

MINUTES

November 16, 1999
Newport News, VA 23607

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

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Lake Cowart, Jr.)	
Sheppard H. C. Davis)	Associate Members
Laura Belle Gordy)	
Henry Lane Hull)	
John W. White)	
Kenneth Wayne Williams)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		MIS Director
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Administration & Finance
Debbie Brooks		Secretary-Administration & Finance
Steven Bowman		Chief-Law Enforcement
Lewis Jones		Deputy Chief-Law Enforcement
W. Bruce Ballard		First Sergeant
John Croft		First Sergeant
Dana Mise		First Sergeant
Dan Eskridge		First Sergeant
Arthur Walden		Marine Patrol Officer
Keith Nuttall		Marine Patrol Officer
Dr. Gene Burreson		Director of Research
Tom Barnard		Virginia Institute of Marine Science
Bob Orth		Virginia Institute of Marine Science
Dr. Jim Wesson		Virginia Institute of Marine Science
		Chief-Conservation and Replenishment

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Jack Travelstead
Rob O'Reilly

Chief-Fisheries Management
Assistant Chief-Fisheries Management

Roy Insley

Head-Plans and Statistics

Stephanie Iverson
Ellen Cosby
Lewis Gillingham
Jim Peters

Fisheries Management Specialist, Sr.
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist

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

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

others present:

Heath Bray
James W. Whitaker
Rich Collins
Jay Foster
Roger McKinley
Barney McLaughlin
William P. Jenkins
Jim Hayden
Pete Nixon
Catherine Davenport
H. J. Deibler
H. M. Jewel
D. McCellen
Jose Simoes
Nancy Taylor
Kelly V. Place

David Sump
Karen Fireholk
G. Stuart Grattan
Ben Flint
Bell Bush
James L. Dull
Don Lancaster
Tom Powers
Douglas F. Jenkins
William S. Reynolds
Rob Brambraugh
R. Shield
Ronnie Pruitt
Jane Oehurst
Warner Hessler
Larry Snider

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Tony Ashburn

Roger Bush

and others.

Commission Meeting**November 16, 1999****1. MINUTES** of previous meeting.

Mr. Pruitt asked for corrections to the draft minutes. There being none, Associate Member White moved to adopt the minutes as drafted; the motion was seconded by Associate Member Williams and was adopted unanimously.

**** APPROVAL OF AGENDA**

Associate Member Hull requested that Captain Bill Jenkins from Reedville be allowed to speak regarding an oyster ground leasing matter on Gaskins Pond. It was agreed that he could be heard during the public comment period (Item 16). Associate Member Hull made a motion to adopt the agenda as discussed. The motion was seconded by Associate Member Ballard and adopted unanimously.

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

Mr. Bob Grabb, Chief - Habitat Management Division, briefed the Commission on the following four Page 2 items (projects over \$50,000 that are uncontested).

2A. RAWLEY SPRINGS, LC, #98-1457, requests authorization to construct a 40-foot long by 18-foot wide concrete bottomless box culvert road crossing over Gum Run in Rockingham County. Recommend a royalty of \$360.00 for encroachment over 720 square feet of State-owned subaqueous bottom at a rate of \$0.50 per square foot.

Encroachment over 720 sq. ft.	
State-owned subaqueous bottom @	
a rate of \$.50 per sq. ft.....	\$360.00
Permit Fee.....	\$ <u>100.00</u>
Total	\$ 460.00

2B. COX COMMUNICATIONS, #99-1973, requests authorization to install, by directional bore method, a 276 linear foot CATV crossing under the Northwest River immediately upstream of the Route 168 bridge in the City of Chesapeake. Recommend a royalty of \$276.00 for the encroachment under 276 linear feet of State-owned subaqueous land at a rate of \$1.00 per linear foot.

Encroachment under 276 Ln. ft. of	
State-owned subaqueous land	
@ \$1.00 per ln. ft.....	\$ 276.00

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Permit Fee.....		<u>100.00</u>
	Total	\$ 376.00

- 2C. OCEAN MARINE, L.L.C., #99-1507**, requests authorization to dredge by mechanical method 9,000 cubic yards of State-owned subaqueous bottom from the Southern Branch of the Elizabeth River and to widen by two (2) feet a 1,350 feet section of an existing concrete marginal wharf, to construct two (2) 75-foot long travel lift piers, a 210-foot syncrolift system, a 370-foot marginal wharf, three (3) commercial piers and a dockmasters station, creating 129 wet slips adjacent to their property situated upstream of Riverfront Park in the City of Portsmouth. Recommend royalties of \$4,050.00 for the dredging of 9,000 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard, and \$75.00 for the placement of nine (9) mooring dolphins at \$1.00 per pile. Further recommend an annual royalty of \$1,611.80 for the encroachment over 32,236 square feet of State-owned subaqueous bottom at a rate of \$0.05 per square foot.

Royalties for dredging of 9,000 cu. yds State-owned subaqueous bottom @ \$0.45 per cu. yd.....		\$4,050.00
Placement of 9 mooring dolphins \$1.00 per pile.....		75.00
Annual Royalty of \$1,611.80 for encroachment over 32,236 sq. ft.....		1,611.80
Permit Fee.....		<u>100.00</u>
	Total	\$ 5,836.80

- 2D. JPM, INC., #96-1342**, requests authorization to modify their previously issued permit to construct a 180-foot long bridge to include an increase in the width from 10 to 12 feet over Heartquake Creek in King and Queen County.

Permit Fee - Not Applicable

There were no questions from the Commissioners. There was no public comment. Associate Member Ballard made a motion to adopt the Page 2 items as presented. The motion was seconded by Associate Member White and adopted unanimously.

3. EXECUTIVE SESSION

Associate Member Ballard moved that the meeting be recessed and that the Commission immediately reconvene in executive closed meeting for the purpose of consultation with legal

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counsel and briefings by staff pertaining to the case of Roger McKinley and other specific legal matters regarding agenda items 4 through 8, requiring legal advice by counsel as permitted by subsection(A), Paragraph (7) of Section 2.1-344 of the Code of Virginia.

The motion was seconded by Associate Member Gordy and was adopted unanimously.

When the Commission returned to regular session, Associate Member Davis moved:

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

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

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

The motion was seconded by Associate Member Ballard. Commissioner Pruitt called for a roll vote. The motion was adopted 6-0, Associate Members Hull, Gordy, White, Ballard, Davis and Williams voting yes.

4. **SHOW CAUSE HEARING** to determine Mr. Roger McKinley's degree of responsibility as an agent and contractor for Mr. Willie E. Bush (#99-0340), pertaining to permit violations associated with a previously authorized dredging project adjacent to Old House Cove, a tidal tributary to Dividing Creek in Northumberland County. Continued from October 26, 1999, meeting.

Mr. Jeff Madden, Environmental Engineer - Habitat Management Division, briefed the Commission. Mr. Madden presented slides showing the areas being discussed. He indicated that Mr. McKinley began work before the final permit was issued and placed approximately 75 cubic yards of spoil material at an unauthorized site behind a failing bulkhead on property owned by Mr. Jim Kelly. He also showed that the spoil material placed at the original authorized spoil site was not positioned as authorized by the permit. He said when the unauthorized placement of spoil at Mr. Kelly's property was reported he talked with Mr. McKinley and they agreed that the 75 cubic yards of material should be moved from the area

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of the failing bulkhead, where it was subject to erosion, to a more stable area near some pine trees on the same property. Mr. Madden said that work had not yet been completed. He also noted that the applicant and his contractor had not provided the required post dredge survey to the Commission.

Mr. Madden presented a detailed chronology of events outlining when the work was done, when the permit was actually valid, when the unauthorized modifications occurred, and when and how he had communicated with the applicant and contractor on this case. Comments are part of the verbatim record.

Associate Member Ballard asked how the spoil placement differed from the permit conditions at the original spoil site on the applicant's property. It was determined that the differences in location were not significant, but that no silt curtain had been installed as required by the permit. Mr. Ballard also verified with Mr. Madden that the spoil placed on Mr. Kelly's property was not permitted.

Associate Member Williams asked if there had been an earlier permit for spoil placement at the Kelly site. Mr. Madden indicated there had been an earlier permit for the Kelly site and adjacent shoreline areas that was associated with another beach nourishment project proposed in 1989, but that VMRC permit was no longer active. Comments are part of the verbatim record.

Mr. Roger McKinley, contractor and agent for Mr. Willie Bush, spoke concerning the problems that had been raised for the project. He said he had sent a letter to Mr. Grabb, Chief - Habitat Management, summarizing his responses to the allegations that letter was a part of the Commission packet. On the issue of starting work before the permit was finalized, he said that he had read the permit document and interpreted it as being valid when the Commission adopted it. He also noted a conversation with Mr. Madden wherein he said he was told that as soon as the fees were paid and the permit document was notarized by the applicant that he could start work. On the matter of placement of the unauthorized spoil at the Kelly site, he said there was an active Corps of Engineers permit, that he had asked the wetlands board to reactivate their permit for the work. He had also met with Mr. Madden after-the-fact and had a discussion during which Mr. Madden indicated that if the spoil was moved to the more stable area near the pine trees on the Kelly property, and a letter was submitted requesting a permit modification, there should not be a problem. Comments are part of the verbatim record.

Commissioner Pruitt asked Mr. McKinley if he had spoken to any VMRC staff other than Jeff Madden. Mr. McKinley indicated that he had not.

Mr. Ballard asked Mr. McKinley to elaborate on the spoil placement at the original spoil site

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on the Bush property. Mr. McKinley said they had some problems with their truck getting stuck which required them to alter the placement of the material from that which was indicated on the original permit application. He said they did not install a silt fence because common sense indicated that the material was not moving and that a silt fence was not necessary. Comments are part of the verbatim record.

There was a discussion between the Commissioners, Mr. Madden, and Mr. McKinley concerning his conversations with Mr. Madden and about the specifics of the activities that had occurred at the Kelly site and what other future work was anticipated. Comments are part of the verbatim record.

Mr. Pruitt asked staff if this was a situation where staff could have administratively approved the modifications that Mr. McKinley had made. Mr. Grabb explained that the policy was to not approve modifications administratively for projects over \$50,000 unless they resulted in a lesser impact. He said in this case, staff probably would have approved the changes made at the original spoil site, but not the placement of the spoil at the Kelly site because of its proximity to the water. Mr. Grabb also reiterated that there was language on the permit document that clearly indicated that the permit was not valid until signed by all parties and that modifications to the permit conditions were not allowed. Comments are part of the verbatim record.

Mr. Bush, the applicant spoke briefly. He said he did not attend the pre-dredge conference where Mr. Madden and Mr. McKinley discussed the permit. He said Mr. McKinley had told him the Kelly site has been approved for spoil for ten years. Comments are part of the verbatim record.

There was another discussion about how Mr. McKinley could be so confused about the permit requirements. Mr. Ballard commented that he could understand Mr. Bush, the applicant, potentially being confused, but Mr. McKinley was a professional and should know better. Comments are part of the verbatim record.

Mr. Pruitt asked the Commissioners to consider the whole record and the human element. Associate Member Davis asked about an appropriate civil charge. Mr. Grabb responded that based on the civil charge matrix, for a case with minimal environmental impact and maximum deviation, the suggested charge was \$1800. Comments are part of the verbatim record.

Associate Member Davis made a motion to assess a \$5000 civil charge and write a letter to the Virginia Board of Contractors about Mr. McKinley's problems. Dr. Hull commented that he thought the proposed charge was an excessive penalty. The motion failed for lack of a second.

Associate Member Ballard then made a motion finding Mr. McKinley in violation of the

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permit because of the lack of the bathymetric survey and for not placing the spoil in the authorized location; in lieu of further enforcement action, he proposed a \$1800 civil charge. The motion was seconded by Associate Member White. After some discussion, Mr. Grabb was asked to write out the motion before final consideration. After the following case (Item 5) was heard, Mr. Ballard read the following motion:

I move that the Commission, after fully considering all of the documents and materials in the official record, including presentations by staff, and the testimony provided by Mssr. McKinley and Bush, find that Mr. McKinley violated the permit description and conditions #20 and #18 which required that the dredged material be suitably contained in the approved upland location depicted in the revised spoil site permit application drawing dated June 14, 1999, and that Mr. McKinley has failed to provide the Commission with the required post-dredge bathymetric survey within the time period specified.

In accordance with the provisions of Section 28.2-1213(B) of the Code of Virginia, I further move that the Commission, having found that substantial violations of the Commission's permit have occurred, consent to a civil charge of \$1800.00 by Mr. McKinley in lieu of further enforcement actions as permitted by law. The amount of the civil charge is in keeping with the civil charge matrix and is predicated on a finding that the environmental impacts attributable to the violations is minimal while the degree of deviation and non-compliance is major. Should Mr. McKinley be unwilling to consent to the civil charge proffered within thirty days, I move that this matter be referred to the Office of the Attorney General for initiation of the appropriate legal actions.

The motion was seconded by Mr. White. Motion carried 5-1, with Associate Member Davis voting no.

Civil charge..... \$ 1,800.00

5. **SOUTHERN STATES COOPERATIVE, INC., #98-1644.** Show cause hearing related to violation of a Commission-imposed permit condition, associated with the authorized installation of two (2) mooring dolphins, which prohibits side-to-side mooring of loaded grain barges for more than 24 hours adjacent to the Southern States facility on Indian Creek in the Town of Kilmarnock in Lancaster County.

Permit Fee - Not applicable

Mr. Jay Woodward, Environmental Engineer - Habitat Management Division, briefed the Commission. Mr. Woodward explained that a condition of the permit issued to Southern States in December 1998 allowed loaded barges to be rafted side by side for up to 24 hours and only

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allowed empty barges to be rafted end to end. He indicated that the condition was established as an aid to boats entering Boathouse Cove on Indian Creek adjacent to the Southern States mooring dolphins. Mr. Woodward stated that Southern States had contacted him in January and March of 1999 to clarify the intent of the permit condition. Comments are part of the verbatim record.

Mr. Woodward then described a report from Mr. Stanley Dull about loaded barges being rafted side by side between October 15 and October 20. He said he called Southern States and talked to Mr. Keith Bray on October 20, who explained that the barges had not been moved because of weather conditions, but they would be moved as soon as possible. Mr. Woodward said he was informed that the barges were finally moved on Friday, October 22, 1999.

Mr. Woodward said that staff sent Southern States a Notice to Comply letter on October 29, 1999 requesting a letter of explanation. He said a letter had been received by fax the morning of the Commission meeting and had been added to their packets. He said that staff believed that Mr. Bray understood the permit condition, and as a consequence staff recommended a \$1800 civil charge for non-compliance, in lieu of further enforcement action or removal of the mooring dolphins. Comments are part of the verbatim record.

Mr. Dave Sump, attorney for Southern States, spoke on behalf of his client. He said that the permit condition was clear and the facts presented by staff were correct. He said the missing factor was Hurricane Irene which was in the Bay area between October 16 and October 20. He said a tug had been assigned to the tow, but could not do the work because of gale force winds and small craft advisories later in the time period in question. He said his client thought it was imprudent to move the barges under those conditions. He also said that in general the 24 hour condition could be hard to meet because of tug breakdowns and weather, and that his client was interested in working out a procedure to notify staff of problems. Comments are part of the verbatim record.

Associate Member Ballard asked why the small craft advisories affected the tug. Mr. Sump explained that they thought because of the small craft advisories there would be little need by smaller boats to use the channel in that area.

Mr. Charles Place, a local resident, testified that the weather had not been bad during that entire time and that the barge could have been moved. He explained that he had been there 18 years and this sort of thing had happened before and that barges were twice as big now, which made navigation at the mouth of the cove even harder. Comments are part of the verbatim record.

Associate Member Davis asked how many people used the cove. Mr. Place said about 15 boats

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and 25 houses.

Mr. James Dull said he lived above the Southern States facility. He said this was not the first time this year that the barges had been rafted longer than 24 hours. He said he had contacted Southern States about it and had also seen side to side mooring of empty barges. Comments are part of the verbatim record.

Associate Member Hull noted that the permit approval in December 1998 was a compromise partially reached because of the conditions imposed to protect navigation. He said this was the first incident reported to the Commission, he thought weather was a factor, and that Southern States should not be punished. Comments are part of the verbatim record.

Associate Member Davis remarked that the property owners rights should be equally considered. Associate Member Gordy asked if boats could get by if two barges were moored side by side. There seemed to be some agreement that a boat could go by based on aerial photos. Mr. Pruitt commented that this should not happen again without extenuating circumstances. Mr. Ballard commented that he thought that the weather had been poor the first few days, but that the barge should have been moved after that. Comments are part of the verbatim record.

Associate Member Hull moved to dismiss the matter. The motion was seconded by Associate Member Williams. Mr. Davis commented that the property owners should report future incidents to the staff for the record. The motion was adopted 4-2, with Mr. Ballard and Mr. Davis voting no.

6. **EDWARD G. HART #99-1329**, requests authorization to construct a 186-foot timber bulkhead adjacent to his property situated along the Mattaponi River in King and Queen County. A wetlands permit is required.

Permit Fee - \$10.00

Mr. Jeff Madden, Environmental Engineer - Habitat Management Division, briefed the Commission. Mr. Madden presented slides showing the areas being discussed. He said the proposed project was two miles south of the King and Queen Courthouse on the Mattaponi River. He said the applicant wanted to install a bulkhead to protect upland trees and prevent undercutting along the bank. He indicated that while King and Queen County had adopted the model wetlands ordinance, they did not have a board yet, so the Commission was charged with acting as the wetlands board. He stated that a public hearing for the application was held on October 22, 1999. He said only the applicant's wife, Mrs. Hart, was present. Mr. Madden indicated that staff recommended approval.

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Associate Member Davis made a motion to approve the application. The motion was seconded by Associate Member White and was adopted unanimously.

7. **WILLIAM E. JONES #99-1719**, requests authorization to install 218 linear feet of riprap revetment adjacent to his property situated along the Mattaponi River in King and Queen County. A wetlands permit is required.

Mr. Madden again briefed the Commission. He indicated that this proposal was very similar to Item 6 and was about one-tenth of a mile downstream. Mr. Madden showed slides of the bank area to be bulkheaded. He noted that this project differed somewhat from the previous project in that the topography of the bank was not uniform. He said the bank was about eight feet high on the outer edges and about two feet high towards the middle. He stated that a public hearing was held on October 22, 1999. Only applicant's agent, Mr. Jay Foster was present. Mr. Madden said staff recommended approval of the project if the applicant agreed to revise their proposal to more closely follow the contour of the bank. Comments are part of the verbatim record.

Mr. J.L. Foster, agent for the applicant, stated that he agreed with the staff recommendation and would submit revised drawings to reflect that.

Associate Member Williams moved to approve the application as recommended by staff. The motion was seconded by Mr. Davis and carried unanimously.

The Commission broke for lunch. Associate Member Cowart joined the meeting after the lunch break.

8. **BARNEY McLAUGHLIN, #99-1094**, requests authorization to construct a joint-use, noncommercial, open-pile pier extending 50 feet channelward with a 16-foot by 40-foot floating platform, two 5-foot by 35-foot tending piers, eight mooring piles for two boat lifts, two 800 square foot, open-sided, covered boat houses and a 15-foot by 80-foot joint-use boat ramp extending 50 linear feet channelward of mean low water adjacent to his property situated along the Appomattox River in Chesterfield County. The project is protested by adjacent property owners. A wetlands permit is required.

Mr. David Bower, Environmental Engineer - Habitat Management Division, presented slides and briefed the Commission. He said the proposed ramp was to be shared by three adjacent parcel owners and the pier would be shared by two of the parcel owners. Mr. Bower pointed out two other boat ramp facilities on the Appomattox River within several miles of the

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proposed ramp. Mr. Bower stated that Chesterfield County did not have a wetlands board and that the Commission would be acting as the Board. He said a public hearing was held on October 28, 1999. Mr. Ellen, an adjacent property owner, was present and protested the proposal.

Mr. Bower said that comments received from VIMS indicated that the width of the proposed ramp was excessive and would have an impact greater than necessary; they recommended a 12' by 15' ramp. Mr. Bower said that because there were other ramp facilities in the area, staff did not recommend approval of the ramp; he said staff had no problem with the other proposed structures. Comments are part of the verbatim record.

Mr. Barry McLaughlin, applicant, spoke in support of his proposal. He said he had proposed a ramp 15' by 50' to allow him to get to deeper water. He said a water depth of six feet was not reached until you were 30 feet offshore. He commented that the other ramp facilities charged a fee, were crowded and were about a 20 minute drive away; he also mentioned his driveway was long and steep and not fun to pull the boat out on. He also indicated that he had always had a small boat ramp and would be willing to reduce the size to 12' by 30'. Comments are part of the verbatim record.

Associate Member Ballard asked Mr. McLaughlin why he needed a ramp and a boat lift structure. Mr. McLaughlin responded that washing and servicing his boats would not be easy from the lift. He speculated that for the three parcel owners using it, the ramp may be used once per week. Comments are part of the verbatim record.

Mr. Richard McLaughlin, father of the applicant and one of the parcel owners, noted that one of the existing ramp facilities was not accessible at low tide and was not for larger boats. He also said the Hopewell ramp was too crowded. He said he would use the ramp for his bass boat and for a sailboat for his grandchildren. Comments are part of the verbatim record.

No protestants were present. There was no public comment.

Associate Member Davis moved to approve the application with the exception of the boatramp recommended by staff. The motion was seconded by Mr. Ballard. The motion carried unanimously.

Wetland permit.....	\$ 25.00
Subaqueous permit.....	<u>10.00</u>
Total	\$ 35.00

9. DISCUSSION: Commission consideration and policy guidance regarding the

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removal and transplantation of submerged aquatic vegetation (SAV) from beds in Virginia's tidal waters to both in-state and out-of-state locations for mitigation of project impacts and/or as habitat enhancement.

Mr. Jay Woodward, Environmental Engineer - Habitat Management Division, made a few brief comments about the discussion item, and then introduced Dr. Bob Orth from VIMS. Dr. Orth commented that SAV transplanting had variable results, and that if transplantation for mitigation projects was allowed there should be a fee. He said that Maryland did not allow SAV removal unless it was part of a university project. Dr. Orth indicated that the VMRC and VIMS staff were interested in getting Commission authorization to develop an appropriate protocol and policy for this type of activity in Virginia. Comments are part of the verbatim record.

Associate Member Davis made a motion encouraging VMRC staff to work with VIMS staff to develop a protocol and policy, to be reviewed by the Commission at a future meeting. The motion was seconded by Associate Member Ballard and carried unanimously.

10. DISCUSSION: Allowing for the use of interchangeable peeler and hard crab pots.

JACK TRAVELSTEAD, CHIEF-FISHERIES MANAGEMENT, briefed the Commission on Mr. Freeland Mason's request regarding interchanging hard crab pots with peeler pots. Comments are a part of the verbatim record. A discussion between staff and Commission members followed regarding interchanging peeler pots with hard crab pots and using cull rings. Mr. Travelstead said based on staff's concerns, he did not think the issue should go to public hearing at this stage. In addition, staff had not received many requests for the change, other than Mr. Mason. Mr. Travelstead also mentioned that this issue had not been discussed with the Crab Management Advisory Committee and that he felt it should be discussed with that committee.

Mr. Freeland Mason was offered the opportunity to make a statement regarding staff's recommendation.

Freeland Mason addressed the Commission. He said the reason he proposed using interchangeable crab pots was because the watermen would have less expense in gearing up. Mr. Mason explained that the regular peeler pot was not eligible for the interchanging of crab pots because the wire used could not stand up to the general usage. Other comments are a part of the verbatim record. He said he felt the proposal was deserving of a public hearing.

Acting Chairman White placed the matter before the Commission.

A brief discussion followed between Commission members regarding the proposal going to the

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Crab Advisory Committee before a public hearing was scheduled. Comments are a part of the verbatim record.

Associate Member Davis moved that the proposal be taken before the Crab Management Advisory Committee and then the Commission could decide whether a public hearing would be scheduled. Motion was seconded by Associate Member Gordy.

Associate Member Hull commented that based on the language by the General Assembly which adopted the legislation and gave the Commission the option, he felt a public hearing should be held after the Crab Management Advisory Committee had met. After a brief discussion between Commission members, the question was called.

Motion carried unanimously.

Item 11: FAILURE TO REPORT COMMERCIAL HARVEST.

Mr. Peters was not available at this time and the Commission moved to the next agenda item.

ITEM 12: PUBLIC HEARING: Allowable options for achieving ASMFC striped bass requirements for fishing year 2000.

Rob O'Reilly, Assistant Chief-Fisheries Management, briefed the Commission on ASMFC's proposal regarding the fishing mortality rate on 8-year old and older striped bass. He said all of staff's proposals were passed at the recent ASMFC's annual meeting. Mr. O'Reilly then briefed the Commission and presented slides on the four options staff had proposed. He also presented information regarding the effect of stock size and effort on the fishing mortality rate. Comments are a part of the verbatim record.

Mr. O'Reilly provided the Commission information on the concerns of the other States regarding the 14% reduction required by ASMFC. He said Massachusetts and New York were the states dominant in taking 8-year old and older fish in the 1998 harvest. However, Massachusetts, New York and New Hampshire would not be required to put in the full 14% reduction, but only a part of the 14% reduction.

Mr. O'Reilly provided information to the Commission regarding 30 letters received and their support for option 1, which would take proposal A and C, and the slots limits in both fisheries. He said there were 11 persons that were against the commercial closed period. Mr. O'Reilly stated that Mr. Warren Cosby from the Upriver and Croaker Landing Watermen's Association

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called and supported the option to close the last week of December. He also stated that several E-mails had been received that supported the slot limit option for both fisheries, but did not support a December closed period for the commercial fishery. There were two responses that supported the recreational slot limit.

Commissioner Pruitt opened the public hearing.

Jim Deibler, Virginia Charter Boat Association, addressed the Commission. He said that they were led to believe that there would be a slot limit and there would be one fish limit that they could keep above the maximum size. Other comments are a part of the verbatim record.

Commissioner Pruitt said that was correct.

Mr. Deibler said his Association would be in favor of the recreational slot limit with the one fish in excess of the maximum size limit. Mr. Deibler gave comments regarding the ASMFC's coastwide reduction proposal and how it affected the Virginia watermen in relationship to other states. Comments are a part of the verbatim record.

Ernie Bowden said he agreed with the charter boat spokesman. He gave comments about Massachusetts not producing any striped bass, but they were catching half of the 8-year olds on the entire coast. He said that was an issue of right and wrong. Comments are a part of the verbatim record.

Associate Member Ballard requested that Mr. Bowden explain his theory regarding the 60% discard mortality that ASMFC was not counting in the commercial or recreational fishery.

Tom Powers, representing the Coastal Conservation Association, said they supported the modified slot limit with the 34 inch maximum size for the second fish for the recreational fishery. He said the two reasons for supporting that recommendation was to reduce and release mortality rate as fewer fishermen would cull smaller fish after they have been placed in coolers and live wells. The second reason was that of the two choices that would be the most equitable solution for the coastal and Bay fisheries. For the commercial fishery they supported the 37 inch maximum and opposed the eight-day closure for the fishery in December. He said if the 37 inch maximum size limit be adopted, it should be coupled with a maximum gill net mesh size similar to the 6-inch mesh size which applies during the spring season and 18 to 28 inch commercial season. Mr. Powers then gave reasons for the 8-day closure. Comments are a part of the verbatim record.

Commissioner Pruitt commented that he had a hard time understanding if the fishery was closed for 8 days how the closure would help. Mr. Powers presented a viewgraph that showed

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Chesapeake Bay's wind conditions and other elements that would affect the fishery. A discussion followed between staff and the Commission. Comments are a part of the verbatim record.

Associate Member Ballard commented that they were trying to comply with a mandate that was sent by ASMFC which staff stated was flawed, Mr. Bowden said it was flawed, and Powers said it was flawed. He said Mr. Power's data did make sense, and he thought they were trying to do the best thing they could.

A discussion regarding recoupment followed between the Commission members and staff. Comments are a part of the verbatim record.

Catherine Davenport, the governor's appointee to the ASMFC, addressed the Commission. She said she felt that Mr. Bowden and the rest of the group had given much of the information the Commission needed. She said this was not a commercial or recreational issue, but a Virginia issue. She said Virginia was not creating the problems, they were living with it. Ms. Davenport said Virginia was taking the theoretical reduction and it was just not doing the job. She also said if Virginia had to do anything, they should just take the week closure. Other comments are a part of the verbatim record.

Pete Nixon, President of the Lower Peninsula Watermen's Association, addressed the Commission. He said if the mesh size option was used, there would be a 100% reduction in the fish. Mr. Nixon said taking a week off would achieve over 20% reduction. He said he thought the 8-day closure was a win-win situation because most of the people were off at that time and it would help eliminate wasteful harvest. He said Mr. O'Reilly was right in what he said about recoupment and the watermen would have to sell the fish for a higher price on a better market and not try to catch the large fish. Other comment are a part of the verbatim record.

Kelly Place, a commercial and recreational fishermen, and a member of the VMRC Finfish Committee. He said he supported the seasonal closure option, which he thought was the best for the commercial fishery. He commented on eliminating the last week in December because a large portion of the catch that ASMFC had mandated would be eliminated. He said as a recreational fishermen he favored having the two holidays and all the days in between free from competition from other user groups. He also mentioned the wasteful discard mortality associated with measuring fish under adverse conditions. Mr. Place gave comments regarding the rationale used by Massachusetts and New York for not meeting the 14% reduction by ASMFC, while having 31.8 and 11.8 percent of the coastwide mortality, but they want a conservation credit for having a one-fish bag limit. Comments are a part of the verbatim record.

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Douglas Jenkins from the Twin Rivers Watermen's Association, addressed the Commission. He said he supported the 37 inch fish, with no days off. Other comments are a part of the verbatim record.

Commissioner Pruitt closed the public hearing.

Rob O'Reilly commented that although ASMFC did not have much time to put the reduction proposal together, he felt there was a problem with 8 year old and older fish. He said the discard mortality was supposed to be in all the proposals for January or February.

Associate Member Davis commented that he felt no regulations should be passed and he wanted to know how the other Commission members felt about telling ASMFC about the irregularities, and inequities that they were not going to comply. Mr. Davis then requested a response from staff regarding the consequences for not following the guidelines by ASMFC.

Mr. Travelstead responded that the law was very clear. If Virginia was judged to be out of compliance with ASMFC, they would forward a recommendation to the U.S. Secretary of Commerce and U. S. Secretary of Interior that Virginia was out of compliance.

A discussion followed between staff and Commission members regarding non-compliance with ASMFC's. Comments are a part of the verbatim record.

Associate Member Davis moved that staff come up with a matrix that would give the same reduction that Massachusetts has. Motion seconded by Associate Member White. Motion carried unanimously.

The Commission recessed for five minutes.

Mr. Tom Powers, CCA, asked if staff would come back with a different recommendation for the striped bass next month, would there be a public hearing. Mr. Pruitt responded that if there was a substantial change, additional public comments would be taken.

11. FAILURE to report commercial harvest, in accordance with Regulation 4 VAC 20-610-10 et. seq.

Robert Jenkins - not present.

Mr. Peters said that a certified letter and a first class letter were not received back which would

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indicate that Mr. Jenkins had received the notifications, and requested that the case be moved to the next Commission meeting because they were unsure whether or not he had been served.

Commissioner Pruitt suggested that a personal contact be made to Mr. Jenkins. Colonel Bowman responded that they would serve him.

Christopher Allen Pauls - not present.

Mr. Peters briefed the Commission on Mr. Pauls. He said Mr. Pauls had bought his reports in on the 15th of the month, and explained that he would be out of town. He informed Mr. Pauls that the case would be heard because of his previous history. Mr. Peters said staff recommended a six month suspension, followed by six months probation.

Associate Member Davis moved to suspend Mr. Pauls license for six months, with a six months probationary period. Motion seconded by Associate Member Hull. Motion carried unanimously.

Ronald Wayne Pruitt - present.

Mr. Peters briefed the Commission on Mr. Pruitt. He said Mr. Pruitt had harvested during the month of April 1999. Mr. Pruitt had requested additional time and folders, and requested they could be mailed to him. Mr. Pruitt did not return the folders. However, he brought the reports in today and they were current. Mr. Peters then said staff would like to modify the recommendation to give Mr. Pruitt six months probation.

Mr. Pruitt was sworn in. Commissioner Pruitt asked if he understood what Mr. Peters had said.

Associate Member Davis moved for six months probation. Motion seconded by Associate Member White. Motion carried unanimously.

Veremdell Hudnall - not present.

Mr. Peters briefed the Commission. Mr. Peters said staff was by Mr. Hudnall's daughter yesterday and Mr. Hudnall was going out of town today on an emergency. He said this was Mr. Hudnall's third appearance before the Commission. Therefore, he recommended two years suspension, followed by a two years' probation.

Associate Member Davis moved for two years' suspensions with two years' probation and the right to come before the Commission. Motion seconded by Associate Member White. Motion

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carried unanimously.

ITEM 13: CONTINUED discussion of the blue crab proposals.

Jack Travelstead said he had received a letter from the Chesapeake Bay Foundation and a letter from the King George County Administrator.

Mr. Travelstead presented slides on the increase in the peeler crabs fishery based on the increase in peeler pot licenses. Mr. Travelstead said that staff was asking the Commission to decide whether or not they wanted to repair the two problems. A discussion between Commission members and staff followed. Comments are a part of the verbatim record.

Mr. Travelstead mentioned the two studies currently being done, (1) a legislative mandated study of the dredge fishery which would be available around December 15; and (2) the study of protected habitat zones by Dr. Lipcius would be available around January or February. Comments are a part of the verbatim record.

Associate Member Ballard commented on the concerns presented to him by two watermen regarding the necessity for 400 peeler pots during the big run and during the habitat mode. Mr. Travelstead responded that the situation was accounted for in the current regulations, which allowed for 400 peeler pots per vessel during the peeler run, and 400 peeler pots per person during the habitat pot season. He said he did not see any new information coming forward in the next six months that would make the decision any easier.

Dr. Lipcius gave comments regarding the status of his study. He gave information on the status of the stock, random sampling, spawning stock bio-mass, and the dredge survey results. Comments are a part of the verbatim record.

Commissioner Pruitt asked Dr. Lipcius if he thought staff was on the right track regarding what had been presented today, along with the Bi-State Commission and the Blue Crab Committee regarding the sanctuaries. Dr. Lipcius responded that he thought staff's recommendations were on track with the capping of the effort on the spawning females. He said he felt the real issues ahead were going to be Baywide similar to the striped bass issue. Comments are a part of the verbatim record.

Associate Member Hull asked Dr. Lipcius how he would address the sponge crab issue. Dr. Lipcius responded that they maintained their stand on the sponge crab, but the potential spawning stock would have to be looked at. Associate Member Hull asked what would the recommendation be on crab dredging. Dr. Lipcius responded that he did not believe there would be any strong recommendation to target the dredge fishery.

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Associate Member Williams asked if a study had been done regarding crabs being predators by other species. Dr. Lipcius responded that they were in the early stages and from some of the data collect in the seagrass beds, 40 to 50 percent of the striped bass had crabs in them.

Commissioner Pruitt commented that Senator Bolling at the Bi-State Committee asked a similar question and he appreciated Dr. Lipcius' work on the seagrass beds.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Davis moved that the peeler pots be limited to 300 and that they withdraw the 26 and 42 licenses that were not applied for at the February meeting. Motion was seconded by Associate Member Ballard.

Associate Member Cowart commented that there were two separate issues and should be voted on separately.

Associate Member White asked how much of a reduction would that be. Mr. Travelstead responded that the target goal talked about last month was 234,000 peeler pots and by reducing the number to 300 would result in 289,000 peeler pots. A discussion between Commission members and staff regarding the increase in the growth of peeler pots and the actual number being fished. Comments are a part of the verbatim record.

Associate Member Ballard commented that he was not sure all the alternatives had been looked at. He said he liked the proposal of a certain number of peeler pots during the run and a higher limit during the habitat season. Mr. Ballard said he felt that there was too much potential effort in this fishery.

A discussion followed regarding if a decision on taking the licenses and reducing the number of pots at one time was necessary. Commissioner Pruitt commented that he ruled at the last meeting that the two items being discussed be carried over until this meeting to allow for Dr. Lipcius presentation and other data. He said there was a motion on the floor that incorporated the two issues.

Mr. Travelstead said that the 300 pot limit would drop the peeler pots to 75% towards the goal of the 234,000 total peeler pots. He said eliminating the 68 licensees would only eliminate 27,200 pots. He also mentioned the draft regulation that would address the habitat and peeler pot run issues. He said the 300 pot limit would not prevent two people who had licenses from fishing on the same boat during the habitat season.

Associate Member Davis amended the motion to reduce the limit to 300 peeler pots and staff

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would examine the 68 licensees and provide a report to the Commission. Mr. Ballard, the seconder, was acceptable to the amendment.

Associate Member Hull commented that he thought it should be two motions. Commissioner Pruitt explained that staff would provide a report on the 68 individual licensees. Motion carried 5 to 2, Associate Members Gordy and Williams voting no, and Associate Member Cowart abstaining.

Associate Member Davis moved to open a 2 5/16 inch cull ring in the main stem of the Bay according to the draft regulation, 4 VAC 20-700-20. Associate Member Ballard seconded the motion.

Associate Member Williams commented that he felt two cull rings were too many. He said there was a possibility that a problem was being created rather than solving one. A discussion followed regarding using cull rings in the main stem Bay. Comments are a part of the verbatim record.

Associate Member Hull requested that the motion be restated.

Associate Member Davis moved to adopt 4 VAC 20-700-20 as proposed in the draft regulations page 1 of 3.

Commissioner Pruitt asked what did the public hearing bring forth. Mr. Travelstead said there was a lot of discussion on this at the Advisory Committee level. The vote was tied and broken by Chairman in favor of adopting the change in cull ring requirements.

Dr. Lipcius gave some information about cull rings before he answered the question. He said cull rings would release the smaller females. He said they had been shown to retain a slightly larger fraction of the larger females which Jeff Crockett had suggested. He said the release of small females, however, was around 50 to 60 percent. The increase in the retention of large females was usually about five to ten percent and the net affect was a release of females by using cull rings. Dr. Lipcius said if the cull ring was not adopted, staff would be faced with having some other effort controlling regulation. Comments are a part of the verbatim record.

Associate Member White called the question. Commissioner Pruitt called for the vote. Motion carried 5 to 2.

Associate Member Davis commented that he was concerned about taking female crabs from the Chesapeake Bay. Mr. Davis then moved to prohibit the taking of sponge crabs. Associate Member Ballard asked if a public hearing was necessary.

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Commissioner Pruitt commented that this motion did not come before a public hearing. Mr. Pruitt stated that this motion would close an entire industry. He then asked if there was a second to the motion three times. The motion failed for lack of a second.

Mr. Pruitt further commented that they were looking at the issue and measures had been taken on the female crab, for example, there were regulations for the taking of sponge crabs from black to brown coloration be returned to the water, and sanctuaries had also been discussed. He then requested staff address the issue. Comments are a part of the verbatim record.

Associate Member Hull asked Dr. Lipcius when the dredge report was due.

Dr. Burreson from VIMS responded that the crab dredge report was due to the General Assembly by December 15 and it would have to be submitted by December 1. Dr. Burreson mentioned that he did not know if he could say what was in the report until the General Assembly had reviewed it.

Associate Member Hull asked if there would also be a report outlining the female crab situation in general. Dr. Burreson said their charge was to make recommendations on the dredge fishery, but VIMS had the liberty of including other recommendations. Dr. Burreson said all the females should be targeted, not just one portion of the fishery. A discussion followed between Commission members regarding saving the female crabs.

SUMMARY OF THE ASMFC ANNUAL MEETING IN MYSTIC, CONNECTICUT:

Commissioner Pruitt commented that the Commission had a detailed copy of the ASMFC Annual Meeting and without any objection, he would have them read that at their leisure.

Associate Member Ballard asked if staff would be comfortable notifying the conch industry of the horseshoe crab issue. Commissioner Pruitt responded that they all knew about it. Mr. Travelstead said staff would be talking to them about the details.

DISCUSSION: Update on SAVs Shoreline - Dr. Bob Orth from VIMS.

Dr. Orth from VIMS gave the Commission an update on the 1999 information regarding

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effectiveness of the sanctuary on the SAV seagrass beds and the revegetation of the existing seagrass beds. He then pointed out the critical key points in that area. Comments are a part of the verbatim record.

Colonel Bowman commented about the violators in the SAV beds and the difficulty in trying to catch them because they were close to the Maryland/Virginia Line. He said they were close, but were not there yet.

Associate Member Davis moved to grant Dr. Goodell a certificate of appreciation. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

PUBLIC COMMENTS:

Associate Member Hull said Captain Jenkins wanted to address the Commission on the matter of the oyster grounds in Gaskins Creek.

Captain Jenkins addressed the Commission and said he was requesting an oyster ground in Gaskins Creek. Commissioner Pruitt commented that the Commission could not approved the permit because the matter was under litigation.

Mr. Grabb briefed the Commission on the background information regarding Captain Jenkin's request. Mr. Grabb said they would not entertain a lease at this time because the Attorney General's office had said it was privately owned submerged land. He said they were waiting until July 1, 2000 to see what the court would rule at that time. Comments are a part of the verbatim record.

Associate Member Cowart commented that Captain Jenkins should continue to maintain his application on file at VMRC so that if it was determined that the property was public domain and the subaqueous bottom belonged to the State of Virginia, and Captain Jenkins application could be considered for lease of the oyster grounds.

Commissioner Pruitt explained that there was nothing the Commission could do while the matter was pending in Court.

Carl Josephson said Mr. Fisher had said there was a reasonable possibility that these oyster grounds were privately owned.

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Associate Member Hull commented that if the oyster grounds were determined to be the State's property, Mr. Jenkins would have the first right to submit an application.

Mr. Grabb said staff would not take any action on it until the court had made its ruling.

Pete Nixon addressed the Commission regarding the female crabs. He said the female crab issue had been a continual subject of discussion everywhere. Mr. Nixon said if you were not an advocate of Dr. Lipcius' proposal by looking at effort across the whole fishery regarding taking of sponge crabs, the crabber would move up the river and take the male crabs which would cause a shift in effort from one part of the fishery to another part and then there would be a collapse of the male part of the fishery. Mr. Nixon gave information on the Venezuelan Fishery who experienced the ban on taking all female crabs. Comments are a part of the verbatim record. He said you must have both male and female crabs because they are just as valuable for the industry.

Dr. Lipcius commented that in Maryland waters there is the same reduction in male crabs. Other comments are a part of the verbatim record

Mr. Insley said Renee Ferguson was present on behalf of Ernest H. Diggs, Jr. regarding his appeal.

James Peters, Fisheries Management Specialist, briefed the Commission on Mr. Diggs' case. He said Mr. Diggs was not present for the Crab Dredge Committee Meeting and the Committee's decision was that if the individual did not show up for the board, they would not be granted a crab dredge appeal and would have to appear before the Commission. Mr. Diggs did not meet the requirement to hold a crab dredge permit for the upcoming season. However, he did have a seed permit for December 1998 to March 1999. However, Mr. Diggs did not hold a crab dredge license during December 1998. He received his license in January 1999. He held the license during the three months, but he did not report any harvest during that time. Mr. Diggs said his engine blew up in his boat in December and by the time the engine was replaced, it was too late in the season to crab. He was asking that his application be approved.

Ms. Ferguson addressed the Commission. She said Mr. Diggs had a lot of boat problems last year and during that time, he had not been able to work a lot. He had been working the water for over 30 years.

Mr. Nixon explained that he knew Mr. Diggs and he brought up his situation at the meeting

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and he was a full time participant in the fishery.

Commissioner Pruitt placed the matter the Commission.

Associate Member white asked if all Mr. Diggs' reports were filed at the present. Mr. Peters said he did not dredge, therefore, he had nothing to file.

Associate Member Gordy moved to reinstate Mr. Diggs' license.

Associate Member Ballard asked Mr. White if Mr. Diggs had been present at the meeting, would his application have been approved. Mr. White said he voted against all eight of the applicants, because they did not meet the criteria; but the other two members of the Committee supported the applications.

Motion failed because of a lack of a second. No additional action was taken. Commissioner Pruitt explained to Ms. Ferguson that the Commission was not going to reinstate Mr. Diggs license, and he could appeal the Commission's decision to the Circuit Court.

Kelly Place re-addressed the Commission. He said instead of withdrawing from ASMFC on the striped bass issue, he thought a task force should be established to examine the past problems with ASFMC and compile them in a coherent form and make their case well in advance before charging forward. Other comments are a part of the verbatim record. He said staying in compliance with ASMFC would be an additional benefit to their case.

Commissioner Pruitt asked if there were further comments.

Associate Member Ballard suggested that the draft motion that Mr. Josephson suggested be entered into the grey book, he felt it would be useful. In addition, he said the enforcement matrix should be updated.

The meeting adjourned at 5:20 p.m.

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William A. Pruitt
Commissioner

LaVerne Lewis
Commission Secretary