

MINUTES

**JUNE 27, 2000
NEWPORT NEWS, VIRGINIA 23607**

The regular monthly meeting of the Marine Resources Commission was held on June 27, 2000 with the following present.

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| William A. Pruitt |) | Commissioner |
| C. Chadwick Ballard |) | |
| Gordon M. Birkett |) | |
| Lake Cowart, Jr. |) | |
| Laura Belle Gordy |) | Members of the Commission |
| Henry Lane Hull |) | |
| John W. White |) | |
| Kenneth W. Williams |) | |
| Carl Josephson | | Assistant Attorney General |
| Wilford Kale | | Sr. Staff Adviser |
| Kevin Kurling | | Sr. Programmer Analyst |
| LaVerne Lewis | | Commission Secretary |
| Bob Craft | | Chief- Finance & Administration |
| Debbie Brooks | | Executive Secretary |
| Steven G. Bowman | | Chief-Law Enforcement |
| Lewis Jones | | Deputy Chief-Law
Enforcement |
| Dan Eskridge | | Northern Area First Sergeant |
| Warner Rhodes | | Middle Area Supervisor |
| Kenny Oliver | | Southern Area Supervisor |
| Randy Widgeon | | Eastern Shore Supervisor |
| Robert Simmons | | Marine Patrol Officer |
| Ronnie Garrett | | Marine Patrol Officer |

Virginia Institute of Marine

Science Staff

- Dr. Eugene Burreson
- Tom Barnard
- Lyle Varnell

Dr. Tom Lipcius	
Dr. Jim Wesson	Head-Conservation and Replenishment
Jack Travelstead	Chief - Fisheries Management
Robert O'Reilly	Assistant Chief -
	Fishery Management
Roy Insley	Head - Plans and Statistics
Ellen Cosby	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Tiny Hutcheson	Fisheries Management Specialist
Tracey Patton	Fisheries Management Specialist
Bob Grabb	Chief-Habitat Management
Tony Watkinson	Deputy Chief-Habitat Management
Chip Neikirk	Environmental Engineer
Jay Woodward	Environmental Engineer
Randy Owen	Environmental Engineer
Tracy West	Environmental Engineer
Heather Wood	Environmental Engineer
Ben Staggs	Environmental Engineer
Hank Badger	Environmental Engineer
Jeff Madden	Environmental Engineer
Gerry Showalter	Head-Engineering and Surveying
Debra Jenkins	Program Support Technician
others present:	
Dr. & Mrs. George W. Brooks	B. Kay Wilson
Michele Floam	Gene & Rosalie Runiski
Alexander G. Papas	Danny & Stella Strader
Cindy Stanton	Ben Pace
Neal & Maxine Messer	Stephen Powell
Juan C. Escajadillo	Andy Killman
Joseph A. Boulter	Zane Edwards
Charles B. Fegan	Bruce B. Mills
Lyle Varnell	Dolly & Calvin Crowley
Marvin & Linda Mathis	Page Ayres
Cathie & Wayne Edwards	Elwyn Darden

Darlene B. Floyd
David Fluhant
David M. Mitchell
Warren B. Trusch
Nate Custer
Tom Powers
Sonja Barisil
Marshall Cox, Sr.
Donna Bozza Rich
F. A. Juartz
Douglas F. Jenkins
Charles Williams
Cassandra Brooks
Russ Baxter
Kelly V. Place

Marie Fox
George H. Ward, Jr.
Beth Cooper
Rick Stilwagen
Sherry Hamilton
Jim Deibler
Rob Brumbaugh
Tim Winell
Michael Schwarz
W. Bokelaar
W. Dupont
Christian Durkam
Melissa Bargu
Michelle Walters
Katherine Holt

Commissioner Pruitt opened the June meeting at 9:30 a.m. Members present were

Associate Members Ballard, Birkett, Gordy, Hull, White, and Williams. Associate Members Davis and Cowart were absent. Associate Member Hull gave the invocation and Associate Member Ballard led the Pledge of Allegiance. Commissioner Pruitt established that there was a quorum. However, he said Mr. Cowart would be arriving later.

1. MINUTES of previous meeting.

Associate Member White move that the Minutes be accepted as distributed. Associate Member Hull seconded the Motion. Associate Member Ballard stated that he would not be voting because he was not present at the last meeting. Motion carried 5-0, with one abstention.

**** APPROVAL OF AGENDA**

Associate Member Hull move to approve the agenda as presented. Motion was seconded by Associate Member White. Motion carried 6-0.

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

Mr. Grabb, Chief-Habitat Management, presented seven page two items that were projects over \$50,000 with no objection and with staff recommendation for approval. Mr. Grabb said item 2G pertaining to Lucy's Cove Property Owners Association #(00-0210) had been removed from the agenda because a protest had been received. Mr. Grabb indicated that he was prepared to dispense with the individual briefing on each item, with the Commission's approval, unless they had any specific questions he might be able to address.

Associate Member Ballard asked if Item 2D, Newport News Shipbuilding and Dry Dock Co., #00-0699, would affect any clam resources. Mr. Grabb responded no. They were in close and were more heavy mooring platforms, 240 feet channelward of the bulkhead and no clam resource should be impacted.

2A. BUCHANAN CREEK PROJECT, #00-0743, requests authorization to hydraulically dredge approximately 87,115 cubic yards of intertidal and subaqueous bottom material to provide maximum project to depths of minus five feet (-5) at mean low water with a six-inch overdredge tolerance to facilitate navigational access to the Western Branch Lynnhaven River municipal channel at properties situated along Buchanan Creek in Virginia Beach. Recommend approval with our standard dredge conditions and a royalty in the amount of \$21,856.05 for the dredging of 48,569 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty of \$21,856.05 for dredging 48,569 cu. yd. of state-owned subaqueous bottom @ \$0.45 per cu. yd.....	\$21,856.05
Permit fee.....	<u>100.00</u>
Total	\$21,956.05

- 2B. JOE MORRIS, ET AL, #00-0158**, requests a modification to their previously issued dredge permit to allow for minor alignment shifts and channel deletions within their proposed navigation channel which will connect to the Western Branch Lynnhaven River municipal channel in Virginia Beach. Recommend a revised royalty in the amount of \$2,681.55 to reflect the net reduction of subaqueous bottom material to be dredged, from 6,111 cubic yards to 5,959 cubic yards, at a rate of \$0.45 per cubic yard.

Royalties of \$2,681.55 for dredging of 5,959 cu. yd. subaqueous bottom @ \$0.45 per cu. yd.....	\$ 2,681.55
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- 2C. ST. CHARLES WATER AND SEWER AUTHORITY, 00-0853**, requests authorization to install a submerged, concrete-encased, ductile iron sewer line beneath 109 linear feet of Straight Creek at three (3) locations, 250 linear feet of Stone Creek at four (4) locations and an aerial sewer line over 52 linear feet of Straight Creek at two (2) locations to facilitate installation of a public sewer system from St. Charles to the Pennington Gap Wastewater Treatment Plant in Lee County. Recommend approval with our standard instream permit conditions.

Permit fee.....	\$ 100.00
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- 2D. NEWPORT NEWS SHIPBUILDING AND DRY DOCK CO., #00-0699**, requests authorization to construct two (2) 14-foot long by 14-foot wide concrete heavy weather mooring platforms approximately 300 feet downstream of Pier #2 and 240 feet channelward of an existing bulkhead at their facility situated along the James River in Newport News. Recommend a royalty of \$392.00 for encroachment over 392 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty of \$392.00 for encroachment

over 392 sq. ft. of state-owned subaqueous bottom @ \$1.00 per sq. ft.	\$ 392.00
Permit fee.....	<u>100.00</u>
Total	\$ 492.00

- 2E. ARMY CORPS OF ENGINEERS, #91-0133**, requests authorization to reactivate and extend their permit to place 50,000 cubic yards of beach quality sand along several beaches along the Chesapeake Bay in Mathews County.

Permit Fee Not applicable

- 2F. JAMESTOWN-YORKTOWN FOUNDATION, #00-0804**, requests authorization to construct a 48-foot long by 20-foot wide covered deck adjacent to their property situated along the James River in James City County.

Permit Fee.....\$ 100.00

- 2G. FEDERAL HIGHWAY ADMINISTRATION AND VIRGINIA DEPARTMENT OF TRANSPORTATION, #99-2108**, request authorization for numerous construction activities associated with the Woodrow Wilson Bridge Replacement Project. These include the following: the dredging of approximately 4,000 cubic yards of State-owned subaqueous bottomlands in the Potomac River adjacent to Jones Point Park; the construction of 454 feet of concrete bulkhead; backfilling of no more than 0.30 acres of subaqueous bottomlands adjacent to the proposed bulkhead; the building of an 11-foot by 168-foot marginal wharf, one (1) 19-foot by 30-foot pier and one (1) 11-foot by 6-foot pier with a 9-foot by 62-foot "T" head, also adjacent to Jones Point Park; and the construction of bridge roadways impacting 1.70 acres of subaqueous bottomland in the Potomac River and Cameron Run in Alexandria and 0.03 acres in Cameron Run in Fairfax County. The 1.70 acres of impact in Alexandria includes 0.80 acres of SAV impact. The applicants also propose to construct three (3), 250-foot breakwaters spaced 50 feet apart which will result in filling of 22,500 square feet of State bottomland, adjacent to Mason Neck Wildlife Refuge and two (2) 300-foot breakwaters, spaced 50 feet apart which will result in the filling of 18,000 square feet of State bottomlands, adjacent to Mason Neck State Park. Both locations are in Occoquan Bay in Fairfax County.

Permit Fee.....\$100.00

There being no comments, pro or con, on the page two items, Commissioner Pruitt placed the matter before the Commission. Associate Member White move for approval of all the page two items. Associate Member Hull seconded the motion. Motion carried.

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 agenda items, 4, 5, 14, and 21. The motion was seconded by Associate Member Birkett. Motion carried unanimously.

The Commission returned from executive session. Associate Member Ballard then moved that

WHEREAS, the 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 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 Birkett seconded the motion. Motion carried.

4. MAGGIE G. RABEY, #99-2240. Commission review on appeal of the May 15, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct approximately 700 linear feet of timber bulkhead, roadway and utility extensions, a storm water structure and the necessary grading for the construction of a three-story duplex involving a beach and coastal

primary sand dune.

5. BRUCE MILLS, #99-2239. Commission review on appeal of the May 15, 2000, decision by the Virginia Beach Wetlands Board to deny a permit to construct approximately 700 linear feet of timber bulkhead, roadway and utility extensions, a storm water structure and the necessary grading for the construction of a three-story duplex involving a beach and coastal primary sand dune.

Randy Owen, Environmental Engineer, said he would like to brief the Commission simultaneously on the Rabey and Mills appeals because of the similarities in both cases. The Commission was agreeable. Mr. Owen then briefed the Commission concerning the May 15, 2000, decision by the Virginia Beach Wetlands Board to deny permits to the estate of Maggie G. Rabey and Bruce Mills to construct approximately 700 linear feet of bulkheading, roadway and utility extensions, storm water structure and the necessary grading for the construction of two, three-story duplexes involving a beach and coastal primary sand dune. Mr. Owen then presented two slides of vicinity maps to orient the Commission. He also presented other slides seen by the Virginia Beach Wetlands Board which depicted the location of the proposed project. He said the purpose of the project was to allow for the construction of a duplex on each of the prospective properties. Mr. Owen said the proposed project called for roadway and utility extensions sited within an existing City right-of-way and called for the grading of a coastal primary sand dune. He said the proposal also included a timber wakefield bulkhead, a three-story duplex and a stormwater structure that involved construction within the crest and foreslope of the dune and extended across the beach to within approximately 50 feet of mean high water. The property was currently undeveloped and the beach was used by the general public for recreation.

Mr. Owen stated that Mr. Mills served as the co-applicant and legal counsel for the Rabey case and represented himself at the hearing. He said Mr. Mills indicated that both he and the Rabey had obtained title to their property prior to the enactment of the Coastal Primary Sand Dune Ordinance in 1980 and that they had tried for years to engage the City of Virginia Beach in a dialogue to develop both bayfront lots. Mr. Owen said that Mr. Mills had indicated that when he put the project together, he was required by the City to design the roadway to the full extent of the City requirements including curbs and gutters, which Mr. Mills objected to. He said Mr. Mills felt that the City's requirements prevented him from developing his lots because of the strict application of the requirements and that the ordinance constituted an unconstitutional taking of his property.

Mr. Owen said that at the hearing, Mr. Mills submitted a number of exhibits in support of his application which included handouts and aerial color photographs/slides. He said that the

Virginia Institute of Marine Science (VIMS) provided written comments on the project stating that the projects were very undesirable and that the proposed activities would destroy the natural vegetation and wildlife habitat, and could possibly lower the dune elevation or isolate portions of it, which would reduce its ability to function as a buffer for shoreline erosion and coastal flooding. VIMS also indicated that the project would potentially reduce the value of the beach as a public recreation resource. VIMS, therefore, concluded that the project was not consistent with the policy, standards and guidelines of the Coastal Primary Sand Dune Act. Mr. Owen said the Virginia Beach Planning Department provided written comments and indicated that when the General Assembly adopted its legislation governing dunes and beaches, they recognized the ability of those features to serve as protective barriers against coastal flooding and erosion. He said the Planning Department also indicated that the proposed construction would result in a significant loss of the resources' ability to protect life and property from coastal storm events. The Planning Department then recommended denial of the project based on the above comments.

Mr. Owen said twelve speakers spoke in opposition to the project. The speakers were concerned that the project would destroy the dune and beach, which could lead to increased erosion and a decrease in the dune's ability to function as a barrier to coastal flooding. Mr. Owen further stated that the speakers presented several exhibits that included color photographs of the area, three letters, and a petition with 80 signatures from the Chesapeake Beach Civic League. In addition, there were approximately 40 other persons present at the meeting in opposition to the project.

Bruce Mills addressed the Commission. He requested that the record be opened so that he could present a few additional slides that were not presented during the Wetlands Board meeting.

Mr. Pruitt placed the matter before the Commission. Associate Member Ballard commented that the purpose of the Commission was to examine the record that was presented to the Wetlands Board, and to determine if the Board had erred based on the evidence they heard. Therefore, he did not see any reason to open the record. The motion to confine the review to the record as transmitted by the Wetland Board was seconded by Associate Member Gordy.

Commissioner Pruitt asked Mr. Mills why he did not present the additional pictures to the Wetlands Board. Mr. Mills responded that he did not have the pictures at that time. Mr. Mills said the intent of the ordinance was not to ambush private property owners. Mr. Mills also stated that all he wanted was an opportunity to have a full and complete hearing under the Constitution of the United States.

After hearing Mr. Mills' comments, Commissioner Pruitt called for the vote on Mr. Ballard's motion. The motion carried unanimously that the review be confined to the record.

Mr. Mills then continued with his presentation. He said he had sent a verbatim transcript of his comments to the Virginia Beach Wetlands Board to each Commission member and he inquired whether each member had read the transcript. Mr. Mills stated that he and Mr. Rabey were grandfathered because the lots were purchased before the enactment of the sand dune ordinance. He said the sand dune ordinance was never intended to apply to their type of situation regarding the taking of their property. Mr. Mills gave further comments in support of his property from the Virginia's Constitutional Law in Article 1, Section XI. He also commented on the Fifth and Fourteenth Amendments of Constitution of the United States. Comments are a part of the verbatim record. Mr. Mills again stated that he wanted to sit down with someone at the City and personally discuss the issue of the possibility that the lots could be developed and still preserve the sand dunes.

Commissioner Pruitt asked if he was denied that meeting? Mr. Mills responded yes. He then read the letter he sent to the City in May from his engineer that explained what development could possibly be done with the property. Comments are a part of the verbatim record.

Mr. Mills then requested that the Commission remand the case back to the Wetlands Board or the City so that he and Ms. Rabey could have an opportunity sit down with the authority to discuss ways of developing the property. He said he did not want any bulkheading or improvement to the sand dunes. He said he was willing to elevate the building on pilings or construct an elevated walkway across the sand dunes on pilings. No roadway improvements would be made to disturb the sand dunes. Mr. Mills then presented slides that showed how his neighbors had developed the sand dune, and he thought it was unfair that his neighbors were objecting to him developing his lot.

Associate Member Gordy asked Mr. Mills how long had he owned the lot. Mr. Mills responded that he had owned the lots since 1975. He said Ms. Rabey had owned her lot since 1950. Mrs. Gordy explained that the laws had changed a lot since that time. A discussion followed.

Commissioner Pruitt opened the hearing to the public.

Kay Wilson, Assistant City Attorney for the City of Virginia Beach representing the Wetlands Board addressed the Commission. Ms. Wilson stated that the Wetlands Board decided to deny both of the projects based on the standards of the Coastal Primary Sand Dune Ordinance. She said the Board found that the public and private detriment exceeded the public and private benefits. She also stated that the Board found out that the proposal violated the standards of

the guidelines, as well as, the purpose and intent of the ordinance. She further stated that the Board went along with the recommendations of VIMS and the Planning Department because the proposal could have a significant, adverse, ecological impact on the structure, form, and function of the sand dune and beach system. In addition, she said the projects would only be 35 feet from the water. She also indicated that the projects needed access, which would destroy the sand dune and the beach. Ms. Wilson then requested the Commission to uphold the decision of the City of Virginia Beach's Wetlands Board.

Associate Member White asked Ms. Wilson if her records indicated that there had been a lack of communication between Mr. Mills and the City of Virginia Beach. Ms. Wilson responded that it was the standard procedure that one would have to build to the standards of the City, such as, the zoning and subdivision ordinances that required access.

Commissioner Pruitt offered Mr. Mills the opportunity for a rebuttal.

Bruce Mills indicated that all he wanted was his expert engineer to come and show the City how the proposal could be done. He said unique situations like his, required unique solutions.

Commissioner Pruitt commented that he did not understand why Mr. Mills had not had the opportunity to address those issues. A discussion followed regarding Mr. Mills' plan and the City ordinances required for his proposal.

Commissioner Pruitt then placed the matter before the Commission. Mr. Pruitt reminded the Commission that items 4 and 5 would be taken at the same time.

Associate Member Ballard requested assistance from staff to prepare a motion that included a finding that the Virginia Beach Board did not err procedurally in their review of the proposal, and that the substantial rights of the applicant had not been prejudiced by their decision. In addition, he requested the motion include a finding that it would be inappropriate for the Commission to review and comment on the constitutionality of a law passed by the General Assembly. Mr. Pruitt then directed Mr. Grabb to draft a motion and bring it back later in the meeting to the Commission for review and discussion.

Mr. Pruitt also requested that Mr. Mills and the City Attorney remain for the final motion.

In the cases of Maggie G. Rabey, est. (VB #99-264-SD/VMRC #99-2240) and Bruce B. Mills (VB #99-265-SD/VMRC #99-2239), Associate Member Ballard move that the Commission, having conducted its review on the record transmitted by the local wetland board as provided by §28.2-1412 of the Code of Virginia, which included the following:

All documents, exhibits, testimony and other materials pertaining to the aforementioned records, including a verbatim transcript of the May 15, 2000 public hearing.

And having heard a complete summary briefing and recommendation by staff and the oral arguments provided by Mr. Bruce B. Mills on behalf of his own and Rabey's application and Assistant City Attorney Ms. Kay Wilson on behalf of the City of Virginia Beach;

and having considered Chapter 14, of Title 28.2 of the Code of Virginia, particularly the provisions of Sections 9 and 10 of the model coastal primary sand dune zoning ordinance which outlines the wetland board duties and responsibilities, matters to be considered, and the criteria for determining whether to grant, grant in modified form or deny the permit to use or develop a coastal primary sand dune/beach;

And considering Code §28.2-1413 that provides the basis on which the Commission shall modify, remand or reverse an appealed decision of a wetland board whenever any of the matters stated therein occurred;

And taking into account the Coastal Primary Sand Dunes/Beaches Guidelines which were developed in conformance with §28.2-1401.C of the Code of Virginia, and the Standards for use of coastal primary sand dunes as set forth in §28.2-1408 of the Code of Virginia;

And specifically finding that this Commission is not an appropriate forum for determining the constitutionality of Chapter 660 Acts of Assembly 1980 that was passed by the General Assembly as applied to the facts of this case;

Now therefore be it resolved that the Commission finds that the Virginia Beach Wetlands Board did not err procedurally in their review of these matters, that the substantial rights of the appellants were not prejudiced by the board's decision, and that the project as designed was inconsistent with the aforementioned standards and guidelines of the Coastal Primary Sand Dunes and Beaches Act (§28-2-1400 et. seq. of the Code of Virginia), and would result in significant adverse impacts to the dune/beach system, and therefore violate the purposes and intent of Chapter 14 of Title 28.2 of the Code of Virginia, and

THEREFORE THE COMMISSION MOVES TO uphold the decisions of the Virginia Beach Wetlands Board acknowledging the appellants' right to resubmit their applications in modified form. Motion was seconded by Associate Member White. Motion carried unanimously.

6. **MR. AND MRS. CHARLES B. FEGAN, #99-1915.** Commission review on appeal of the April 20, 2000, decision by the Accomack County Wetlands Board to deny a permit to construct and backfill 50 linear feet of timber bulkhead, impacting 500 square feet of wetlands, at their property situated along Chincoteague Bay.
7. **DR. AND MRS. ALEXANDER J. PAPAS, #99-1831.** Commission review on appeal of the April 20, 2000, decision by the Accomack County Wetlands Board to deny a permit to construct and backfill 50 linear feet of timber bulkhead, impacting 500 square feet of wetlands, at their property situated along Chincoteague Bay.
8. **MR. AND MRS. JAMES D. KAZLAUSKY, #99-1830.** Commission review on appeal of the April 20, 2000, decision by the Accomack County Wetlands Board to deny a permit to construct and backfill 50 linear feet of timber bulkhead, impacting 500 square feet of wetlands, each situated along Chincoteague Bay and the Captains Cove subdivision.

Hank Badger, Environmental Engineer, indicated that he would like to brief the Charles B. Fegan, Dr. Alexander J. Papas, and J. D. Kazlauskys appeal cases together because the cases were very similar; the VIMS report was the same for each appeal; and that staff's recommendation and summary were identical. He said he had two slides to orient the Commission that were not presented at the public hearing, and five slides that were presented at the public hearing. However, staff did not believe that showing the two aerial slides constituted an opening of the record. The Commission gave their unanimous consent to brief the three appeal cases at the same time.

Mr. Badger then briefed the Commission and presented the slides on the location of the proposal and provided description of the lots. Comments are a part of the verbatim record. Mr. Badger said that SAV was present throughout the proposed project area and that the water depths ranged from two to seven feet. Mr. Badger indicated that he had 10 photographs that were presented at the Fegan public hearing.

Associate Member White asked if the three cases were heard individually or separately when they went before the Wetlands Board. Mr. Badger responded that they were handled as three cases, but the cases were very similar and the applications were received at the same time.

A discussion followed between the Commission and staff regarding the low and high water marks in connection with the proposed project. Comments are a part of the verbatim record.

Mr. Badger stated that each applicant was requesting a permit to install 50 linear feet of timber bulkhead that would impact approximately 500 square feet of tidal wetland and 1250 square feet of state-owned subaqueous bottom. However, only the wetland portion of the project would fall within the Commission's jurisdiction today given the fact that these were Commission reviews on appeal of the local wetland board decisions.

Mr. Badger indicated that during the April 20, 2000, public hearing the Accomack County Wetlands Board considered the VIMS reports and testimony provided by the applicants and others. He said all the applicants stated that their lots were not large enough to build without reclaiming some of the land that had eroded away. The VIMS report was read into the record, which stated that the degree of encroachment into Chincoteague Bay and the resulting loss of wetland resources were undesirable. VIMS also indicated that considering the number of lots likely to be proposed at the present time and in the future, the cumulative marine resource losses were considered a significant factor in developing their opinion. Mr. Badger stated that VIMS suggested a properly sized riprap revetment was preferable to a bulkhead. VIMS also recommended that the structure be aligned at or above the mean high water mark in order to minimize the impact to and loss of wetlands and other marine resources.

Mr. Badger said all three applicants letters of appeal of the April 20, 2000, Accomack County Wetlands Board's decision were considered to be timely under the provision of §28.2-1311 (B) of the Code of Virginia. In the applicants' letters, they all stated that the Board did not present the option of land recovery through participation in a mitigation fund. The letters also stated that the Board had no jurisdiction above mean low water mark since the Commonwealth's ownership began at MLW, not MHW, and that their surveys were lawfully recorded in the Circuit Clerk's office, which showed that the low water mark was beyond the proposed bulkhead.

Mr. Badger said based on the record, that staff did not believe the Board erred procedurally in denying their portion of the project. The Board's decision accommodated the standards for use or development of wetlands contained in Section 28.2-1308 of the Code of Virginia and the Wetlands Guidelines, which stated that, "when an erosion control structure is deemed necessary, it should ordinarily be placed landward of any existing and productive marsh vegetation. Along shorelines where no marsh vegetation exists, the retaining structure should be placed landward of the mean high water mark so as to minimize exposure to wave action."

Mr. Badger also indicated that had the Board approved the project as proposed, it would have clearly eliminated the entire wetland area within the applicant's property and the cumulative marine resource losses would have been considerable. Therefore, based on the foregoing, staff recommended that the April 20, 2000, decision of the Accomack Wetlands Board be upheld.

Associate Member Cowart asked the location of the lot that was permitted in 1991 and where the bulkhead came out at that point? Mr. Badger responded that it was permitted at mean high water according to the VIMS' recommendation at that time. Mr. Badger said since that time, there had been some erosion. A discussion followed.

Mr. Badger indicated that Dr. Papas, Mr. Fegan also representing Mr. Kazlauskys, and members of the Accomack County Wetlands Board, were present.

Charles B. Fegan, applicant addressed the Commission. He stated that Mr. Badger had represented his situation fairly. He said their appeal was based on the Wetlands Board ruling. Mr. Fegan also expressed his feelings about the possibility of contributing funds to a mitigation fund for creating wetlands at another location to offset what was lost by the proposed bulkhead. Mr. Fegan also indicated that he was concerned about the location of the mean low water mark. Comments are a part of the verbatim record.

For the Record: Commissioner Pruitt indicated that the applicants were sworn in, and he requested the two applicants state their full names for the record.

Alexander J. Papas, second applicant, addressed the Commission. He stated that Mr. Badger's presentation had helped him understand exactly what he was talking about. He said the location where they wanted to locate the bulkhead was behind the low water mark. He then referred to the Code of Virginia Section 28.2-1202 regarding property owners' rights extending to the mean low water line. Other comments are a part of the verbatim record.

Associate Member Hull asked Mr. Fegan and Dr. Papas how long had they owned their property? Dr. Papas responded since 1971. Mr. Fegan responded since 1975. Mr. Hull asked what was the condition of the shoreline when the property was purchased. Mr. Fegan responded that the line was just short of where the gabions were in one the photographs shown earlier. Mr. Pruitt then requested the photograph be shown again. A brief discussion followed.

David Fluhart, Secretary to the Accomack County Wetlands Board, addressed the Commission. He said the chairperson, the recording secretary and two other board members of the Wetlands Board were also present. Mr. Fluhart commented that the Accomack County Wetlands Board did suggest alternatives, including possible variances going to the Captain's Cove Association to try to secure front yard setback variances. He said this was routinely done in this development. He said the applicants were informed that they needed to determine how much land was required to make the lots buildable, but the applicants did not want to do that. Mr. Fluhart then stated that the Wetlands Board based their decision on the laws of Virginia.

He said the applicants also stated at the meeting that the proposal was reclaiming land for construction based on the fact they owned the land since the seventies, and they had buildable lots at that time and perhaps they should have been more aware of the erosion problem and probably could have done something earlier. Mr. Fluhart also stated that he did not think the applicants were aware of all the permits involved when they originally made application. Mr. Fluhart then requested that the Accomack County Wetlands Board's decision be upheld based on the testimony and the complete package as presented.

Associate Member Gordy requested that Mr. Fluhart introduce the members of Accomack County Wetlands Board because it was unusual for that many members to show up at a Commission hearing.

Mr. Fegan commented in rebuttal about the Captain's Cove Covenant giving them variances to make their lots buildable, which was not a viable alternative in their particular case. Secondly, they should have been aware of the potential erosion, but he was away for six years. He also stated that the Captain's Cove development had a lot of problems with one of the developers. He also felt there was a catch 22 because you couldn't build without the water and sewer permits. Mr. Fegan stated they were not aware of all the permits necessary.

Alexander J. Papas commented that he never received the instructions Mr. Fluhart mentioned in his presentation today. He said he had talked with Mr. Neal Taylor and he had told him they could pay a certain amount of money and get a permit.

Associate Member Hull asked Mr. Badger what process was used when the owner constructed the bulkhead in 1991. Mr. Badger responded that it was two years ago, not in 1991 when the gabion baskets were put in. He said the process included VIMS coming to the site and presenting a report. He said it was strictly a Wetlands Board jurisdiction, not a subaqueous jurisdiction. He said the Board held them to the high water mark, and that's what the Board attempted to do in all three cases.

Commissioner Pruitt commented that in this particular case, he thought that the Wetlands Board had taken the VIMS report seriously. Mr. Pruitt then placed the matter before the Commission.

Associate Member White moved that the Accomack County Wetlands Board's decision be upheld. Motion was seconded by Associate Member Gordy. Mrs. Gordy then commented that she sat through the hearings and she had sympathy for the land owners because she thought when the subdivision first got started the corporation would see that everything was taken care of, but the corporation defaulted on everything and she felt that was the problem.

Commissioner Pruitt called for the vote. The motion carried unanimously 7 - 0 to uphold the Accomack County Wetlands Board's decision. Mr. Pruitt then advised the applicants that they could appeal to the Circuit Court of Accomack County.

9. **DEWEY WILLIS, ET AL, #99-2026.** Commission review on appeal of the May 15, 2000, decision by the Virginia Beach Wetlands Board to approve in modified form a request to mechanically dredge approximately 1,029 cubic yards of bottom material involving 3,002 square feet of wetlands to provide navigable access to three properties situated adjacent to Brock Cove in Virginia Beach.

Tony Watkinson, Assistant Chief- Habitat Management, stated that Dewey Willis' appeal had been withdrawn and there was no longer any need for Commission review .

10. **JEFF HARRIS, #00-0138,** requests authorization to construct a 40-foot long by 16-foot wide open-sided boathouse adjacent to his property situated along the Poquoson River in York County. The project is protested by both adjacent property owners.

Tracyie West, Environmental Engineer, briefed the Commission and presented slides of the project. Comments are a part of the verbatim record. Ms. West indicated that Mr. Harris currently had a 113-foot long by 4-foot wide private pier at his property situated along the Poquoson River in York County. She said he was proposing to remove the existing pier and replace it with a 300-foot long by 5-foot wide private pier, with a 40-foot long by 16-foot wide open-sided boathouse with a lift, upper deck roof structure, and associated finger piers. Ms. West stated that only the boathouse was under the jurisdiction of the Commission, and the pier was authorized under the provisions of § 28.2-1203 of the Code of Virginia.

Ms. West indicated that the property owner to the northeast, Mr. Randolph Hermann, was concerned that the proposed boathouse would restrict his view, might interfere with jet ski traffic, and could compromise the safety of jet ski operators along this stretch of the river. She said Mr. Hermann had commented that he would withdraw his objection if the pier was shortened to no greater than 120 feet and the boathouse was located closer to shore. Ms. West said the neighbors to the southwest, Mr. and Mrs. George Brooks, were also opposed to the project because of the impact to their view and the roof on the boathouse. However, they were willing to withdraw their objection if the pier was shortened to no greater than 150 linear feet

and the lift was located closer to the shore.

Ms. West said that although the proposed boathouse appeared large for a 23-foot vessel, the boathouse was under 700 square feet, which was the threshold for exemption under the Code of Virginia. Ms. West said that if the project had not been protested, this structure would have qualified for that exemption. She said the proposed open-side design should minimize the visual impacts associated with this structure. However, the proposed deck, railing and associated stairs, would increase the visual obstruction. In addition, the deck was not water-dependent and the activities that would take place on the deck could be accommodated on the upland or on the adjacent dock. Accordingly, staff recommended approval of a 40-foot by 16-foot open-sided boathouse, but without an elevated deck portion.

Elizabeth Cooper, co-owner of the property, addressed the Commission. She gave comments in support of their reasons for wanting to build the boathouse. She said they were requesting a covered boatslip to protect their investment. Other comments are a part of the verbatim record.

Dr. George Brooks, protestant, 103 Silva Drive, adjacent to the applicant, addressed the Commission. He said they had lived 30 years at that address. Dr. Brooks then gave comments for his opposition to the project. Other comments are a part of the verbatim record. Dr. Brooks also said he had no objection to a pier, but he felt the proposed pier was excessively long and would be a hazard for boat traffic.

Elizabeth Cooper readdressed the Commission in rebuttal. Ms. Cooper said they planned to tear down the old pier and extend the current pier out longer.

Commissioner Pruitt asked why she wanted the pier so long. Ms. Cooper responded to get to deeper water and not have to worry about getting the boat in and out during low tide. Ms. Cooper showed slides of the location of the pier.

Christina Swinson, 201 Silva Drive, spoke in support of the Harris project.

Associate Member Gordy requested that staff show exactly where the new dock would be constructed in relation to the adjacent neighboring piers.

A discussion followed between Commission members regarding water depth and the length of the proposed pier.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Hull commented that he thought the pier was an intrusive incursion into waters of the Poquoson River. He said he could not vote for a pier 300 feet long with a boathouse that far out in the river.

Associate Member Cowart gave his comments on Section 28.2-1205 of the Code of Virginia as it related to the granting of permits for use of state-owned bottomlands. Comments are a part of the verbatim record.

Associate Member Birkett commented that he would have concerns regarding limiting the pier to 100 feet because they would not have any more water at 100 feet than what they had at their current pier, which was approximately one foot. He said the more palatable thing to do would be to allow a 200 foot pier, which would give them two feet of water.

After a discussion regarding the verification of water depth, Associate Member Hull suggested that staff be directed to check the water depth and that the Commission defer a decision on the case until next month. Commissioner Pruitt suggested that the motion include the parties communicating on a compromise. Associate Member Cowart suggested that the motion also include realignment of the dock. Motion was seconded by Associate Member White. Motion carried. Issue to be considered at next month's meeting.

For the record: The Commission recessed for five minutes.

Commission recessed for lunch.

ITEM 11. DANNY STRADER, #99-2212, requests authorization to construct a 34-foot long by 18-foot wide, private, noncommercial, open-sided timber boathouse adjacent to his property situated along Whays Creek in Northumberland County. The project is protested by the adjacent property owners.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides on the location of the proposed project. Comments are a part of the verbatim record. Mr. Madden said that Mr. Strader proposed to build a 612 square foot boathouse to his existing 44-foot long

private pier. He said the applicant also intended to construct a 58-foot long catwalk and an L-head extension to create a wetslip around his existing mooring that was authorized by statute. Mr. Madden said the roof would be confined to the wetslip and would not cover the catwalk or the inboard deck extension. Mr. Madden said the proposed boathouse was protested by Mr. and Mrs. Gillispie, who owned property on the upstream side of the applicant's property on a parcel of land possessing approximately 20 feet of water frontage. The protestants were concerned that the proposed boathouse would block their view of the creek and interfere with ingress and egress to their pier.

Mr. Madden said that on May 11, 2000, the Northumberland County Board of Supervisors considered the aesthetic impacts the proposed boathouse might have on the adjacent property and approved the request to construct the boathouse. The U. S. Army Corps of Engineers had issued their permit for the project. In addition, VIMS indicated that the environmental impacts associated with the project were minimal and that no other State agency had objected to the proposal.

Mr. Madden stated that although the aesthetic issues were important to the adjoining property owners, the environmental impact was considered to be minimal. The permitted construction would be downstream and away from the protestants' property line and should not interfere with their ability to access navigable water. The proposed boathouse was proportionally sized to accommodate the applicant's 27-foot power boat and similar to other structures already on the Creek. Accordingly, staff recommended approval of the project as proposed.

Danny Strader and Stella Strader addressed the Commission. Mr. Strader gave comments in support of his project. Mr. Strader also indicated that he had a video he could show regarding the proposed project, if the Commission wanted to see it. The Commission did not feel that was necessary. Comments are a part of the verbatim record.

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

Associate Member Gordy move for approval of staff's recommendation. Motion was seconded by Associate Member Birkett. Motion carried unanimously 6 - 0.

Permit fee.....\$ 25.00

12. **HARRY LEE SELF, #99-1185**, requests authorization to install 80 linear feet of

quarry stone riprap marsh toe stabilization and two (2) ten (10)-foot long, low-profile riprap groins adjacent to his property situated along Bridge Creek in Northumberland County. The project is protested by an adjacent oyster ground leaseholder.

For the record: Associate Member Hull indicated that he would be abstaining on this item because Mr. Self's brother was his realtor.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides of the project location. Comments are a part of the verbatim record. Mr. Madden stated that Mr. Self had hardened the downstream portion of his property with a 115-foot long, pressure treated, timber bulkhead. He said the remaining 80 feet of the applicant's property, upstream of the bulkhead, was unprotected. Mr. Madden indicated that a broad, low lying, fringe saltmarsh along the upstream shoreline was being eroded by wave action.

Mr. Madden said the project was protested by Mr. R. Prosser Crowther, who currently leased oyster ground offshore of the applicant's property. Mr. Crowther objected to the two low-profile riprap groins and marsh toe stabilization. However, Mr. Crowther did agree to withdraw his protest over the marsh toe if the structure was determined to be off his leased oyster ground.

Mr. Madden indicated that on June 5, 2000, a telephone call was received from Mr. Crowther that reiterated his endorsement of the marsh toe stabilization, but still objected to the two riprap groins. Mr. Crowther felt that the two groins would interfere with his ability to work his lease. He also thought that the groins would deposit sand on his lease and decrease its potential ability to propagate oysters.

Mr. Madden said that VIMS had indicated that the cumulative adverse impacts associated with the project would be minimal.

