grossman
Pamela A. Dumnit
Larry Lynch
Alvin T. Johnson
Leonard Kamm
Jim Rahmai
Bert Turner
Isabella Harrison
Craig S. Kelly
Herb Thomas
Tom O'Connelly

Kim Allen Parks, Jr.
Bill Parker
Steven Clark
Andy Parks
Michael Ryan Parks
Rudy Shores, Jr.
Mike Croxton
Everette Lewis
Garnett Haynie
Stephen C. Bunce, Jr.
Daniel Bock
Frank McLaughlin
Tom Powers
John R. Jones
Edward V. Marshall
Sandra Spencer
Fred Portlock
Kevin Portlock
Pat Sanford
Herman W. Ayers, III
James Teel
Mike Handforth
Bob Hutchinson
Bill Reynolds
Jeannie Butler
Tom Mikrut
David L. Robeson
Stephen W. Burch
Kim Hoalon
Lee R. Smith
Bill Portlock
James V. Orlando
Eileen Rowan
Sue Carlyle
John Wood
Samuel J. Bawley
Paul H. Hernat
Harry Jenkins, Jr.

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Clifton Lee
Allen Jenkins
Richard B. Zasimowich
Henry M. Hayes
Ricky L. Jenkins
Jessie R. Bonniville
Benjamin M. Copeland
Douglas Jenkins
Larry W. Thrift
Davie Smith
Joe Blanchard
Greg Huffman
Alvin Carl Wimbrough
Ron Bolle
Daniel D. Gibbs
Timmy Howard
Kelly Place
John Hamlin

William Kelly
Z. R. Lewis
T. D. Ashe
Billy Moore
David W. Jenkins
Kenneth C. White
Richard E. Pearson
James Thrift
Eddie Farlow
John Farlow
Billy Bowen
Edward H. Bender
Charles Williams
Robert Harwood
Henry B. Stewart, Jr.
Bill Kellam
Shawn Boggess

and others.

The meeting was called to order by Commissioner Pruitt. Members present: C. Chadwick Ballard, Gordon M. Birkett, S. Lake Cowart, Sheppard H. C. Davis, Henry Lane Hull, H. Grant Goodell, Laura Belle Gordy, and John W. White, Sr.

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Associate Member Hull gave the invocation.

Commissioner Pruitt led the Pledge of Allegiance to the American Flag.

Copies of the Minutes of the meeting held January 26, 1999, had been sent to the Associate Members prior to this meeting. Associate Member Cowart commented that on page 26, the third paragraph from the bottom should be amended to read, 10 bushels per man, per boat. Associate Member White moved that the Minutes be accepted as distributed with the correction. Associate Member Hull seconded the motion. Motion carried unanimously.

Commissioner Pruitt informed the Commission that Mr. Grabb had a change to the Agenda. Mr. Grabb indicated that the applicant in Item 5, Colonial Beach Yacht Center, #98-0335, had requested that item be pulled from the agenda, and in keeping with the Commission's policy, the request would be granted. Mr. Grabb also commented that a 1993 Act of Assembly, had conveyed some waterfront property to Newport News, and staff wanted to add that item to the agenda between eight and nine. Commissioner Pruitt then suggested that Items 12 and 13 be reversed to allow persons travelling from the Eastern Shore time to get to the meeting.

Associate Member Goodell requested clarification on Item 5, Colonial Beach Yacht Center, as to whether it would be deleted or postponed. Mr. Grabb responded that at this point, they had not withdrawn the application, they had just requested a deferral. Commissioner Pruitt indicated that the Commission would not have to vote on it, just remove it from the agenda.

Associate Member Hull moved to approve the agenda with the modifications. Associate Member Gordy seconded the motion. Motion carried unanimously.

Mr. Robert Grabb, Chief-Habitat Management, briefed the Commission on the nine

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page two items. Mr. Grabb explained that those projects involved applications for permits for projects over \$50,000 in cost, and were unopposed as a result of public interest review. Staff was recommending approval with the specified conditions in each item.

U.S. ARMY CORPS OF ENGINEERS, #90-0745, requests reactivation and an extension until December 31, 2000, their previously issued permit to place up to 100,000 cubic yards of dredge material from the maintenance of the Quinby Creek Federal Project Channel in an overboard site containing non-vegetated wetlands adjacent to State-owned marsh at Pealer Point along Upshurs Bay in Accomack County.

PERMIT FEE - NOT APPLICABLE

DEPARTMENT OF THE NAVY, #98-2073, requests authorization to install two (2) 24-foot by 13.5-foot mooring bollard platforms; one at the terminus and another mid-pier of an existing pier adjacent to the Permittee's property situated along the York River in York County.

PERMIT FEE..... \$ 100.00

HARPER & ASSOCIATES, L.L.C., #98-2248, requests authorization to widen the southbound Route 33 bridge crossing of the Chickahominy River in Henrico County by 7.5 linear feet.

PERMIT FEE..... \$ 100.00

CITY OF NORFOLK, #98-2044, requests authorization to replace ten (10) existing storm water outfalls and 1,162 linear feet of an existing stone bulkhead adjacent to Mowbray Arch and along Smith Creek at the Hague.

PERMIT FEE..... \$ 100.00

CITY OF HARRISONBURG, #98-1672, requests authorization to install and protect a 24-inch diameter raw water intake with riprap scour protection which will extend approximately 170 linear feet channelward of ordinary high water along the South Fork of the Shenandoah River immediately upstream of the City dam in Rockingham County. Recommend a screen mesh size of 2mm to reduce fish impingement and

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entrainment.

PERMITE FEE..... \$ 100.00

VIRGINIA ELECTRIC AND POWER COMPANY, #98-2010, requests authorization to install by directional drill method two (2) 290 linear foot conduits under the Northwest River adjacent to the Route 168 bridge in Chesapeake. Recommend a royalty of \$290.00 for the encroachment under 290 linear feet of subaqueous land at a rate of \$1.00 per linear foot.

PERMIT FEE.....\$100.00

DEPARTMENT OF THE NAVY, #98-2191, requests authorization to replace 5,900 linear feet of an existing timber bulkhead with steel sheet pile bulkheading a maximum of two (2) feet channelward of the existing bulkhead adjacent to the Naval Air Station situated along Willoughby Bay in the City of Norfolk.

PERMIT FEE.....\$100.00

SLEEPY POINT PROPERTY OWNERS ASSOCIATION, #96-0591, requests a modification to their previously issued permit to include the replacement of a 20-foot long by 8-foot wide floating pier section of a community pier with a 20-foot long by 8-foot wide section of open-pile fixed pier adjacent to their property situated along the Nanesmond River in Suffolk.

PERMIT FEE - NOT APPLICABLE

TARMAC AMERICA, INC., #93-1543, requests authorization to reactivate and extend to December 31, 1999, their previously issued permit to dredge approximately 5,000 cubic yards of State-owned subaqueous bottom material adjacent to their ship berthing facility situated along the Southern Branch of the Elizabeth River at Money Point in Chesapeake.

PERMIT FEE - NOT APPLICABLE

There being no comments, pro or con, on the page two items, Commissioner Pruitt placed the matter before the Commission. Associate Member White move to approve the page two items. Motion seconded by Associate Member Birkett. Motion carried unanimously.

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Associate Member Ballard moved that the meeting be recessed and that the Commission immediately reconvene in executive closed meeting for the purpose of consultation with legal counsel and briefings by staff pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of Section 2.1-344 of the Code of Virginia.

Motion seconded by Associate Member Cowart. Motion carried unanimously.

WHEREAS, the Marine Resources Commission has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

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

NOW, THEREFORE, BE IT RESOLVED that the Marine Resources Commission hereby certifies that, 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 Marine Resources Commission. Associate Member Davis seconded the motion. Motion carried unanimously.

A brief discussion followed regarding the four different types of settings the Commission faced pertaining to habitat items, public hearings, fishery issues pertaining to regulations, repeat offenders and mandatory reporting. The Commission also discussed concerns regarding setting time limits on speakers. Comments are a part of the verbatim record.

Associate Member Davis moved that in matters where the public speaks, a time limit

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of five minutes would be implemented, unless there was some exception for a scientist or other professionals, and their time would be limited to ten minutes.

Associate Member Ballard commented that he did not feel the motion was specific enough for the Commission to take action on.

Associate Member Hull commented that he did not feel any changes should be made at this time. He said he had confidence in the Chairman in conducting the meetings. He also felt that the Chairman always gave the public and others a fair opportunity to speak for themselves or to be represented by attorneys. Other comments are a part of the verbatim record.

Motion lacked a second, therefore Mr. Davis withdrew the motion.

Associate Member Gordy commented that the speakers were often interrupted to provide comments and answers to the Commission, and if they were going to be timed, the Commission would be taking from their allotted time.

Associate Member Hull informed the Commission that Mr. McKinley's attorney, Mr. Nunnally, had represented him in a legal matter and the matter was concluded on Saturday. However, he had not received Mr. Nunnally's bill for services rendered, and on the advice of the Assistant Attorney General he wanted to be recused from this deliberation. Commissioner Pruitt granted the request.

DENNIS WHITCOMB, ET AL, #97-1876. Show cause hearing to determine Mr. Garrett England's (co-permittee) and Mr. Roger McKinley's (agent/contractor) degree of responsibility for permit violations associated with a previously authorized dredging project adjacent to Roness Bay off the Rappahannock River in Lancaster County. Continued from the December 21, 1998, Commission meeting.

Jay Woodward, Environmental Engineer, briefed the Commission. Mr. Woodward said that on April 3, 1998, staff issued a permit for the dredging of the previously dredged channel. Messrs. Dennis Whitcomb, Charles R. England and Otis G. Pike were permitted to dredge 198 cubic yards of subaqueous material from the channel. The channel was located in a cove off Roness Bay near the mouth of Dyer Creek in Lancaster County. The permitted channel was to be approximately 200 feet long by 25 feet wide with a maximum depth of minus four (-4) feet at mean low water. The

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material was to be removed by a barge-mounted crane and trucked to a disposal area at a sand pit outside the Town of Irvington in Lancaster County. Mr. Woodward said that Mr. McKinley acted as both the agent and contractor for the project. He also signed and accepted the permit documents for the permittees.

Mr. Woodward further stated that on September 10, 1998, staff conducted a routine compliance inspection of the project and noticed a discrepancy with the permit. Specifically, that a large amount of the dredged material had been deposited in the yard of Mr. England, adjacent to the dredged channel. Staff also noted that permit condition #18, which required a pre-dredging conference for the project, was never conducted. On September 17, 1998, staff issued a Notice to Comply to each of the permittees. Mr. McKinley was also directed to appear before the Commission at the October 27, 1998, to show cause why he should not be found in violation of Section 28.2-1203 of the Code of Virginia. Mr. Woodward said additional investigation revealed that (1) the channel had been overdredged to an average of six feet at mean low water, rather than the authorized four feet, (2) the dredge cut appeared to be more extensive in area and closer to adjacent vegetated wetlands than permitted, and (3) an estimated 300 cubic yards of dredged material had been transported to and deposited on Mr. Thomas Nichols' property without authorization.

Mr. Woodward then presented slides that showed the project location, the newly dredged channel, and the location of the properties belonging to Messrs. Pike, Wickham, and England. He also presented slides that showed the channel depth and the location of the dredged material that was deposited on the adjacent upland. Comments are a part of the verbatim record.

Mr. Woodward said Mr. England responded to the Notice to Comply by fax on October 16, 1998. Mr. England indicated in his letter that he had told Mr. McKinley that he could use some of the dredged material in his yard to fill some low spots, providing it was authorized by all the regulatory agencies. Mr. England indicated that Mr. McKinley told him that he would contact the proper agencies and get the necessary authorizations. Mr. England removed some of the material adjacent to the vegetated tidal wetlands and attempted to stabilize the remainder. Mr. Woodward said Mr. England had been very cooperative throughout staff's investigation and provided use of his personal watercraft so that staff could do soundings in the dredged canal.

Mr. Woodward stated that on October 22, 1998, staff granted Mr. McKinley's request

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for a one-month continuance of the show cause hearing. In November, the Commission again granted Mr. McKinley's request for a continuance. Mr. R. Wayne Nunnally, attorney representing Mr. McKinley, requested a further continuance in December until February 23, 1999. Mr. McKinley submitted material on November 17, 1998, in response to staff's inquiry regarding the reason for the discrepancies in the dredging. Mr. Woodward said staff further investigated the project as a result of the material submitted by Mr. McKinley, and determined that the majority of the dredged channel was initially cut out of marsh in the early 1970s before the Wetlands Act was implemented. However, the Commission clearly had jurisdiction over 850 square feet of the dredging that had occurred. The area where the material was deposited would likely have been approved.

Associate Member Ballard asked if the original permit was for a channel 200 feet long by 25 feet, which was approximately 5,000 square feet. Mr. Woodward responded that was correct. Mr. Ballard then asked if only 850 square feet was within the Commission's jurisdiction. Mr. Woodward responded that, according to the information submitted at this point, that was correct.

Mr. Woodward also stated that Mr. McKinley submitted an after-the-fact permit modification request to the U. S. Army Corps of Engineers. The Corps was continuing their review of the after-the-fact request. The Corps also indicated that the project would not qualify as maintenance dredging because the depths exceeded the minus four feet that was initially dredged back in the early 1970's and subsequently maintenance dredged in 1991. The Department of Environmental Quality was waiting for a permit decision by the Corps prior to their determining the need for an after-the-fact Virginia Water Protection Permit. The Virginia Institute of Marine Science (VIMS) indicated that the impacts to the benthic community may have been greater than expected, because of what was proposed originally. In addition, VIMS also indicated that the reduced buffer between the dredged cut and the vegetated wetlands may lead to slumping of the vegetation into the dredge cut, thereby resulting in a loss of that vegetation. Mr. Woodward said that excessive depths could result in anoxic areas, since the dredged area appears deeper than the controlling natural depths in the immediate area. The dredged material consisted mostly of coarse sand and shells and did not pose a threat of re-entering State waters. Mr. Woodward said staff recommended allowing the material to remain on Mr. England's and Mr. Nichol's upland property because the material had been contained within a silt fence. Furthermore, he said given Mr. England's cooperative attitude and the fact that he relied on his professional agent/contractor to comply with

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the permit conditions and all applicable laws, staff recommended assessment of a minimal civil charge to Mr. England in lieu of any further enforcement actions. Mr. Woodward said that while Mr. England was certainly at fault for not obtaining the prior authorization regarding the change in disposal areas, staff felt that the majority of the blame lay with Mr. McKinley for the unauthorized disposal and other discrepancies associated with the dredging.

Mr. Woodward also stated that staff was troubled by the fact that Mr. McKinley, a licensed contractor a well-known construction permitting agent in the Northern Neck, would flagrantly and willfully violate the law. He said that Mr. McKinley was well aware of the importance of permit compliance, and staff's final letter included the language recently recommended by the Commission regarding the unauthorized modification. Accordingly, staff recommended that the Commission consider an appropriate civil charge be assessed Mr. McKinley. The civil charge would be in lieu of further civil penalties which could be imposed under Section 28.2-1213 of the Code. Staff also recommended that the Commission file a formal complaint with the Virginia Board of Contractors concerning Mr. McKinley's actions in this matter. In addition, staff recommended that consideration be given to placing Mr. McKinley on probation for a year to ensure his compliance with any future permitted projects he may be involved with. If Mr. McKinley was found in violation of any wetlands or subaqueous permit during this probationary period, staff recommended that the Commission cease recognition of Mr. McKinley as an agent authorized to submit permit applications in the Commonwealth of Virginia.

Mr. Woodward also said that the remainder of the material that was out on the point was so close to the mouth of Rones Bay and Dymer Creek, that it should be moved to an upland location further away from the wetlands.

For clarification, Associate Member Ballard asked if the dredged material was placed on the Mr. England's property that had applied for the permit. Mr. Woodward responded that it was placed on Mr. Charles England's property. Associate Member Birkett also asked if Mr. Nichols asked for the material to be placed on his property. Mr. Woodward responded that Mr. Nichols saw what was happening during the dredging operation, and approached Mr. McKinley about placing some of the dredged material on his property. Mr. McKinley then trucked some the dredged material to his property. He said the material was deposited in non-jurisdictional areas in Mr. Nichols' yard. Mr. Nichols did receive after-the-fact authorization from the Board of Supervisors in Lancaster County.

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Associate Member Goodell commented that the contractor had a permit to dredge a channel of certain dimension and he was to be paid by the cubic material that he removed. The contractor went out and overdredged and he wanted to know if the contractor got paid for the overdredging or if it was pro bono. Mr. Woodward responded that he did not have that information. He said he did not understand how a contractor could over dredge, spend his own money, and distributed the fill around to others. Mr. Woodward responded that he did not have an answer for that but Mr. McKinley and Mr. England were both available to answer any questions the Commission might have.

Associate Member Ballard asked if the 850 square feet included the slumping of the wetlands vegetation. Mr. Woodward responded that it did not appear to be any existing vegetation. The area was protected on the East side by riprap on Mr. Wickham's property and the riprap jetties. He said the area that was slumping appeared to be within the man made portion. Mr. Woodward also stated that there was no wetlands permit required for this project because there were no wetlands impacts involved, it was all supposed to be subaqueous. He said he did not know if the Wetlands Board could get involved at this point regarding the direct impacts associated with the judging outside the boundaries of what appeared to be the proposed channel. Associate Member Ballard said he was trying to find out if the environmental impacts were moderate within the 850 square feet area? Mr. Woodward responded that they were not severe. Mr. Woodward said he was trying to point out that at no point in the recent past had the channel possessed depths greater than minus four. Now they were at minus six. He said he did not believe there were any significant wetlands impacts associated with the overdredging, but there certainly could be water quality impacts or benthic community impacts associated with the additional material removed from the areas within the Commission's jurisdiction.

Associate Member White commented that he recalled reading in the narrative, that the method they used to maneuver the barge in the small, confined area was to extend the clam bucket and pull the barge around with it. Mr. Woodward responded that in Mr. McKinley's response in 5B, that was how the crane operator maneuvered the barge. Mr. White asked if it was possible, in that process, with the tremendous force on the clam bucket and pulling the large barge across, that could cause variations in the depth. Mr. Woodward responded that it was quite possible.

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Associate Member Gordy asked if it was possible for the contractor to do exactly four feet.

Mr. Woodward responding that dredging was not an exact science. Staff had wrestled with that issue and concluded that a lot depended upon the method of dredging. He said with a clam shell bucket it was possible to be exact. In addition, if the over dredging had been plus or minus six inches, or even up to a foot in a few places, staff would have determined it to be in moderate compliance. But because the depth was minus six feet throughout, staff felt that a 33 percent increase was a significant increase.

Mr. R. Wayne Nunnally, attorney representing Mr. McKinley and Mr. England, from Norfolk and Irvington, addressed the Commission. He said Mr. McKinley took 100 percent of the blame for everything that occurred. He said Mr. England, in his opinion, did nothing wrong. He was the land owner and he had hired the contractor. He said when the channel was being dredged, it was discovered that it was good fill material, Mr. England then said he had a couple of low spots and could use the material on his property instead of taking it back to Irvington. Mr. McKinley told Mr. England he could, but he needed permission. Mr. McKinley indicated he would go ahead and place the material and get permission later. Mr. Nunnally said in all his conversations with staff, staff had said the spoil sites would likely have been approved. He said the terminology they used was minor impact, no significant impact, moderate impact. His client was guilty only of not getting after-the-fact approval from the Board, and not seeking authorization to change the spoil site.

Mr. Nunnally said he felt that staff's recommendation for a \$4,500 fine for Mr. McKinley, with a year's probation and the filing of a complaint with the Virginia Board for Contractors was outrageous for the moderate impact or significant impact violation. He also said that staff had recommended that Mr. England be fined \$500. He said he felt an oral reprimand from the Commission was sufficient, and that Mr. Kinley had indicated that he would follow all the written instructions in the future and assured them that he would comply in the future. A discussion followed regarding the violations. Comments are a part of the verbatim record.

Associate Member Ballard commented that he agreed with staff in that there had been a major degree of non-compliance, but he did not agree with staff's opinion that the environmental impact was moderate. He said in dealing with the three degrees of impacts, significant, moderate, and minimal, that it seemed that 850 square feet of environmental impact was minimal. He said he did not feel that the VIMS report

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contradicted that opinion.

Associate Member Birkett commented that he concurred with Mr. Ballard's statement of there being a minimal impact given the 850 square feet of jurisdiction.

Commissioner Pruitt placed the matter before the Commission for a motion.

Associate Member Goodell commented that he agreed with Mr. Ballard that perhaps the environmental impact was not as great as staff thought. Nevertheless, it was an issue that was very serious. Associate Member Goodell then moved that the contractor be assessed, with his agreement, a civil charge of \$2,500, and that Mr. England be assessed a civil penalty of \$1,000 for the overdredging and disposal of illegal fill material without a permit. Motion seconded by Associate Member Davis.

Associate Member Gordy commented that she found it difficult to believe that Mr. McKinley would go into the project without a pre-dredging conference. She did not feel that Mr. England should be charged because he hired a contractor, and the contractor should be held responsible.

Assistant Attorney General commented that he was confused by the motion. He said the permit was issued to three persons, Messrs. Whitaker, Charles England and Pike, and that the only Mr. England mentioned by staff was Mr. Garrett England. His offense was that he took some bottom material without a permit. Mr. Fisher then requested clarification on the motion.

Associate Member Davis asked Associate Member Goodell if he would consider leaving the \$2,500 charge on the contractor, but reducing the charge on the permittees to \$250 for each permittee.

Associate Member Gordy commented that she did not feel that they should have to pay anything because the contractor was paid to do the project.

Associate Member Ballard commented while the deviation of non-compliance was major, he felt the degree of environmental impact was minimal, and he had a problem going along with the \$2,500 fine and felt another number in the matrix would be better. He said with regards to the three permittees, if there was going to be a civil charge in lieu of further enforcement, he agreed it should be split three ways.

Associate Member Goodell agreed to accept the amendment to change the motion to

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\$2,500 and he accepted Mr. Davis' amendment that the three permittees be assessed a charge of \$250 each. The seconder accepted the amendment. The question was called. The motion carried 5 to 2, with one no vote, and one abstention by Associate Member Hull.

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|--|-------------|
| Assessed Civil Charge \$3,250 (\$2,500 to agent/contractor, \$250 for each of the three permittees)..... | \$ 3,250.00 |
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For the Record: The Commission recessed for approximately seven minutes.

COLONIAL BEACH YACHT CENTER, 98-0335, request authorization to dredge 1,000 cubic yards of subaqueous bottom and to repair and expand existing marina facilities to include 34 additional wetslips adjacent to their property situated along Monroe Bay at Colonial Beach in Westmoreland County. The project is protested by an oyster ground leaseholder.

Project postponed at the applicant's request.

YORK RIVER YACHT HAVEN, #98-2156, requests authorization to add a 229-foot and a 260-foot extension to an existing pier to provide 34 additional boat slips on the north side of their marina located along the Northwest Branch of Sarah Creek in Gloucester County. The project is protested by the owners of a nearby property.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides of the project location. Mr. Neikirk gave background information on the location of the proposed marina and the proposed pier expansion. Comments are a part of the verbatim record. He said the proposed pier expansion would provide 34 open wetslips measuring 17 feet wide by 38 feet long. Also proposed was a 36-foot by 36-foot open-pile deck with a tent canopy landward of the juncture of the two proposed pier extensions.

Associate Member Goodell commented that the applicant should reconsider the regulations referred to as the Marina's Operating Rules and Regulations concerning

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trash and debris.

Commissioner Pruitt asked if there were any navigational concerns. Mr. Neikirk responded that there would probably be a couple more boats going in and out of the creek on a daily basis. The facility was located in a cove and the marina owned all the property around the marina. He said Mr. Baker owned one of the lots and Mr. Doggette, who owned the other lot, was in support of the marina.

Associate Member Cowart asked staff to point out the open-pile structure. Mr. Neikirk responded that rather than constructing all open pile piers, the applicant would like the option of using floating piers. He said staff was concerned that the portion that crossed the wetlands should be open-pile and high enough to avoid shading as much as possible. He said floating or fixed piles were inconsequential.

Breck Ingalls, from Gloucester representing the applicant, addressed the Commission. He said that Mr. Dan Bacot, Jr. was with him today, and was available to answer any questions. He also said that Bob Reid, the General Manager and a licensed engineer, was also present to address the BMPs and environmental issues. Mr. Ingalls stated that the Wetlands Board met on January 13, 1999, and there no one spoke against the application. He said the letter from Ms. Whitely was a possible opposition, and Mr. Dobson were not present at the meeting. He said the property owners affected by the proposal were Mr. Doggette and Mr. Baker and both of them spoke in favor of the project. Mr. Ingalls said that Mr. Doggette was here today, but had to leave because of another commitment. However, Mr. Doggette left a letter and requested that it be entered into the record, which indicated his views on the matter. Mr. Ingalls then stated that the environmental aspects of the project would be addressed by Mr. Reid, and that the BMPs were proffered and would become a part of the application. He then addressed the letter from Ms. Whitely in which she indicated some concerns, not any opposition. Mr. Ingalls said that Ms. Whitely's concern had to do with boat traffic in and out of Sarah's Creek, not necessarily related to the York River Yacht Haven. He said Ms. Whitely, in fact, acknowledged that the "Yacht Haven had been a good neighbor." Mr. Ingalls also stated that the Gloucester County Wetlands Board had approved the application unanimously. He said the County, through the local industrial development authority, recognized the need for additional slips (a letter concerning that was in the Commission's package). He said only the oyster ground encroachment affected was leased by Mr. Bacot, who was present today and in favor of the project. Mr. Doggette's letter was a part of the Commission's package. He said staff's

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recommendation for a reduction in the size of deck was not objectionable, and the applicant would comply with that request.

Mr. Robert Reid, general manager of York River Yacht Haven, addressed the Commission. He said Mr. Neikirk had done an excellent presentation on their behalf, and he was available to answer any questions from the Commission.

Associate Member Goodell asked Mr. Reid if he thought, Item 5 under the Marina's Operating Rules and Regulation, should be emphasized to all of the marina patrons. If they did not abide by those rules, they could be subject to prosecution under both Federal and State statutes. In addition, the marina should take the lead in prosecuting those persons that did not abide with their guidelines. Mr. Reid responded that was one of the environmental considerations that was made a part of the Commission's package. He said through education and enforcement the boaters would be required to comply with all existing laws and regulations. Mr. Reid said the point was well taken and he agreed with Dr. Goodell.

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

Associate Member Davis moved to approve the project with the required BMPs outlined by the staff. Motion was seconded by Associate Member White. Motion carried unanimously.

| | |
|--------------------------------------|-----------|
| Annual Royalty for encroachment over | |
| 8125 sq. ft @ 0.05 per sq. ft..... | \$ 406.25 |
| Permit Fee..... | _____ |
| 100.00 | |
| Total | \$506.25 |
| ***** | |

Returning to Item 4, Dennis Whitcomb, ET AL, #97-1876, Commissioner Pruitt commented that Mr. Garrett England, who was now a co-permittee in place of his father, wanted to ask the Commission a question. After a brief discussion by the Commission members, Commissioner Pruitt explained that the matter would be remanded to the Attorney General's Office, therefore, it was proper to hear from Mr. England.

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Assistant Attorney General Fisher stated that the applicant's attorney, Mr. Nunnally had declined the Commission's offer to settle payment of civil charge. Therefore, Mr. Garrett England had requested some time to present the offer to the other two co-permittees in order that they could individually decide whether they wanted to accept the offer made by the Commission. Mr. Fisher then stated that such a request seemed appropriate.

Mr. Garrett England addressed the Commission. He said he was asking for the opportunity to talk with Dennis Whitcomb and Otis Pike to discuss with them the civil charge, and paying the assessed amount of \$250 each, which would remove them from further litigation. He said Otis Pike lived in Florida, and Mr. Whitcombe was a good friend.

Commissioner Pruitt asked how much time would he need? Mr. England responded that he would like a week. Commissioner Pruitt then placed the matter before the Commission.

Associate Member Davis moved to approve the request. Motion seconded by Associate Member Cowart. Motion carried, with Associate Member Hull abstaining.

Commissioner Pruitt then requested a motion to refer the McKinley matter to the Attorney General's Office. Associate Member Davis moved to refer the matter to the Attorney General's Office for enforcement. Motion was seconded by Associate Member Goodell. Motion carried, with Associate Member Hull, abstaining.

Assistant Attorney General Fisher requested clarification of the motion to ensure that he had the motion correctly. He then explained that the motion would be to pursue the violations of the permit against the three permittees, of which one permittee had received the dredged fill, and the contractor. If the three permittees accepted the Commission's offer of a settlement, the Attorney General's Office would just pursue the contractor. The Commission concurred with Mr. Fisher's interpretation of the motion.

PERMIT FEE..... \$ 100.00

TOM HAWKSWORTH, #98-1647, requests authorization to install a single piling to

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support an osprey nesting platform adjacent to his property along Tobacco Cove on Jackson Creek in Middlesex County. The project is protested by an adjacent property owner.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides. He gave background information on the location of the proposed project. Comments are a part of the verbatim record. He said the applicant proposed to install a single mooring pile approximately 150 feet channelward of his property designed to support an osprey nesting platform. He said the water was approximately 8 feet deep at mean low water. The platform would be approximately 50 feet channelward of the end of his proposed pier addition. Mr. Neikirk stated that staff had previously determined that the pier addition qualified for the private pier exemption provided by §28.2-1203(A)(5) of the Virginia Code. However, an osprey pole was not exempt, and therefore required a VMRC permit.

Mr. Neikirk said the project was protested by Ms. Mary Stull, Mr. Hawksworth's neighbor to the west. Ms. Stull was concerned that the osprey platform would obstruct her view and interfere with navigation in the vicinity of her dock. He said Mr. Hawksworth had expressed a willingness to relocate the piling, however, he was not able to reach a compromise location with Ms. Stull. The pilings and platform would be located on oyster ground leased by Mr. Hawksworth. No State agencies had expressed any opposition to the project.

Mr. Neikirk said the proposed structure was not water dependent and the structure appeared to be more of an amenity than a structure necessary for navigation or other traditional use of the applicant's riparian area. Accordingly, staff recommended denial of the project based on the non-water dependent nature of the structure and the potential adverse impacts to adjoining properties, as well as its impact on other reasonable and permissible uses of State waters and bottomlands.

Associate Member Davis asked how wide the cove was? Mr. Neikirk responded that it was approximately 600 feet wide and approximately 900 feet long.

Mr. Neikirk said he received a fax this morning from Mr. Doug Welch representing Mary Stull. He said Mr. Welch had put some drawings together for Ms. Stull, but was not sure how much of the drawings applied to the project.

Associate Member Goodell asked if there was a lack of osprey nesting locations? Mr.

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Neikirk responded no.

Tom Hawksworth, addressed the Commission. He gave several reason why he wanted the osprey nest. His comments are a part of the verbatim record. He also said that several of his neighbors had written letters expressing their interest in the nests. The letters were made a part of the verbatim record. Mr. Hawksworth also presented an article from the *SOUTHSIDE SENTINEL*, which was also made a part of the verbatim record.

Associate Member White asked how far was it from the proposed site and the protestant's house. Mr. Hawksworth said it was approximately 1000 feet.

George Harris gave comments in support of Mr. Hawksworth proposal.

Associate Member Birkett asked Mr. Hawksworth if he had offered to compromise by moving the nest inshore or to another location. Mr. Hawksworth responded that he had offered to move it anyplace on his property and Ms. Stull rejected the offer. She said they did not need an osprey nest because the osprey were nesting in the nearby pine trees.

Associate Member Davis asked Mr. Hawksworth if he was willing to place the osprey nest on land. Mr. Hawksworth responded he was requesting to place the nest in his riparian area out in front of his property.

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

Associate Member White commented that he thought Mr. Hawksworth had done everything he could to make it a viable project, and he felt Ms. Stull was strongly convinced that the project was wrong, and she would think it was wrong wherever Mr. Hawksworth suggested. He said for the sake of conservation, the project had merit and he was in favor of the project.

Associate Member Cowart commented that from a navigational point of view, the proposal should be placed behind the dock.

Associate Member Hull suggested using one piling on the dock. Associate Member Birkett commented that was not a good place.

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Associate Member Birkett moved to allow the piling to be installed, and that staff and Mr. Hawksworth get together on relocating the piling as near to his dock or shore as possible, but still remain waterside. Associate Member Gordy seconded the motion. Motion carried, Associate Member Hull opposing.

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| PERMIT | FEE..... | \$ |
| 25.00 | | |

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

Mr. Jay Woodward addressed the Commission. He said staff was asking that a public hearing be held after they had an opportunity to review this matter with the Habitat Management Advisory Committee. Therefore, the matter may not come before the Commission at the next meeting. The Commission was agreeable.

After a brief discussion, Associate Member Ballard moved to go to public hearing. Associate Member Goodell seconded the motion. Motion carried unanimously.

Associate Member Davis commented that he would like any items coming before the Commission to be sent out in advance of the meeting. Commissioner Pruitt emphasized that the agenda was amended to include this particular item related to Newport News. The Commission had agreed to discuss it. Now, the Commission would have to discuss it.

Gerald Showalter, Head Engineering and Surveying, briefed the Commission and presented a composite map that showed several plats of a Proposed Deed for the City of Newport News. The map depicted an area in red which was the area approved by the legislature in 1993 to be conveyed from the State to the City of

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Newport News. He said the area between the red and green line was presently water, with the exception of some pilings in the area. Other comments are a part of the verbatim record. Mr. Showalter said he had talked with the City of Newport News and the only plans they had were to add a bulkhead, which would be two feet water on the waterside of the green line where the bulkhead was presently located.

Commissioner Pruitt asked Mr. Showalter what he was asking the Commission to do? Assistant Attorney General Fisher explained that the legislature had agreed to convey the property, "upon consultation with the Marine Resources Commission." Mr. Fisher said in his letter to the Commission he had asked what the Commission's views were on the matter. He said the Commission would now have to consider the proposal.

Associate Member Goodell requested an answer to the question in the last sentence of Mr. Fisher's letter which inquired when the fill was placed on State-owned land. Mr. Showalter said he had checked with the City and they did not have a definite date that the fill was done. He said Horne Brothers filled the area sometime between 1953 and 1984. Mr. Goodell asked if they had legally filled the area, would they have received a proper permit? Mr. Grabb responded that they did not consider the fill to be illegally placed and that the Commission did not get the submerged lands authority until 1962. Therefore, anything prior to that time would not have required a permit from the Commission.

After a brief discussion concerning the filled area, Mr. Pruitt suggested that staff prepare a resolution and bring it back before the Commission for their action.

Associate Member Goodell said he had a problem and wanted to know if the Commission would be held liable in the future if the filled material turned out to be hazardous or in some way environmentally unsafe. A discussion followed regarding the liability once the property was conveyed. Comments are a part of the verbatim record. Staff agreed to devise a 'whereas' to address this situation. That condition is included in the Resolution.

Staff presented the following resolution before the Commission for consideration.

RESOLUTION

WHEREAS, Chapter 618 of the 1993 Acts of Assembly authorizes and empowers the

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Governor, upon consultation with the Marine Resources Commission and the Attorney General, to convey to the City of Newport News, Virginia, all rights, title and interest, and all riparian rights appurtenant thereto, in certain filled and subaqueous lands lying in the James River and within Newport News; and

WHEREAS this land is an extension of the property of the City of Newport News, and which is more particularly described as follows:

Beginning at a point where the southerly right-of-way line of 26th Street, a 60 foot right-of-way, and the mean low water line of the James River intersect, which said point is South 63 Degrees, 37 Minutes West, 600 feet plus or minus from the intersection of the right-of-way lines of West Avenue, an 80 foot right-of-way, and 26th Street, a 60 foot right-of-way; thence from the aforesaid beginning point South 63 Degrees, 37 Minutes, 00 Seconds West, 355.35', to a point, thence South 29 Degrees, 04 Minutes, 00 Seconds East, 780.76 feet, to a point, thence North 63 Degrees, 37 Minutes, 00 Seconds East, 253.14 feet, to a point at mean low water which is the original shore line, thence along the original shore line, North 31 Degrees, 21 Minutes, 17 Seconds West, 107.10 feet, to a point, thence North 8 Degrees, 25 Minutes, 37 Seconds West, 136.47 feet, to a point, thence North 26 Degrees, 07 Minutes, 52 Seconds West, 295.17 feet, to a point, thence North 21 Degrees, 10 Minutes, 39 Seconds West, 151.19 feet, to a point, thence North 16 Degrees, 12 Minutes, 36 Seconds West, 46.92 feet, to a point thence North 15 Degrees, 51 Minutes, 55 Seconds West, 52.35 feet, the beginning point, containing 5.378 acres (234,277 square feet); and

Whereas the property to be conveyed is depicted on a composite, scaled drawing prepared by the staff of the Commission which is attached hereto; and

Whereas the City of Newport News will provide a signed plat of the property to be conveyed; and

Whereas the Attorney General has caused the attached deed to be prepared to convey such rights, title and interest as the Commonwealth may have in such land to the City of Newport News for developmental purposes; and

Whereas the Commonwealth absolves itself of any liability related to the nature of the previously filled lands covered by this conveyance; and

Whereas the Commission deems the terms and conditions therein set forth to be

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proper;

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby consents to the conveyance of the above described property to the City of Newport News on the terms and conditions as set forth in the attached deed.

Associate Member Goodell moved that the Resolution granting the 5.38 acres of the City of Newport News and the Commonwealth. Associate Member Ballard seconded the motion. Motion carried unanimously.

Commission recessed for lunch.

Commission returned from lunch 1:00 p.m.

PUBLIC HEARING ON STATE-OWNED LANDS MANAGEMENT PLAN:
Commission consideration of the Draft Management Plan for the Ungranted State Lands in Accomack and Northampton Counties recommended by the Virginia Coastal Land Management Advisory Council.

Robert Grabb, Chief-Habitat Management, briefed the Commission on background information concerning the study and Draft Management Plan for the Ungranted State Lands in Accomack and Northampton Counties. He said that Dr. Bart Theberge, from the Virginia Institute of Marine Science, was very instrumental in coordinating the study which culminated in the draft document. He said Dr. Theberge was present in the audience and available for questions. Comments are a part of the verbatim record. He said the study was based on years of research conducted by the Virginia Institute of Marine Science, with support from the Marine Resources Commission surveying staff. The study identified 28,507 acres of previously unknown and unclaimed State land on the Eastern Shore. He said 27,722 acres of this land was on the seaside and 785 acres was on the bayside in the Counties of Accomack and Northampton. Surveys of these lands were filed with the Clerks of Court and the Commissioners of Revenue in the appropriate county on July 20, 1992.

Mr. Grabb said that, according to VIMS, there were an additional 43,385 acres, which had been claimed by owners other than the State, and may also be subject to State

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claim.

Mr. Grabb also gave information on the public ownership of those lands that were established by two statutes in 1873 and 1888, and dealt with *shores of the sea* and ungranted *marsh or meadowlands*. Mr. Grabb explained that in 1995, the General Assembly enacted Chapter 15 Title 28.2-1500 et. seq. of the Code. That provided protection and management of the lands in §28.2-1504 and directed the Commission to prepare and implement a management plan in consultation with the Virginia Coastal Land Management Advisory Council. Mr. Grabb said that prior to the referenced legislation, VIMS and VMRC had been successful in securing funds from EPA to advance the management planning effort called for in the statute. He said that due to Code changes, habitat management regulations and are now promulgated in the same manner as fisheries regulations. As a result, staff made some additional administrative changes in the draft plan so it would reflect the Commission's current regulatory adoption and approval process.

Mr. Grabb said that in the month, they had run an advertisement of the hearing in the Daily Press, Richmond Times Dispatch, Eastern Shore News, and Virginian Pilot in keeping with the same procedures followed by fisheries. He said that our marine patrol officers had also posted the notice at the required locations. Comments are a part of the verbatim record.

Mr. Grabb said that former Governor Allen only appointed the last of the six citizen members to the Council on January 7, 1998, even though the enabling legislation was enacted in 1995. The Council held eight meetings during 1998. At the last meeting the Council adopted minor changes to the draft management plan which were proposed by the Nature Conservancy, and voted unanimously to forward the plan to the Commission with a recommendation for adoption. Other comments are a part of the verbatim record.

Acting Chairman White requested that Mr. Grabb brief the Commission on what they were charged with in considering the adoption of the guidelines. Mr. Grabb responded that the actual goal of the management plan was spelled out in §28.2-1504 of the Code of Virginia. He then read that section of the Code into the record. Comments are a part of the verbatim record.

Acting Chairman White then opened the public hearing.

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Dr. Bart Theberge, from the School of Marine Science at the College of William and Mary, addressed the Commission. He said the process took three years and was very contentious in the beginning. In the end, he was pleased that people from very different segments of the population had come together to produce the draft management plan.

Associate Member Davis complemented Dr. Theberge for leading the effort and on doing an excellent job.

Randy Lewis, from Wachapreague, addressed the Commission and asked if the Commission was talking about the marsh land in Accomack and Northampton Counties that was granted by the King of England to the people of the State of Virginia. Mr. White responded yes. Mr. Lewis then asked how they were talking about "our land," and requested an explanation.

At the request of Mr. White, Mr. Grabb addressed the question.

Associate Member Davis commented that there had been lengthy information put to the public and the public had significant involvement in developing the plan. Mr. Lewis commented that the reason more public comments had not been received was because it was not stated what specific lands they were talking about. A discussion followed. Comments are a part of the verbatim record.

Mr. Grabb addressed the question and said the situation Mr. Lewis referred to actually stemmed from two laws the 1873 statute, and an 1888 statute. He said the 1873 statute dealt with the *shores of seas*, and if they had not been granted by a special grant by April 1, they would remain the property of the Commonwealth. He said the 1888 statute provided that any unappropriated *marsh* or *meadowland* on the Eastern Shore should remain ungranted after that time. If the land had been used as a common, it should remain a common and remain ungranted. Mr. Grabb said both of the statutes were found codified today as §28.2-1200 and §28.2-1502, so the ungranted lands were lands owned by the Commonwealth. He said surveys of these lands were prepared by staff and were available at the Eastern Shore Office. They had been there since the filing with the Clerks of Court and Commissioners of Revenue and both counties had copies. He said they tried to get the word out as much as they could, especially during the multi-year EPA grant process, and had a number of people who were involved. He said this did not include the 43,000 acres which were claimed, clouded or otherwise. These were currently ungranted State

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owned lands and the management plan was designed to accommodate traditional uses and recognize the value of those lands.

Assistant Attorney General Fisher commented that he would like to go into some background information. He said when the English came here, they claimed the land for the King and it was the King's custom to grant the land to various individuals. Mr. Fisher said the *marshes and meadowlands* were never granted, and remained the property of the King. In 1776, the Commonwealth of Virginia took over what the King had and the land became the property of the Commonwealth of Virginia. He said by the two statutes that Mr. Grabb cited, the Commonwealth took the *marshes and meadowlands and shores of the sea* away from the category of waste and unappropriated land, which could be granted to individuals. The Commonwealth said they would no longer grant this land to individuals, and said we are going to hold it as the Commonwealth's lands. Mr. Grabb said this is the land that had been surveyed, which was the subject of this particular management plan.

Mr. Lewis was acceptable to all the explanations.

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

Associate Member Davis moved to approve the Management Plan as modified. Motion seconded by Associate Member Gordy. Motion carried unanimously.

CONSIDERATION OF 1999 OYSTER REPLENISHMENT PROGRAM PROPOSAL

Jim Wesson, Chief-Replenishment and Conservation, briefed the Commission. He said the proposal was included in the briefing packages, and had been through the subgroups. He was available to answer any questions.

Associate Member Goodell asked Dr. Wesson if we had more monetary resources, would there be enough shells to utilize the resources. Dr. Wesson responded that currently they did, but he did not know how long for the future. He said there were shells that were dredged in Maryland that they could buy, but there was not enough money available. Dr. Goodell asked if the budget was larger, could they proceed at a faster rate. Dr. Wesson responded yes.

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Associate Member White asked Dr. Wesson if he needed funds for shells for this cycle? Dr. Wesson responded yes. He said there was more money next year that was put into the Governor's budget.

Associate Member Ballard questioned item 4, the "Turn and Clean", on page 4 of the evaluation in reference to a discussion regarding that subject, and if it would be very tough to design an experiment. Dr. Wesson said the experiment was tough to design in the Rappahannock. He then explained that he needed a large area, approximately 20 acres, and which was relatively consistent and an area they thought could have a spatset. He said he had found three areas that he could use. He said it would be divided up into four parts, with five acres each. One part would do some method of "turning and cleaning, and at the same time test oyster or clams shells, and leave one part alone. Associate Member Ballard asked if VIMS concurred with this experiment?

Dr. Wesson then stated that he needed the Commission to adopt his one page procurement methods, on page 9 and 10 of the evaluation package.

Approval of Procurement Activity for the 1999 Replenishment Program

General:

Certain aspects of the procurement of seed, shell and replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-505 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to

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changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the turning and cleaning and dredging of public oyster bottoms, the Commission will set a per hour or per day rate to be paid. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

For the 1999 York River Aquaculture project, participants will be selected by Yorktown Naval Weapons Station.

For the 1999 Seaside Aquaculture project, watermen participants will be selected by lottery.

The Commission will also set the price for the purchase of house shells. The prices will be approximately \$0.70 per bushel for clam shells and \$0.80 per bushel of oyster shells, but may vary somewhat by type of activity, transportation costs, and geographic area. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 1999 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased by the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

The agency anticipates that all other 1999 oyster replenishment activity will be done using the Invitation for Bid, or Request for Proposal process, in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Division Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 1999 Replenishment Program.

APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL

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ABOVE.**SUMMARY OF 1999 REPLENISHMENT PROGRAM****Chesapeake Bay**Seed Planting

James River Seed

| | | |
|--|-------------------------|-------------|
| Nomini River | 12,000 bu. @ \$3.75/bu. | \$45,000.00 |
| Rappahannock River Bowlers & Sharps | 5,000 bu. @ \$3.75/bu. | \$18,750.00 |

Subtotal for JR Seed Planting
\$63,750.00

Great Wicomico River Seed

| | | |
|--|-----------------------|-------------|
| Coan River, Big Bar Yeocomico River | 2,000 bu. @\$2.00/bu. | \$ 4,000.00 |
| Walkers Bar Rappahannock River | 2,000 bu. @\$2.00/bu. | \$ 4,000.00 |
| Smokey Point Tangier Sound | 2,000 bu. @\$2.00/bu. | \$ 4,000.00 |
| Thorofare Rock Little River | 2,000 bu. @\$2.00/bu. | \$ 4,000.00 |
| PG 42 | 2,000 bu. @\$2.00/bu. | \$ 4,000.00 |

Subtotal for GWR Seed Planting \$20,000.00

Subtotal Seed Planting \$83,750.00

Shellplanting

| | | |
|--------------------|---|-------------|
| Rappahannock River | 82,000 bu. @\$0.85/bu. of oyster shell from Rappahannock River area | \$69,700.00 |
| Piankatank River | 35,000 bu. @\$0.70/bu. of clam shells from Elizabeth River area | \$24,500.00 |
| | 40,000 bu. @\$0.90/bu. | \$36,000.00 |

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| | of oyster shells from Rappahannock River area | | |
| Great Wicomico River | 35,000 bu. @\$0.70/bu. of clam shells from Elizabeth River area | \$24,500.00 | |
| | 40,000 bu. @\$1.20/bu. of oyster shells from Yeocomico River area | \$48,000.00 | |
| Coan River | 25,000 bu. @\$0.80/bu. of oyster shells | \$20,000.00 | |
| Yeocomico River | 25,000 bu. @ \$0.80/bu. of oyster shells | \$20,000.00 | |
| Elizabeth and Lafayette Rivers | 20,000 bushels @ \$0.70/bu. of clams shells | \$14,000.00 | |
| Subtotal Shellplanting | | | \$256,700.00 |
| Turning and cleaning - 3 locations | | \$10,000.00 | |
| Aquaculture Training at Naval Weapons Station | | \$ 4,000.00 | |
| Subtotal Shell/Seed Planting, Turn/Clean, and Aquaculture Training | | | \$354,450.00 |

Reef Construction

| | | | |
|-----------------|---|--------------|--|
| Mobjack Bay | 2 reefs in either the East, North or Ware Rivers 122,222 bu. @ \$1.35/bu. of oyster shells | \$165,000.00 | |
| York River | Reef near Felgates Creek 37,333 bu. @ \$1.50/bu. of oyster shells | \$56,000.00 | |
| Lafayette River | 70,520 bu. @ \$1.25/bu. of oyster shells | \$88,150.00 | |

Subtotal for Reef Construction

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Reef Construction

| | |
|----------------------|-------------|
| Kegotank Bay | \$25,000.00 |
| New Inlet- South Bay | \$25,000.00 |
| Magothy Bay | \$40,000.00 |

| | | |
|---------------|---------------------|-------------|
| Shellplanting | 7,000 bu. @1.00/bu. | \$ 7,000.00 |
|---------------|---------------------|-------------|

| | |
|-----------------------------------|-------------|
| Hydraulic Excavation B Turn/Clean | \$45,000.00 |
| Aquaculture Project | \$18,000.00 |

Subtotal for Seaside Eastern Shore**\$160,000.00****Total Project Costs:****\$823,600.00****FUNDING BREAKDOWN:**State Funding Sources:

| | |
|--------------------------|--------------|
| State General Funds | \$400,000.00 |
| Special Funds | 40,000.00 |
| Indirect Cost Recoveries | 30,450.00 |

Subtotal for State Funding Sources:

\$470,450.00

Grant Funding Sources:

| | |
|--|--------------|
| EPA - Chesapeake Bay Program (Mobjack Bay) | \$165,000.00 |
| Naval Weapon Station (York River) | 60,000.00 |
| Coastal Resources Management (Magothy Bay) | 40,000.00 |
| FishAmerica (Lafayette River) | 11,150.00 |
| Chesapeake Bay License Plate (Lafayette River) | 18,000.00 |
| Norfolk Rotary Club (Lafayette River) | 27,000.00 |
| EPA Chesapeake Bay Program - Chesapeake Bay Foundation (Lafayette River) | 32,000.00 |

Subtotal for Grant Funding Sources:

\$353,150.00

Total for Funding Sources:**\$823,600.00**

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Associate Member Goodell moved to approved the Procurement Activity for the 1999 as proposed by Dr. Wesson of the Conservation and Replenishment Division's evaluation of 2/23/99. Motion seconded by Associate Member Davis. Motion carried unanimously.

JIMMY CROCKETT AND ALEX FLEET: Virginia Watermen's Steamboat Museum

Associate Member Hull informed the Commission that he would like for Mr. Fleet, Mayor of Irvington, and Mr. Crockett, brother of the Lancaster County Sheriff to come before the Commission and give a presentation on the Virginia Watermen's Steamboat Museum. Mr. Hull said he would like for the Commission to endorse the proposal.

Mr. Alex Fleet, Mayor of Irvington, addressed the Commission. He gave some personal comments in reference to a picture of his grandfather, W. Donald Lee, a Commissioner of Fisheries under three governors some years ago. Comments are a part of the verbatim record. He then requested Mr. Crockett, a councilman, from Irvington to make the presentation.

Mr. Jimmy Lee Crockett, member of the Town Council of Irvington, and Chairman of the Museum Committee gave background information on the artifacts relating to the proposal for the steamboat museum. Comments are a part of the verbatim record. He then asked the Commission to use their influence to talk with the persons involved, and give favorable consideration to their efforts. He also read an article written by Mr. Don McCann of the Northern Neck Planning District regarding the golden age of the steamboat. Comments are a part of verbatim record.

Associate Member White asked if they had applied for Istea Fund?

Associate Member Hull then moved to endorse the efforts presented. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

PUBLIC HEARING: Consideration of Amendments to Regulation 4 VAC 20-20-10 et.

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seq., to establish further safety measures for those persons fishing near pound nets.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said the Commission took a great deal of comments last month and he would speak briefly today. He said the language in the evaluation was slightly different from the language the Commission agreed to advertise last month. Mr. Travelstead said they met with the Law Enforcement Division and discussed at length the language advertised and how it might be enforced. He said after a discussion with Law Enforcement, the proposed buoy marking system would not work because of the location of nets. He said the pound net could be marked with flags, which would still alert the public that there was a "no fishing zone" around the pound net. He said this could be accomplished by placing a flag at the stake on the channelward end and on the opposite end, four feet above the water. He said if a pound netter chose not to have the area enforced around his pound net, he would not use the flags.

Associate Member Ballard asked if staff's recommendation was for a blaze orange flag on both ends of the net. He also asked if the watermen did not want the no fishing zone enforced, would they leave the flags off? Mr. Travelstead responded that using the flags were strictly optional. However, if the watermen wanted "no fishing zone" enforced, they must use the flags.

Mr. Travelstead said the rest of the language in the proposed regulation was the same as advertised.

Acting Chairman White opened the public hearing.

Jim Deibler, with the Virginia Charter Boat Association, addressed the Commission. He said he had talked with the Charter Boat Association about the compromise, and they had decided that they could live with the 100 feet on each side of the pound net.

He also thought it was a good idea to use the flags, which would allow the fishermen the opportunity to make the decision to have the flags, or not to have the flags. In addition, he said the Virginia Charter Boat Association supported staff's recommendation.

There being no other comments from the public, the public hearing was closed.

Associate Member Goodell asked what size would the flag be? Mr. Travelstead responded that it should be 12" by 12" and blaze orange, and the bottom of the flag should be 4 feet above the water.

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Associate Member Davis moved to approve the staff's recommendation with modification to 4 VAC 20.20-10 as described in the language given to the Commission. Motion seconded by Associate Member Goodell.

A discussion followed regarding the shape and size of the different pound nets. Comments are a part of the verbatim record. Dr. Goodell then suggested that if there was a standard distance from the centerline, it would be easier to enforce, but if there was no distance from the centerline, the enforcement would be difficult.

Associate Member Davis was not agreeable to the amendment.

Associate Member Birkett asked Mr. Davis if he would consider a change in the distance from the centerline rather than from the perimeter of net. Associate Member Davis commented that a lot of time had gone into getting the language and everyone was in agreement with the language, and he did not want to change anything at this point. However, he would revise his motion to 125 feet from the center of the net.

Acting Chairman White requested clarification on the motion.

Associate Member Davis moved to adopt 4 VAC 20.20-10 as stated, and modify the footage from 100 feet to 125 feet from the centerline. Associate Member Goodell was acceptable to the change. Motion carried unanimously.

PUBLIC HEARING: Consideration of amendments to Regulation 4 VAC 20-900-10 et. seq., "Pertaining to Horseshoe Crabs," to comply with provisions of the interstate fishery management plan.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said there was a revised staff recommendation on the issue. He presented additional letters that were received within the past two days to the Commission for the record. Mr. Travelstead then presented slides that demonstrated the horseshoe crab landings in 1998. He said ASMFC adopted a plan last October that would require States to collect a certain amount of information on horseshoe crabs in the future. He also made other comments about capping and reducing landings of horseshoe crabs. He said those measures were not compliance measures at this point. Mr.

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Travelstead said there were three basic measures that were advertised:

1. A number of measures to require the reporting of all horseshoe crabs caught or landed in the State of Virginia. He said he had contacted industry, buyers, and the National Marine Fishery Service, in order to gather all the available numbers on horseshoe crabs landings, and they came up with approximately 260,000 horseshoe crabs in numbers.
2. Cap the landings in 1999 at some value, no lower than landings in 1997.
3. Prohibit taking of horseshoe crabs from the beach during the spawning season two days week from April through June.

Mr. Travelstead said staff had some modification to support the adoption of a cap on landings in Virginia. He said a cap set at the 1998 level would continue to meet the Virginia conch and eel fishery bait needs, and would prevent a further surge in landings, which could place the stocks in jeopardy. He said staff's recommendation to establish this cap was contingent upon two factors: 1) the ASMFC, which had authority over that species, must recognize the importance of the horseshoe crab fishery to Virginia; and that ASMFC must insure that Virginia receive a significant share of a coastwide quota when it establishes a mandated quota next year, 2) the cap of 260, 000 crabs would assume that landings of crabs in New Jersey, Delaware and Maryland would continue at the 1998 level. He said if there were further reduction in landings in those states because of the additional regulations, then it would be necessary to revise Virginia's quota in 1999. He said they had contacted each of the States and each had indicated that no further regulations would be adopted in 1999. He said they would also monitor the landings from North Carolina that were previously unaccounted for that would serve to reduce Virginia's dependency of crabs from those other States. He said 260,000 crabs cap on crabs was less than what they had anticipated for 1998 in Virginia. He said in May of Last year they had anticipated landings of approximately 500,000 crabs.

Mr. Travelstead said that a cap on landings would be justified for several reasons: given the lack of knowledge about the status of crab resource, they believed a cautious approach was warranted. He said horseshoe crabs did not meet sexual maturity until they were between nine and eleven years old. Therefore, this would tend to put the crab in a position of being overfished, than if it matured at a much younger age. 2) Horseshoe crab blood was the only source of LAL which was a

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clotting agent used worldwide by the bio-medical community to detect human pathogens in pharmaceutical and injectable drugs to ensure the purity of the drugs in this country. 3) If Virginia failed to enact measures to prevent a continuing surge in landings, staff believed the other States could receive insurmountable pressure to further regulate their fisheries and the numbers would associated with New Jersey, Delaware, and Maryland could go down. 4) He said they also believed that a part of the interstate fishery management process was being a good neighbor, and Virginia should avoid being a loophole State where landings of crabs could occur, which were otherwise intended to be protected by other jurisdictions. 5) The ecosystems approach to fisheries management was becoming a necessity. He said that our responsibility extends beyond the horseshoe crab population, but also maintaining the sustainability of the shorebirds that relied on the horseshoe crab as part of the ecosystem. Mr. Travelstead also said that industry should be aware that lower quotas were likely and would be a reality in the future. The ASMFC plan said it would work this year to implement quotas in the year 2000. Other comments are a part of the verbatim record.

Mr. Travelstead said staff recommended the prohibition of harvesting horseshoe crabs within 1000 feet of mean low water during the peak spawning period from May 1 through June 7. He said they believed this action was justified on the basis of the horseshoe crabs extreme vulnerability while on the spawning beach. He said the May 1 to June 7 closure was originally recommended in the Chesapeake Bay Horseshoe Crab Management Plan adopted back in 1994 and signed by former Governor Allen. He said staff believed that adoption of this measure would finalize implementation of that Fishery Management Plan. In addition, staff recommended no change to the adoption of the reporting measures that were originally advertised.

A discussion regarding industry's crab need and Virginia's need. Comments are a part of the verbatim record.

Associate Member Ballard asked if staff could do a study on the stock assessment, which would determine the exact stock size of horseshoe crabs and the trends of the stock over a period time. Mr. Travelstead responded, in his opinion, that was unknown. He said ASMFC attempted to prepare a stock assessment for horseshoe crabs, but was unsuccessful. They had sent out a scientific peer review panel and asked them to take look at the assessment, but the date was not suitable for determining the status of the stock, and it did not give a clear picture of where the stock was. He said the committee recommended a cautious approach to management of this species until better data was available, and until a real stock

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assessment could be done.

Commissioner Pruitt opened the public hearing.

Rick Robins, from Chesapeake Bay Packing, and representing Bernie Conch, addressed the Commission. He said the Virginia conch industry accounted for seven million dollars of direct revenue for Virginia firms, which translated into an indirect economic impact on the industry totaling approximately 42 million dollars. He said there were approximately 50 boats participating in the fishery, and approximately 50 to 80 percent of the fishermen depended on the conch fishery for the majority of their income. He said even though staff made a good faith effort to tabulate 1998 horseshoe landings for Virginia, staffs tabulation did not include unreported landings. He also understood that the landings did not include Peter Bender's trawl landings. Other comments are a part of the verbatim record.

Associate Member Ballard asked Mr. Robins how he arrived at the unreported landings. Mr. Robins responded that the only unreported landings he had were Peter Bender's trawl landings, which took place in Cape Charles and totaled 300,000 crabs.

Bill Portlock, representing the Virginia Society of Ornithology, addressed the Commission.

He said they had a membership of 1000 members in Virginia. He gave comments on shorebirds and their dependency on the horseshoe crab eggs. Other comments are a part of the verbatim record.

Marshall Cox, President of the Eastern Shore Watermen's Association addressed the Commission. He said they just did not have the data, the figures had gone up and down, and there was no stock assessment on the horseshoe crab. Therefore, he agreed that we should be careful with this resource. He said he also agreed with staff's recommendation regarding closure during the spawning season between May and June 1. He said he thought they should form a committee made up of the Audubon Society, watermen, buyers, and staff and try to get some data before placing a cap on the fishery.

Bert Turner, attorney from Eastville and representing Bernie Rolley. He gave comments on the potential impact on capping the horseshoe crabs. He said they supported the regulation regarding the hand harvesting of horseshoe crabs. They

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also supported the monitoring and reporting as advertised. He said the Code Section 28.2-201 and 203 required the overriding concern in any fisheries management plan to promote the general welfare of the seafood industry. He said Mr. Rolley had been in the conch business for more than 20 years, had demonstrated himself to be a responsible citizen, had contributed to his community and the seafood industry. Therefore, he was also concerned that severe restrictions on horseshoe crab landings would have traumatic economic impact on the channel whelk industry. Other comments are a part of verbatim record. Mr. Turner then suggested that before a quota be established, more data be collected to determine the effect of quotas on the horseshoe crab population and the channel whelk industry.

Douglas Jenkins, President of the Twin Rivers Watermen's Association in Northern Neck, addressed the Commission. He said he was representing watermen and the eel industry that depended upon the horseshoe crabs for the eel fishery in Northern Neck. He was also concerned with importing horseshoe crabs into Virginia. He also felt that the need for medical reasons should overrule the need for the birds. Other comments are a part of the verbatim record

Dave Grossman, with the National Audubon Society, addressed the issue of looking out for the future interest of the fishermen, the horseshoe crabs, and the shorebirds. He said it was an ecosystem that was being affected. He said it was important to cap landings in order to closed the loop holes, but the current levels would not do that. Other comments are a part of the verbatim record.

Associate Member Ballard requested Mr. Grossman's comments on the Article for the *Richmond Times Dispatch* regarding shorebirds that took a decline in the mid 80s. Mr. Grossman responded that he did not know the exact reason, but it could be seasonal effects.

Aileen Rowan, from the Virginia Audubon Council and the Richmond Audubon Society, addressed the Commission. She said the Audubon Council had approximately 6500 members in Virginia. She then gave information on the population trends of the shorebirds. She said they must act conservatively because they did not know the affect of capping horseshoe crab landings on the shorebirds. Ms. Rowan said a sizeable body of anecdotal evidence supporting concerns that there were declining horseshoe crabs in Virginia existed. Other comments are a part of the verbatim record.

Ms. Rowan then requested Dr. Burreson give his observation of the status of

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horseshoe crabs in Virginia. Dr. Burreson responded that they did not have any data. The information they had would often come from the scientist, Paul Shuster. However, Dr. Paul Shuster was a retired faculty member from the University of Delaware. Dr. Burreson then explained that Dr. Shuster donated his library to VIMS in order to become an adjunct member of the VIMS faculty to have an academic home for writing his papers. Dr. Burreson stated they did not have any information on what the status of stock was, or to accurately assess any recent trends, and there was no way to assess the trend at this point.

Ms. Rowan gave information on research done in Maryland on the horseshoe crab status on a regional basis as to the male: female ratio study. Other comments are a part of the verbatim record.

Commissioner Pruitt asked who did the research in Maryland. Ms. Rowan responded that it was data from the ASMFC Plan of December 1998 and the citation was in the study. She said an important issue was where Virginia was headed.

Associate Member White asked Ms. Rowan about the statement she made regarding a third of Accomack County residents being gainfully employed relating to the birds. Mr. Rowan responded that was correct, according to a study done for the Chincoteague National Wildlife Refuge by an outside consultant. Mr. White stated that was approximately 11,000 people and it seemed like a lot. Ms. Rowan stated that Chincoteague was an ecotourist dominated community in many ways. She said the study was done by Dr. Paul Curlinger.

Kim Heeley, from the Worldwide Life Fund in International Conservation Organization, addressed the Commission. She said they had 1.2 million members in the United States and approximately million members worldwide. She expressed her concerns regarding the international significant phenomenal of crabs that migrated off the Atlantic Coast. A discussion followed regarding the data to take a risk adverse management approach. Comments are a part of verbatim record.

Larry Lynch, President of the Richmond Audubon Society, addressed the Commission. He said he was concerned about the fish population, oysters, and the fisheries in general, and the about horseshoe crabs. He said they would like a sustainable harvest so that there could be a good ecological balance of all of fisheries. Other comments are a part of the verbatim record.

Doug Reid, a watermen, addressed the Commission. He was concerned about the

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statement made that fishermen depleting one fishery and moving to the next fishery. Other comments are a part of the verbatim record.

Kelly Place spoke on behalf of watermen from Poquoson, Hampton, and Virginia Beach. He said he was concerned about the small amount of information that had been twisted in order to justify various groups of people. He said that staff's recommendation to stay at 1998 levels represented a significant restriction, which would have obvious and well documented affects on the commercial watermen by putting them out of business or severely decreasing their income. Other comments are a part of the verbatim record.

Edward Bender, a fish crabber, addressed the Commission. Mr. Bender said he thought they needed a study to see if horseshoe crabs was the only means of food source for the shorebirds. Other comments are a part of verbatim record.

Pete Bender addressed the Commission. He said the figures Virginia had for landings were far off. He said he had two boats that landed in Virginia with approximately 1,155,250 pounds of horseshoe crabs. He said one vessel alone landed 999,250 million pounds. He said those figures were faxed yesterday from the National Marine Fisheries. He then presented the figures to the Commission for review. He said it was unbelievable how many crabs were out there. He said before a cap was placed on horseshoe crabs, a stock assessment, not just on landings, but what was actually out there should be done. He said the States should get together and get a research vessel with a trawl net and see how many crabs were actually out there before making a decision. Other comments are a part of the verbatim record.

Associate Member Davis asked where did he work. Mr. Bender responded that he worked up and down the beach from New Jersey down to Carolina.

Associate Member Ballard requested clarification on the 260,000 of reported horseshoe crabs in Virginia, and why it did not include Mr. Bender's 300,000 pounds that Mr. Bender caught. A discussion followed.

Mr. Travelstead responded to the earlier question regarding the 260,000 crabs reported harvest. Mr. Travelstead said half of the reported harvest did come from the National Marine Fishery Service. However, he said if you sell to a buyer that was not permitted by the National Marine Fishery, they did not report to them.

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

Associate Member Gordy requested that all the watermen representing the horseshoe crab issue be recognized by standing, approximately 50 to 60 persons stood.

Associate Member Davis commented that the bio-medical issue had not been addressed to his satisfaction. Mr. Jack Travelstead responded that he could not say anymore than what had already been said. He said the harvest for the bio-medical community was non-consumptive. The crabs were bled and placed by into the ocean, and the mortality was around 10%.

Aileen Rowan addressed Mr. Davis's question. She said she talked with Bio-Whittaker of Chincoteague last week on the issue, and they had a boat that went out of Chincoteague and and each year it was having a harder time getting the amount of crabs they needed.

Commissioner Pruitt asked if the bio-medical industry was present. There was no response. The matter was placed before the Commission.

Associate Member White commented that he had listened today about the lack of statistics, and some he felt were incorrect. However, he said the Commission relied on Dr. Burreson a great deal in making their decisions, and he testified that they had no statistics. Therefore, he was convinced that they needed to go back and do a stock assessment.

Associate Member Davis commented that he supported Mr. Marshall Cox's decision to get a balanced group of representatives and do a study.

Associate Member Hull commented that it seemed like Dr. Burreson and Mr. Cox said the same thing that the statistics were lacking. He said that the Commission needed to go ahead and pull some kind of process together to get accurate statistics if the resource would be managed effectively.

Associate Member White moved that the Commissioner, at his discretion, establish the study group today. Association Member Hull seconded the motion.

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Commissioner Pruitt commented that there was one issue that pertained to the Baywide Plan that he wanted to know if it could be held over for another month. Mr. Travelstead explained that the issue was discussed with the Secretary of Natural Resources relating to the spawning season closure on the beaches from May 1 to June 7, within a 1000 feet of mean low water. Mr. Travelstead commented that if that was adopted, it would need to be done before May 1. A discussion followed.

Associate Member Davis said he wanted to incorporate the motion on the floor, which would create a study committee immediately to address the issues and to close the fishery from May 1 to June 7 to protect the spawn.

Associate Member White was not acceptable to the substitute motion. He said he thought that when the study committee came back to the Commission, it would have that provision in the recommendation.

Dr. Burreson addressed the Commission. He said he was unclear as to what was meant by a study committee. He said if the Commission was expecting the Virginia Institute of Marine Science (VIMS) to do an adequate stock assessment in the next six months to a year, it would be impossible. However, Dr. Burreson further stated that if the Commission wanted VIMS to look at a better quota, they were willing to do that.

Associate Member Goodell commented that he concurred with Dr. Burreson, but they needed better data of what the landings were for horseshoe crabs in Virginia.

Mr. Travelstead responded that one way to begin addressing that problem would be to adopt the staff recommendation that dealt with reporting, harvesting, and landings of the horseshoe crabs.

Commissioner Pruitt commented that he agreed with Dr. Burreson's comments and they were scientifically sound, but he did not think that was what Mr. Cox had in mind. Mr. Pruitt said there seemed to be a gap between the bird society, industry, watermen, processors, and the bio-medical groups, and they needed to meet and try to clarify some of the statistics and see what the other states had done.

Associate Member White said he was acceptable to closing the fishery from May 1 to June 7 during the spawning season. Mr. White moved that the Chair establish a study group. In addition, he also incorporated into his motion approval for A1, A2, and A3 that established the reporting practices, and the revised staff

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recommendation establishing a spawning season closure within 1000 feet of mean low water from May 1 to June 7. The seconder, Associate Member Hull, was also acceptable to the revised motion.

The question was called, and the motion carried unanimously.

Commissioner Pruitt appointed three persons from each group. He then appointed Marshall Cox to get in touch with three people from his organization, Ms. Rowans would contact the medical group. Mr. Pruitt said staff persons would be Dr. Burreson and Mr. Travelstead.

Jack Travelstead, Chief-Fisheries Management, addressed the Commission and said he was pleased to report that effective today, the State of New York, had authorized the sale of striped bass originating from the State of Virginia into New York Markets that met the following conditions: The striped bass must fall within the legal size limits of New York, not less than 24 inches, nor greater than 36 inches, and they must be sold and possessed only in the round. Mr. Travelstead said this was extremely good news for the State of Virginia because prices would give the watermen in the fulton market one to two dollars more per pound greater than what they received in other markets.

For the record: The Commission recessed for a five-minute break.

For the record: Commission came back in session.

PUBLIC HEARING: Consideration of Amendments to Regulation 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder," to set the recreational fishing measures for 1999.

Commissioner Pruitt commented that the Commission agreed to have two public hearings on this issue. One meeting was held last week on the Eastern Shore and the hearing today would be the final hearing.

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Robert O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission and presented slides. Mr. O'Reilly provided information to the Commission on measures that could be used to meet the 40% reduction in landings that were required by Mid Atlantic Fishery Management Council (MAFMC) and the Atlantic States Management Fisheries Commission (ASMFC). Comments are a part of the verbatim record. The MAFMC and ASMFC developed the following management measures to allow states to meet the 40% reduction in landings in 1999:

1. A closed season of September 12, 1999 through May 28, 2000;
2. an 8-flounder limit (unchanged for 1998);
and,
3. a 15-inch minimum size limit (unchanged from 1998).

Mr. O'Reilly said that the recreational landings had exceeded the established limits each year since 1996, by at least 3 million pounds. However, it had been estimated that the 1998 limit of 7.41 million pounds would be exceeded by at least 5 million pounds. He said States may adopt variations to the above measures, provided that the measures were judged by the ASMFC to be conservationally equivalent and would achieved a 40 % reduction in the States' recreational flounder landings. Mr. O'Reilly also stated that states may proceed immediately to adopt conservationally equivalent measures, if the measures were based upon State specific reduction tables pre-approved by ASMFC, and that the minimum size limit not less than the current 15 inches. Mr. O'Reilly also presented several tables that demonstrated, coast-wide summer flounder quotas and landings from 1993 - 1996, reductions in the Virginia recreational landing of summer flounder based on a possession/size limit analysis of 1998, total Virginia 1993-1997 recreational summer flounder landings in pounds, summer closures, and percentage reductions for various semimonthly closures of the summer flounder recreational fishery. Comments are a part of the verbatim record.

Mr. O'Reilly also gave background information on the public hearing held on February 16, 1999 on the Eastern Shore. He said there were approximately 132 to 150 participants in the public hearing. The participants comments are a part of the verbatim records.

Mr. O'Reilly said staff recommended that the Commission adopt Regulation 4 VAC 620-10 et. seq., as written. He said there did not seem to be much room to maneuver and get around the 16-inch size limit, 8-fish limit, and a seasonal closure

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would have to be a reality. He said although it was difficult to have a summer closure, the week of July 25 to July 31, 1999, seemed to be best time for a closure. Other comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing and advised the public that the issue was a federal ASMFC issue.

Richard Welton, representing the Coastal Conservation Association, addressed the Commission. He said he would like to commend, Mr. O'Reilly and Mr. Travelstead, for going out of their way to work hard for the recreational community to make this issue as acceptable as one could. He said the recreational fishermen would not have the conservation equivalency options if it was not for Mr. Travelstead, and they appreciated all his efforts. He said they favored proposal number 3, regarding the 16-inch minimum size, 8-fish bag limit, and the closing from Sunday to the next Saturday. He said he talked with staff and some of the Commissioners, and CCA would like for Commissioner Pruitt to talk to the Secretary of Natural Resources and the State Attorney General Office about writing a letter to ASMFC saying they were complying this year under protest, but they would like a state-by-state allocation in the future. Also, Virginia flounder fishermen should not be penalized in the year 2000 for the overfishing of other States. Other comments are part of the verbatim record.

Douglas Jenkins, Twin Rivers Watermen's Association, addressed the Commission. He said the Potomac River adopted a 15-inch fish, 4-fish per person, which was in compliance with the 40% reduction. However, he was concerned about how the law would be enforced in Virginia. Comments are a part of the verbatim record.

Mr. O'Reilly responded that the Potomac Fisheries Commission was using Maryland data for their reduction. It was a decision made at ASMFC that they could be Maryland data, but Virginia had to use Virginia data. Therefore, the Potomac River tributaries would be combined with the rest of Virginia for the same size limitations. He then referred to the draft regulation, page 5, that stated the regulation for the landing of summer flounder of Virginia.

Commissioner Pruitt asked what Maryland would use? Mr. O'Reilly said Maryland had not declared everything yet, but the thought they were going to have a 14 1/2 inch for the Bay, and a 15 1/2 inch for the coast, and drop back on the possession limits.

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Ben Raugh from Virginia Beach and ran a small tackle shop in Virginia Beach addressed the Commission. He said he talked with fishermen everyday, about the new rules and sizes, and they seem to have accepted it. However, they wanted to fish from the March 1 to January 1. He said the general consensus was to fish for 16-inch size limit, with an 8-fish possession limit.

Commissioner Pruitt closed the public hearing.

Associate Member Davis moved to adopt staff's recommendation for 16-inch size limit, with an 8-fish possession limit, and closing July 25 through July 31, 1999, which was option 3.

Commissioner Pruitt asked if the Potomac situation could be addressed in option 3. Mr. O'Reilly responded that the Potomac situation could not be addressed because it was part of the Virginia Intercept Data. He said the Potomac River Fishery said they did not have their own data set, and they felt more closely associated with the Maryland data than the Virginia.

Associate Member Ballard seconded the motion.

Associate Member White commented he would like to help the sports fishermen and harbor people at Wachapreague, but he didn't know how they could be accommodated.

Associate Member Goodell asked if it would be feasible to have a different size limit for the Bay and the Eastern Shore. Mr. O'Reilly responded that when you split the data, you would lose something on the ocean side, and you would lose some of the reduction credit for the seasonal closure. He said if you use a 15-inch or 15 1/2-inch size limit, it would cause an extensive closed season, for example, July 13 to September 15, or July 4 to September 15, that would be worst than using the 16-inch size limit. Dr. Goodell asked how did Maryland get around the restriction? Mr. O'Reilly said he thought they were going to bring a plan to the ASMFC which would show their bag and size limit savings were greater than Virginia's, for 1998. Other comments are a part of the verbatim record.

There being no further discussion, the question was called and the motion carried unanimously.

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APPROVAL of Procurement Procedures and Notice for the American Shad Restoration Program.

Robert O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission on the procurement procedure and requested the Commission's approval, using its authority under Section 11-35G of the Code of Virginia.

The procurement method listed in the Notice of the evaluation is as follows:

A total of nine individuals will be selected as permitted project participants, and two individuals will be selected as project alternates.

For fishing days during the March 16 through May 15, 1999 period, permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 noon and 12:00 midnight.

Specific evaluation criteria, ranked by order of importance will be used. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for American Shad Restoration Project. In the event there are more than 11 equally qualified respondents, selection for the project will be made through a lottery system.

Commissioner Pruitt asked Mr. O'Reilly if he recommended the approval. Mr. O'Reilly responded yes. The matter was then placed before the Commission.

Associate Member Ballard moved to approve the Procurement Procedures as outlined in the Notice. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

DISCUSSION: Crab Management Advisory Committee recommendation to open the crab pot season on March 15, 1999 and to close crab dredging season on March 14, 1999.

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Associate Member Cowart briefed the Commission on the Blue Crab Committee's meeting held on February 3, 1999. He said the committee voted to recommend the closure of the last two weeks of the crab dredge season on March 14, and open the hard crab pot season on March 15. He said this was to be an emergency regulation.

Associate Member Davis asked how would this affect the stock? Mr. Insley responded that Billy Moore from Poquoson was on the committee and presented the proposal. He said it was his understanding that Mr. Moore would attend the meeting today to present the argument.

Mr. Moore was not present and Mr. Pruitt asked Mr. H. M. Arnold to speak to the Commission since he was present at the February 3 meeting.

H. M. Arnold addressed the meeting. He said the watermen had been talking about this since the law became effective to possibly open the crab pot season two weeks early. He said they did not want to use it as an emergency regulation, but it was so late in the season and that was the only way.

Freeland Mason from the Virginia Watermen's Association said they had discussed this proposal in their meeting. He said they were against the change in the season for this year. However, next year they would have some recommendations for the season.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis moved to let the season remain the same. Motion seconded by Associate Member Ballard.

A brief discussion followed regarding the makeup of the Blue Crab Committee. Comments are a part of verbatim record.

Motion carried 7 to 1.

Commissioner Pruitt stated that the season would not change this year, but the issue would be addressed in the future.

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CONSIDERATION of requests for hardship exemptions to the crab pot/peeler pot license sales limit.

Ellen Cosby, Fisheries Management Specialist, briefed the Commission. She said according to Section 4 VAC 20-880-40 the Commission was authorized to grant hard crab or peeler pot licenses to any registered commercial fishermen based upon conditions of significant hardship as evidenced by participation in the fishing of significant amount of crab gear in two of the last five years, for the crab pot or peeler pot fishery. She said the application had to be turned in January and the waterman had to be present at the meeting today. She also stated that the applicants license history was included in the evaluation package. She said that the applicants were requesting either a crab pot/or peeler pot license or an upgrade. The applications were organized according to the following categories: those that had a crab pot license history, those who just wanted a crab pot license upgrade, new applicants that had no history in the crab pot fishery, and the unregistered. In addition, there was a category for applicants that submitted their letters past the deadline.

Ms. Cosby then presented slides that showed the number of crab pots in the fishery and the history of the upgrades in the fishery. Comments are a part of the verbatim record.

The Commission agreed to hear the two cases where the crabbers dropped out of the fishery and they did not have the commercial registration license. However, they had crab pots in 1995.

Ronald K. Howlett and Stanley Redcross were requested to come forward.

Ronald K. Howlett - Not present.

Stanley Redcross - Present. Mr. Redcross had a nine-year history of fishing 300 pots. He was requesting a crab pot license. In the past, he had some medical problems where he had to drop out of the fishery. Mr. Redcross had received his commercial registration card.

Acting Chairman White requested comments from the Commission on how they would like to handle the cases, case-by-case, or wait until the end.

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Associate Member Davis then moved to give Mr. Redcross an exception for 300 pots. Motion was seconded by Associate Member Goodell. Motion carried unanimously.

Acting Chairman White polled the Commission on how they wanted to handle cases if the applicant was not present. Mr. White then explained that the Crab Dredge Committee did not consider the applicants if they were not present. The Commission unanimously agreed to not consider applicants not present.

CRAB POT LICENSE HISTORY

Stephen W. Belch - requested a peeler pot license. He said at the present time he was not using the 500 crab pot license because he had an operation on his leg.

A brief discussion followed on the number of peeler pots, how many peeler pots were in the Bay at the present. Comments are a part of the verbatim record.

Associate Member Cowart asked how many peeler pots were in the Bay. Ms. Cosby responded that she did not know the number of pots in the Bay, but in 1998, 929 licenses were sold for peeler pots. She also said that not all licensees used 400 pots. Associate Member Ballard asked if staff had any data on how many pots the blue crab could support for peeler pots in the Bay. Ms. Cosby responded no.

Associate Member Gordy moved to give Mr. Belch the peeler pot license. Motion seconded by Associate Member White. Motion carried, 5 to 3.

Jesse R. Bonnaville - not present.

Dean N. Dise - requested peeler pot license. He had a history of 12 yrs. in the crab pot fishery.

Commissioner Pruitt placed the matter before the Commission. Associate Member Birkett moved to approve 100 pots. Motion seconded Associate Member Gordy.

After a discussion regarding the differences in the two motion, Associate Member Birkett withdrew the motion.

Mr. Travelstead explained to the Commission about the Regulation that established a peeler pot license. He said if you have a peeler pot license, you were limited to 400

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pots . He said if you gave someone less than 400, you would have to go back through the regulatory process.

Mr. Insley explained to the Commission the process on how the fishermen used the peeler pots. He said peeler pots were used to supplement and compliment their hard crab potting, and most of the time they only set 150 to 200 peeler pots and they caught the best of the run with those pots. However, there were peeler pot fishermen who fished all season and they set 400 or if there were two on a boat, they set 800 peeler pots, and they called them habitat pots. Other comments are a part of the verbatim record.

Commissioner Pruitt then placed Mr. Dise's request before the Commission. Associate Member Birkett revised his motion to give Mr. Dise 400 peeler pots. Associate Member Gordy seconded the motion. Motion carried 5 to 3.

Joseph R. Gillett requested peeler pots, and an upgrade from 100 to 300 crab pots. Mr. Gillett had three years in the fishery of 100 pots.

Commissioner Pruitt asked if all the applicants were up-to-date on their mandatory reporting, and if all the information had been verified? Ms. Cosby responded that she checked the license history, but did not the check mandatory reporting.

Mr. Gillett said he always sent all his reports in for anything he caught.

Associate Member Davis asked staff why the peeler pots did not go against the hard crab pot allocation. Mr. Travelstead responded that the Commission approved last year to increase crab pots by 35,000. However, at the same time, the Commission adopted a change in the regulation that said anybody with a hardship, could come into this meeting and request a crab pot upgrade or a peeler pot license. Mr. Travelstead also commented that in prior years staff had handled the exceptions, but the Commission decided they did not like that procedure.

Commissioner Pruitt commented that there were going to be some studies done. He said Senator Barry had a study resolution that passed that would require a study of the crab dredge fishery. He said both Houses of the General Assembly had put money in the budget for a study which would be conducted through the Chesapeake Bay Commission. He said that body was made up of legislators from Virginia and Maryland, watermen, and industry people. Mr. Pruitt emphasized that even though they were granting approval today, if the crab population and landings went down,

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and the female ratio continued to drop, they did not know what the study would bring forth. However, the issue would come from a bi-state committee that would be referred to the Commission and or the General Assembly.

Commissioner Pruitt then placed Mr. Gillett's request before the Commission.

Associate Member Hull asked Mr. Gillett if he had a choice between crab pots and peeler pots, which would he chose. Mr. Gillett responded that after the first month of crab potting, the crabs were peeling and during that month and half, if you are not peeling, you had no other means of making money.

Associate Member Cowart moved to grant Mr. Gillett peeler pots only. Motion seconded by Associate Member Hull. Motion carried 5 to 3.

Rogers M. Graham - Not present. William S. Hackett, Sr. - Not present.

Garnett R. Haynie - Not present. Ms. Cosby stated that Mr. Haynie had a problem and had to leave.

Associate Member Hull said he knew Mr. Haynie very well and he was a person with extraordinary integrity and honesty. He said Mr. Haynie's request was denied last year because he was straightforward with the Commission. Mr. Hull said Mr. Haynie had 30 years in the crab industry, but missed one year, and he felt he was deserving because he had a terrific hardship in his family, and he was trying to overcome it by very diligent work. Mr. Hull then moved that Mr. Haynie be granted his request. Motion seconded by Associate Member White. Motion carried 7 to 1.

Fay R. Holloway, Jr. - presently had 300 crab pots for five years, requested peeler pots. He had also worked as a mate.

Commissioner Pruitt placed the matter before the Commission. Associate Member Cowart moved to give Mr. Holloway peeler pots. Motion seconded by Associate Member Hull. Motion carried 5 to 3.

Timothy H. Howard - 3 years of 100 pot license, requested peeler pots. He had also worked as a mate.

Commissioner Pruitt placed the matter before the Commission. Associate Member

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Birkett moved to grant Mr. Howard the peeler pots. Motion seconded by Mrs. Gordy. Motion carried 5 to 3.

David W. Jenkins - 6 years of 100 pot license, requested peeler pots and upgrade from 100 to 150 crab pots.

Associate Member Cowart asked if he would rather have peeler pots or crab pots. Mr. Jenkins responded peeler pots. Associate Member Gordy move to grant the peeler pots. Seconded by Associate Member Hull. Motion 5 to 2.

Alvin T. Johnson - 2 years of 100 pot license, requesting peeler pot license.
Leonard M. Kamm - 4 years of 100 pot license in 1994 and earlier, requesting crab and peeler pots.

Associate Member Cowart made a recommendation that the Commission grant either crab or peeler pots, and let the choice be the applicant's.

Mr. Johnson - requested peeler pots & Mr. Leonard M. Kamm requested peeler pots.

Commissioner Pruitt placed the Johnson and Kamm requests for peeler pots only before the Commission.

Associate Member Cowart moved to approve the requests. Motion seconded by Associate Member White. Motion carried 5 to 2.

Bobby W. King requested hard crab pots. Held individual crab pot license in 1993, 150 crab pots in 1991 and 1992.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull asked Mr. King what he had done since 1992. Mr. King responded patent tong.

Associate Member Gordy moved to grant 150 crab pots. Motion seconded by Associate Member Birkett. Motion carried 5 to 2.

Associate Member Ballard said he would abstain on items 14 through 31. He said he was tired of voting "no." The reason he could not vote "yes" was because he had no

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idea what rationale was being used for approving the licenses.

For the record: Commissioner Pruitt said let the record so state.

George H. Marshall - not present.

Daniel W. Marshall, III - 3 years at 300, requesting peeler pots. Held license in 1998, 1997, and 1996.

Commissioner Pruitt placed the matter before the Commission. Associate Member White commented that in light of what Associate Member Ballard said regarding justification, it had not been manifested for approval, the Commission needed to remind the people that if there was a declining trend in the industry, they would be the first to lose their licenses.

Commissioner Pruitt responded that the statement was made and he would accept Mr. White's statement as a matter of record for the Commission.

Associate Member Cowart moved to approve Mr. Daniel Marshall's request. Motion was seconded by Mr. Birkett. Motion carried 5 to 1, with one abstention.

Everett Martin, Jr. - 2 years with individual crab pot license, and he had a medical hardship, requesting 100 crab pots. He held license in 1987.

Associate Member White moved to approved 100 pots. Motion seconded by Associate Member Birkett. Motion carried 5 to 1, with one abstention.

Michael E. McGee - Not present.

Gregory S. Martin - working one year as assistant, requesting crab pots. He last held license in 1988, he works with his father.

Associate Member Birkett moved to grant 100 pots to Gregory S. Martin. Motion seconded by Associate Member Gordy. Motion carried 5 to 1, with one abstention.

Rodney Miller - 3 years of crab pots with assistant, worked as a mate. Held license in 1987 and 1988 and 1989 and has been working as a mate every since then.

Associate Member Goodell commented that these were supposed to be hardship

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licenses, but what was the hardship?

Commissioner Pruitt asked Mr. Travelstead if he had any comments on issue because he was not present for the opening of the hardship exceptions. Mr. Travelstead responded that there was no specific definition in the regulation for a hardship, it was entirely left up to the Commission and that was why they had to come before Commission. A discussion followed.

Ms. Cosby said the regulation made some mention that the Commission could review this matter today if the applicants had worked as a mate, and had worked a significant amount of crab gear in the past two out of the last five years. Mr. Travelstead explained that the decision was left up to the Commission to define what they believe would constitute a hardship. The regulation was silent on the issue. However, if an applicant had been in the fishery before and worked those licenses as a watermen, and for some reason was bumped out of the fishery, and now wishes to get back in, perhaps he deserve some special consideration. A discussion followed.

Commissioner Pruitt asked Mr. Miller what was his reason. Mr. Miller responded that he just would like to have 150 crab pots. Commissioner Pruitt asked what was he doing at the present time. Mr. Miller said he works full time and crabbed part time with another person, and he had worked with him for the past three years part time. A discussion followed.

Commissioner Pruitt commented that approving these licenses would possibly force the Commission to place a cap earlier than anticipated. Ms. Cosby responded that out of 35,000 crab pots that the Commission approved last year, there were 11,850 left unassigned. A discussion followed.

Commissioner Pruitt placed Mr. Miller's request before the Commission.

Associate Member Gordy moved to approve 150 crab pots. Motion seconded by Associate Member Birkett. Motion carried 3 to 2. Mr. White commented he was inclined to vote for a full time watermen.

Andrew T. Parks, Jr. - said he had been a full time watermen since 1972, but when they changed the law in 1991 or 1992, he never picked up hard crab pots, and was requesting 300 hard crab pots.

Commissioner Pruitt placed Mr. Park's request before the Commission. Associate

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Member Birkett moved to grant 150 crab pots. Motion was seconded by Associate Member White. Motion carried 4 to 1.

Ronnie D. Reynolds - said he would like to forego the request for the hard crab pots, but be considered for a peeler pot license.

Associate Member Ballard returned to the meeting and Commissioner Pruitt explained that the Commission discussed getting into more detail on what the hardship was, and if they were full time or part time watermen. Mr. Pruitt also indicated that when they acted on categories three and four the ground rules should be discussed. Associate Member Ballard commented that he had not voted on the prevailing side on any of these, but if the rules were changed mid-way on whether the applicants were full time or part time, he might behoove someone who voted on the prevailing side to reconsider the others. Commissioner Pruitt commented that the applicants were being considered individually, it presented a challenge and they could go to court. A discussion followed.

Commissioner Pruitt placed the request from Mr. Reynolds before the Commission. Associate Member White moved to deny the request. Associate Member Goodell seconded the motion. Motion carried 5 to 1.

James L. Riggins, Sr. - 12 years of good history of 300 pots, requesting peeler pots. Mr. Riggins said he had been a full time waterman for 37 years.

Associate Member Goodell asked what was Mr. Riggins' hardship. Mr. Riggins responded that his hardship was peeler's was a part of his income.. He said he had been struggling for years. He also had a shedding operation. Other comments are a part of the verbatim record.

Commissioner placed the matter before the Commission.

Associate Member Birkett moved to grant Mr. Riggins 400 crab pots. Associate Member Hull seconded the motion. Motion carried 5 to 1.

John L. Robbins - 1 year with individual license in 1987, requesting 100 crab pots.

Associate Member Gordy moved to grant 100 crab pots. Motion seconded by Associate Member Hull. Motion carried.

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Ronald W. Sheppard - not present.

Rudy Shores - 7 years with individual pot license, requesting 100 crab pot license.

Associate Member White asked how many pots did he have? Ms. Cosby responded that Mr. Shores did not have a crab pot license, he last held a crab pot license in 1993.

Associate Member Hull asked what had he been doing since 1993? Mr. Shores responded that he had been scraping, and peeler potting, and he was left out when the law changed.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to grant Mr. Shores 100 pots. Motion seconded by Associate Member Hull. Motion carried.

Henry B. Steward, Jr. - Mr. Pruitt commented that although his history only showed one year in the fishery, he had been on the water all his life in various capacities. Held crab pot license in 1993, and crab pot individual.

Associate Member Birkett moved to grant him 150 crab pots. Seconded by Associate Member Gordy. Motion carried.

Herbert A. Thom - Not present, Benjamin A. Tolson - not present, Larry P. Williams - not present.

CRAB POT UPGRADE REQUESTS

Associate Member Cowart commented that he did not feel the late applicants should be considered today. Ms. Cosby responded that in some cases, the applicants did not know they had to have something sent in January. Mr. Cowart then requested Mr. Travelstead to provide some guidance on the subject, because it had been handled by staff in past. Mr. Travelstead responded that was correct. Mr. Travelstead responded that the impression staff got last year when they went through the long history of crab pot licenses, increasing the number of pots in the Bay, and how the number of peeler pots had increased by 40% in the past three years, staff

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was too lenient and that's why the regulation was changed.

Mr. Insley commented that the trend was to go into the peeler fishery because it was a more lucrative fishery. He said he thought the Commission was assuming that they were adding crab pots or peeler pots, but it was difficult to crab pot and peeler pot at the same time. Therefore, when the applicants were getting licenses to peeler pot, it was taking the pressure off of the hard crab fishery. He said you were not adding more pots to the fishery by doubling, or tripling up to catch crabs at the same time.

Associate Member Cowart asked what were the chances of remanding this matter to staff for their evaluations and the individuals that were not satisfied with the outcome, could appeal to the Commission. Associate Member Gordy commented that people had been waiting all day, and they deserved a decision today.

Commissioner Pruitt asked if there were any new ground rules on upgrades?

Associate Member Goodell asked if it was still a hardship upgrade? Mr Pruitt responded yes.

James H. Barnett - Not present.

Ron J. Bolle - 6 years with 100 pot license, requesting upgrade from 100 pots to 300 pots.

Commissioner Pruitt asked if he was a full time waterman? Mr. Bolle responded yes, and worked full time as a fishermen, and he worked part time at the hospital in the offseason.

Associate Member Hull commented that Mr. Bolle was an important member of the water community in the Northern Neck and he could attest to his veracity. Mr. Hull then moved to approved the request for 300 pots. Motion seconded by Associate Member Gordy. Motion carried.

Mike E. Croxton, Jr. - 3 years with 100 pots, requesting upgrade to 300 pots.

Commissioner Pruitt asked if he was a full time watermen? Mr. Croxton responded yes.

Ms. Cosby responded that Mr. Croxton held a 100-pot license from 1996 through

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1998.

Associate Member Hull said Mr. Croxton had been on the water since he was born, helping his father. Associate Member Hull then moved to approve Mr. Croxton's request. Associate Member Gordy seconded the motion. Motion carried.

Biagio J. Frake, Jr. - Not present.

Daniel D. Gibbs - 5 years with 100 - 300 pots and received 50 pot upgrade last April, requesting upgrade from 150 to 300.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Birkett moved to grant Mr. Gibbs 300 pots. Motion was seconded by Associate Member Cowart. Motion carried.

Larry B. Gordon - Not present.

Harry H. Johnson, Sr. - 7 years with 100 pot license, requesting upgrade from 100 to 200 pots.

He said he was industrially blind in his left eye, and denied a number of jobs in industry.

Associate Member White moved to approved Mr. Johnson's request. Motion seconded by Associate Member Gordy. Motion carried.

Charles P. Parks, Jr. - One year with 100 pots. Ms. Cosby said Mr. Parks received his crab pot license in 1998, requesting an upgrade from 100 to 300 pots.

Associate Member White moved to approve Mr. Parks for 300 pots. Associate Member Cowart seconded the motion. Motion carried.

Kim A. Parks, Jr. - 3 years with 100 pot license, requesting upgrade from 100 to 500 pots.

Commissioner Pruitt asked if he had been on the water all his life. Mr. Parks responded yes.

Associate Member Cowart moved to approved Mr. Parks for 300 pots. Motion seconded by Associate Member Gordy. Motion carried.

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Rudy J. Shores, Jr. - Ms. Cosby said Mr. Shores received his 100 pot license in 1998 and received an exception to 100 pot license, requesting upgrade from a 100 to 200 pots.

Commissioner Pruitt asked if he had been on the water all his life. Mr. Shores said he had been working with his dad since his high school years.

Associate Member Birkett moved to grant approval for a 200 pot-license. Seconded by Associate Member Gordy. Motion carried.

Lee R. Smith - 2 years with 100-pot license, requesting upgrade from 100 to 300 pots.

Commissioner Pruitt asked if he was a full time watermen? Mr. Smith responded yes. Associate Member Cowart moved to approve 300 pot-license. Motion carried.

Everett N. Watson, Jr. - Ms. Cosby said Mr. Watson received a transfer for 100-pot license recently, requesting an upgrade to a 200-pot license.

Associate Member Gordy asked if he was a full time waterman? Mr. Watson responded that he had asthma and he was in an entry level job now, and he was trying to improve his quality of life so he would not be breathing dust and dirt.

Associate Member Goodell asked what did he pay for the transfer? Mr. Watson said they were advertised in the National Fisherman for \$2000. He said he paid a considerable less than a \$1000 for the 100-pot license and the blue card.

Associate Member White moved to grant Mr. Watson an upgrade from 100 to 200 pots. Motion seconded by Associate Member Birkett. Motion carried.

Richard B. Zasimowich - Not present, but had waited most of the day. A friend said he had to go home and because his father was sick. He said he promised to stay long enough to find out what the Commission's decision would be.

Ms. Cosby asked if he would speak for him.

Commissioner Pruitt asked if Mr. Zasimowich had been on the water full time. The

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friend responded yes. He said both of them had been clamming.

Ms. Cosby said he received a 50-pot upgrade last year and he wanted to upgrade to more pots, but he did not specify a number.

Associate Member Birkett moved to grant him 200 pots. Motion seconded by Associate Member Cowart. Motion carried.

NEW APPLICANTS - NO CRAB POT LICENSE HISTORY

Commissioner Pruitt asked what unregistered applicant's meant. Ms. Cosby said the regulation stated that registered fishermen could apply for the hardship exceptions, and they did not have commercial registration licenses at this time.

Troy D. Ashe - has commercial registration license.

Associate Member Cowart asked Mr. Travelstead what had been done with new applicants in the past. Mr. Travelstead responded that in the past with no prior history, there was no provisions for the granting of a license.

Associate Member White asked if working as a mate would qualify. Mr. Travelstead responded again. He said there was no rule written down anywhere as to how this should be done.

Ms. Cosby said Mr. Ashe received his commercial registration license this year. Mr. Ashe said he was interested in 100-crab pots and a peeler pot license.

Associate Member Hull asked which license would he prefer crab pots or peeler pots. Mr. Ashe responded that if he had to choose, peeler pots. He said although no history was shown, he worked for many years. However, this was his first year with the card. He said the reason he did not apply for a card or licenses was because he was an employee in the Law Enforcement Division.

Associate Member Hull moved to grant him 100 crab pots and peeler pots. Motion was seconded by Associate Member Birkett.

Associate Member Ballard commented that now that they were into new applicants with no crab pot license history, and the Commission started granting licenses, the

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seven point conservation plan went out the window. Associate Member Goodell concurred.

There being no further discussion, Acting Chairman White, placed the matter before the Commission. Motion failed 2 to 3.

Joseph R. Bacheler - Not present.

Samuel J. Bavely - had no history in the fishery, held charter boat licenses, and received his commercial card through the delayed entry program, never held a crab pot license. He said he owned and operated a tour boat downtown Hampton. He said they did an ecotour with the Virginia Living Museum the past year and half. He said the science museum was required to have a permit to do auto-trawl and to bring up critters from the Bay to do studies for school groups.

Acting Chairman White placed the matter before the Commission. Associate Member Ballard moved to deny the request. Motion was seconded by Associate Member Goodell. Motion carried to deny.

Daniel R. Bock - requesting peeler pot license, and 100 hard pot license. Associate Member Ballard moved to deny. Associate Member Cowart seconded the motion. Motion carried to deny 4 to 2.

Steven B. Clark - owned a bait and tackle shop, he sent a map showing where there were no crabbers in his area fishing in that range of the waterway.

Associate Member Hull asked where was that area? Mr. Clark responded the lower Elizabeth River.

Mr. Clark said he did a lot of business in crabs and baits and it was too expensive to buy them, and he was looking for a way to offset the expense.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to deny. Motion was seconded by Associate Member Goodell. Motion carried.

Charles R. Forrest - requesting a 100 crab pot license.

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Associate Member Ballard said he would abstain in Mr. Forrest's case, because they had a business relationship.

Mr. Forrest said he had been on the water since 1976. He said he crab potted for George Spence, Jr., who was active in shedding crabs and harvesting hard crabs. He said he rigged for him for hard crabs and peeler crabs. From 1981 through 1986 he worked under John D. Stuman, III. He said he was currently involved in an aquaculture business with Mr. Ballard. Other comments are a part of the verbatim record.

Associate Member White commented that he knew Mr. Forrest to be a working waterman and that he was justified in making the request. Motion seconded by Associate Member Gordy. Motion carried 5 to 1 to approve.

Robert A. Harwood - requesting hard crab pot and peeler pot licenses, he came in through the delayed entry program for commercial registration card this year.

Associate Member Gordy asked what was his preference hard crab pot or peeler pot?

Commissioner Pruitt asked what was he doing at the present. Mr. Harwood responded that he did a little peeler, pounding and aquaculture for oysters in the York River. He said when he was not pound netting and he drove a truck. Commissioner Pruitt asked if he had worked as a mate. Mr. Harwood responded no. He worked for himself. He said he worked last year through someone else's card.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Goodell moved to deny. Motion was seconded by Associate Member Cowart. Motion carried to deny 3 to 2.

A discussion followed regarding the fairness to all the applicants. Mr. Travelstead responded that in 1996, the decision to cap licenses was a part of the seven point plan that Associate Members Ballard and Goodell had spoken about. However, staff knew there would be cases where individuals had a legitimate hardship and deserved to get into the fishery or be harmed in some way because they received wrong a license. Mr. Travelstead said that had been the policy for the past three years, and

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every year some exception to licenses had been issued.

Larry Hawthorne - Not present.

Henry M. Hayes - requested 150 crab pots, worked on the water for past six years with his son as mate on the boat, he had his commercial registration card for two years, and requested his license four years ago. He said he would be unemployed Monday, because he worked for Levi Strauss.

Associate Member Hull moved to grant a 100 crab pots. Motion seconded by Associate Member Gordy. Motion carried to approved.

Commissioner Pruitt commented that Mr. Travelstead explained the process. He said the way it was being done today was different because of comments made to staff, and staff put it before the Commission. He said this process was not violating the seven-point plan. A discussion followed.

Paul A. Haynie - said he had been working on the water all his life and was requesting a peeler pot license, he had been a mate the last four or five years.

Associate Member Hull asked if he had crab pot license. Ms. Cosby responded that the transfer was pending, and he would get a transfer on the 100-pot license.

Mr. Insley commented that Mr. Haynie had a brother that was going to transfer his commercial license to him, and it would be a one in, one out situation.

Associate Member Gordy moved to grant Mr. Haynie peeler pots. Motion seconded by Associate Member Hull. Motion carried 4 to 3 to approve.

Ricky Jenkins - He was a full time commercial watermen. He said he clammed during the time he could not crab pot.

Ms. Cosby said he had documentation that he worked as a mate in 1997 and 1998 crab potting.

Associate Member Goodell asked what was the nature of his hardship? Mr. Jenkins responded working on the water, and he wanted to supplement the hard clamming income.

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Associate Member Ballard move to deny Mr. Jenkins. Associate Member Goodell seconded the motion.

Associate Member Hull asked how many pots was he requesting? Mr. Jenkins responded 100.

Commissioner Pruitt asked how long had he been in the industry? Mr. Jenkins responded four years. He said he had been around the seafood industry all his life, either working for someone or himself.

Motion failed to deny.

Associate Member Hull moved to approved Mr. Jenkins for 100 crab pots. Associate Member Gordy seconded the motion. Motion carried to approved 4 to 2.

Walter B. Johnson, III - His grandfather spoke on his behalf. He said Walter had been working with his Dad since 1989, and had worked as a first mate. He said he wanted to go on his own. He had purchased a rig.

Ms. Cosby said Tayloe Murphy also had a letter in the package on his behalf.

Associate Member Cowart requested clarification on his request. He asked if he would be willing to trade the hard crab pot license for a peeler pot license.

Associate Member Hull moved to grant the peeler pot license. Mr. Hull said this young man wanted to continue in the family tradition. If he was going to come into the industry, he would have to come in some time.

Motion was seconded by Associate Member White. Motion carried to approve for peeler pot license.

Clifton Lee, Jr. - He said he had been working on the water all his life with someone else and he wanted 200 crab pots and 50 peeler pots.

Ms. Cosby said Mr. Lee had some medical problems that took him out of the fishery for awhile.

Associate Member White moved to grant the request. Motion seconded the motion.

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Motion carried.

For the record: Ms. Cosby explained that the peeler pot license was for 400 and 200 crab pots.

Norman T. Lee - Not present.

Michael R. Parks - said he had been on the water since 1990 and was requesting peeler pot license and 300 crab pot license. He said he worked with his Dad and different people crab potting.

Associate Member Gordy moved to approve for 100 crab pots and peeler pot licenses. Motion seconded by Associate Member Hull. Motion carried 5 to 1 to approve.

Richard E. Pearson - came in off his sick bed. He has a commercial registration license in 1998. He said he had been working on the water for 11 years and hard crabbing with Kenny Ethridge for five years.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to approve the 100-pot crab license. Motion seconded by Associate Member Hull. Motion carried 5 to 1.

Jonathan L. Perok - Ms. Cosby said he received his commercial registration in 1998, and was requesting crab pot and peeler pot licenses, and he had working as a mate on father's boat.

Associate Member Gordy asked why Mr. Perok was not here. His father responded that he was in school. He was full time student during the winter and a full time waterman during the summer.

Associate Member Hull asked how old was he? His father responded 15. He said he received the card on the assumption that the license was attached. and he paid a hefty price.

Associate Member Birkett moved to grant 100 crab pots and peeler pot license. Motion seconded by Associate Member Hull. Motion carried.

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Richard J. Shores - Not present.

James W. Thrift - Mr. Douglas Jenkins spoke on behalf of Mr. Thrift. He said Jamie lived in a water community and worked crabbing on the water all his life. He was senior in high school and purchased his registration card for two years, hoping to get into the crab fishery. Mr. Jenkins said he had a crab pot license for 40 years and had never increased it from 100 pots. He said he would yield his 200 or 300 eligibility to Mr. Thrift. He wanted to attend the Community College and this would supplement his income while attending the Warsaw Community College.

Commissioner Pruitt commented that was a good point that Mr. Jenkins made. Mr. Pruitt said as a followup to the overall conservation issue that would be addressed within the next two years. There were a number of people that had licenses and were not fishing that many pots. A discussion followed.

Associate Member Hull asked if he had any other licenses, other than the commercial card. Mr. Thrift responded no. Mr. Hull said they had tried to be consistent with granting 100 pots for people starting out. Associate Member Hull then moved to grant a 100 crab pot and a peeler pot license. Motion seconded by Associate Member Gordy. Motion carried.

Leroy C. Williams - Not present.

Richard F. Zasimowich - had to go home because he was sick, requesting 100 crab pots and peeler pots.

Ms. Cosby said he had worked with his son crab potting and peeler potting, and due to health reasons he could work pots on his own, held his commercial registration since 1992. He gill nets.

Associate Member Birkett moved to approve 100 crab pots and peeler pots. Associate Member Hull seconded the motion. Motion carried 5 to 2 to approve.

UNREGISTERED APPLICANTS - NO CRAB POT LICENSE HISTORY

Commissioner Pruitt said he did not know how unregistered applicants could apply.

Ms. Cosby explained that it was possible that they had applied for a license or there was a possibility that they may get a transfer, but she was unsure.

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Dennis L. Hall - Not present. Michael Samuels - Not present.

SEEKING AN UPGRADE - STAFF HAD NO RECORD

Edward Vance Marshall - said he was a fourth generation watermen and he was self-employed and this was his fifth year crab potting. He said he had a 100-pot license and wanted an upgrade to 300.

David Bell - requesting an upgrade from 100 to 300 pots.

Associate Member Hull suggested that they be put at the end of the list, because they had other applicants that were there all day.

LATE APPLICANTS - WITH CRAB POT LICENSE HISTORY

Ronald H. Malone - Not present.

Herman W. Ayers, III - history of 3 years crab potting with assistant, requesting a crab pot license, had a crab license in 1993.

Commissioner Pruitt asked if he was a registered watermen presently.

Ms. Cosby said Mr. Malone was coming in off the delayed entry exception. Commissioner Pruitt suggested staff get with Mr. Ayers and return to the Commission later.

Dale S. Mitchem and Kevin L. Mitchem - Commissioner Pruitt said they called in and said they had a conflict. Mr. Insley said they bought a business shedding crabs in Mathews. Mr. Pruitt said one of them was on the Board of Supervisors and he had talked with him. He said he was late paper wise, but had discussed the matter with him. Mr. Insley said there was a Board of Supervisor's meeting today and he could not come. His brother could not come either, but they both had planned to be here. Mr. Insley said it was a one-in, one-out type situation and they needed a peeler pot license for the business.

Associate Member White move to approved the request for both Mitchems. Motion seconded the motion. Motion carried.

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The Commission returned to the Ayers case.

Ms. Cosby said Mr. Ayers received his commercial registration card for this year as a hardship exception due to his history that he had before.

Associate Member Hull asked if he had asked for the peeler pot license earlier. Ms. Cosby responded that it was a telephone message that she had received and she was not sure what he had requested.

Commissioner Pruitt requested his background in the industry. Ms. Cosby responded that from 1987 to 1993, he had a strong history.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Gordy moved to grant the 100 crab pot and peeler pot licenses. Motion seconded the motion. Motion carried 4 to 3.

Kenneth W. Jenkins - Not present.

Granvill R. Williams - Not present.

Julius L. Ashburn - Not present.

John Hamblin, Jr. - Ms. Cosby said he had 4 years of 300 crab pot license and he was requesting peeler pots.

Associate Member Gordy moved to approve the request for peeler pots.

Associate Member Hull asked why he was not on the list? Associate Member Gordy responded that he was in a seafood business for a long time on the Eastern Shore. His father was also in the seafood business before him.

Associate Member White seconded the motion. Motion carried.

Macon Hawthorne - Ms. Cosby said he was requesting crab pots. Mr. Hawthorne had one year of crab potting with assistance in 1993, he also had a history in oystering and clamming since 1986. Mr. Hawthorne said he was sick in 1994 and 1995.

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Associate Member Gordy moved to reinstate Mr. Hawthorne for 300 pot license. Motion was seconded by Associate Member Hull. Motion carried.

CRAB POT UPGRADE REQUESTS FOR LATE PEOPLE

Keith C. Haydon - requesting upgrade from 100 to 300 crab pots.

Associate Member Gordy moved to approved the 200 crab pots. Motion seconded by Associate Member Hull. Motion carried.

William P. Jenkins, Jr. - Not present.

Wayne Morgan - Not present.

John A. Wood - Not present.

Edward Vance Marshall - requesting an upgrade from 300 to 500.

Associate Member Gordy moved to grant the upgrade to 500 crab pots. Seconded by Associate Member White. Motion carried.

David Bell - stated he was the fourth generation watermen from Oyster, and requesting an upgrade from 100 to 300 pots. His sister had a sick baby and he was in New York for a month and unable to submit a letter. He said he had been self-employed crabbing for five years and had worked on and off the water his whole life.

Associate Member Gordy moved to approved the request for 300 crab pots. Motion seconded by Associate Member Hull. Motion carried.

David L. Robeson - in the past, held a commercial card, but it ran out and he filled out a hardship application to get his card renewed.

Commissioner Pruitt asked what was he doing prior? Mr. Robeson responded that he worked for Bobby Bunting for seven years. He said he had been working on the water full time ten years.

Mr. Robeson requested a peeler pot license and reactivation of his crab pot license.

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Commissioner Pruitt asked staff if Mr. Robeson met the criteria? Ms. Cosby responded that he had a crab pot with assistance in 1993, and an individual and supplement in 1992.

Associate Member Hull asked when would the applications be coming up again? Mr. Travelstead responded that you could only apply for a hardship application in January.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White asked how long had he been a mate. Mr. Robeson responded 10 years. Associate Member White move to approved Mr. Robeson's request. Motion seconded by Associate Member Hull. Motion carried 6 to 1.

NEW APPLICANTS - NO CRAB POT LICENSE HISTORY

Gill A. Gouldthread - Not present.

William T. Kelly - Ms. Cosby said he had worked for the past 12 years with Mr. Frances Harwick in the crab pot fishery, worked the Potomac River 20 years. Requesting 100 crab pots.

Associate Member Gordy moved to grant 100 crab pots and peeler pot license. Motion seconded by Associate Member Birkett. Motion carried.
Irving L. Newsome, Jr. - Not present.

Larry Hawthorne - Not present.

Galen Owen - Not present.

Thomas Dyson - Not present.

UNREGISTERED APPLICANTS - CRL PENDING

James C. Parks - Not present.

Steve D. Jenkins, Jr. - Not present.

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OTHERS - LATE REQUESTS

Charles F. Pruitt - requesting peeler pots.

Associate Member Gordy moved approved the request, Associate Member White seconded the motion. Motion carried.

William I. Kellum - he said he had been using someone's license and they told him that he could not do that anymore. He said he had been in the seafood business all life. He requested a 100 crab pot license and peeler pot license, and he would be willing to trade his crab dredge license.

Associate Member Hull moved to approve the 100 crab pot and peeler pot license, pending his returning of the crab dredge license. Motion seconded by Associate Member Birkett. Motion carried.

Associate Member Goodell commented that the Commission issued 10,800 peelers pots and it should be subtracted from the remaining crab pot licenses, which were mentioned in the beginning for the benefit of the industry and the fisheries. Motion was seconded by Associate Member White. Motion carried.

Mr. Grabb commented that staff had drafted the Resolution from earlier in the meeting. He said the Deed had been prepared for the Governor's signature.

Associate Member White moved that the Draft Management Plan for the Ungranted Lands in Accomack and Northampton Counties be approved as submitted.

Associate Member Goodell moved that the Resolution of the Granting of the 5.38 acres of land of the City of Newport News under the Commonwealth. Motion seconded by Associate Member Ballard. Motion carried.

Mr. Craft addressed the Commission. He said the Commission earlier reviewed the Oyster Replenishment Program and voted on the procurement method, but did not vote to approved the actual program for the upcoming season.

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Commissioner Pruitt responded that Mr. Rowe had requested to speak to the Commission in this section of the meeting.

Charles Rowe addressed the Commission. He said he wanted to comment on the replenishment of the shellfish. Mr. Rowe explained his concerns regarding the Eastern Shore and his area. Mr. Rowe expressed concerns regarding 100 acres for the shell reef. Comments are a part of the verbatim record.

Mr. Showalter responded that the application was out in the Mobjack Bay. Mr. Rowe said not according to the Gloucester paper. Commissioner Pruitt said Mr. Showalter was the Chief Engineer and perhaps the Gloucester paper was incorrect, but he would have staff look into the matter.

Commissioner Pruitt asked if there was a part of the program that he was not agreeable to. Mr. Rowe said every reef that had been built had oysters from Tangier, and the Rappahannock to put on the reefs, and the Elizabeth River Lynnhaven, and he wanted to know where the oysters were coming from for the Mobjack Reef.

Dr. Wesson responded that they never put in broodstock until after the reef was built.

Commissioner Pruitt asked when would the reefs be built in Mobjack. Dr. Wesson responded that there were two reefs scheduled for Mobjack in the Spring. Mr. Rowe continued to expressed concern as to where the broodstock was coming from. He felt that when the other reefs were built in Yeocomico and the Cone River they knew where the seed was coming from to go on the reefs. A discussion followed.

After a discussion regarding placement of reefs, Commissioner Pruitt requested that the full Commission approve the location, to put it to rest forever any questions about the reef in Mobjack Bay.

Commissioner Pruitt said he was unable to control the attendance at the shellfish meetings. Mr. Rowe indicated that the reason for the low attendance was the members had no input. A discussion followed. Commissioner Pruitt said he would look at the membership for the committee next year.

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Associate Member Hull said he met with Mr. Arnold White and Joe Self, Chairman of the Board of Supervisors yesterday. He then requested that Mr. Grabb explain the private pier situation there. He said his concern was that legislation before the General Assembly about piers would be applied to Mr. White's case.

Mr. Grabb said John Burton, Co-Administrator, had talked to him on several occasions about this and he had met with Joe Self, Chairman of the Board of Supervisors for Northumberland, and Tommy Tomlin, a Board member, during the recent subcommittee meeting. He said the legislation that passed the General Assembly, House Bill 2272 relating to private piers had no bearing on this issue. Mr. Grabb then explained that this was a legal issue and the Attorney General's Office should address the issue. Comments are a part of the verbatim record.

Associate Member Hull said he thought the Commission should seek an opinion from the Attorney General for Mr. White. Mr. Grabb said he would draft a request for an official opinion if that was the will of the Commission.

Associate Member Hull then moved to request an official opinion from the Attorney General's Office. Associate Member White seconded the motion.

Associate Member Ballard asked what the Commission was requesting precisely? Associate Member Hull responded an opinion from the Attorney General as to which was superior, the Common Law Right or the Baylor Right. Mr. Grabb said he thought it was whether the Constitutional protection afforded Baylor prevented or precluded a private property owner from obtaining his lawful Common Law right to obtain navigable access.

After a brief discussion, the matter was placed before the Commission. Motion carried unanimously. Mr. Grabb said he would draft the request.

Mr. Craft said the Commission still had not approved the Replenishment Program.

Associate Member Ballard moved to approve the Replenishment Program. Motion seconded by Associate Member Birkett. Motion carried unanimously.

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Edward Bender addressed the Commission. He said he wanted to bring to the Commission all the hardships they were having under the rockfish regulations. Comments are a part of the verbatim record.

Mr. Travelstead address the Commission and said the regulation says that you cannot transfer less than a quarter of an original share. Original share varied dependent upon how much was granted by the Commission last year.

Associate Member Ballard asked if staff could work on some language to help that issue. Mr. Travelstead said they would work on language to amend the regulation. He said they probably should have set a number of tags as a minimal, rather than what constitutes a percentage of an original share.

Commissioner Pruitt requested staff to work on the language.

A member of the audience asked the Commission how they looked at someone that was given rockfish tags and then allowed them to sell them. He said he stayed on the lottery system for three years, and then he was thrown out of the lottery. He said a lot of them could not afford \$6,000 to buy rockfish tags. He did not understand how the State could give the tags to some watermen and let them sell the tags, and the rest of them that wanted rockfish tags could not get them.

Commissioner Pruitt responded that they had the necessary public hearing required by State law, the Commission voted in open session, and passed the regulation, and no one had challenged that in court.

The member of the audience said a lot of them did not have money to go to court to challenge the decision. A discussion followed.

Commissioner Pruitt commented that he was also frustrated with the rockfish issue and he fought it up and down the coast. He said he felt the Commission did the best they could with the rockfish issue. He said if they had to readdress the issue, his comments would be considered.

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Meeting adjourned approximately 8:10 p.m.

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary