

MINUTES

December 21, 1999
Newport News, VA 23607

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

- William A. Pruitt) Commissioner
- C. Chadwick Ballard)
- Gordon M. Birkett)
- Sheppard H. C. Davis)
- Laura Belle Gordy) Associate Members
- Henry Lane Hull)
- John W. White)
- Kenneth Wayne Williams)

- Carl Josephson Assistant Attorney General

- Wilford Kale Sr. Staff Adviser
- 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
- Warner Rhodes Middle Area Supervisor
- Kenny Oliver Southern Area Supervisor
- Ray Jewell Northern Area Supervisor
- Danny Howlett Marine Patrol Officer
- Guy Abbott Marine Patrol Officer

- Dr. Gene Burreson Virginia Institute of Marine Science
- Tom Barnard Virginia Institute of Marine Science

- Dr. Jim Wesson Head-Conservation and Replenishment

- Jack Travelstead Chief-Fisheries Management
- Rob O'Reilly Assistant Chief-Fisheries Management

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Stephanie Iverson
Lewis Gillingham
Ellen Cosby
Jim Peters

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

Roy Insley
Tiny Hutcheson

Head-Plans and Statistics
Fisheries Management Specialist

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

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

Jerry Showalter
Rob Butler

Head-Engineering and Surveying
Surveyor

others present:

J. Libassi
Mike Hall
Michael Ewing
Marina Phillips
Wimer
Tina Henderson
Sandra Spencer
Don Lancaster
J. Barry Frankenfeld
Tom Powers
G. G. Crump
Bill Martz
Bob Merten
Tom Mitchell

A. C. Fisher, Jr.
Rebecca Francese
Steve Bulleigh
Nealon
Bob Weinstead
Jan Marshall
Chris Banks
Edward McKay
Bob Hutchinson
W. C. Tice
John Wyatt
Theresa Martz
Robert S. Holtz
Mark Horner

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Ken McNely
Richard Welton
Gary Owens
Mike Breault
Lyndon H. Bolick
Michelle Conie
Herb Gordon
Kelly N. Place
M. Scott Bloxom
Captain Bob Jensen

Jim Hayden
Scott Cole
Stuart Chesson
Marty Esposito
Lyse Martz
Bob Frelstad
Dale Carlson
J. H. Benkert
Kelly Price

and others.

Commissioner Pruitt opened the December meeting at 9:30 a.m. Associate Members present were Ballard, Birkett, Davis, Gordy, Hull, White and Williams. Associate Member Cowart was

absent. Associate Member Williams gave the invocation. Associate Member Birkett led the Pledge of Allegiance.

1. Minutes of previous meeting.

Mr. Pruitt asked for corrections to the draft minutes. Associate Member White corrected Associate Member Ballard's name on the attendee list. Associate Member Gordy then moved for approval of the minutes with the correction. Associate Member Hull seconded the motion. Motion carried, with Associate Member Birkett abstaining because he was not present at the last meeting.

**** Approval of Agenda**

Associate Member Hull commented that Mr. and Mrs. Bill Marks, artists, would like to address the Commission during the public comment period. Commissioner Pruitt also commented that Mr. Bob Jenson and a watermen from the Eastern Shore would also like to address the Commission during the public comment session.

There being no further changes, Associate Member Hull moved to approve the agenda with the additions. Motion was seconded by Associate Member Gordy. Motion carried 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 eight page two items (projects over \$50,000 that were uncontested).

2A. LEVEL 3 COMMUNICATIONS, LLC, #99-1737, requests authorization to install 1748 linear feet of fiber optic cable within existing rights-of-way along various State roadways utilizing directional boring, and bridge attachment methodologies. The line will cross the Appomattox River, Appomattox Canal, James River and associated tributary branches and creeks in Richmond City, Dinwiddie, Chesterfield, and Henrico Counties in Virginia.

Royalty for crossing of 1,748 ln. ft.		
@ \$1.00 per ln. ft.....	\$	1,748.00
Permit Fee.....	\$	<u>100.00</u>

Total \$ 1,848.00

2b. OPSAIL NORFOLK 2000, #99-1364, requests authorization to construct three (3) temporary community floating piers that will range in length from 220 to 600 linear feet to accommodate the mooring of sailing vessels for OpSail 2000 adjacent to Waterside Marina and Town Point Park situated along the Elizabeth River in the City of Norfolk. Recommend a royalty in the amount of \$17,955.00 for the encroachment over 59,850 square feet of State-owned subaqueous bottom at a rate of \$0.30 per square foot. Given the "temporary" nature of the encroachment, we recommend that the royalty be assessed at a rate of \$1,496.25 per month, or any part thereof, for so long as the encroachment exists.

Royalty per month for	
Temporary encroachment over 59,850 sq. ft.	
of State-owned subaqueous bottom @ \$0.30	
per sq. ft. per month.....	\$ 1,496.25
Permit Fee.....	<u>100.00</u>
Total	\$ 1596.25

2C. NORFOLK SHIPBUILDING AND DRYDOCK CORPORATION, #99-1879, requests authorization to extend Pier #1 an additional 251.5 linear feet to 1,281.5 linear feet at their facility situated along the Southern Branch of the Elizabeth River in the City of Norfolk. Recommend an annual royalty of \$1,257.50 for encroachment over 12,575 square feet of State-owned subaqueous bottom at a rate of \$0.10 per square foot.

Royalty annually for	
Encroachment over 12,575 ln. ft.	
of State-owned subaqueous bottom	
@ \$0.10 per sq. ft.....	\$ 1,257.50
Permit Fee.....	<u>100.00</u>
Total	\$ 1,357.50

2D. LYON SHIPYARD, INC., #99-1789, requests authorization to dredge, by mechanical method, 117,000 cubic yards of State-owned subaqueous bottom, 17,900 cubic yards of which is maintenance, and to maintenance dredge on an annual basis up to 20,000 cubic yards of State-owned subaqueous bottom from the Eastern Branch of the Elizabeth River to maintain maximum depths of -12 feet to -38 feet at mean low water adjacent to their facility in the City of Norfolk. All dredged material will be transported directly to Craney Island for disposal. Recommend a royalty of \$44,595.00 for the new dredging of 99,100 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard.

Royalty for Dredging 99,100 cu. yds. of State-owned subaqueous bottom @ \$0.45 per cu. yd.....	\$
44,595.00	
Permit Fee.....	
<u>100.00</u>	
Total	\$ 44,695.00

2D. LYON SHIPYARD, INC., #96-1218, requests authorization to reactivate and extend a previously issued permit to mechanically dredge 16,500 cubic yards of State-owned subaqueous bottom to provide maximum depths of -21 feet and -31 feet at mean low water adjacent to their existing facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk.

PERMIT FEE - NOT APPLICABLE

2F. U.S. ARMY CORPS OF ENGINEERS, #99-1832, requests authorization to construct 345 linear feet of concrete replacement bulkhead, to repair approximately 600 concrete pilings under an existing landship and pier, to install 92 linear feet of riprap, and to construct a 65-foot long by 55-foot wide container hold and 124-foot long retractable loading ramp adjacent to their facility situated along Skiffs Creek at Fort Eustis in the City of Newport News.

PERMIT FEE.....\$ 100.00

2G. U.S. COAST GUARD, #98-0661, requests authorization for the temporary lifting of a previously Commission-imposed time-of-year restriction of November 15th through March 30th in order to place 450 cubic yards of materials generated from the maintenance dredging of the Wormley Creek Channel overboard and unconfined in the Chesapeake Bay at the Wolftrap site east of New Point Comfort and south of Wolftrap Light.

PERMIT FEE - NOT APPLICABLE

2H. TARMAC AMERICA, INC., #99-1800, requests authorization to construct a 420 linear foot riprap revetment adjacent to their facility situated along the Eastern Branch of the Elizabeth River adjacent to the Campostella Bridge in Norfolk.

PERMIT FEE.....\$ 100.00

Associate Member Davis asked if staff was comfortable setting the precedence in 2G. Mr. Grabb responded that he did not feel that this was setting a precedence because the temperature had been rather moderate and staff was able to go to VIMS to determine if the additional placement of the 450 cubic yards would impact the resource. VIMS had indicated that this was acceptable.

Associate Member Ballard asked if a certain expiration date was specified in the permit for 2B, the OpSail permit? Mr. Grabb indicated that there would not be a time limit specified, unless the Commission stated they wanted them moved by a certain time. Associate Member Ballard said he did not want see this as a backdoor situation permitting a permanent marina. Mr. Grabb said they would indicate on the permit that the Commission would like 90 days or six months for removal.

Associate Member Gordy asked if the Commission would be collecting the royalty of \$1,495. per month. Mr. Grabb responded that the royalty would be assessed.

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

Associate Member Davis moved to approve the page two items with two qualifications; one, on 2B, OPSAIL NORFOLK 2000, #99-1364, that the piers be removed within 90 days after July 1 and if there was a problem, they should come back to the Commission. He further moved that in item 2G, U. S. Coast Guard, #98-0661, the time relaxation not to be considered precedence for future issues. Associate Member Ballard seconded the motion, but asked if the technical corrections should be made to 2G. Mr. Grabb responded that since they were in the record, he believed that would take care of the technical corrections. Mr. White asked for clarification on the corrections. Mr. Grabb explained that 2G was a one time relaxation of the time of year restriction and was not to be considered a precedence for future application or requests. Motion was carried 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 counsel and briefings by staff pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of Section 2.1-344 of the Code of Virginia, pertaining to oyster leasing matters. Motion was seconded by Associate Member White. Motion carried unanimously for a closed session.

Meeting reconvened and Associate Member Ballard moved that;

WHEREAS, the Virginia 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; and

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

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

Associate Member White seconded the motion. Roll call of the votes were as follows: Associate Members Ballard, "aye", White "aye", Williams "aye", Davis "aye", Birkett "aye", Gordy "aye", Birkett "aye", Hull "aye". Motion carried unanimously.

4. HARLEY TOMEY, #98-2201, requests authorization to construct a 34-foot extension to an existing, previously permitted 48-foot, low-profile timber groin adjacent to his property situated along the west shore of the Chesapeake Bay in Northumberland County. The project is protested by the downdrift adjacent property owner, Ms. Susan Damron.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides. Comments are a part of the verbatim record. He said in January 1999, the Northumberland County Wetlands Board approved the project for a 48 foot long low profile timber groin. However, there was no objection to the project at that time. The Virginia Institute of Marine Science indicated that cumulative impacts associated with the project would be minimum and that the project as originally constructed met the criteria of the Virginia General Permit #2. He said based on the foregoing, staff administratively approved the 48-foot low profile groin. A brief discussion followed regarding the property lines and the placement of the groins. Comments are a part of the verbatim record.

Mr. Madden explained that the protestant, Ms. Damron, was concerned that the proposed

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extension to Mr. Tomey's groin would trap more sand and thereby reduce the ability of her groin to trap sand. Ms. Damron was also concerned that the area was scouring out and that the upper beach was eroding away because her neighbor had not done any work to armor the shoreline. Ms. Damron also believed that any potential reduction in the current supply of sand from the north to the downdrift section of her beach may not offset the effects of natural erosion. As a result, Ms. Damron felt that the beach south of her groin would wash away. Mr. Madden said VIMS reviewed the modification request and advised that although the proposed modification would cause minimum impacts, the necessity for a 78-foot groin within the present 133 foot distance between the existing groin did not seem to be justified. Also, the modification was not consistent with the Best Management Practices (BMP) indicated in the handbook.

Mr. Madden said that although Mr. Tomey wanted to enlarge his beach, staff believed that lengthening of the groin could significantly reduce the amount of material available downdrift. Mr. Madden explained that according to the BMP's, groins should be spaced so that the distance between the groins would be greater or equal to one and one half times the groins length measured from mean high water. He also stated that the updrift groin on the north end of Mr. Tomey's property extended 78 feet from mean high water and staff recommended that any downdrift groin of equal length should be normally spaced at least 117 feet away. He said it appeared that the largest groins were adequately spaced apart. In addition, Mr. Tomey's 48 foot groin appeared to be functioning well enough now. Therefore, it was staff's belief that any further lengthening of the groin was an unnecessary encroachment over state-owned submerged lands and that any increase in the length could reduce the effectiveness of the protestant's existing groin. Accordingly, staff recommended that Mr. Tomey's request for modification of his previously issued permit be denied.

Edgar Nealon from Northumberland County representing Mr. Tomey addressed the Commission. Mr. Nealon gave comments regarding groins being an individual structure and how the structures were affected by numerous parameters, such as the location, orientation, sand movements, weather conditions, timing and other groins in the area. He talked about the VIMS' two reports. He then stated that they just wanted to extend this proposed low profile groin 34 feet.

Susan Damron, protestant, addressed the Commission. She stated that her family had owned the property for 40 years. She said that she had expressed her concerns and issues in the letter addressed to the Commission and there was no need to address them further. She was concerned that the proposed groin would rob one hundred feet of unprotected beach between her groin and the one south of her. She also suggested that the Commission look at a long-range plan for the development.

Mr. Pruitt asked if her neighborhood had an association. Ms. Damron responded that they had an association. Mr. Pruitt then suggested that maybe the association should take over all of the development area. Mr. Pruitt said that the Commission dealt with the permits as they came before the Commission. Mr. Pruitt also mentioned that VIMS had an ongoing program where they gave advise and VMRC worked with individual applicants and she might want to seek their advice.

Associate Member Hull asked if she had owned the property for 40 years? Ms. Damron responded that her grandfather purchased the property in 1958. He asked if there were jetties or groins already on the property. Ms. Damron responded that in 1956 that was sort of a concrete pole that was put out in front of their property that was still there. Mr. Hull then asked Mr. Nealon how long Mr. Tomey had owned his property. Mr. Nealon said he was not sure how long Mr. Tomey had owned the property, but the groin had been there since May 1998.

Associate Member Birkett asked if the neighbor she mentioned was Mr. Tomey? Ms. Damron responded she was talking about the neighbor south of her.

There being no other comments in opposition, Commissioner Pruitt offered Mr. Nealon the opportunity to rebut.

Mr. Nealon readdressed the Commission and requested that the VMRC application #99-2201 submitted by Mr. Harley Tomey to extend the existing, permitted 48 foot low profile groin, 34 foot plus or minus be permitted to bring it in line with the groins immediately north and south.

Commissioner placed the matter before the Commission.

A discussion followed between Commission members regarding equal distribution of sand, and the lengths of the groins and the beaches. Comments are a part of the verbatim record.

Tom Barnard addressed the Commission and said that lengthening the groin would not have any significant benefits to the applicant. A brief discussion followed.

Associate Member Hull commented that there was no history of the smaller groin, and Mr. Tomey was asking the Commission for a permit to encroach onto State-owned bottom on the premise that this would help, but, in his opinion, there was no evidence to justify extending the groin.

Associate Member Williams commented that he agreed that in time, the short groin, if extended out with others, would equal itself up.

Associate Member Hull said based on his previous comments and what staff had said and there was no history of the initial 48 foot groin showing what it could or could not do, he thought it would be inappropriate to give the applicant the permit to extend onto State-owned bottom without knowing what they could expect from it. He then moved that the request be denied. Motion was seconded by Mr. Ballard.

Associate Member Davis commented that he supported the motion, because he felt more data on the groin was needed.

Associate Member Gordy commented that she supported the motion only because the groin had not been in place long enough for her to be satisfied to approve the proposal.

Commissioner Pruitt called for the vote. The motion carried, 5 to 2.

5. DR. CHAN PARK, #99-1852, requests authorization to install a 32-foot long by 16-foot wide private, non-commercial, open-sided boathouse adjacent to his property situated along Boathouse Creek in York County. The project is protested by an adjacent property owner.

Tracey West, Environmental Engineer, briefed the Commission and presented slides. Ms. West gave background information on the location of the property, the protestant's property, Mr. Park's pier and the boathouse. Comments are a part of the verbatim record. Ms. West said Mr. Buhl, the adjacent property owner, was concerned that the boathouse and the finger pier would restrict navigable access to his property. Mr. Buhl was also concerned about the impact to his view. Mr. Buhl stated that he would withdraw his objection if a compromise could be reached.

Ms. West said staff conducted an inspection on two occasions to assess the impact of the proposed structure on the creek. She said based on those inspections, the proposed boathouse and finger pier did not appear to encroach any further toward Mr. Buhl than the mooring pilings already existing at the pier. Staff also noted that there was a large, enclosed boathouse that had been previously permitted on the creek near Mr. Park's proposed boathouse.

Bob Weinstead, agent for Dr. Park, and also the contractor addressed the Commission. He

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said he went to the site and tried to address the concerns that Mr. Buhl had. He said it appeared to be 40 or 50 feet of access between the mooring piles and the property, and he did not feel navigation was an issue because there was no defined channel and there was a foot of water at low tide. He said the proposed structure was open-sided and it would be to the right outside of the cove.

Chan Park addressed the Commission. He commented that staff's presentation represented their view very well. He said the proposed structure would not affect navigation. He said the water there was so shallow that the only vessel that could navigate in that area was a canoe. Dr. Park said because the structure was open-sided it would not affect his neighbor's view. Other comments are a part of the verbatim record.

Acting Chairman White called for any opposition, there being none, he placed the matter before the Commission.

Associate Member Birkett commented that the proposed structure of 512 square feet was within the guidelines, and the footprint of the boat house would not take any more space than the mooring piles that were currently there. Mr. Birkett then moved to approved the recommendation for the proposed structure. Motion was seconded by Associate Member Davis. Motion carried unanimously.

PERMIT FEE..... \$ 25.00

6. APPLICATION FOR REASSIGNMENT OF OYSTER PLANTING GROUND:

James M. Shinault, II, completed an Application for Reassignment of Oyster Planting Ground for Lease #12061, containing 16.79 acres in the East River. That application was not approved because the documented use was not considered to be "significant use" for 16.79 acres in the East River. Continued from the October 26, 1999, meeting.

Gerry Showalter, Head of Engineering/Surveying, briefed the Commission on the background of Mr. Shinault's leased ground. Comments are a part of the verbatim record. Mr. Showalter said he had made several attempts to notify Mr. Shinault; once after the October meeting, a letter was mailed on December 1, 1999, and he had attempted to call him twice. Mr. Showalter said Mr. Shinault's lease was not renewed because his use was not considered significant for that part of the East River. Mr. Showalter said staff's recommendation based on Section 28.2-613 of the Code of Virginia, "shall not renew" would apply for the 16.79 acres. He said if the Commission concurred, Mr. Shinault's area could be reduced and if Mr. Shinault was willing to

pay for the survey and plat.

James M. Shinault, II, the applicant, addressed the Commission. Mr. Shinault said the reason for his coming to the Commission was to have his lease reinstated. He said oysters were not living on most of the shore that he owned. He said he owned 2000 feet of shoreline and the only production of oysters was in the marsh grass around the oyster shore. He said during the past 20 years he had raked the small spatted oysters that would strike in the shell and he replanted them in different areas for experimental use. The harvest in some years were five bushels, and in some years, the harvest was as high as 25 to 30 bushels. He said part of the 16 acres had already been taken by the state and added to the Baylor area. He said he was very interested in the oyster industry in Virginia and requested that his lease be reinstated.

Commissioner Pruitt placed the matter before the Commission.

Mr. Showalter stated that Mr. Shinault had not clarified his oyster ground use, when requested, other than what was stated on the original Application for Reassignment. Mr. Showalter also referred to Mr. Shinault's statement about an area that the state had removed from his lease because it encroached into Baylor, but pointed out that the area was reinstated to him in 1989, after a code change. (29.1-101-3)

Commissioner Pruitt asked Mr. Showalter if he was aware of the experimental work Mr. Shinault was doing. Mr. Showalter responded that Mr. Shinault had not mentioned that he was experimenting with his leased ground.

Associate Member Williams asked if the Commission did not renew Mr. Shinault's lease, could he reapply. Mr. Showalter responded that staff normally would require a detailed plan of how the leased ground would be used. Mr. Showalter said he probably would have reevaluated the lease differently had Mr. Shinault presented all the facts that he presented today. A discussion between Commission members followed. Comments are a part of the verbatim record.

Associate Member Williams commented that he knew this family's history of working on the East River during most of his lifetime; therefore, he would like to make a motion. Associate Member Davis requested Mr. Showalter explain the reason why staff changed their decision today regarding the significant use of the leased ground. Mr. Showalter pointed out that if Mr. Shinault had indicated that he had experimented with the leased ground and had harvested some oysters, he would have renewed Mr. Shinault's lease.

Associate Member Williams moved to reinstate Mr. Shinault's lease. Associate Member Davis seconded the motion.

Associate Member Hull commented that he felt this was the right thing to do. Associate Member White commented that if Virginia received a resurgence in the oyster industry it would be because of the efforts from VIMS, VMRC's staff, and people that would be using experimental techniques like Mr. Shinault's. He said he intended to support the motion. Motion carried unanimously.

Associate Member Davis commented that situations had come before the Commission before regarding length of ownership of property, but the Commission's decisions should not be based on length of ownership because all persons should be treated equally regarding ownership of property, not length of ownership.

Carl Josephson commented that another factor the Commission was entitled to take into consideration was the fact that when someone purchased a piece of property, they should know what they were getting based on certain structures that may already exist.

7. APPLICATION FOR REASSIGNMENT OF OYSTER PLANTING GROUND:
Mr. J. Libassi has appealed staff denial of his Application for Reassignment of Oyster Planting Ground Lease #12024 in the East River for 5.83 acres.

Gerry Showalter, Head Engineering and Surveying, briefed the Commission on Mr. Libassi's lease, and referred to a map of the leased areas for Mr. Shinault and Mr. Libassi. Comments are a part of the verbatim record. He referred to Mr. Libassi's reasons for not making any significant use of the leased ground and his concern about the diseases of MSX and Dermo. Mr. Showalter said that Mr. Libassi also said the area was polluted. Mr. Showalter explained to the Commission, from the Health Department records, that Mr. Libassi's leased area was not part of the condemned area. Mr. Showalter then indicated that the pollution lines were further upstream and did not affect Mr. Libassi's leased ground. Mr. Showalter stated that Mr. Libassi had written a three-page letter of appeal which was a part of the record in their packet.

Jerome J. Libassi, applicant, addressed the Commission and provided the Commission with background information on Mathews County. Comments are a part of the verbatim record. Mr. Libassi said he did not think it was very smart to put oysters shells in the East River with the hope that the shells would bring back the oysters.

Commissioner Pruitt asked Mr. Libassi to tell the Commission what he wanted to do with his leased ground. Mr. Pruitt then explained to Mr. Libassi that he would give him a month to come back to the Commission with a plan or the Commission could vote now. Mr. Libassi

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responded that his plan was the last paragraph of his appeal letter, "when and if I hear that the recently built oyster reef at the mouth of the river is successful, I will seriously consider building a reef of this type on my leased ground, if I can get the authorization."

Commissioner Pruitt then placed the matter before the Commission.

After some discussion, Associate Member Davis moved that the Commission should deny the application subject to Mr. Libassi coming back to the Commission with plan to implement and to do something with the leased ground. Associate Member Gordy seconded the motion.

After further discussion between Commission members and staff, it was indicated that a time limit should be placed on Mr. Libassi coming back with a plan. The Commission agreed to have a 90-day time limit for Mr. Libassi to come back to the Commission with his plan. This was acceptable to the maker and seconder of the motion. Motion carried unanimously.

Mr. Grabb approached the Commission and stated that Mr. Nealon had requested the Commission's guidance regarding when and under what conditions Mr. Tomey could reapply for an extension. Commissioner Pruitt referred the matter to Mr. Barnard for determination of a reasonable time period to evaluate a groin. Mr. Barnard from VIMS responded that he felt that it would be two to three more years before the success of the groin could be evaluated.

Commissioner Pruitt placed the matter before the Commission. Associate Member Birkett moved to grant Mr. Tomey a two year evaluation and then he could come back to the Commission for a redetermination. Commissioner Pruitt asked Ms. Damron if she understood the proposal. She responded yes. Associate Member White seconded the motion. Motion carried.

The meeting recessed for lunch.

Commission returned from lunch.

Associate Member Ballard commented that based on an article from the Eastern Shore News Saturday, December 18, 1999, regarding the Marine Resources receiving the highest State Evaluations, which pertained to the financial management of the agency, prompt payment of vendors, decentralized accounting services, and a prefect audit. Mr. Ballard then commended

the Commissioner and staff for the overall exceptional rating. Associate Member Ballard then offered the following resolution.

WHEREAS the Virginia Marine Resources Commission has been recognized for its excellence and its management of financial matters, Namely, relating to decentralized automated accounting services prompt payment to vendors and achievement of a perfect audit.

That we, as Commissioners, offer our congratulations and commendations to the agency head, Mr. Pruitt, the Chief of the Finance and Administration Division, Mr. Robert Craft, and all of the agency staff.

Associate Member White seconded the motion. Motion carried unanimously.

Commissioner Pruitt recognized three marine patrol officers:

Almon Newsome who was retiring from the VMRC Law Enforcement Division and was recognized at the Criminal Justice Academy by his fellow trainees as an outstanding officer of the class.

Colonel Steven Bowman then presented Mr. Newsome a recognition plaque for his devoted 28 years of service with the Law Enforcement Division of the Virginia Marine Resources Commission.

Commissioner Pruitt congratulated Mr. Newsome and wished him good luck.

Mr. Pruitt then introduced the two Marine patrol officer who were elected sheriffs, Guy Abbott sheriff for Middlesex County and Danny Howlett was elected sheriff for Mathews County. Colonel Steven Bowman then presented certificates of recognition for years of service 22 1/2 and 19 1/2 years of service respectively. Mr. Pruitt congratulated them for their fine work and wished them well.

8. RECOMMENDATIONS of the Recreational Fishing Advisory Board and Commercial Fishing Advisory Board.

Jack Travelstead, Chief-Fisheries Management, pointed out to the Commission that all the

recommendations of the Fisheries Advisory Board were a part of their packages. He said the projects were put through a five-month review process, including peer review and public comment for each project. The recommended approvals were:

- A. Virginia Game Fish Tagging Program: VIMS, VMRC, \$49,980.00
- C. Mini-school of Marine Science; VIMS, \$10,625.00
- H. Lynnhaven Boat Ramp, City of Virginia Beach. \$332,150.00, with six conditions.
 - 1. That the City enact an ordinance requiring only trailer parking in designated spaces and enforce a ticketing and towing policy.
 - 2. That the City agree to 20 years usage of the facility as a ramp, as proposed and designed, and keep the facility open 24 hours per day, 365 days a year.
 - 3. That any conversion of the property to another use prior to 20 years would result in a mandatory repayment to the fund of an amortized amount representing the VMRC contribution.
 - 4. That signage be placed at the site indicating the contributions of funds were from the Recreational Fishing Development Fund.
 - 5. That rentals of personal watercraft be prohibited at the site, and
 - 6. That those fishermen with Virginia saltwater recreational fishing licenses not pay a ramp fee, usage fee or parking fee at the site.
- I. Oyster Reef Restoration in the Lower Rappahannock River: Recreational Fishing support for the Oyster Heritage Program, CCA of Virginia and VMRC, \$100,000.00
- L. 1998 Saltwater Recreational Fishing License Database; VMRC, \$20,000.00
- M. Deployment Funding for Placement of structures on Virginia's Chesapeake Bay Artificial Reefs: VMRC, \$50,000.00.