Mr. Madden summarized the situation as follows: He stated that staff agreed that the marsh upstream of the timber bulkhead was undergoing erosion, and if left unchecked, the marsh would erode resulting in the potential flanking of the existing bulkhead. The small groins could effectively reduce the amplitude of waves which were generated along the face of the bulkhead. He said any encroachment over Mr. Crowther's lease could be eliminated by reducing the length of the downstream groin by two feet. Accordingly, staff recommended approval of the 80 linear feet of marsh toe revetment and the 10 foot long x 10 foot wide, low-profile groin immediately adjacent to the marsh toe. Staff also recommended that the length of the downstream groin be reduced to eight (8) feet.

Harry Lee Self, applicant, addressed the Commission. He gave comments in support of his proposal. Comments are a part of the verbatim record.

After a brief discussion between Commission members regarding the dimensions of the proposed project, Acting Chairman White placed the matter before the Commission.

Associate Member Birkett move to accept staff recommendations. Motion was seconded by Associate Member Gordy. Motion carried, 5-0-1 with one abstention.

Permit Fee.....\$25.00

13. BARNEY McLAUGHLIN, #00-0673, requests authorization to construct a 77-foot long, by 20-foot wide, concrete seaplane ramp adjacent to his property situated along the Walthall channel of the Appomattox River in Chesterfield County. The project requires both wetland and subaqueous permits.

Jeff Madden, Environmental Engineer, briefed the Commission and presented slides of the location of the proposed project. He said Mr. McLaughlin was in the process of constructing a hanger on the upland and he intended to launch and recover a seaplane at the site. Mr. Madden said the proposed concrete ramp would cover a 24-foot long by 20-foot wide intertidal area with the remaining 30-foot long by 20-foot wide portion extending channelward of mean low water.

Mr. Madden stated that VIMS had characterized the site as having a type XII Brackish Water Mixed Wetland Community along the waters edge. However, VIMS reviewed the project and indicated that the environmental impacts associated with the project were minimal. No other agency had objected to the project.

Mr. Madden indicated that the proposed seaplane ramp would impact approximately 500 square foot intertidal area, but there was no effective alternative to the construction of the concrete pad. As a result, staff believed that the public and private benefits exceeded the potential public and private detriments and recommended approval of this project as proposed.

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

Associate Member Gordy move to approve the proposed project. Motion was seconded by Associate Member Birkett. Motion carried unanimously 6-0.

Permit fee..... \$ 15.00

DISCUSSION: Consideration of Mr. Roger McKinley's failure to remit the civil charges agreed to by the Commission in November 1999.

Bob Grabb, Chief-Habitat Management, informed the Commission that Mr. McKinley had been contacted by the Commissioner and he had responded by letter outlining his current situation. However, the civil charge still had not been paid.

After a brief discussion between Commission members, Mr. White motioned that Mr. McKinley be given an additional 45 days. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Dr. Jim Wesson informed the Commission that Katherine Holt, a 14-year old student from Bruton High School had participated in an experimental project regarding Replenishment of Oysters for the Chesapeake Bay. Her experiment had earned her first place awards on the local, state, national levels and on the international level she won second place for her experiment.

Katherine Holt addressed the Commission and explained her experience and appreciation for the opportunities this project provided her.

15. OYSTER GROUND APPLICATION: Joseph A. Boulter has applied for 10.00 acres of oyster planting ground in Burtons Bay in Accomack County. The application is protested by Stuart P. Bell and a group of petitioners.

Gerry Showalter, Head-Engineering and Surveying, briefed the Commission on Mr. Boulter's application for 10.00 acres of oyster planting ground in Burtons Bay. He said that Mr. Stuart P. Bell and a group of petitioners were protesting the application. The oyster ground Mr. Boulter applied for was previously leased by a Mr. Vodvarka, plat file 15937. However, that lease was terminated on January 23, 1998. Mr. Showalter also stated that Mr. Andy Killmon, a waterman and adjoining leaseholder, had written a letter in support of Mr. Boulter's application, along

with a petition signed by 75 individuals. He said there was also a petition in protest, which had 69 names on it.

Mr. Showalter said Mr. Boulter stated that he planned to plant shells in an effort to restore oysters on the lease. There was also public bottom in the area, however, Mr. Boulter's application for 10 acres would still leave approximately 23 acres open for the public.

Joseph A. Boulter, applicant, addressed the Commission. He said he had applied for the 10 acres of oyster ground that had been previously leased. Therefore, he felt that since the ground had been previously leased, he should be allowed to lease the 10 acres. He also gave comments in support of his application. Comments are a part of the verbatim record.

A brief discussion followed regarding Mr. Boulter making arrangements for getting shells. Comments are a part of the verbatim record.

Andy Killmon, addressed the Commission and gave comments in support of Mr. Boulter's application. Comments are a part of the verbatim record.

Acting Chairman White placed the matter before the Commission.

Associate Member Gordy move to approve Mr. Boulter's application. Motion was seconded by Associate Member Birkett. Motion carried unanimously 6-0.

16. PUBLIC HEARING: Consideration of proposed amendments to Regulation 4 VAC 20-910-10 et. seq., Pertaining to scup (Porgy) to modify the summer period commercial quota.

Tina Hutcheson, Fisheries Management Specialist, briefed the Commission and presented data that provided information on the scup annual coastwide quota and its allocation into three periods. Ms. Hutcheson said the Winter period I would run from 1 January through April 30; and the summer period would run from 1 May through October 31, and Winter period II would run from 1 November through December 31. She said during the winter periods, the quota would be available coastwide and controlled through trip limits.

Ms. Hutcheson said the current summer period was managed by two different systems. One was managed by The Atlantic States Marine Fisheries Commission's plan, which was based on a state-by-state-quota system. During the period May through October, each state shared in a percentage of their commercial landings. The Federal plan used a coastwide quota system.

The two different systems created difficulties because there was no way to ensure that the summer period quota was not exceeded. In fact, the summer period 1999 quota was exceeded by 298,967 pounds. Therefore, an emergency rule was deemed necessary to resolve the conflicts and keep the summer quota from being exceeded. This rule would help ensure that the quota was more equitably allocated to all jurisdictions. The emergency rule was approved by The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board on April 5, 2000. This rule provided a state-by-state quota-based allocation scheme for all the states to implement their summer period scup fisheries. In addition, the Board adopted a coastwide total allowable landings amount of 1,319,270 pounds for the summer period.

Ms. Hutcheson said that all the states included in the Fishery Management Plan for Scup are required to implement the provisions of the emergency action by May 1, 2000. Therefore, to maintain compliance with the ASMFC Scup Management Plan, staff recommended adoption of Regulation 4 VAC 20-910-10 et. seq., with the amended summer commercial scup quota of 2,149 pounds.

There being no further comments, pro or con, Acting Chairman White placed the matter before the Commission. Associate Member Cowart move to approve 4 VAC 20-910-10, et. seq. Motion was seconded by Associate Member Hull. Motion carried unanimously.

17. PUBLIC HEARING: Consideration of proposed regulations to establish a blue crab sanctuary and to eliminate certain cull ring requirements for crab pots.

Jack Travelstead, Chief - Fisheries Management, handed the Commission additional supporting documents for the proposed regulations. He pointed out that all of the documents were in support of the crab sanctuary except for one, which was a newspaper article that was received by fax today. He also pointed out that most of the documents received also supported maintaining the current cull ring regulations in the mainstem of the Bay.

Associate Member Gordy commented that she thought when this matter was discussed, they talked about closing the cull ring. Mr. Travelstead explained that staff had come to the Commission several months ago and recommended that the Commission require a second cull ring for all crab pots fishing in the mainstem of the Chesapeake Bay. Mr. Travelstead said after discussing it with the Commission and the Advisory Committee, Dr. Lipcius, of VIMS, came forward with a better proposal of establishing a network of protected habitat zones, which would provide more protection for the female spawning stock biomass. Mr. Travelstead said Dr. Lipcius also thought that his proposal would keep the crabs in the water and the

proposal would function better than a cull ring regulation.

Dr. Rom Lipcius, from VIMS, presented information regarding the rationale for development of the sanctuary, the sanctuary corridor approach and the sanctuary corridor benefits. He also gave information on the 10-year data base from the VIMS trawl survey of abundance of adult females. Dr. Lipcius also provided information on the sponge crabs that were outside the sanctuary. Comments are a part of the verbatim record.

Mr. Travelstead explained the draft regulations and staff's recommendation for adoption: 4 VAC 20-752-10, "Pertaining to the Hampton Roads and Bayside Eastern Shore Blue Crab Management Areas;" that contained the new language describing the proposed sanctuary and the second regulation, 4 VAC 20-700-10 et. seq., "Pertaining to Crab Pots." He said staff was proposing to modify the old language so that the second cull ring would not go into effect on July 1. Mr. Travelstead said that the sanctuary was, in fact, a fine tuning of the 11-point Management Plan that had been in effect for six years.

Commissioner Pruitt opened the public hearing.

Ric Stilwagen, Secretary of the Virginia Watermen's Association, addressed the Commission. He stated that the Virginia Watermen's Association opposed the sanctuary based on the following reasons: the sanctuary would only open the door for further expansion of the sanctuary; the sanctuary would push more watermen out of the Bay into the Rivers, which would crowd the rivers; and the fishermen would have to purchase additional electronic gear. In addition, Mr. Stilwagen pointed out that an economic study had not been done, and the association was also concerned about the effects of the increasing population of predatory species, specifically, species that like to eat crabs. Mr. Stilwagen gave some 1994 statistics from the Marine Resources Commission mandatory reporting reports regarding the increase population in the species that like to eat crabs. He felt it was not because of effort, but because there was more fish. As the population of fish increased, the population of the crabs was decreasing rapidly. He talked about an article from the University of Maryland regarding, "the Chesapeake Rockfish Thriving, and they were eating a bunch crabs."

Mr. Stilwagen also stated that the association would like to see the rockfish quota increased and the species regulated. He also suggested speaking to state and federal legislators regarding taking more rockfish, because he felt they would just keep eating more and more crabs. Mr. Stilwagen said he would like to see some work done on the affect of droughts and hurricanes on the crabs. Other comments are a part the verbatim record.

Tom Powers, representing the Coastal Conservation Association of Virginia (CCA), addressed

the Commission. He said the Fisheries Committee from the CCA fully supported the sanctuary action because they felt it was a major step in the right direction. He indicated that the Commission still needed to address the issue of too much commercial pressure on this fishery, and to remove excess gear from the waters in the overcapitalized blue crab fishery. Mr. Powers further stated that the CCA did not support closing the 2 5/16 cull ring in the mainstem of the Bay, which would leave only the small 2 3/16 open.

Dr. Robert Brambaugh, Fisheries Scientist with the Chesapeake Bay Foundation, said they had faxed their comments yesterday. However, he had one comment regarding Mr. Stilwagen's statement concerning predators like the rockfish and croaker, eating a lot of crabs and causing some of the decline in the past 10 years. Dr. Brambaugh said that was a possibility, but VIMS was working on that issue to quantify how many young crabs were food for those fish. He said he felt the loss of underwater grass habitat in the Bay also contributed. He said the Bay Foundation also supported the sanctuary and it was a proactive and positive step in that direction.

Douglas Jenkins, President of the Virginia Twin Rivers Waterman's Association, said they favored this proposal because it had a tendency to increase the crab population baywide. They also favored the elimination of the large cull ring baywide. Other comments are a part of the verbatim record.

There being no further comments, Commissioner Pruitt placed the matter before the Commission. He also indicated that Mr. Cowart would continue to be the Chairman of the Blue Crab Committee.

Associate Member Cowart moved to adopt the crab sanctuary regulation with an effective date of July 1, 2000. He also included the closure of the 2 5/16 cull ring in the mainstem of the Bay, as previously allowed by the Commission. Mr. Cowart also commented that the rationale behind this was that VIMS had done an extensive amount of work on this process. The Fisheries Management Division of VMRC had done well to exploit this process and built the consensus for the idea of the crab sanctuary. He commented that by protecting the female crab, a rebound of the crab population could be seen. Associate Member Gordy seconded the motion. Motion carried 6 to 1.

18. **DISCUSSION:** Alternate methods for measuring minimum size limits of channeled whelk.

Robert O'Reilly, Assistant Chief-Fisheries Management, provided information on the present regulation which establishes a 5 1/2 inch size limit and tolerance for channeled whelk. Mr. O'Reilly said staff had recently received a request from Marshall Cox regarding an alternative method of measuring the channeled whelk because the tips of the channel whelk were so easily damaged. He said staff contacted Delaware and found out they were using a 6-inch length limit, and a 3 1/8 diameter culling ring measurement. However, Delaware had a stricter tolerance of 5 per bushel on a 6-inch length or 3 1/8 cull ring for the diameter.

Mr. O'Reilly indicated that staff was prepared to recommend a 3 1/8 diameter cull ring and a 5-inch length measurement today, but staff had received some comments from industry. Therefore, staff felt that the public hearing should be postponed until further study on measurements could be done. A discussion followed between the Commission and staff regarding the request for public hearing. Comments are a part of the verbatim record.

Associate Member Ballard commented that he had seen a small conch sampling done with the 3 1/8 culling ring and it appeared that the 3 1/8 inch culling ring was too large.

Marshall Cox addressed the Commission. He said he felt the issue should be discussed today. Mr. Cox then provided a conch sample of the damage done from a bushel of harvested channeled whelk. He also mentioned that he thought it was unfair that when the conchs were caught legally, and then three or four hours later, they were illegal because the tip was damaged. He said he had also talked with Mr. Rolley and Mr. Rick Robbins, conch dealers, about the ring system and both agreed that 3 1/8 cull ring was much too large because of different geographical locations.

Commissioner Pruitt asked staff how much time was needed to get a study on the measurements. After a discussion regarding how much time was needed, Mr. Pruitt suggested that staff get with the committee and update the Commission at the next meeting.

Associate Member Williams commented that there was a law on the books regarding setting conch pots in the tributaries that he would like the committee to revisit. Mr. Pruitt suggested that the entire conch issue be taken to the committee. Mr. O'Reilly indicated that at the present time, there was no committee and they would probably need to get a special group for that committee. Commissioner Pruitt appointed Mr. Hull as chairman of that committee and requested that the committee be organized by next week.

ITEM 19. DISCUSSION: Use of bait bags in the channeled whelk pot fishery. Request for public hearing.

Jack Travelstead, Chief - Fisheries Management, informed the Commission that the current regulation in Virginia established a 710,000 horseshoe crab quota. He said the Commission's Fishery Management Policy prevented a modification or reduction in that quota. Mr. Travelstead provided information on reducing the amount of bait needed per conch pot without affecting the fishery through the use of bait bags. Mr. Travelstead said he also felt this was a good opportunity for Virginia to do something to reduce its dependency on the horseshoe crab.

Mr. Travelstead said Mr. Fisher from VIMS had been studying this problem and working with watermen using bait bags and various quantities of horseshoe crabs. He said he was available for a presentation today on his findings. Mr. Travelstead said staff recommended the issue of using bait bags be taken to public hearing next month.

Mr. Bob Fisher, from VIMS who worked with the Sea Grant Program, addressed the Commission. He said their ultimate goal was finding alternative bait to the horseshoe crab. In the meantime, they were trying to reduce consumption or usage of the horseshoe crab. Mr. Fisher's presentation included information regarding the use of the horseshoe crab for medical purposes, the migrating birds use of the horseshoe crab eggs for food, and the use of the horseshoe crab for primary bait for the conch pot fishery. Mr. Fisher also provided information that could lessen the impact on the horseshoe crab population. Comments are a part of the verbatim record.

Mr. Travelstead said that staff's recommendation was to require that all fisherman to use the bait bags. However, it was brought to staff's attention that you could require the use of the bags, but it did not mean a half of crab would be used. He said the advertised regulation should require conch potters to use no more than half of a female or two halves of a male crab, which would give a 50 percent reduction. He also stated that he had contacted industry and they did not feel the additional cost would be much of a deterrent to the fisherman and they were supportive of the regulatory change.

Marshall Cox said he thought this was a very good idea. He said he used the bait box theory the first year he conch fished. However, he thought his bait box was much simpler to use and would still use a half of crab. He was concerned that a particular type of bag would be required. He suggested that he show the bait box he used, and it did not make a difference in the type of bait box used.

Commissioner Pruitt then placed the matter before the Commission. Associate Member Gordy

moved to go to public hearing as requested by staff. Motion was seconded by Associate Member Hull. Motion carried unanimously.

20. RECOMMENDATIONS of the Recreational Fishing Advisory Board.

Mr. Travelstead, Chief-Fisheries Management, said over the years staff and the Recreational Fishing Advisory Board had recommended hiring a person to staff the Board. He said they went to the General Assembly this session and requested funding for a staff person, the General Assembly said they could not pay for the position. The Recreational Fishery Advisory Board was supportive of the position. The Board then reviewed the proposed job description and recommended the approval for the expenditure of \$57,637 to hire that person and to staff an office.

Commissioner Pruitt asked for public comments, there being none, he placed the matter before the Commission. Associate Member Hull moved to approve the expenditure of \$57,637 to establish the position of saltwater recreational fishing development program coordinator. Motion was seconded by Associate Member White. Motion carried unanimously.

21. WILLIBRORDUS BOKELAAR: Review of Elver Harvest/Aquaculture Permit.

Jack Travelstead, Chief-Fishery Management, briefed the Commission on Mr. Bokelaar's permit authorizing the harvest and aquaculture of elvers in Virginia. He said Mr. Bokelaar recently pled guilty and was convicted of violations of the Federal Lacey Act. However, Mr. Travelstead said the violations occurred prior to the issuance of the permit for the aquaculture facility. Mr. Travelstead indicated that had staff been advised of these violations, staff would not have recommended in 1997 to grant Mr. Bokelaar a permit that would allow him to harvest elvers from Virginia.

Franklin Swartz, an attorney representing Mr. Bokelaar, addressed the Commission. He indicated that he would like to present three witnesses that could tell how Mr. Bokelaar's project was progressing. Mr. Swartz then briefed the Commission on the background of the violations and the punishment Mr. Bokelaar received. Comments are a part of the verbatim record.

For the record: Mr. Willy Bokelaar was sworn in and stated his name. His attorney then asked

Mr. Bokelaar to tell about his farm and the work he had done since he received his permit. Mr. Bokelaar responded that he had built the indoor recirculation farm in Prince George County. He said he was very successful in farming eels. Comments are a part of the verbatim record.

Michael James Osterling, a fisheries and aquaculture specialist at the Virginia Institute of Marine Science. Mr. Swartz asked Mr. Osterling questions regarding how he became involved with Mr. Bokelaar, and his follow up with Mr. Bokelaar's program. He said Mr. Bokelaar had a state of the art facility and was most cooperative in all aspects. Mr. Osterling was then asked about Mr. Bokelaar's adhering to the permit requirements. Mr. Osterling said Mr. Bokelaar complied completely with the each stipulation of the permit. Mr. Osterling also indicated that the restocking of 10 percent of elvers was done by VIMS and VMRC at Mr. Bokelaar's request. Mr. Osterling said he was very supportive of any aquaculture development program within the State. Other comments are a part of the verbatim record.

Michael Hunt Swartz, Aquaculture Specialist for Virginia Tech in Hampton answered questions regarding Mr. Bokelaar's facility and if he had been in regular contact with Mr. Bokelaar. Mr. Swartz indicated that Mr. Bokelaar had contacted them on several occasions and requested recommendations that would ensure that his operation was run correctly. Mr. Swartz said he had visited Mr. Bokelaar's operation on many occasions. Other comments were given in reference to the operation of the facility. Comments are a part of the verbatim record.

Mr. Swartz then made closing remarks in support of Mr. Bokelaar's contribution to the Commonwealth and his going beyond to make sure everything was done correctly. Comments are a part of the verbatim record.

There were no comments from Colonel Steven Bowman or Mr. Travelstead.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard commented that he was supportive of Mr. Bokelaar when he visited him at his office before coming to the Commission regarding his intentions for entering the aquaculture business. However, he felt some betrayal by Mr. Bokelaar because he never mentioned his prior violation history. Mr. Ballard said perhaps the Commission had learned a valuable lesson.

Associate Member White indicated that Mr. Bokelaar visited him also and he was quite intrigued by his elver aquaculture business. Mr. White said he felt Mr. Bokelaar had made a terrible mistake and he was paying the price for it.

Associate Member Gordy commented that she was impressed with Mr. Bokelaar when he came before the Board for the permit. However, the Board did not ask him about his prior record. Mrs. Gordy said she didn't know if she would have offered the information without being asked and, therefore, could not hold that against him.

Commissioner Pruitt indicated that he was also impressed with Mr. Bokelaar when he came before the Commission and he believed in the two witnesses wholeheartedly. Mr. Pruitt then addressed Mr. Swartz and Mr. Bokelaar. Commissioner Pruitt said, "he did not feel, based on Mr. Bokelaar's past record in dealing with elvers, that he should be authorized a permit, which in and of itself was a document of public trust. However, I believed even more strongly in the both the principle of fairness, as well as adherence to the law, for these reasons I would not oppose you keeping the permit as long as you do not further violate the laws dealing with our precious marine resources. If, however, I hear of any violation of your permit, either technical or criminal, I can assure you that I will vigorously pursue, through all lawful means, the immediate revocation of your existing permit. Further, I call your attention to one of the conditions contained in your existing permit that indicates there is no guarantee of renewal. So the ball is in your court."

Mr. Bokelaar stated that he understood. Mr. Bokelaar and Mr. Swartz thanked the Commission.

22. FAILURE TO REPORT.

Ronald Owens, Fisheries Management Specialist, briefed the Commission on Carlton E. Haywood, Jr. failure to report. He said Mr. Haywood was not present and could not be found. The marine patrol had attempted to issue a Notice to Appear. In addition, certified letters had been sent to Mr. Haywood and they were returned unclaimed. He said staff recommendation was to suspend Mr. Haywood's commercial registration, gear licenses and permits today until he appeared before the Commission.

Commissioner Pruitt placed the matter before the Commission. Associate Member Hull moved to suspend Mr. Haywood's licenses until he appeared before the Commission. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

22. PUBLIC COMMENTS:

Douglas Jenkins, President of the Virginia Twin Rivers Watermen's Association, addressed the Commission. Mr. Jenkins requested an advertisement for the privilege in the rest of the Bay to close off large cull ring. Commissioner Pruitt said, the Commission in this section of the agenda was referring everything to Committee rather than acting on the recommendation, which included emergency regulations.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Ballard moved to refer the idea to the Crab Committee. Motion was seconded by Associate Member White. Motion carried unanimously.

Associate Member Cowart said that the Crab Committee had decided to meet in August and there was no meeting scheduled for July. Therefore, that issue would be on the agenda in August.

There being no further business to come before the Commission, the meeting adjourned at 3:45 p.m.

William A. Pruitt, Commissioner

LaVerne Lewis, Commission Secretary