

MINUTES

May 25, 1999
Newport News, Virginia 23607

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

William A. Pruitt)	Commissioner
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.)	
Wilford Kale		Sr. Staff Adviser
Erik Barth		MIS Director
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance and Administration
Jane McCroskey		Assistant Chief-Finance and Administration
Steven G. Bowman		Chief-Law Enforcement
Lewis Jones		Assistant Chief-Law Enforcement
Randy Widgeon		Eastern Shore Area Supervisor
Ray Jewell		Northern Area Supervisor
John Croft		Southern Area Supervisor
Warner Rhodes		Middle Area Supervisor
P. D. Newman		Marine Patrol Officer
B. K. Tittermary		Marine Patrol Officer
L. Ayers		Marine Patrol Officer
Tom Barnard		Virginia Institute of Marine Science
Dr. Jim Wesson		Chief-Conservation and Replenishment
Jack Travelstead		Chief-Fisheries Management

Commission Meeting

May 25, 1999

Rob O'Reilly
Ellen Cosby
Tina Hutcheson

Assistant Chief-Fisheries Management
Fisheries Management Specialist
Fisheries Management Sepcialist

Bob Grabb
Tony Watkinson
Chip Neikirk
Jay Woodward
Jeff Madden
Randy Owen
Heather Wood
David Bower
Ben Stagg

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

Gerald Showalter
Robert Butler
Debra Jenkins

Head/Engineering Surveyer
Engineering Technician
Office Services Specialist

others present:

Dana Dise
Gene T. Brown II
Warren R. Eskridge, III
Chuck Pruitt
Pete Nixon
Steve Pruitt
Marshall B. Cox, Sr.
Rob Brumbaugh
Mark Heath
John B. Graham, Jr.
Jim Casey
Mike Godwill
Bobby Parks
Steven Green
Billy L. Bonniville
Jan Marshall
Dean Dise
George C. Cannon

Gary Marshall
Terry Connaly
Michael Ryan Parks
Dana Crockett
Chris Ludford
Tim Winell
John E. Horner
B. N. Hall
Douglas F. Jenkins, Sr.
Tommy Leggett
Marcel Montane
Bill Clinton
Wayne Parks
Hutch
L. Bonniville
Tracy Moore
Jerry Parks
L. Credle, Jr.

Commission Meeting

May 25, 1999

Daniel Bock
Strickland Crockett
Jamie Crockett
Kelly Place
Michael Emerson
Freeland Mason
William Brian Pruitt
Bill DuPaur
Peter R. Cummings
Tom Powers
David Hart
Viremdell Hudnall
Cindy Parks
George Janek
Cynthia Hall
R. P. Ayres
Beverlee R. Peters
W. P. Jenkins, Jr.
Ken Stolle
Ken Dierks
Sherry Hamilton
Warren M. Cosby, Jr.
Les Rickman
George M. Chall
Warren R. Eskridge, III
Michael Ryan Parks
Dan Crockett
Chris Ludford
Tim Wivell
John E. Horner
Bill Hall
Barry Liston
Steven Green
L. Bonniville
Dean Dise
George C. Cannon
Daniel Bock
Strickland Crockett

Dan Dire
Daisy Crockett
Burke Landon
Edward H. Bender
James W. Ferguson, III
Ray Wicker, Jr.
Carroll Pruitt
James W. Fergeson, III
Thomas J. Wright
Bob Merten
Jim Haden
Frances W. Porter
Linda Wheatly
Bill Kirby
Juan S. Crofton
Tommy Dyson
Lee Rosenberg
Castle Craddock
Ronnie & Laura Crewe
Jon Poulson
Edward C. Hogge
John Galver
Dana Dise
Gene T. Brown, II
Paul Wheatly
Chuck Pruitt
Pete Nixon
Steve Pruitt
Marshall B. Cox, Jr.
Bob Brumbaugh
Mark Heath
Hutch
Billy L. Bonniville
Tracy Moore
Jerry Parks
L. Wade Creedle, Jr.
Dan Dire
Daisy Crockett

Commission Meeting

May 25, 1999

Jamie Crockett
Kelly Place
John B. Graham, Jr.
Jim Casey
Mike Gadwill
Bobby Parks
Jan Marshall

Burke Landon
Douglas F. Jenkins, Sr.
Tommy Leggett
Marcel Montane
Bill Clinton
Wayne Parks

and others.

Commission Meeting

May 25, 1999

The meeting was called to order by Commissioner Pruitt. Members Present: C. Chadwick Ballard, Gordon M. Birkett, S. Lake Cowart, Sheppard H. C. Davis, Laura Bell Gordy, Henry Lane Hull, H. Grant Goodell, and John W. White. Assistant Attorney General, Carl Josephson, not present.

Gerald Showalter gave the invocation.

Commissioner Pruitt led the Pledge of allegiance of the American Flag.

Copies of the Minutes of the meeting held April 27 and May 4, 1999, had been sent to the Associate Members prior to this meeting. Associate Member White moved to accept the Minutes as distributed. Associate Member Hull requested that comments made by Mr. Freeland Mason regarding internship for watermen from the May 4, 1999, supplemental meeting be described in more detail. Associate Member White was acceptable to the request. Motion carried unanimously.

Approval of the agenda: Commissioner Pruitt stated that both parties were in agreement to move Item 8, David Stearn, forward on the agenda. Associate Member Davis wanted to know if the crab issued had been set for 3:00 p.m. Commissioner Pruitt indicated that 3:00 p.m. was the time set to hear the crab issues at the last meeting. Associate Member Davis then moved to accept the change to the agenda. Motion carried 7 to 1, with Associate Member Gordy voting no.

Mr. Grabb, Chief-Habitat Management, briefed the Commission on five page two items. Mr. Grabb explained that those projects involved application for permits for projects over \$50,000 in cost for which public interest review had been conducted and no objections or concerns were raised about the projects. Staff, therefore, recommended approval for the projects.

Commission Meeting

May 25, 1999

Associate Member Goodell asked if in Item D, Newport News Shipbuilding & Drydock Co., #99-0597, there were clam grounds within the proposed dredged area. Mr. Grabb explained that maintenance dredging had already been authorized for this area. Dr. Goodwill commented further that bucket dredging would leave a great deal of silt in the water, and he wanted to know if the clam grounds outside that area would be disturbed. Mr. Grab responded that it would depend upon the grain size of the material. After a discussion, Dr. Goodwill asked if a royalty should be charged on the 15,000 square feet of footing. Mr. Grab responded yes. He said a royalty could be assessed in the amount \$0.50 per square foot since the project would be a permanent encroachment. He said if the Commission indicated that they would like \$0.50 a square foot for the permanent concrete footings.

Associate Member White asked if the clams had been removed from that area when the Commission authorized the previous dredging for an aircraft carrier. Mr. Grab responded that it was not in this particular area. The proposed dredging was between Pier 8 and 9.

Ronald Page Ayers, Senior Environmental Engineer in the Newport News Shipbuilding, asked if the additional monies for the square footage encroachment was in addition to what the shipyard would already be paying for the volume of cubic yardage. Mr. Grab responded yes. He also said that the dredging royalties were assessed at \$0.45 per cubic yard. The royalty mentioned by Dr. Goodwill was for the permanent encroachment for the three footings which measured 66 ft. by 66 ft. This equated to an encroachment of 13,068 feet.

There being no further comments, the page two items were placed before the Commission.

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

Mr. Grab commented that there was no reason for an executive session at this time. However, at the last Commission Meeting, while the Commission reinstated the use of consent agenda items, there were none for this meeting. In addition, the Commission also requested that staff reevaluate the enforcement matrix that was adopted in 1991, taking into account increases for the Consumer Price Index - Urban. Since that time, he said staff took the matrix and revised it accordingly. The ceiling remained at \$10,000 because that was mandated in the Code. He said he recommended that the Commission adopt the revised matrix, but round it to \$600, \$1200, and \$1800 on the lower level; and \$1800, \$6600 and \$5500 on the second level; and \$6,000,

Commission Meeting

May 25, 1999

\$9,000 and \$10,000 on the third level for ease in calculation.

Associate Member Cowart pointed out a discrepancy in the figures in the second row under moderate impact and moderate deviation. The impact was higher than that for moderate-major. Commissioner Pruitt requested that staff review the information and come back later in the meeting with corrected figures. (See Minutes p. 10795).

Proposed Revisions to Civil Charge Matrix

Environmental Impact

Significant	\$6,050	\$9,075	\$ 10,000**
Moderate	\$1,815	\$6,630	\$ 5,445
Minimal	\$ 605	\$1,210	\$ 1,815
	Minor	Moderate	Major

Relative Degree of Deviation or Non-compliance
Table 1 - Civil Charge Determination

*Note: 1991 figures updated by an inflation factor of 21% as determined from average annual CPI from 1991 through April 1999.

**Note: Section 28.2-1213 states civil charges shall not exceed \$10,000 for each violation.

KAY L. NEER, #99-0139. Commission review of the April 22, 1999, decision of the Accomack County Wetlands Board to approve construction of an open-pile, elevated, single family home and deck over 508 square feet of vegetated tidal wetlands in the Town of Chincoteague.

Hank Badger, Environmental Engineer, explained to the Commission that there were three slides that were not a part of the record, but would help orient the Commission on the proposed project. Mr. Grab also commented that in keeping with the past AG's opinion this orientation would not constitute as opening of the record.

Commissioner Pruitt placed the matter for viewing the slides before the Commission.

Commission Meeting

May 25, 1999

Associate Member Ballard moved to view the slides. Motion was seconded by Associate Member Birkett. Motion carried unanimously.

Mr. Badger proceeded to show the slides and explain the location of the proposed project. He then provided information on the original proposal which called for the construction of an elevated, open-pile, 30-foot by 40-foot, single family home with a 10-foot by 40-foot deck (all 14 feet above the marsh) and a small front porch that extended over 1,609 square feet of vegetated wetlands. He said the Wetlands Board considered the application on February 25, 1999. The Board and two nearby property owners expressed some concern about the extent of the encroachment, since the property had been a part of a larger parcel that had been subdivided. The Board also questioned whether the appropriate adjacent property owners had been notified. In response to the Board's concern and request that the applicant seek a setback variance from the Town of Chincoteague to reduce the wetlands impacts, the agent agreed to a tabling of the application.

Mr. Badger informed the Commission that Mrs. Neer's agent obtained a variance from the Board of Zoning appeals, and then submitted revised drawings at the Board Meeting on April 22, 1999, that showed an open-pile 28-foot by 44-foot single family home with a 10-foot by 28-foot deck that would impact 508 square feet of vegetated wetlands. The previous protestants were not present at the April meeting. However, the Wetlands Board did consider the information provided by the Commission staff which showed that the current lot was created by the subdivision of a much larger parcel of property in 1978. Mr. Badger said the Board, after considering the testimony provided, voted 3 - 1 to approve the revised application. The Board members commented that they felt the applicant had done as much as possible to reduce the impacts and still be allowed to build a home.

Mr. Badger said based on staff's review of the record, it did not appear that the Board's decision neither accommodated the standards for use or development of tidal wetlands contained in Section 28.2-1308 of the Code of Virginia, nor did it appear that the Wetlands Guidelines were adequately considered. He said it also appeared that the Board may have failed to provide proper notice to all adjacent property owners as required. Furthermore, the decision of the Board was not supported by the VIMS report which was a part of the record in this case. The VIMS report stated that, "Although no filling of wetlands is proposed, adverse impacts to the wetlands below and adjacent to the site are anticipated from the construction activities and shading effects. Shading could result in the death and loss of wetlands vegetation, which may destabilize the marsh and accelerate local erosion." The estimated environmental impacts from the project are based on the construction of a non-water dependent structure. As stated in the Wetlands Guidelines, Section IV, "alteration of the shoreline is ordinarily not justified for

Commission Meeting

May 25, 1999

purposes or activities which could be conducted on existing fastlands." VIMS recommended that the applicant consider relocating the structure to an upland location. Mr. Badger said, in staff's opinion, the Wetlands Board may not have had adequate time to review and notify the adjacent property owners of their revised drawing because the revised drawing was not received until the day of the hearing. Therefore, VIMS and the protestants were unable to comment on the revision. In addition, staff believed that a central issue was the necessity for the encroachment of the house over 508 square feet of vegetated tidal wetlands. Also, the Board did not discuss any compensation for the impacted wetlands. Staff also felt that since there was approximately 1,000 square feet of available fastland to build the house, it appeared that either a more modest structure or a two-story home could be constructed without any impacts to the wetlands. Therefore, staff recommended that the Commission reverse the Wetlands Board's decision and deny the application.

There being no comments from the public, and since the applicant was not present, Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis moved to reverse the Wetlands Board decision and deny the application. The motion was then seconded by Associate Member White.

Associate Member Gordy then commented that she had given this situation a lot of thought and felt that Mrs. Neer sold the upland area, and placed herself in that position. She also felt that if the Commission approved her request, it would set a precedence on Chincoteague and she indicated that she would support the motion.

Associate Member Goodell commented that the motion should include the VIMS report regarding the Wetlands Guidelines, Section IV, i.e. that "alteration of the shoreline is ordinarily not justified for purposes or activities which can be conducted on existing fastlands," which was the explicit reason for denying the application.

Commissioner Pruitt asked Mr. Davis if he would like to incorporate Section IV of the Wetlands Guidelines in his motion. Associate Member Davis was agreeable, along with the seconder Associate Member White. The Commissioner then considered that a part of the motion.

Associate Member Ballard commented that staff had laid out an excellent rationale in the summary and recommendation section of the evaluation. He then stated that he would support the motion based on the rationale staff had presented. Motion to reverse carried unanimously.

(See discussion Minutes P. 10792)

Mr. Grabb presented a revised matrix in light of the earlier presentation concerning civil charges. Commissioner Pruitt asked Mr. Cowart if the new corrected figures addressed his question. Mr. Cowart responded yes. Mr. Grabb commented that the revision was not a regulation, but a guideline for staff to use in coming up with a consent agreement to be placed before the Commission. Commissioner Pruitt said based on those comments, he would rule that action could be taken on that issue today.

Associate Member Davis then moved to approve the revision to the civil charges. Motion was seconded by Associate Member White.

Associate Member Ballard commented that Mr. Grabb had suggested that rounding of the numbers be used. Mr. Grabb responded that staff could use them exactly, or the numbers could be rounded to \$600, \$1,200 and \$1,800, it would become \$1,800, \$3,600, \$5,500, on the second level and \$6,000, \$9,000 and \$10,000 on the top.

Associate Member Davis then revised his motion to include the rounded numbers of \$600, \$1,200, \$1,800, \$3,600, \$5,500 and \$6,000, \$9,000 and \$10,000. Associate Member White was acceptable to the amendment.

Associate Member Goodell asked if the Commission could still assess civil charges up to \$10,000. Mr. Grabb then explained the guideline for the new civil charge assessment. Dr. Goodell then requested that there be a revision to Section 28.2-1213 so that the upper limit of \$10,000 be raised to \$12,500. Mr. Grabb said that this matter would have to be forwarded to the Administration and ultimately sent to the General Assembly for their consideration.

Commissioner Pruitt explained that Dr. Goodell's proposal could not be a part of the original motion. He then placed the original matter before the Commission. Motion carried unanimously. Mr. Pruitt commented that the issue could be addressed in two ways. A member of the General Assembly could address the issue, if there was interest on their own, or the Commission could try to get it in the administrative package. The Commission made no decision on which way to proceed at the present time.

Revised Civil Charge Matrix* (Adopted by Commission May 1991)

Environmental Impact			
Significant	\$6,000	\$9,000	\$10,000

Commission Meeting

May 25, 1999

Moderate	\$1,800	\$3,600	\$ 5,500
Minimal	\$ 600	\$1,200	\$ 1,800
	Minor	Moderate	Major

Relative Degree of Deviation or Non-compliance

Table 1-Civil Charge Determination

*Note: 1991 figures updated by an inflation factor of 21% as determined from average annual CPI from 1991 through April 1999 and rounded for ease of calculation.

**Note: Section 28.2-1213 states civil charges shall not exceed \$10,000 for each violation.

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

Heather Wood, Environmental Engineer, briefed the Commission and presented slides showing the location of the proposed project in the Cove. She said the Cove was approximately 100 feet wide and was subject to little wave energy. The applicant's property was adjacent to a marsh consisting primarily of Spartina alterniflora and Phragmites. The existing bulkhead had failed on the downstream end of the property and resulted in a small vegetated tidal wetland, consisting of Spartina alterniflora and Distichlis spicata that formed behind the existing structure. Ms. Wood stated that the applicant proposed to install 82 linear feet of timber replacement bulkhead on the same alignment as the existing bulkhead. The existing 10 foot return wall would be removed and a new 32-foot return wall would be tied back into the upland. The project would result in the filling of approximately 300 square feet of vegetated tidal wetlands.

Ms. Wood stated that the Norfolk Wetlands Board held their public hearing on April 14, 1999, with five of the seven board members present. The City staff recommended approval of the project as proposed with the condition that marsh toe stabilization be added and that saltmarsh cordgrass be planted in the area channelward of the proposed return wall. Ms. Wood also

Commission Meeting

May 25, 1999

indicated that supporting testimony was received from Ms. Beverly Peters, attorney for the applicant, Mr. Jim Krom, the agent, Mr. Ken Dierks with Langley and McDonald, and Mr. Paul Weiss, a property owner along the cove. Comments of opposition were provided by Mr. Eric Schwartz and Mr. Ken Stolle, counsel for the adjacent property owner, Mrs. Castle Craddock, and Mr. James Watt, an engineer with Oberman and Associates. The Board voted 5-0 to approved the project as proposed with the conditions recommended by City staff.

Ms. Wood said that on April 22, 1999, staff received a letter and petition signed by 46 freeholders of property in the City of Norfolk, noting an appeal of the April 14, 1999, Norfolk Wetlands Board's decision. Staff considered the appeal timely under the provisions of Section 28.2-1311(B) of the Code of Virginia. She said the freeholders stated in their letter that their request for review was based on the fact that the Wetlands Board failed to fulfill its responsibilities under the ordinance by approving the application when less intrusive and destructive methods could be used at the site to prevent erosion and because the Stearns' lack title to the property upon which the bulkhead repairs would occur. Ms. Wood said that a discussion regarding ownership of the wetlands took place during the hearing between City staff and the Board members. City staff indicated that aerial photographs from 1946 to 1958 showed the entire area as being a marsh. The marsh was dredged to form the basin, and the upland around the marsh was most likely created with the dredged spoil. During this hearing, the Board also considered the VIMS report which indicated that the wetland impacts had been reduced based on the fact the bulkhead was being replaced along the same alignment as the existing bulkhead instead of two feet channelward as originally proposed. While, VIMS suggested that placing the bulkhead landward of the wetland area would further minimize impacts to the wetlands, City staff indicated that placing the bulkhead landward would likely result in a slumping of the wetland area into the basin which would further contribute to siltation of the boat basin.

Testimony was also received from Ms. Beverly Peters, attorney for the Stearns, regarding property ownership. She presented the Board with a copy of the subdivision plat which indicated the property line for Lot 77, the Stearns Lot, was the bulkhead line. Ms. Peters also indicated that the Stearns had considered installing riprap in lieu of a bulkhead but were advised by their agent and engineer that installing riprap would necessitate excavating the wetlands. Mr. Jim Krom, agent, and Mr. Ken Dierks, Director of Environmental Services at Langley and McDonald, both spoke on behalf of the Stearns, and reiterated that riprap was not the preferred erosion control structure in this location because of the consistency of the soil on the property. Mr. Paul Weiss, a neighbor of the Stearns, expressed some concern about watercraft access and the need for dredging the area if the material behind the bulkhead was allowed to slump into the basin. Mr. Eric Schwartz, an attorney with Mays & Valentine in

Commission Meeting

May 25, 1999

Norfolk, spoke on behalf of Ms. Castle Craddock, and adjoining property owner, protesting the project. Mr. Schwartz submitted a copy of the Stearns' plat and argued that the Stearns did not want the property in the area to be filled. The plat indicated that the land conveyed to the Stearns and other lot owners did not include the boat basin. Mr. Schwartz argued that the wetlands involved actually belonged to the Belvedere Corporation, a defunct corporation and the original developer of the subdivision. Mr. James Watt, an engineer with Oberman Associates Engineers in Virginia Beach, also spoke in opposition to the project. Mr. Watt felt that while installing riprap would involve disturbance of the wetland, the impacts would be offset by the habitat creation.

Mr. Ken Stolle, co-counsel for Ms. Craddock, also addressed the Board on the issue of property ownership. Mr. Stolle argued that under Section 28.2-1201 of the Code of Virginia, that the wetlands in this particular case had arisen from submerged lands owned by the Commonwealth.

Ms. Wood indicated that because this was a manmade boat basin, the submerged lands channelward of the bulkhead were not owned by the Commonwealth and, therefore, staff believed that any wetlands that may have arisen did not rise from State-owned submerged lands, and therefore could not be considered wetlands of the Commonwealth.

Associate Member Davis asked who owned the land? Ms. Wood responded that was the heart of the discrepancy. She said the subdivision plat showed that the entire property to the bulkhead line platted as Lot 77, which was in the deed, was what the Stearns owned. However, she said the individual plat that was submitted with the application showed the property line landward of the bulkhead line. Therefore, it was possible that portion of the property still belonged to the development company that developed the subdivision.

Ms. Cynthia Hall, the Board's Counsel, reminded the Board that there was no mandated requirement for the Board to determine property ownership. She indicated that the City Code Section 49-14 provided a mechanism for a person who claimed ownership of, or a right in the property, to seek redress against an applicant or permittee for trespassing. Ms. Hall further stated that Section 49-6 of the City Code did not require proof of ownership when filing an application.

Ms. Wood said that after a discussion between Ms. Hall, Ms. Peters, Mr. Schwartz, and Mr. Stolle regarding the property ownership issues, City staff advised the Board that there had been many cases where an applicant had secured a permit to build an erosion control structure on a property contingent on their purchase of that property, and that the laws regarding trespassing prevented development and construction of a project until the property had been transferred to

Commission Meeting

May 25, 1999

the new owner. She said the Chairman of the Board, Mr. Harrison, reminded the Board that they needed to consider the environmental aspects of the project. He then proceeded to summarize the alternatives for erosion control. The Board then approved the project on a 5-0 vote.

Ms. Wood said based on a review of the record, staff did not believe that the Board erred procedurally in their review or approval of the Stearn's application. Furthermore, she stated that the Board consulted their attorney regarding the ownership issue and were advised that it was not within their jurisdiction to determine property ownership.

Associate Member Goodell said he was concerned over why the applicant was permitted to build the bulkhead over property where there was no clear deed. Ms. Wood responded that when the Stearn's purchased that property, the bulkhead was there. A discussion followed.

Associate Member Birkett asked if one drawing took precedence over the other. Ms. Wood responded no. He said the plat of the subdivision was surveyed and recorded in the 1940s. Commissioner Pruitt asked if the basin was manmade. Ms. Wood responded yes. He asked when it was it dredged? Ms. Wood responded sometime after 1956. Associate Member Birkett commented that the chart passed around to Commission members showed that the survey was done in 1939 and it was recorded in 1940. The chart clearly showed the boat basin in existence at that time. Mr. Birkett also read the covenant written on the side of the chart. It stated that "no owner of any lot fronting on the water or boat basin as shown in the plat should be permitted to fill in beyond the line shown on the plat and designated bulkhead line." Mr. Birkett said that would indicate to him that the boat basin was there when the plat was made and the bulkhead line was established at that time.

Associate Member Hull commented that much of the Commission's discussion revealed information that he found agreeable, but he felt that it should come after they had heard from both sides of the issue. Commissioner Pruitt concurred with the comment and asked the applicant to come forward.

Commissioner Pruitt asked if either side proposed to submit any new evidence or anything not heard by the local Wetlands Board. Ms. Peters responded that she had no new evidence. Mr. Schwartz, representing Ms. Craddock, addressed the Commission, he said they would like to introduce items that the Board did not hear on April 14, and also additional information from Mr. Steve Walls, an environmental engineer, who went on the water to take pictures that he felt were informative for the Commission. Commissioner Pruitt said he would put that before the Commission first.

Commission Meeting

May 25, 1999

Mr. Schwartz addressed the Commission and stated that the information he wanted to submit was very limited regarding some photographs taken from different angles which the Commission could see regarding other people placing bulkheads landward of wetlands that were prospering.

Ms. Peters responded that the procedure for the Commission's review was to determine the correctness or controversy as to the record itself. She said there was no provision for new evidence to be put forward. She also stated that her client was unable to be present today and they did not know what that new evidence would be presented today. Commissioner Pruitt responded that the Commission did have the authority to open the record. Ms. Peters then stated that they were not aware that new evidence or a new expert had been hired by the protestant. She, therefore, opposed the submission of new evidence. She said she did not have her client present to confer with or offer any testimony or rebuttal. Ms. Peters said she was certainly present to discuss the record before the Commission.

Associate Member White commented that recently the Board had opened the record for another case.

Ms. Peters said she would ask for a continuance if the record was to be opened.

Mr. Schwartz commented that the applicant had an environmental engineer present today that could speak on their behalf, Mr. Ken Dierks. Secondly, he said Mr. Stearns testified before the Norfolk Wetlands Board on April 14, and that testimony was in the record.

Commissioner Pruitt then placed the matter of opening the record, before the Commission. Associate Member Gordy commented that she did not see why Mr. Schwartz should be allowed to submit his information, when Ms. Peters had no further information to present for the Stearns. Ms. Gordy then moved that Mr. Schwartz not be allowed to open the record to present his additional presentation.

Associate Member Ballard commented that 28.2-1312 (B) said exactly what Ms. Peters had previously said regarding verifying the record and taking new evidence. He said another statement said that "the Commission in its discretion may also receive such other evidence as the ends of justice require." He said he was unfamiliar with what that phrase meant. Commissioner Pruitt commented that he thought what the General Assembly meant was that the Commission had the power to open the record. Mr. Ballard then commented that they were functioning today without the Commission's attorney. In addition, he said he was aware that

Commission Meeting

May 25, 1999

Ms. Peters said she was not aware that the record would be opened, and if that was done she would prefer to have her client present. He said it seemed like since the Commission did not have an attorney and they were faced with many attorneys today, that a continuance might be the best thing to do.

Commissioner Pruitt then placed the matter of opening the record or not opening the record before the Commission. Associate Member Davis moved that the record be opened and that a continuance be available, if either side wanted it. Motion was seconded by Associate Member White.

Associate Member Hull commented that it seemed that the two parts of the motion were in conflict or premature at this stage, and he felt it should be one or the other or one followed by the other, and not put the two together.

Commissioner Pruitt said the Commission would take the motion of opening the record first. Motion to open the record was approved unanimously.

Ms. Peters then requested a continuance on behalf of her clients.

Associate Member Birkett moved to grant a continuance until the June meeting. Motion was seconded by Associate Member Davis.

Mr. Stolle commented that they would stand silent on the continuance because he realized the position that the applicant was in. He then asked that the slide that had the border around the property be placed back on the screen in order to determine the property line.

Ms. Peters then stated that she had a deed with a legal description that would also address those questions. A brief discussion followed regarding opening the record to show the slide regarding the property line. Comments are a part of the verbatim record.

Ms. Cynthia Hall, Deputy City Attorney with the City of Norfolk, representing the Norfolk Wetlands Board, addressed the Commission. She said Mr. Lee Rosenberg a staff member to the Wetlands Board put the line on the slide and would like to explain the line to the Commission.

Mr. Rosenberg then addressed the Commission.

Edwin L. Rosenberg, manager of Environmental Services and staff to the Norfolk Wetlands

Commission Meeting

May 25, 1999

Board, addressed the motion. He said the line was laid out as a schematic to show the issue of ownership taken off what was submitted. It was not an exact depiction, and the line just showed where the basin was in respect to the plat that showed where the lines were.

Commissioner Pruitt then stated that the motion on the floor was for a continuance until the June meeting. Motion carried unanimously.

The meeting was recessed for five minutes.

ACCOMACK COUNTY, #98-2047, requests authorization to install a 100-foot long by 32-foot wide concrete public boat ramp with associated stone riprap and two(2) 94-foot long by 6-foot wide tending piers with 6-foot by 24-foot L-heads along Pungoteague Creek near the Town of Harborton in Accomack County. The project is protested by two nearby property owners.