Commissioner Pruitt asked if there were any comments from the public. There being none, pro or con, the matter was placed before the Commission.

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Associate Member Davis moved to approved the projects. Associate Member White seconded the motion. Motion carried unanimously.

Mr. Travelstead said the remainder of the projects were not being recommended without prejudice. He said several of the denied project would be modified and should come back to the Commission in January or a later date.

Associate Member Davis stated for clarification that he would like project "H" to have the six conditions as part of the motion.

Commissioner Pruitt asked for comments from the public on the denied projects without prejudice. There being none, pro or con, the denied projects were placed before the Commission. Associate Member Ballard made a motion to deny the projects without prejudice.

Motion seconded by Associate Member Davis. Commissioner Pruitt then suggested that Mr. Travelstead read the letters that were denied into the record. which were. B, D, E, F, G, J, K. Associate Member Hull commented that projects B and K had been withdrawn. However, Mr. Travelstead stated that B and K would be resubmitted. Mr. Ballard amended the motion to deny the projects that had not been previously withdrawn. Mr. Davis was acceptable to the amendment. Motion carried unanimously.

Mr. Travelstead then briefed the Commission on the Commercial Fishing Advisory Board's recommendations. He said a meeting was held on December 13, 1999, and the Board reviewed the projects. Mr. Travelstead said there were only two board members present and that was not a quorum. He said the other Board members would be sent copies of the proposed projects before the January meeting. However, one project should be approved for funding today because of the timing. He said the two Board members present had no objection to staff proceeding in this manner. The project was examining ways to reduce dependency on horseshoe crabs in the conch pot fishery and because ASMFC was in the process of regulating the taking of horseshoe crabs which might affect Virginia's quota could significantly lower the quota below the current level. Mr. Travelstead said VIMS had been attempting to work with some of the Virginia conch pot fishermen to look at ways to reduce their dependency on the horseshoe crab. He said because watermen sometimes were unsuccessful with the experiments, and it would leave them without an income for that period of time was the reason VIMS was requesting funding in the amount of \$4,125.00 which would be used to supplement the income of the conch pot fishermen that participated in the study. Mr. Travelstead said he thought it was an important study because it could have a major impact on decisions that ASMFC would make in February 2000 on the quotas given each state on harvesting of horseshoe crab.

Commissioner Pruitt commented that there would be two new members, which should

eliminate the quorum issue. Commissioner Pruitt asked if there were any members of the public that wished to address that issue. There being none, the request was placed before the Commission. He also stated that the Commercial Fishing Advisory Committee was an advisory committee to the Commission, therefore a quorum was not necessary from the committee. Associate Member Davis moved to approved the request. Motion seconded by Associate Member Birkett. Motion carried 7 to 1.

Mr. Williams commented that he opposed the motion because the Commercial Fishery Advisory Board should have made an effort to have another meeting and let the Board make the decision on how they wanted their funds spent. However, Mr. Williams said he understood that the Commission could override their decision.

Commissioner Pruitt said the next item would be held at 1:00 p.m. because people had called and requested time to arrive at the meeting.

10. CONCH POT FISHERY: Staff request for emergency amendments to Regulation 4VAC-20-890-10 et. seq.

Rob O'Reilly, Assistant Chief-Fisheries Management, said this was a staff request for an emergency amendment to regulation 4 VAC20-890-10 because the Commission had approved a limited entry fishery that would start January 1. Mr. O'Reilly explained that the bases for the request was the two management measures used since 1991 in the experimental permit that now needed to become a part of the regulation as follows:

- A. Place, set, or fish any conch pot in Virginia waters, other than the mainstem of Chesapeake Bay or in the Territorial Sea (up to the 3-mile limit line).
- B. Place, set or fish any conch pot within any channel.
- C. Fail to inscribe each conch-pot with the letter "w" followed by the last 4 numbers of the Commercial Fisherman Registration License.

Mr. O'Reilly said staff was requesting to advertise for public hearing these measures at the January Commission Meeting.

Associate Member Davis asked if they were voting on the measures today. Mr. O'Reilly responded that the Commission would be voting on adopting the emergency regulation today

and to have a public hearing in January. Associate Member Davis moved to approve staff's recommendation. Motion seconded by Associate Member Williams. Motion carried unanimously.

14. ROBERT JENKINS - Failure to Report in accordance with regulation 4 VAC 20-610-10 et. seq.

Jim Peters, Fisheries Management Specialist, briefed the Commission. He said Mr. Jenkins had not received the certified card because the card came back unclaimed. He said Law Enforcement Division personally served Mr. Jenkins a letter to appear before Commission. Mr. Jenkins accepted the letter and the letter stated that he should appear at 12:00 noon today. Mr. Peters said staff recommended that since Mr. Jenkins was not present, his license be suspended until such time as he appeared before the Commission to explain his noncompliance.

Commissioner Pruitt asked again if Robert Jenkins was present. No response was received and Commissioner placed the matter before the Commission. Associate Member White moved to suspend Mr. Jenkins' license until he appeared before the Commission. Motion was seconded by Associate Member Hull. Motion carried unanimously.

15. VEREMDELL HUDALL: Failure to report as required by regulation 4 VAC 20-610-10 et. seq.

Veremdell Hudnall - Present.

Jim Peters, Fisheries Management Specialist, briefed the Commission. He Peters said Mr. Hudnall was to appear at the November hearing for failure to report. Mr. Hudnall was not present and he contacted the agency and said he would be out of town on a personal matter. The Commission heard his case and suspended him for a period of two years for failure to report. He said Mr. Hudnall had been before the Commission on two previous occasions: on April 1995, placed on probation from April 25, 1995 to April 25, 1996, at the October Commission Meeting for failure to report, he did not appear and his license was suspended from October 29, 1996 to January 1, 1998, he appealed the decision in 1996, and the Commission stood by its October decision. Mr. Hudnall had been found harvesting from the Commonwealth April and June 1999, and no reports were received during this year. He said Mr. Hudnall came in the office on January 8 requesting an appeal.

Commission Meeting

Commissioner Pruitt asked staff if Mr. Hudnall was up-to-date now on all his reports. Mr. Peters responded that according to the computer, and as Mr. Hudnall stated to Ms. Iverson on December 13, that he did not work any time during this year, which did not match staff's reports.

Veremdel Hudnall addressed the Commission. Mr. Hudnall said he called in his report in June. He said he started crabbing the last of May, there were no crabs and he took his pots up and called the report in that he was not crabbing. In July he called in that he did not have any report forms and he received the report forms on July 7. He said he didn't crab because he could not make it off of a 100 pots. Other comments are a part of the verbatim record.

Associate Member Davis asked what two months in the Spring did a marine officer see him working in the water. Mr. Peters responded that on April 28, the marine patrol officers observed him culling crabs tied up to dock on his boat, the Grace Marie. On June 30, 1999, he was issued a summons for non registration of a vessel, and Mr. Hudnall stated to the officer that he was working 50 crab pots.

Commissioner Pruitt asked Mr. Hudnall if he was asking the Commission to reinstate his license. Mr. Hudnall responded that if he couldn't get more than a 100 pots, there was need for his license.

Commissioner Pruitt placed the matter before the Commission. Associate Member Ballard commented that he had not heard anything today that would change his mind on what was done originally for suspending his license for two years because this was the third offense. Associate Member Ballard asked if a motion was needed to uphold what was done previously, that would be his motion, if a motion was necessary. Associate Member Davis commented that he would second the motion, if it was necessary.

Commissioner Pruitt asked staff if there was any mitigating circumstances regarding Mr. Hudnall's calling in his reports. Mr. Peters responded no, because law enforcement officers had observed Mr. Hudnall culling crabs from his boat and had 50 pots in the water, which was a sign of harvesting under the compliance program. He said not working was not an issue when documentation was available that he had worked.

Associate Member Ballard then moved to deny the appeal. Motion was seconded by Associate Member Davis. Motion carried 7 to 1.

Mr. Hudnall asked why he could not get more than a 100 pots. Mr. Travelstead responded that the freeze was still on until May 2000.

Commissioner Pruitt advised Mr. Hudnall that he could appeal the decision to the Northumberland Courthouse.

Commissioner Pruitt returned to the order of the agenda, starting with Item 9.

9. DISCUSSION: Consideration of striped bass regulatory changes mandated by the ASMFC Striped Bass Fishery Management Plan for 2000.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission. He said staff had received 1,114 letters and e-mails that supported the Commission's adopting the full set of measures that staff had recommended last month. He said there was a petition of 1401 signatures supporting adoption and one letter opposing adoption. Mr. Travelstead stated that staff had been directed to prepare additional options to achieve at least an 8% reduction in Virginia's commercial and recreational harvest of 8-year and older striped bass. Mr. Travelstead presented slides that showed the different proposals to reach a 14% reduction in the harvesting of 8-year and older striped bass. He said in the recreational fishery, slot limits were looked at, and in the commercial fishery, maximum size limits and seasons were looked at. He said the option of a 18" to 34" and a 28" to 34" slot limits were the favorable, and the slot limit applying only to a one-fish or a two-fish possession limit, with the second fish not being larger than 34". He said on the commercial side, the preference was the closed season for 8 days at the end of the season.

Mr. Travelstead also prepared options that would achieve a 8% reduction. He also gave information on noncompliance and moratorium issues. Comments are a part of the verbatim record. Mr. Travelstead commented that the major states such as Massachusetts and New York would be given credit for having a one-fish recreational possession limit for the past several years. Those states most likely would not have to implement the 14% reduction. He said if Virginia went to a one-fish possession limit for recreational fishermen, Virginia would give up a 120,000 fish compared to the recent measures which would be about 5 to 6 thousands fish. Mr. Travelstead said this was a minor issue to go out of compliance with, which only required giving up a few thousand fish.

Commissioner Pruitt indicated that staff had explained the issue very clearly and the Commission would received pro and con comments from both sides. Each side would have five minutes and each side should select a spokesman to address the Commission.

Commission Meeting

Richard Welton, from the CCA, commented that they had a lot of people that had taken off from work and he would like 10 minutes for each side. Commissioner Pruitt said based on the time constraint he would allow seven minutes each.

Richard Welton, Coastal Conservation Association, addressed the Commission. He said he had persons to speak regarding their economic hardships.

Marty Esposito, Dock Shop and Dry storage Manager at Marina shores from Virginia Beach, addressed the Commission. She said 95% of their business at this time was from striped bass and if they lost the striped bass business, she would lose her job for the season and 15 other employees that worked with her.

Mark Horner, Charter Boat Captain, addressed the Commission. He said he was able to get back into the business because of the resurgence of the striped bass, which represented 60% of his business. If they lost the striped bass business, he would have to go out and get another job.

Tom Mitchell, owner and operator of the Lighthouse Tackle in Virginia Beach, said that 45% of his business came from the striped bass. He said closing the fishery would present an impact on his business and would cause him an economic hardship.

Gary Owens, owner of a lures company that manufactured all types of lures, but mainly striped bass lures addressed the Commission. He said he had nine employees and if the fishery closed, it would close down his business.

Herb Gordon, a Charter boat person that brought Bill Carson from Lynnhaven with him, addressed the Commission. He said 60% of their business came from the striped bass industry, both north and south. Mr. Gordon felt Virginia should stay in compliance because it was a 100 million dollar industry.

Dick Braml, representing the Coastal Conservation Association in front of the Atlantic States Marine Fisheries Commission, addressed the Commission. He said he wanted to point out the process regarding Amendment 6 that would affect the striped bass fishery next year. He said it would be a revolutionary change in the way striped bass was done. He said Mr. Travelstead was an extremely good proponent of Virginia, and he did not want anything to happen that would discredit him before that regulatory body. He said Virginia had gotten a very good deal from ASMFC for striped bass. He said fishery managers loved to manage fish in someone else's state and Virginia should not go out of compliance because there would be 14 other people managing fish in Virginia.

Richard Welton, Coastal Conservation Association, addressed the Commission. He said he felt like staff was given part of the story last month that was not about striped bass, but about the shad fishery and the ocean fishermen were just using that as an excuse to get out of compliance. Other comments are a part of the verbatim record.

Ernie Bowden addressed the Commission. He said staff had indicated that the problem was harvest, but the problem was the hook and release mortality in the northeast on the 8-year old fish. He said Virginia caught a smaller fish. He said if you could convert what Massachusetts kept and destroyed approximately 579,000 fish that were spawning stock fish. He said if weight alone was used, Massachusetts destroyed more fish than the entire Chesapeake Bay Area. He said everyone should be measured by the same rule. He said he thought there should be a task force to look into ways of reducing the bycatch problem. Other comments are a part of the verbatim record.

Commissioner Pruitt complimented both sides for their presentation. He said he felt that Amendment 6 should be addressed together with the recreational and commercial industry and stay with the process. Mr. Pruitt then placed the matter before the commission.

Associate Member Davis commented that he agreed with Mr. Bowden. He also said he was not aware that there was two different laws, striped bass and coastal law. Mr. Davis said he would reverse his vote on this particular issue and hope that in the future there would be an issue where they all agreed.

Associate Member Gordy requested an explanation regarding going out of compliance and then coming back. Mr. Travelstead said ASMFC could give a state as much time as they wanted to come back within compliance, but he did not know if ASMFC would give the Commission a second chance. Mr. Travelstead said the law was very clear that once the Commission had recommended a state for being out of compliance, then the Secretaries at the Federal level would have 30 days to make a decision. A discussion between Commission members followed regarding going out of compliance. Comments are a part of the verbatim record.

Mr. Travelstead explained to the Commissioners they would be considering regulation 252 which contained the measures for both the fisheries recreational and commercial to achieve the 14 % reduction in order to be in compliance with ASFMC requirement, which was the 8-day season closure for the commercial industry, and the slot limit for recreation fishery. Mr. Travelstead said a motion was needed to adopt the regulation 4 VAC 20-252-10 et. seq.

Associate Member Davis moved that Regulation 4 VAC 20-252-10 et. seq. be approved.

Commission Meeting

Associate Member Ballard asked if the measures would have to be specified within that regulation. Commissioner Pruitt asked for a second to the motion before further discussion. Associate Member Ballard seconded the motion. Mr. Ballard commented that he had evaluated this regulation from a business standpoint and he did not think there was a good risk reward ratio for going out of compliance. Comments are a part of verbatim record. He said he was sympathetic to the idea that they needed to take a stand with ASMFC as a Commission, at some point, on certain matters. However, he had heard from both the recreation and commercial people that Mr. Travelstead did stand up for the Commission at the ASMFC meeting along with other members of the delegation.

Associate Member White said he had attended several ASMFC meeting and it was politics as usual, but he wanted to go on record as agreeing with Mr. Ballard's statement. Associate Member Hull was also in agreement.

Commissioner Pruitt placed the matter before the Commission. The motion carried 5 to 2, with Associate Members Williams and Gordy voting no.

For the record, Mr. Pruitt mentioned that he had to attend a funeral and Associate Member White would be chairing the rest of the meeting. Mr. Pruitt then wished the members of the Commission a happy holiday season. He said he was very pleased working with the members of the Commission and he looked forward to working with the Commission for the next two years.

For the record, Associate Member Ballard also left the meeting.

11. BLUE CRAB: Continued discussion and review of blue crab life history characteristics and their implications for management.

Jack Travelstead, Chief-Fisheries Management, gave an overview of what occurred at last month's meeting. He said staff had not fully informed the Commission about various aspects of the bluecrab life history and its characteristics which made certain management measures unrealistic or would have less impact than one would think. Therefore a meeting was held with Mr. Pruitt and Dr. Don Wright and others at VIMS, they suggested that there be a presentation on some basic biology of the blue crab and its life history. Mr. Travelstead then introduced the two speakers, Jacques van Montfrans, from VIMS, and Dr. John McConaugha

from Old Dominion University.

Associate Member Davis commented that he was concerned that only a third of the Commission members were present for the presentation and he felt that the information was important. Mr. Travelstead responded that he would try to get the information in written form to all the members.

Jacques van Montfrans presented detailed information on the life history of the blue crab and how it affected various fisheries in the Chesapeake Bay. He also emphasized the reproductive biology of the blue crab, the importance of males to the reproductive potentials, and females in size relationships. Mr. Montfrans provided data from the winter dredge survey regarding the different sampling stations. Comments are a part of the verbatim record.

Dr. John McConaugha presented detailed information on the Larvae and Impact of Offshore Larval Transport on the Blue Crab Fishery. Comments are a part of the verbatim record.

A brief discussion followed between the Commission and Dr. McConaugha regarding the blue crab being affected by diseases. Comments are a part of the verbatim record.

Dr. Bureson commented that the two diseases that affected the blue crab were on the seaside and there were no disease that he knew about in the Bay that affected the blue crab.

- 12. DISCUSSION:** Request for public hearing to consider opening of Deep Water Shoal, James River, to the harvest of oysters and approval of the 2000 Broodstock Relocation Program.

Dr. Jim Wesson, Head-Conservation and Replenishment, briefed the Commission on the request to have a public hearing to open Deep Water Shoal far up the James River. He said it was an area that was normally polluted and was used as a seed source. However, Ft Eustis's Army Transportation facility had closed its facility and attached to the Hampton Roads Sanitation System. He said the Health Department was in the process of making a determination for the final area, and most of the oyster rocks would be reclassified as safe for direct marketing.

Dr. Wesson said the second request was to get approval for the procurement measures (as stated below) to go ahead and start the broodstock relocation program to move 2,000 bushels of oysters from Gwynn's Island, Deep Rock and Beverly's Rock. He said the project would start in January.

Approval of Procurement Activity for the 2000
Broodstock Relocation Project

General:

Certain aspects of the procurement of replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising the option available under Section 28.2-550 of the Code of Virginia.

Item C of Section 28.2-550 of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment, including contracts with commercial fishermen for replenishment, research, and stock assessment activities as provided in subsection B, which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its awards and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

This project envisions contracting with dredgers to harvest oysters 3 inches or larger from an area known as Deep Rock in the Lower Chesapeake Bay off of the mouth of the Piankatank for transplanting by the harvesters to areas selected and marked by VMRC in the Piankatank and Great Wicomico Rivers.

The Commission will post a public notice to contract for dredgers. All individuals interested in participating in the project will notify the MRC Conservation and Replenishment office. All interested dredgers will be allowed to work. The Commission and/or the Conservation and Replenishment Officer will set the per bushel price for oysters, based upon prevailing market conditions.

If the conditions of the oyster resource changes, or if the Conservation and

Replenishment Officer encounters unanticipated/unscheduled situations with this program, planned procurement activities may be changed, to facilitate the completion of the project.

APPROVAL, BY THE COMMISSION, OF THIS REPLENISHMENT PROJECT WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

Associate Member Williams moved to go to public hearing on opening the Deep Water Shoal Replenishment Seed area. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Dr. Wesson reminded the Commission that he also needed approval for the procurement methods. Associate Member Williams was agreeable to add the procurement methods to his motion. Associate Member Hull was also acceptable. Associate Member White then took another vote on the entire motion. The entire motion carried unanimously.

13. DISCUSSION: Charterboat/Headboat license fees for non-residents fishing in Virginia tidal waters. Reciprocity agreements.

Jack Travelstead, Chief-Fisheries Management, stated that this item was placed on the agenda at the request of Commissioner Pruitt, who had received a number of phone calls from the Charter boat industry in the Northern Neck area. He said the charterboat industry was concerned with the number of Maryland charterboats that were coming to Northern Neck to fish. The Maryland striped bass season ends in November while Virginia is still open through December. This angered some of the Virginia Charter boat people. Mr. Travelstead said he contacted Mr. Jim Diebler, the President of the Virginia Charter Boat Association to find out his concern about the issue. He said Mr. Diebler stated that he was not aware of the issue and did not see a solution to the problem. However, there were five or six Maryland charterboats that did come into the Northern Neck in December. Mr. Diebler also pointed out that in the spring of the year the reverse was true because there were as many as 39 charterboats that went to Maryland to fish in their fishery. Mr. Travelstead said Mr. Diebler felt that any legal action that could be taken, such as, raising license fees or limiting entry in the fishery, would affect residents as well as non residents. Therefore, Mr. Diebler felt the Commission should not do anything because it might have a more negative affect on Virginia fishermen in solving that problem.

Acting Chairman White asked the Commission about their feelings on this issue. He also asked

if there were any charterboat captains present to address this issue. A brief discussion followed.

Associate Member Williams suggested that he thought the issue should be left alone. Associate Member Birkett asked if this issue had been discussed before the Finfish Committee. Mr. Travelstead responded that the issue was discussed at the Finfish Meeting approximately two years ago regarding fees, and was then brought before the Commission. He said Maryland and Virginia worked out a solution regarding the fees. Mr. Travelstead said the General Assembly adopted the amendment to Section 28.2.302.8 that gave the Commission the authority to create licenses and establish fees. Mr. Travelstead said at this point he did not see any need to do anything.

Associate Member Hull moved to take no action. Motion seconded by Associate Member Birkett. Motion carried unanimously.

For the Record: Acting Chairman White stated that a request from Kelly Price, Arthur Kellum and Fred Linton had been received to address the Commission regarding the Crab Dredge Committee Exception. The Chairman requested Mr. Peters to come forward and brief the Commission.

Jim Peters, Fisheries Management Specialist, briefed the Commission. He said this case dealt with Mr. James W. Porter and Mr. Price. Mr. Porter was the crab dredge holder and was granted an exception in 1997 - 1998 because his wife was ill and he was unable to participate in the fishery. He was granted the permit for that year, but did not use the permit. He was supposed to come to the crab dredge exception committee meeting, but he never showed up. However, during that time period, he sold Mr. Price his gear and license and crab dredge permit, even though he had not been approved for one. Mr. Price was here before the Commission today to say that he purchased it in good faith, but he did not have a license and he would like to take Mr. Porter's place in the fishery.

Mr. Price said he purchased the boat approximately three years ago. Each year he would ask Mr. Porter to transfer his license, Mr. Porter would always tell him "we'll do it next fall", this happen again. He said Mr. Porter did not have another boat. He explained to Mr. Porter that he bought the boat with the intentions of purchasing the license along with the rig, license and the boat. He said the license was never transferred the way it was supposed to have been. He said he paid \$8,000 for a crab rig, boat, and everything.

Commission Meeting

Mr. Peters explained that Mr. Porter did not report and did not harvest, apparently because he did not have a boat, and therefore was not eligible for a license. Mr. Peters then read a note from Mr. Porter that said, "I, James E. Porter, sold Miss Betty to Kelly Price, and I also promised my dredge rig and crab dredge license to him." Mr. Peters said it was dated and signed with Mr. Porter's commercial registration number on it.

Acting Chairman White asked if the Commission had a similar situation in the past. Mr. Peters and Mr. Insley responded that this was a unique situation and this situation had not come before the Commission before. A brief discussion followed between staff and Commission members.

Mr. Peters mentioned the criteria that the Crab Dredge Exception Committee used for issuing licenses: (1) must possess crab dredge, (2) must have a permit, (3) must report during that time frame and (4) complete an application. Mr. Porter did not do any of the requirements to remain in the fishery. Mr. Peters said Mr. Porter sold his equipment in guise that he did have a license.

Associate Member Birkett mentioned that he thought it was a civil matter that did not come under the Commission's jurisdiction regarding a recourse between Mr. Porter and Mr. Price. However, in view of the circumstances, he said he would like to make a motion to grant him the license because of the circumstances. Associate Member Gordy seconded the motion so that the matter could be discussed. Mr. Travelstead responded that the Commission had the authority to grant the license. The question was called. Motion carried unanimously.

Jim Peters, Fisheries Management Specialist, briefed the Commission on Mr. Arthur Kellum's situation. Mr. Kellum was sent a letter in September that they did not have the necessary reports. A followup letter was sent in October stating that the reports were not received. Another letter was sent stating that the crab dredge committee meeting was in October, please attend the meeting to be heard. Mr. Kellum did not respond, he did not appear before the Committee. Mr. Kellum did not meet the requirements because he had no reports on file for January or February. Mr. Kellum said that he did not work December 1998 and March 1999. Mr. Peters said Mr. Kellum told him yesterday that he did mail the reports into this office. Mr. Peters said he checked the computer and the copies in the file, and could not find any reports. Mr. Kellum said he would bring the copies today and was requesting the Commission to reinstate his crab dredge license.

Arthur Kellum addressed the Commission. He said he did send the report in December,

January, and February using the green card. He said he put it in his mailbox at his home.

Acting Chairman White asked if Mr. Kellum had responded to any of the certified mail sent him. Mr. Peters responded no, but staff had received the certified letter back from the crab dredge meeting denying Mr.Kellum's appeal.

Associate Member Gordy commented that the Commission had received complaints before about the reports not being received and she wondered if a return address was being used.

Mr. Kellum said the only thing he didn't do was circle the month when he sent the green card. Mr. Kellum presented some reports from 1998.

Acting Chairman White indicated that it was important to report when it was required, not when it was convenient. Mr. White then placed the matter before the Commission. There being no action from the Commission, Acting Chairman White said the previous decision would stand, and he would have to appeal to the court. Mr. Kellum said the reason he did not show up at the Crab Dredge Committee meeting was that he knew he had sent his reports in and he saw no reason to appear at the meeting.

Associate Member Hull commented that he thought the Commission should have a motion to uphold the previous decision. He then so moved. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Freddie W. Linton - not present.

Mr. Peters briefed the Commission on Mr. Linton's circumstances. He said Mr. Linton wanted to get an appeal for a crab dredge license. Mr. Peters said he could find no record of Mr. Linton ever holding a crab dredge license.

Acting Chairman White requested that Mr. Peters advise Mr. Linton to appear before the Commission and provide evidence that he had held a license and the Commission would discuss the matter.

PUBLIC COMMENTS.

Associate Member Hull informed the Commission that a distinguished Virginia Artist, Mr. Bill Marks, who lived in Northern Neck, had produced a significant print of watermen of the Chesapeake Bay. He had asked the Commissioner if they could come today and make a

presentation.

Mrs. Marks addressed the Commission. She gave background information on the Chesapeake Watermen's Print. Comments are a part of the verbatim record. She then provided information to purchase the print.

Captain Jensen addressed the Commission. He gave the Commission a collage of historic pictures from Millersville, Maryland. He then asked the members if they had a draft of the Chesapeake 2000. He thanked the Members for their dedicated service. He said he wanted them to talk seriously next year about cleaning up the Rappahannock River.

G. G. Crump addressed the Commission. He said he had offered a shad program last year for the York River system and it was put on hold. He said he had not heard any thing about new data, or any program being set up, or any request to the Atlantic States for any type of shad program. He said the shad fishery had been closed since 1993 and he was interested in a report.

Jan Marshall, Tangier waterman, addressed the Commission. He gave information regarding the oyster fishery in the Pocomoke Sound. He said they had learned that there were more oysters in Pocomoke Sound and they had learned that there was a spat set everywhere. Mr. Marshall asked if Hurley's Rock could be opened and left open. He said they would like to bring oysters back to the place where they could go anywhere and they would not have to come to the meetings every month and ask to open certain areas. He said Dr. Wesson had informed them that a large part of the problem was the lack of money for shells. He said he felt they should contact their representatives to enable the Commission and Dr. Wesson to do what they needed to do. Comments are a part of the verbatim record.

There being no further comments, the meeting was adjourned at 3:10 p.m.

William A. Pruitt
Commissioner

Commission Meeting

11084
December 21, 1999

LaVerne Lewis
Commission Secretary