Hank Badger, Environmental Engineer, briefed the Commission and presented slides. Mr. Badger presented information regarding the location and development of the proposed project. Comments are a part of the verbatim record. Mr. Badger stated that the proposed project was protested by an adjacent property owner, Mr. Robert E. Peterson, and a nearby property owner, Mr. Larry W. Small. Mr. Peterson's opposition to the project was the noise, debris, vandalism and possible devaluation of his property. Mr. Small was concerned that the proposed boatramp and tending piers might fall into disrepair. In addition, Mr. Small felt that the State road was not adequate to accommodate the volume of traffic anticipated that would use the proposed facility. Mr. Small was also concerned about the maintenance and upkeep of the facility.

Mr. Badger said the VIMS report indicated that the impacts associated with the proposal would be minimal, and the Accomack County Wetlands Board approved the project at their April 22, 1999, public hearing. The project also qualified for the Corps' Regional Permit. The Chesapeake Bay Local Assistance Department also indicated that the project was consistent with the framework of the Bay Act, but noted that the project design must be consistent with Accomack County's Bay Act Ordinance requirements. The Department of Health reviewed the project and stated that the applicant's plan for sewage treatment was approved, and the Department of Environmental Quality had waived their permit. In addition, the Department of

Commission Meeting

May 25, 1999

Game and Inland Fisheries did not anticipate any adverse impacts upon wildlife because of the proposed project. No other state agency had expressed any opposition to the project.

Mr. Badger further stated that the boat ramp and tending piers should improve the appearance of the property and their impacts on the marine environment appeared to be minimal. Mr. Badger also commented that according to Section 28.2-1205 (A) of the Code of Virginia, the Commission, in addition to other factors, should consider the public and private benefits of the proposed project and the effect on other reasonable and permissible uses of State waters and State-owned bottomlands. He said there were valid concerns regarding the impacts on the adjacent and nearby property owners. Also, the need for improved public access for the citizens and visitors in Accomack County outweighed the anticipated public and private detriments of the proposed project. As such, staff recommended approval of the project.

Associate Member Davis asked if the existing County boat ramp would be closed. Mr. Badger responded that it was his understanding that it may or may not be closed.

Keith Bull, County Administrator of Accomack County, addressed the Commission. He said he had a minor correction in that the County had acquired the oyster grounds in front of the site and anticipated turning them back to the Commission and requesting that the Commission not lease those grounds. He said the County had all the permits that were required except for the VMRC permit.

Associate Member Davis commented that he would like to see the small ramp open which could possibly relieve some of the pressure from the proposed ramp. Mr. Bull responded that there was no parking associated with the small ramp, and it had always been a problem. The water was shoaling in the front and only small boats could be launched at the site. He said the Board had not made a decision at the present to close the small ramp, but he expected that it would be closed.

Associate Member Gordy asked how many public boat ramps were located on the Bayside. Mr. Bull responded that was the only one on site at Onancock and the closest one would be Morley's Wharf which was not completed.

Associate Member Goodell asked if the permit included a provision for pumping out waste and trash so that the proposed project would not become an eye sore. Mr. Bull responded that there was no permit that required that stipulation, but the County anticipated doing one of two things, either placing a large septic tank on the property with two porta Johns bolted to the top that would be pumped out periodically, or using the porta Johns and contracting with a private

Commission Meeting

May 25, 1999

company to do the pumpout. There would be no running water on the site and the site would be policed by County staff. In addition, he said that a temporary committee had been appointed, made up of citizens of Harborton that were working on the design issues and concerns of the townhouse occupants, and a permanent committee would be appointed at the time of construction and they hoped that committee would play an active role in helping to police the site.

Associate Member Hull asked if the County planned to screen the property with vegetation. Mr. Bull responded that they planned to buffer one of the two lots and to partially buffer the second lot. He said they also planned to fence the lot with buffering, then place a fence inside from the property line with additional plantings and bufferings.

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

Associate Member Gordy moved to approve of the project. Motion seconded by Associate Member Davis. Mr. Davis then requested that Mrs. Gordy consider making vegetation and a sewage system a part of the motion. After a brief discussion by Commission members, Mr. Bull stated that it was their preference not to get tied down to specific proffers, but there would be a substantial buffer.

Associate Member Hull commented that he did not feel the Commission had jurisdiction over landscaping.

Associate Member Gordy stated that the original motion would stand without any proffers. Associate Member Davis then withdrew his second to the motion. Associate Member Hull then seconded the motion. Motion carried 7 to 1.

Mr. Grabb came forward and stated that Mr. Travelstead had a funding request available for this project through the Recreational Fishing Fund similar to what was done at Morley's Wharf, and he would like to discuss the issue.

Jack Travelstead, Chief - Fisheries Management, informed the Commission that a funding request was presented last Fall to the Recreational Fishing Advisory Board for a public boat ramp in Accomack. The Advisory Board unanimously approved funding for the construction of a public boating access project in Pungateague Creek with direct access to the Chesapeake Bay in the amount of \$285,000.

Commission Meeting

May 25, 1999

Associate Member Goodell questioned what the funding would include. Mr. Travelstead responded that it included the design and construction of a new public boating access site in Accomack County located in the Town of Harborton (if the County acquired the land for the development). The concept design called for a minimum of a double wide launching lane with two L-shaped courtesy piers. The piers would facilitate the use of the facility. The parking lot would be designed to handle 100 cars and trailers. The boating access facility would have storm water management and be handicap accessible. The Department of Game and Inland Fisheries would work with the County on a design review, and the final design would make this one the largest public access sites on the Eastern Shore. An additional launching lane was desired to maintain 30 to 35 cars and trailer parking spaces per launching lane.

Associate Member White asked if the facility would be lighted. Mr. Bull indicated that it would be lighted. Associate Member Davis asked how large was the site. Mr. Bull responded that it was approximately seven acres.

Mr. Travelstead then explained to the Commission the process for the approval of the funding. Comments are a part of the verbatim record.

Associate Member Gordy moved that funding in the amount of \$285,000 be approved for the proposed project. Motion was seconded by Associate Member Birkett.

Mr. Davis stated that he was still concerned with the vegetation and the sewage issue, and he felt that since the Commission had approved the funding, they could make proffers regarding the project. He then requested Mrs. Gordy to include in the motion a proffer for protective vegetation and the requirement for an adequate sewage disposal system. Mrs. Gordy said she was acceptable to amending the motion to include the proffer of two porta Johns and the buffering. Mr. Birkett, the seconder, was also acceptable to the motion. Associate Member Goodell felt that it was a mistake to designate a certain number of porta Johns. He then requested that the motion state "adequate sewage disposal and buffering." Mrs. Gordy was acceptable to changing the motion to state "adequate sewage disposal system. Associate Member Hull commented he felt it was important that the Commission be careful on what the proffers were because of the two protestants that were not here today, and they had expressed opposition to the facility. Therefore, the Commission should realize that proffers had to come from Accomack County and they were the authorities giving the approval, and the Commission should not impose additional proffers on them. Without further discussion, Acting Chairman White, placed the matter before the Commission.

Mr. Travelstead asked if the motion would require them to make a condition of the contract

Commission Meeting

May 25, 1999

that there be an adequate supply of porta Johns on site before the release of any money. Dr. Goodell responded that they did not physically have to have the adequate facilities in place before the monies were released, but the proffers should be in place before the facilities were completed.

The question was called. Motion carried unanimously.

VIRGINIA DEPARTMENT OF TRANSPORTATION, #99-0532, requests authorization to replace the existing Route 60 Shore Drive Bridge over Little Creek with a 413-foot long by 90-foot wide four-lane bridge which will enhance navigable access to Pretty Lake in Norfolk. The project includes the replacement of a storm water outfall, the construction of two (2) temporary riprap causeways, and the dredging of 400 cubic yards of State-owned subaqueous bottom.

Ms. Wood described this project in light of the Supreme Court's ruling in the 1941 case, of Ewell v Lambert that the northwest branch of Little Creek was not navigable because of the present bridge and the low vertical clearance of six feet at mean high water. The ruling resulted in the Commission relinquishing all regulatory authority over the subaqueous bottom in Little Creek west of the Shore Drive Bridge. The new bridge, however, would restore navigable access because of the 20 foot vertical clearance. Ms. Wood recommended that the Commission, could, should the project be approved, reassert jurisdiction over the subaqueous bottom in Little Creek.

Ms. Wood then presented slides and briefed the Commission on the location of the proposed project. Comments are a part of the verbatim record. She said that VDOT proposed to replace the existing 200 foot long by 68-foot wide Shore Drive Bridge with a 413-foot long by 90-foot wide bridge that would be located 36 feet upstream of the eastern edge of the present structure. In addition, two temporary riprap access causeways would be constructed. Each would have a top width of 30 feet and extend approximately 1000 feet channelward of mean high water. VDOT also planned to dredge 400 cubic yards of subaqueous bottom and allow a storm water outfall with riprap scour.

Associate Member Goodell asked how many square feet of wetlands would be disturbed and how many would be mitigated. Ms. Wood responded that the total impact to the wetlands would be 20,698 square feet according to the VIMS report.

Ms. Wood continued her presentation. She said the Department of Conservation and

Commission Meeting

May 25, 1999

Recreation indicated that the project was acceptable. VIMS had commented on the wetlands mitigation. Ms. Wood stated there was no opposition to the project, and the environmental impacts associated with the bridge appeared to be minimal and temporary. Therefore, staff recommended approval of the project as proposed. Staff further recommended that the Commission move to reassert jurisdiction over the subaqueous bottom of Little Creek under the authority contained in 28.2.-1200 of the Code of Virginia.

Acting Chairman White offered VIMS the opportunity to make comments. Mr. Tom Barnard addressed the Commission and clarified the issue of filling of the wetlands. He said there would be a total loss of 2,877 square feet of wetlands. He said the 20,698 square feet that Ms. Wood quoted was the total impact, including temporary impacts, shading, and etc. which were not actual losses.

Associate Member Goodell commented that the Commonwealth and VDOT should mitigate in good faith for the loss of the wetlands because the Commission required others to mitigate. Mr. Barnard stated that Mr. Janek was present from VDOT, and VDOT was mitigating at a greater degree than the permanent loss.

George Anthony Janek, representing VDOT as an environmental specialist, addressed the Commission. He attempted to clarify some of the wetlands issues. He said this permit application had gone through an inner agency review called the Inter-Agency Coordination Meeting. In addition, the permit had been approved by several State agencies. Mr. Janek stated that the impacts that had scrub shrub and caused permanent impacts, VDOT would separate them differently than VIMS. He said at the request of the Corps of Engineers, VDOT was mitigating for the scrub shrub and emergent wetlands, and VDOT went 1½:1 for the scrub shrub and 1:1 for the emergent. The total impact would be approximately 3,894 square feet of permanent impacts due to fill. Mr. Janek stated that he was not sure the contractor would use the temporary causeways, but if the contractor had a better way to do the construction with less environmentally detrimental effects, VDOT would support his decision for constructing the bridge. He said the Corps of Engineers imposed an additional condition that VDOT must resprig the footprint of any vegetated wetlands impacted by the temporary causeways with Spartina alteriflora.

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

Associate Member Ballard moved that the project be approved. Mr. Ballard further recommended that staff do whatever was necessary to reassert jurisdiction over the State-owned subaqueous bottom within Little Creek west of Shore Drive. Motion was seconded by

Commission Meeting

May 25, 1999

Associate Member Davis. Motion carried unanimously.

JOHN VIGLIOTTA, #99-0472, requests authorization to install 600 linear feet of 8-inch mesh netting, supported by 15 PVC poles, around a 28,350 square foot area (0.65 acres) of the North River to exclude cownose rays from a soft clam aquaculture grow-out area near the "Anchorage" in Gloucester County. The project is protested by a nearby property owner.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides. He said Mr. Vigliotta was President of Mobjack Bay Seafood. Mr. Neikirk showed the location of the proposed project and provided background information of the project. Comments are a part of the verbatim record. Mr. Neikirk stated that the nets would only be needed during the warmer months when the rays were in evidence. At the present time, Mr. Vigliotta used nets that were placed directly on the bottom which was authorized by regulation 4VAC 20-335-10 et. seg. adopted approximately a year and a half ago. Mr. Vigliotta was hoping that the staked net would prevent cownose rays from entering the area and crushing the soft clams. Mr. Neikirk stated that the project was protested by a nearby property owner, Ms. Canaday.

Associate Member White asked what was the distance between the protestant and the proposed project. Mr. Neikirk responded that it was approximately 800 to 1,000 feet. He said Ms. Canaday was concerned there were a lot of markers out there already and now there would be additional markers for the leased oyster grounds and stakes that extended up above the bottom.

Mr. Neikirk continued with the briefing. He said the Virginia Institute of Marine Science (VIMS) and the Departments of Game and Inland Fisheries, Conservation and Recreation, and the United States Coast Guard all indicated that the project was acceptable. Mr. Neikirk also indicated that rays and skates had been recognized as a threat to the shellfish culture industry. A work group was formed last year to study the threat of the rays. The work group identified the need to evaluate various exclusion devices and strategies to minimize the impacts of the cownose rays on the shellfish beds. The Commission approved a request by VIMS last month to test the effectiveness of a staked plastic net to exclude cownose rays from a 625 square foot soft clam aquaculture bed in the Coan River. That study should be completed in November 2000. Mr. Neikirk stated that staff acknowledged that rays and skates posed significant threats to the shellfish aquaculture industry and that the density of cultured beds made them vulnerable to predation. He said the proposal did not appear to adversely impact either the environment or navigation. The net, however, would exclude the public from the use of over one-half acre of State-owned water. Also, one local resident had concerns over the aesthetic impacts of the

Commission Meeting

May 25, 1999

structure. He said while staff applauded Mr. Vigliotta's efforts to develop innovative aquaculture techniques, staff was hesitant to recommend approval and, therefore, encourage the proliferation of exclusion nets in State-owned waters until further studies on the effectiveness of these nets had been completed by VIMS.

Mr. Neikirk stated that Mr. Vigliotta would be delayed, but he informed the Commission that the only thing holding back soft clams at the present time was the ray problem.

Linda Crewe addressed the Commission and stated that she supported Mr. Vigliotta's request to enclose the area. Ms. Crewe said that it was her understanding that the VMRC Aquaculture Committee was formed at the direction of the General Assembly to remove existing barriers to aquaculture. She also indicated that it was her understanding that the reason for the Committee to attempt to come up with the guidelines for leasing the water column was to try and discourage people from leasing out large sections just to keep people from using that particular area. She said that soft clam aquaculture was showing a lot of promise and the only problem was keeping the cownose rays out. She said if the problem could be solved, she felt that this would be a viable species to grow, and that Mr. Vigliotta's request was no different from pound netters and peeler pounders taking up space in the water column.

Associate Member Cowart commented that soft clams were in abundance in the Bay until 1972 when Hurricane Agnes came through, and the soft shell clams disappeared. Mr. Cowart said he felt that the species would grow and the main predator now was the cownose rays. He said he thought the proposed project was a worthwhile project, and he did not feel the Commission should be setting policies at this point for exclusion in the Chesapeake Bay. A brief discussion followed regarding setting precedence. Comments are a part of the verbatim record.

Associate Member Ballard asked what the time frame would be for this permit. Mr. Neikirk responded that this permit was a little different. He said staff discussed this permit and thought about issuing an experimental permit to see if it would work. Mr. Neikirk then stated that if the Commission did approve the permit, staff recommended having a one or two year study done and then have the applicant come back for a renewal. Associate Member Ballard then asked if staff could structure a permit that would document a three-year permit that would only be applicable from March to October. Mr. Grabb responded that the VIMS project that was approved last month in the Coan River provided two summers because the rays were only a problem during the warmer months. He said they required VIMS to remove the poles and nets on October 1 and the structure could go back out in May. Mr. Grabb stated that if the permit was approved, he recommended the same time frame. He said after the VIMS study was

Commission Meeting

May 25, 1999

completed in 2000, the Commission could look at both comparative studies, one from the Coan River and Mr. Vigliotta's, to see if it was a cost effective and a reasonable way in protecting the shellfish industry.

At this time, Mr. Vigliotta entered the meeting and Mr. Ballard requested his comments on the matter.

John Vigliotta addressed the Commission. He stated they he only needed the device when the rays and skates were around, which was the same time period as VIMS referenced. He said from May 1 through October 1 would cover the time period he was looking for. Mr. Vigliotta stated that he had done some studies himself. He said outside his hard clam nets they found zero soft clams. However, underneath his hard clam nets they did find some soft clams. He said double netting was necessary.

Associate Member Goodell asked Mr. Vigliotta if he intended to catch any fish in the net. Mr. Vigliotta responded that was not his intent to catch fish.

Dr. Goodell then asked Dr. Burreson from VIMS to describe what they were doing compared to what Mr. Vigliotta was proposing. Dr. Burreson said Bill DuPaul was more familiar with the experiment and he could address the issue.

Bill DuPaul, from VIMS, addressed the Commission. He said the study they were doing in the Coan River was a small scale project and they were looking at a more finer resolution regarding growth rate and survivability rates. He said Mr. Vigliotta's proposal was based upon the same design but they were not going to look at such fine scale details as individual growth rates and survivability.

Dr. Goodell asked if this project would be scientifically useful. Mr. DuPaul responded yes. There being no further comments, pro or con, Acting Chairman White placed the matter before the Commission.

Associate Member Ballard moved to approve Mr. Vigliotta's request for a permit with a maximum duration of three years, and that the device only be allowed in the water from May 1 to October 1 in each year. Motion seconded by Associate Member Goodell. Motion carried unanimously.

Commission Meeting

May 25, 1999

Meeting convened for lunch.

Meeting reconvened from lunch.

REPEAT OFFENDERS

Lew Jones, Assistant Chief-Law Enforcement, briefed the Commission on:

Clifton Curtis, Jr. - Present.

Colonel Jones stated that Mr. Clifton Curtis was before the Commission for a repeat offender and placed on probation for one year. He said Mr. Curtis was appearing today for an offense that occurred on October 22, 1997, for refusing the inspection of crabs. Mr. Curtis was convicted while still on probation.

Jon Poulson, representing Mr. Curtis, addressed the Commission. He stated that he had a submittal sent to him that had several things that were inaccurate. Mr. Curtis then presented the Commission with a history summary. Mr. Poulson reviewed Mr. Curtis' history with the Commission and stated that Mr. Curtis' last offense was September 16, 1997. There were no other convictions in 1997; no convictions in 1998; no convictions in 1999, and the reason he was before the Commission was quirk in the probation. He said the probation got extended.

Associate Member Goodell asked why was this case reaching the Commission so late. He said the charge, refusing inspection of crabs was in September 1997 and he was just appearing before the Commission. Mr. Poulson responded that the conviction was not until October 1998 because of an appeal process.

Associate Member Ballard asked if the Circuit Court conviction was in October 1998 and appealed. Colonel Jones said the lower court's conviction was appealed to the Circuit Court and the Order was entered in October 1998. A discussion followed regarding the Commission's policy on repeat offenders. Comments are a part of the verbatim record.

Commissioner Placed the matter before the Commission.

Associate Member Goodell moved to revoke Mr. Curtis's license for three months. A discussion followed regarding the probation for Mr. Curtis.

Commission Meeting

May 25, 1999

Associate Member Ballard asked if there were any outstanding charges pending. Mr. Poulson responded no.

Associate Member Ballard commented that probation works for Mr. Curtis and the motion was for a three month revocation which was equivalent to a year for crab potters.

Associate Member Goodell asked if the record showed that Mr. Curtis had a violation while on probation. Colonel Jones responded yes.

Commission Pruitt placed the matter before the Commission. Motion carried 4 to 4 motion failed for revocation of license.

Associate Member Gordy then asked if probation was over for Mr. Curtis. Colonel Jones responded that probation was over. Ms. Gordy then moved to place Mr. Curtis on probation for 6 months. Motion was seconded by Associate Member White.

Associate Member Davis commented that there was a history of convictions (five). There was a violation of probation. Mr. Davis then stated that to place Mr. Curtis on probation was not fair to the watermen.

Associate Member Ballard commented that he planned on voting against the motion for the reasons stated by Mr. Davis. Mr. Ballard then stated that if the motion was defeated he would move to revoke Mr. Curtis's license for one month and continue probation for one year.

Associate Member White requested clarification on the motion.

Commissioner Pruitt restated the motion. He said the motion was to place Mr. Curtis on probation for six months. Motion carried 4 to 4. Commissioner Pruitt voted to oppose the motion. Motion failed, the floor was reopened for another motion.

Associate Member Ballard moved that Mr. Curtis's crabbing license for hard and peeler pots be revoked one month starting in June and Mr. Curtis be placed concurrently on a year's probation. Motion was seconded by Associate Member Goodell. Motion carried 5 to 3.

Polly D. Custis - not present.

Colonel Jones commented that he had conversation with Ms. Custis and she did not intend to appear. Colonel Jones said that Ms. Custis was the wife of a watermen who worked out of

Commission Meeting

May 25, 1999

State and she tended her husband's pots in his absence. However, she received the summons for unculled crabs, and she was not a commercial watermen, but assisted her husband as a quasi agent. Colonel Jones stated that this situation was not unusual, there had been two previous cases like this. He said typically this charge would prevent an individual from acquiring a commercial waterman's registration card.

Commissioner Pruitt placed the matter before the Commission. Associate Member Goodell moved that Ms. Custis be prohibited from obtaining a commercial waterman's card for two years. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

Wayne C. Justis - present.

Colonel Jones said Mr. Justis was appearing today for three violations in 1998 where he was convicted on May 18, 1998 for placing food bait in a peeler pot, found guilty, fined \$25.00; possession of unculled crabs, July 30, 1998, found guilty, fined \$50.00; and unlawful dredging of hard shell clams from unassigned State-owned bottom during closed season. He said this was Mr. Justis's first time as repeat offender.

Jon Poulson, representing Mr. Justis, addressed the Commission. He indicated that this was Mr. Justis's first time appearing before the Commission. He then explained the convictions to the Commission. Comments are a part of the verbatim record.

Associate Member Davis asked how long Mr. Justis had been a commercial watermen. Mr. Justis responded 15 years. A brief discussion followed.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull asked what type of licenses did Mr. Justis have at the present time. Mr. Justis responded that he had hard crab, peeler pot, and dredging.

Associate Member Ballard moved that Mr. Justis be placed on year's probation. Motion was seconded by Associate Dr. Goodell. Motion carried unanimously.

PUBLIC HEARING: To consider an amendment to Regulation 4 VAC 20-720-10 et. seq., Pertaining to Restrictions on Oyster Harvest." The proposed amendment will extend the harvest of clean cull size oysters from the public grounds in the James River Seed and Clean

Commission Meeting

May 25, 1999

Cull areas through June 30, 1999.

Jim Wesson, Chief-Conservation and Replenishment, indicated that an emergency regulation was approved at the April Commission meeting to extend the season in the James River for 30 days. This request was a formality to extend the regulation until June 30, 1999.

Associate Member Davis asked if staff had any problems regarding the oyster stock. Dr. Wesson responded that for the past three weeks they had only caught 300 bushels, which indicated that the quota would not be met.

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

Associate Member White moved that the season in the James River be extended through June 30, 1999, contingent upon the quota not being caught. Motion seconded by Associate Member Gordy. Motion carried unanimously.

EDWARD H. BENDER: Reconsideration of request for a black drum fishing permit which was denied on March 23, 1999.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on Mr. Bender's request for a formal hearing to rehear the denial of a black drum permit requested at the Commission's March meeting. He informed the Commission that all the material from the March 23, 1999, meeting relating to Mr. Bender was included in the evaluation packages. He said the only thing staff had to add was Mr. Bender's verbatim comments made at that meeting. He then presented the comments to the Commission.

Commissioner Pruitt asked Mr. Bender if he had any witnesses. Mr. Bender responded no.

Edward H. Bender addressed the Commission. He said he was a fixed fishing device and fish trapper. He was asking for an exception to the black drum permit because they caught black drum. He said they caught approximately 20 to 30 a year. Mr. Bender said for conservation reasons they would keep the fish because they could not sell them, and it would help with their expenses if they could be able to sell the black drum.

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

Commission Meeting

May 25, 1999

Associate Member Cowart moved to deny the black drum permit request based on the closed fishery and it was the desire of the Commission that no more permits be issued for that fishery. Motion was seconded by Associate Member White. Motion carried unanimously.

PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-80-10 et. seq., "Pertaining to the Setting of Fishing Devices Proximate to the Chesapeake Bay Bridge Tunnel," to extend the prohibited net fishing zone to the new bridge spans.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. Mr. Travelstead said a regulation had been in place that prohibited the setting of gill nets and fixed fishing devices along the Chesapeake Bay Tunnel for more than 20 years. However, since the second span of the bridge had been completed, it was necessary to amend the regulation to apply the prohibited area to the second span. Mr. Travelstead then discussed the recommendations made by the Finfish Advisory Committee:

1. The distance specified in the regulation should be measured from the outer edge of each trestle rather than the centerline of the road bed to improve enforcement.
2. The distance specified by the regulation be reduced from 300 yards to 250 yards to lessen the additional closed area created by the new span and to account for its measurement from the outer edge of the roadbed.
3. Exempting a portion of the closed area for drift net harvest of striped bass on the Eastern Shore side of the bridge tunnel along the northwest side of the new span, where a traditional striped bass fishery occurred with drift gill nets in November and December.

Mr. Travelstead said there were concerns expressed for the combination of gill nets and recreational fishermen and the potential conflicts that might occur in the proposed exempted area. He said as a compromise, a day of week addition to the exempted area may be considered, which would accommodate both the commercial and recreational fisheries. Mr. Travelstead stated that if the Commission agreed with the compromise, an incorporation of the exempted area into the regulation would be necessary. He said during the period of midnight Sunday to midnight Wednesday gill netting would be allowed in this area, then from Thursday,

Commission Meeting

May 25, 1999

Friday, Saturday, and Sunday the area would be closed to gill netting and opened solely to recreational fishing. Accordingly, staff recommended adoption of the regulation effective June 1, 1999, which would incorporate the recommendations of FMAC with the addition of a day-of-week closure in the exempted area.

Associate Member Ballard asked how many persons were engaged in the gill net fishery. Mr. Travelstead responded that there were approximately two dozen fishermen that fished that area.

Mr. Travelstead then presented four letters that were received recently opposing the exempted area, which included a letter from Delegate Bob McDonnell from Virginia Beach. Mr. Travelstead read the letter from Delegate Bob McDonnell into the record. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing.

Peter Nixon, President of the Lower Chesapeake Watermen's Association, addressed the Commission. He said the current regulation had been a point of contention for many years, for different reasons. He said because another span was added to the bridge tunnel, a commercial watermen should not have to give up any additional Bay area for no good practical purpose. He also said that if there was another good area recreational fishermen could fish unimpeded that would be good enough. He said there needed to be a compromise on the drift nets. Other comments are a part of the verbatim record.

Bob Merten, past President of Central Chapter of the CCA Virginia, and a past public education officer for the Third District of the Coast Guard Auxiliary, addressed the Commission. He said the CCA was opposed to drift nets in that portion of the Bay, because it would conflict with the recreational fishermen. He said there was a great deal of money spent there in November and December for the tournament and they recognized it as an IGFA prime spot. He was also concerned that it was a safety issue. Other comments are a part of the verbatim record.

Tom Powers, representing the CCA Finfish Committee, addressed the Commission. He said they supported the 250 yards on the outside of the span. He said he felt that was fair because it would take away a little from the recreational fisherman near the Island and a little from the commercial fishery near the high rise. The CCA was opposed to the exclusion for drift gill nets for the last two miles of the bridge. He said they were opposed to the regulation, but if the regulation was adopted the CCA requested consideration for the following: 1) release of the

Commission Meeting

May 25, 1999

net should not be allowed within one hour of high tide or low tide and it should occur on an incoming tide; 2) the net should not be released closer than 200 feet from the outside edge of the structure; and 3) the exclusion zone should extend from the intersection of 211,000 feet to north 565,000 on the Virginia Statute Grid. At no time should a gill netter set their net where it would impede the hook and line fishermen who were actively engaged in fishing anchored or tied to the bridge structure. He said they also agreed with staff's recommendation of a midnight Sunday to Midnight Wednesday restriction.

Michael Lee Amberson, an angler, addressed the Commission. He said he agreed with the CCA recommendation.

Ernie Bowden, President Eastern Shore Watermen's Association, addressed the Commission. He gave comments regarding the fishing area and said that 98 percent of the fishermen got along fine. He said the people from Cape Charles had lost so much and requested the Commission not to pass a new regulation that would keep them out of the area. He said they supported the day of week proposal.

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

Associate Member Davis commented on the importance of the game fish tournament. He said last year was the first year of the World Striped Bass Championship. He said they had a large group last year and they were excited and expected the tournament to grow. A discussion followed.

Associate Member Cowart suggested perhaps a good idea would be to get two people from the CCA and two people from the commercial industry and allow them to discuss their differences. He said he felt there should be some compromise. With a group of four people, under the guidance of a staff and Commission member, they could determine if there was some common ground that they could agree upon. He said he did not feel comfortable making the decision today, and perhaps recommendations could be brought back to the meeting next month for a decision. Mr. Cowart then recommended that Mr. Richard Welton from the CCA and Mr. Pete Nixon from the commercial industry be a part of the group.

The Commission agreed with the recommendation.

Commissioner Pruitt then recommended Mr. Bob Merten to represent the recreational community and Ernie Bowden from the commercial industry, Associate Member White would chair the group, and Mr. Travelstead would staff the meeting.

Commission Meeting

May 25, 1999

PUBLIC COMMENTS.

After a brief discussion, the Commission agreed to accept the public comments and defer the crab issue until 3:00 p.m.

Louis Ewell from Saxis addressed the Commission. He said he had been crabbing all his life and in 1991 he had a heart attack, and in 1993 he had cancer. He requested that the Commission allow him to get his crabbing license. No action was taken by the Commission.

The Commission agreed to take a 20 minute break and return to hear the crab issue.

PUBLIC HEARING: Consideration of proposed crab regulations to terminate all crab license sales and transfers of licenses, to require the tagging of all crab pots and peeler pots, to reduce the number of peeler pots from 400 to 200 per license, to establish minimum and maximum size limits on female crabs, and to establish a 1:00 p.m. daily time limit on crabbing.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the five proposed regulations as follows:

1. A moratorium on the sale and transfer of all crabbing licenses, in addition to a prohibition on the issuance of all crab licenses via the hardship exception process.
2. A requirement to mark crab pots and peeler pots with a tag;
3. A reduction in the number of peeler pots per licensee from 400 to 200;
4. A size limit on mature female crabs; and,
5. A 1:00 p.m. daily time limit on crab potting and peeler potting.

Mr. Travelstead said that staff had examined each item and met with the Crab Management Advisory Committee (CMAC), who commented on all the items. In addition, they had

Commission Meeting

May 25, 1999

received written comments from the Virginia Institute of Marine Science (VIMS). Mr. Travelstead then presented slides and gave staff's comments on each item. Comments are a part of the verbatim record. He said the license moratorium was the most important issue before the Commission primarily because of the fishing effort increases in the crabbing industry.

Associate Member Davis asked how many pots were authorized between 1994 and 1999. Mr. Travelstead said he did not have the exact number with him. A discussion followed.

Mr. Travelstead stated that the Crab Advisory Committee supported the freeze on a 10 to 1 vote; but the Committee asked for three modifications: 1) that the freeze not apply to the crab shedding tank license, because crab shedding tanks were not a harvesting gear. He said staff agreed that the freeze should not apply to shedding tanks; 2) that the freeze not apply to transfer of licenses between immediate family members, when the holder of the license died or was incapacitated; 3) that the freeze sunset after 12 months and be reconsidered by the Commission. Mr. Travelstead stated that VIMS supported the freeze.

Mr. Travelstead gave comments on the tagging of crab pots and peeler pots. He said many industry members believe that imposition of a pot tagging system would result in the most significant reduction in effort. Comments are a part of the verbatim record. Mr. Travelstead said VIMS favored the tagging program because it would enable better enforcement of the pot limits and increase the accuracy of the fishing effort estimates. He said the Crab Management Advisory Committee discussed the issue at length and then voted in favor of the tagging system 8 to 3. Some of the concerns expressed of using the tagging systems would be the loss of tags due to pot theft and vandalism; haul seiners destroying their gear, and loss of pots due to bad weather. Mr. Travelstead said most of the Crab Management Advisory Committee members supported a dual tagging systems for the buoys and the crab pots. He said staff proposed a tagging program that supported the following elements:

- 1) Tags be issued in the amount equaled to 110 per cent of the number of pots a person would be eligible to fish.
- 2) All tags should be numbered, with each fishermen having the same number for all their tags. Replacement tags would differ in color from the original tags.
- 3) Additional requests for tags would be allowed beyond the 10 per cent initially allotted, with the approval of a review board

Commission Meeting

May 25, 1999

established by the Commission.

- 4) In the event of a major storm, which resulted in the loss of pots, the Commission should be able to suspend the tagging requirements until new tags could be issued.

Mr. Travelstead said a pot tagging system would be experimental. He said the program could not be implemented with the current staff. The tagging system would require two additional staff members. The program could cost as much as \$200,000 for tags, depending upon how many are in the fishery, how many people would remain in the fishery, and how many pots were fished. Mr. Travelstead said the benefits of such a tagging program far outweighed the minor inconveniences that might develop with the implementation of the program. He said a tagging program could not be put in place today because of the lack of funding and staff to do the program. The funding for the program would also have to go to the General Assembly. Mr. Travelstead said if the Commission was in favor of a tagging program, it should become effective April 1, 2000.

Mr. Travelstead then briefed the Commission on the reduction of peeler pots from 400 to 200. He said a great deal of discussion was generated by the Crab Advisory Committee on that issue. He said some members said it would result in a significant economic burden on some fishermen. He said since 1994, peeler pot licenses had increased 77 percent. Mr. Travelstead presented slides that showed the different levels of increased effort in the fishery. Comments are a part of the verbatim record. He further stated that the CMAC noted that the Commission had been responsible for the increases in the peeler pot effort through the granting of extensive numbers of hardships, and they felt that fishermen that had been in the fishery since 1995 should not be penalized for the mistakes of the Commission.

Mr. Travelstead described the advisory committee's recommendations on controlling fishing effort in the crab fishery. He stated that he did not think some of the advisory committee's recommendations on taking away unused licenses could be done without readvertising. Comments are a part of the verbatim record. Associate Member Davis asked how these recommendations reduced actual fishing effort. There was a short discussion on the effect of the recommendations and other alternatives to reduce the fishing effort in the peeler pot fishery. Comments are a part of the verbatim record.

Mr. Travelstead said the advisory committee opposed size limits on mature females. He mentioned that cull rings were, in effect, imposing a size limit, but that the current allowance to block cull rings in the mainstream Bay should be removed. Comments are a part of the

Commission Meeting

May 25, 1999

verbatim record.

Mr. Travelstead said there was universal opposition to a daily time limit; he indicated that for several reasons this would not work well for the pot fishery. Mr. Travelstead said a daily time limit may effectively reduce the number of part time crabbers in the fishery, but that he felt that was a decision that should be carefully considered by the Commission. Comments are a part of the verbatim record.

Mr. Travelstead said that the advisory committee and staff fully supported the concept of a habitat network to protect the spawning migration of crabs to the mouth of the Bay. Comments are a part of the verbatim record.

Dr. Goodell commented on the difficulty in defining a part time crabber and lack of proposed regulations on the recreational pot fishery. Comments are a part of the verbatim record.

An industry representative stood up and commented that many peeler fishermen had been unable to participate in some of the planning meetings leading up to today's public hearing.

Mr. Pruitt opened the public hearing.

Delegate Glen Croshaw, from Virginia Beach, spoke in favor of protecting the crab population and encouraged the Commission to consider some of the measures being proposed. Comments are a part of the verbatim record.

Mr. Pruitt commented on some of the input he had from members of the General Assembly. He said that Delegate Jones from Suffolk had called and stated that he had a constituent who opposed the time limit. He said Delegate McDonnell had sent a letter supporting protection of the crab resource. Mr. Pruitt indicated that Delegate Leo Wardrup and Senator Warren Barry had some participation in previous meetings and were concerned about protecting the crab resource as well. Comments are a part of the verbatim record.

Commissioner Pruitt stated that he would like to limit the testimony to 25 minutes each of pro and con, regardless of the number of speakers.

Mr. Harry Savage, peeler potter and crab shedder from Saxis, spoke in opposition to the proposed measures on the peeler fishery. He indicated that the proposed regulations on peelers were more of an allocation measure than a conservation measure. Comments are a part of the verbatim record.

Commission Meeting

May 25, 1999

Mr. Bob Burton, CCA, submitted a letter by Bob Pollard, CCA State Chairman, supporting the conservation program being proposed. Mr. Burton, speaking as a citizen, also asked the Commission to make their decision based on the benefits to all citizens of the Commonwealth. Comments are a part of the verbatim record.

Mr. Doug Jenkins, Twin Rivers Waterman's Association, spoke in opposition to the proposed regulations. He remarked on the similarity between the management of striped bass in the 1980s and the current crab situation. He stated that he thought there were a lot of small crabs and that the crabs would come back. Comments are a part of the verbatim record.

Mr. Ernest Bowden, President, Eastern Shore Working Waterman's Association, said he thought there had been too much worry about potential pot effort. He indicated that the fishery had always fished much less gear than they were entitled to by license. He stated his association was opposed to the size limits, daily time limits, and the peeler pot reduction from 400 to 200. They also did not like the sanctuary proposal yet because there were no specifics. He indicated that the pot tagging may be okay if some of the specifics could be worked out. He also said they supported license transfers in certain situations. Comments are a part of the verbatim record.

Associate Member Goodell asked Mr. Bowden's opinion on the proposal to take away unused licenses. Mr. Bowden commented on some of the reasons people held unused licenses; he indicated one big reason was fear that they could not get a license in the future.

Associate Member Ballard asked if they were opposed to the cull ring recommendation made earlier. Mr. Bowden said no, but that the cull rings could have big effects dependent on the geographic location where they were imposed. Comments are a part of the verbatim record.

Mr. Freeland Mason, President of Virginia Waterman's Association, spoke in opposition to taking action today. He indicated he felt that a more comprehensive plan was necessary before taking action. He also spoke in opposition of freezing the transfer of licenses. Mr. Mason described some of his activities in selling crab licenses in hardship situations. On pot tagging, he said he favored stickers and a simple system for replacement of lost tags. Comments are a part of the verbatim record.

Mrs. Wheatley, speaking on behalf of crabber's wives on Tangier, described their opposition to further regulations. Comments are a part of the verbatim record.

Commission Meeting

May 25, 1999

Mr. Warren Cosby, York River Working Waterman's Association, handed out some material he had compiled using crab dredge fishery information from Rob O'Reilly and Jack Travelstead. He described the spawning potential of female crabs in the dredge fishery and suggested that the Commission should consider protecting female crabs in the winter dredge fishery. Comments are a part of the verbatim record.

Mrs. Paige Hogge, Vice-president of Virginia Soft Crab Association, presented her association's views on the proposed measures. She said her association supported the moratorium on new licenses, but opposed the measure preventing transfers. She said her association also opposed the proposed 400 to 200 peeler pot reduction and the 1 p.m. daily time limit. Mrs. Hogge said they did support the tagging requirement. She said that her association had no opinion on measures related to the hard crab fishery. Comments are a part of the verbatim record.

Mr. William Pruitt, Eastern Shore crabber, spoke in opposition to the proposed 200 peeler pot limit and the daily time limit. Comments are a part of the verbatim record.

Mrs. Francis Porter, Virginia Seafood Council, spoke in support of the staff recommendations. She said the Council was concerned about the unused crab licenses. She said that although the Council had suggested the daily time limit, they now understood that it may be too difficult to impose. Comments are a part of the verbatim record.

Mr. Jamie Green, Gloucester, spoke in opposition to the pot tagging requirement. He said he fished in the Bay and sometimes lost 20-30 pots per day. Comments are a part of the verbatim record.

Mrs. Cindy Parks, Tangier, testified that she was opposed to the freeze on future licenses. She was worried that the potential inability of young fishermen to crab would seriously hurt their community. Comments are a part of the verbatim record.

Mr. Thomas Wright, Chesapeake, suggested some language to put on the proposed crab tags to help discourage crab pot theft and destruction. Comments are a part of the verbatim record.

Mr. Vermadell Hudnall, spoke in favor of allowing transfers of licenses. Comments are a part of the verbatim record.

Mr. Strickland Crockett, treasurer of the Tangiers Waterman's Association, spoke of the importance of the commercial fishing industry. He said he opposed further regulations.

Commission Meeting

May 25, 1999

Comments are a part of the verbatim record.

Mr. Jan Marshall, Tangier, thanked the Commission for their action on oysters earlier in the year. He spoke in opposition to further regulations and asked the Commission to wait two years before taking action. Comments are a part of the verbatim record.

Mr. Kelly Place, spoke in favor of equitable regulations affecting all segments of the fishery. He said he did not think the fishery was in as bad a shape as had been indicated. Comments are a part of the verbatim record.

Dr. Rob Brumbaugh, Chesapeake Bay Foundation, spoke of configuring measures that would help fishing communities like Tangier survive. He commented that some license transfers would be reasonable. He also spoke in support of developing an overall management plan. Comments are a part of the verbatim record.

Mr. Jeff Crockett, President of the Tangier Waterman's Association, commented on the limits of scientific data. He said he felt that after looking at the harvest data that they were on track with the plan that the Commission had put in place two years earlier. He indicated that although he did not necessarily see the need for regulations, that they could live with the pot tagging requirement and the freeze on new licenses; however, he commented that pot losses could be high and that a 10% tag allowance for tag loss was not sufficient. He also said in the case of a license freeze that transfers had to be allowed to help the young people on Tangier get into the fishery. He said they were opposed to all of the other proposed measures. Comments are a part of the verbatim record.

Mrs. Rita Pruitt, asked about the effect of the proposed freeze on her boys. Comments are a part of the verbatim record.

The public hearing was closed.

Associate Member Davis reminded the Commission that some of the hardship cases approved in February and maybe even earlier could potentially be withdrawn (he was troubled by reports that some of licenses issued in the hardship cases had been sold). Associate Member Hull commented that he would like to see transfers be prohibited for any hardship licenses issued in 1999. Mr. Davis moved that they approve Item 1, moratorium on the sale and transfer of all crabbing licenses for a 12 month period. Dr. Hull commented that it should only apply to inactive licenses. There was a discussion on the appropriate period by which they should define inactive. Comments are a part of the verbatim record. Mr. Davis clarified his motion by adding to it an exception that within an immediate family when there was a hardship (death or

Commission Meeting

May 25, 1999

incapacitation of the licensee) or a one in/one out cases (individuals selling their boat/gear and getting out of the fishery) a transfer could be allowed and an exception to crab shedding licensees. The motion was seconded by Mr. Ballard. There was additional discussion on the motion. Comments are a part of the verbatim record. The motion carried 7-0, with Mr. Cowart abstaining.

Associate Member Gordy commented that the proposed pot tagging system needed a little additional study. Mr. Davis moved that crab pots and peeler pots be required to have tags next year and that staff come back with more specific implementation steps. Mr. Hull said he thought that the specifics of the tagging system should be developed before the proposal was voted on. Mr. Ballard commented that the draft language in the proposed regulation on tagging was fairly specific, but that there were additional implementation steps that needed to be worked out by staff. Mr. Cowart commented that more work on the implementation details should be done with industry. Mr. Davis reiterated that he thought it was important to take action today. The motion was seconded by Mr. Ballard. There was a continued discussion on the pot marking proposal and the need for additional input on the specifics of implementation. Comments are a part of the verbatim record. Mr. Davis further clarified his motion by adding a provision for an implementation committee to meet and come back to the Commission with specific recommendations on the pot marking system. Mr. Ballard restated Mr. Davis' motion to adopt Regulation 4 VAC 20-10-60, the pot tagging requirements, parts A and B, and to ask the Commissioner to appoint an implementation committee for this regulation to be composed of Commissioners, staff members and the parties affected by the regulation. The motion carried unanimously.

Associate Member Cowart stated that he intended to abstain on the vote on the proposal to reduce the peeler pot limit from 400 to 200 pots. He said he was not sure which way the Commission should go based on the mixed testimony. Mrs. Gordy agreed with Mr. Cowart's uncertainty over how to act on this matter. Mr. Ballard spoke in support of the staff recommendation and the need to further explore the alternatives for regulation the fishing effort in the peeler fishery. Dr. Goodell said he thought that instead of an individual licensee pot limit, they should consider an overall industry pot limit of 200,000 peeler pots. He moved to set a goal of 200,000 peeler pots industry wide and to have staff come back in two months with recommendations on how to reach that goal. The motion was seconded by Mr. Davis. Mr. Hull asked how many potential pots were now licensed. Mr. Travelstead responded that there were 357,600 potential pots, and in 1994 there had been 202,400. Mr. Hull asked how many of the 357,600 were being fished; Mr. Travelstead said they did not have that information, but that they could figure it out. There was additional discussion on the motion. Comments are a part of the verbatim record. Motion carried 6-1, with Mr. Cowart abstaining.

Commission Meeting

May 25, 1999

Mr. Davis said that he liked Mr. Travelstead's suggestion to require that 2 5/16 inch cull rings in the Bay be required to be left open, instead of requiring size limits on mature female crabs. Mr. Davis made a motion to that effect. The motion was seconded by Mr. Birkett. Associate Members Ballard, Cowart and Hull stated that they could not support the motion because it needed further study. A vote on the motion failed, 2-5. Mr. Davis suggested that this issue be considered as part of the future agenda of the Commission when considering the other crab matters discussed previously. Comments are a part of the verbatim record.

Mr. Davis said he thought they should pass over Item 5, regarding the 1 p.m. daily time limit. Mr. Pruitt indicated that there appeared to be consensus on this issue and declared the item passed over.

Associate Member Ballard proposed that they have a public hearing in July to discuss the reduction of peeler pots from 400 to 200 per license and the elimination of the inactive licenses. After further discussion, it was determined that the previous motion had already provided for having a public hearing on these matters.

Mr. Davis suggested including a discussion about crab dredging and sanctuaries at the July hearing. Mr. Pruitt commented that the General Assembly had directed the Commission to study the crab dredge fishery and report back by December 15. Comments are a part of the verbatim record.

Dr. Goodell also asked that staff come back within 60 days with a proposal for a baywide protected habitat network for blue crab in the Chesapeake Bay. Mr. Travelstead responded that a recommendation could not be developed within 60 days because VIMS was working on a proposal, but did not expect results until the end of the year at the earliest.

Mr. Cowart commented that they should consider peeler pot limits being imposed on the boat instead of allowing multiple licenses and pot limits being fished from the same boat. After further discussion, it was determined that this could be considered at the July hearing. Comments are a part of the verbatim record.

Mr. Pruitt adjourned the meeting at 5:30 p.m.

Commission Meeting

May 25, 1999

William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary