

**MINUTES**

**AUGUST 29, 2000**  
**NEWPORT NEWS, VA 23607**

The regular monthly meeting of the Marine Resources Commission was held on August 29, 2000.

William A. Pruitt	)	Commissioner
C. Chadwick Ballard	)	
Gordon M. Birkett	)	
Lake Cowart, Jr.	)	
Laura Belle Gordy	)	Members of the Commission
Henry Lane Hull	)	
F. Wayne McLeskey	)	
John W. White	)	
Kenneth W. Williams	)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		Head-MIS
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance & Administration
Debbie Brooks		Executive Secretary
Lewis Jones		Deputy Chief-Law Enforcement
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Randy Widgeon		Eastern Shore Supervisor
Ray Jewell		Northern Area Supervisor
James Vanlandingham		Marine Patrol Officer
Keith Crandall		Marine Patrol Officer

**VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF**

Dr. Eugene Burreson  
 Tom Barnard  
 Lyle Varnell

**COMMISSION MEETING**

**11276  
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Jack Travelstead  
Rob O'Reilly

Chief-Fisheries Management  
Assistant-Chief Fisheries Management

Dr. Jim Wesson

Head-Conservation & Replenishment

Roy Insley  
Lewis Gillingham  
Ellen Cosby

Head-Plans & Statistics  
Fisheries Management Specialist  
Fisheries Management Specialist

Bob Grabb  
Tony Watkinson  
Chip Neikirk  
Randy Owen  
Tracy West  
Heather Wood  
Ben Stagg  
Hank Badger  
Jeff Madden  
Mark Eversole

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

Gerry Showalter

Head-Engineering & Surveying

others present:

Frances Broaddus-Crutchfield  
John Marshall  
John D. Spruil  
Paul Kidel  
John Evans  
Clyde Tysor  
Al Schlim  
Frank Harksen  
Ettalea Kanter  
Nancy Taylor  
Billy Wood  
Bill Snider  
Floyd & Teresa Moore

Henry Broaddus  
Pete Freeman  
Ron Taylor  
John Mitchell  
Chris Evans  
Jeff Watkins  
Erling Engelsen  
R. Page Ayres  
Rick Thomas  
Bill Snider  
James L. Pittman  
Barbara Rese  
Bob Weinstead

**COMMISSION MEETING**

**11277**  
**AUGUST 29, 2000**

Yeadley Blackwell  
Calvin Shaffer  
Jeannie Butler  
Charles Williams  
Nichelle Walters  
David Hayslett  
William S. Reynolds  
Dick Dishaborn  
Dorothy Jons  
Dale Taylor  
Douglas E. Jenkins  
Bob Hutchison  
Kelly V. Place

Ed Slaughter  
Claude W. Blanchard  
H. J. Deibler  
Chris Ludford  
Marshall B. Cox, Sr.  
Tyla Matteson  
Terry Scanlan  
H. L. Jons, Jr.  
Rick Stilwagen  
Russell Gasbin  
Donnie Starke  
Jim Haylen  
Frances W. Porter

and others.

Commissioner Pruitt opened the August meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Gordy, Hull, McLeskey, White, and Williams. Mr. Pruitt indicated

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that Associate Member Cowart would be arriving later. Mr. Gerry Showalter gave the invocation and Mr. Hull led the Pledge of Allegiance. Commissioner Pruitt established that there was a quorum.

Commissioner Pruitt stated that Governor Gilmore had reappointed Mr. Birkett for four years to the board and appointed F. Wayne McLeskey as the new member. He informed the board that Mr. McLeskey was an avid recreational fisherman and boater. Mr. McLeskey was also a businessman in the Virginia Beach area.

1. MINUTES of previous meeting.

Associate Member White moved to approve the Minutes as distributed. Associate Member Hull seconded the motion. The motion carried unanimously for approval.

\*\* APPROVAL OF AGENDA

Mr. Grabb stated that Mr. Jensen had requested to be placed on the agenda after lunch for 10 minutes for a presentation. Associate Member Hull then moved for approval of the agenda with the change as prepared. Motion was seconded by Associate Member Williams. Motion carried unanimously.

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

Mr. Grabb, Chief-Habitat Division, briefed the Commission on the following nine page two items for projects that were over \$50,000 and not contested.

2A. U.S. MARINE CORPS, #00-0847, requests authorization to place 700 linear feet of riprap revetment and to construct a handicap accessible fishing pier along the shoreline of Chopawamsic Creek, a tributary to the Potomac River, in Stafford County.

Permit fee..... \$ 100.00

2B. CITY OF ALEXANDRIA, #99-1502, requests authorization to install 370 linear feet of sheet-pile replacement bulkheads aligned within two (2) feet of existing concrete

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bulkheads at two (2) locations, backfill 740 square feet of State-owned subaqueous bottomland, and install a 1251 square foot deck and a 296 square foot floating dock and gangway at a third location and to replace three mooring dolphins along the City waterfront of the Potomac River in Alexandria.

Permit fee.....\$ 100.00

**2C. LANDSDOWNE COMMUNITY DEVELOPMENT, L.L.C., #00-0954**, requests authorization to construct an 82-foot by 371-foot roadway bridge over Goose Creek, a tributary to the Potomac River in Loudoun County. Recommend approval with our standard instream construction conditions.

Dredge/fill 16,154 State owned- subaqueous bottom.....	\$ 1615.40	
Permit fee.....		<u>100.00</u>
Total	\$ 1715.00	

**2D. ST. MARGARET'S SCHOOL, #00-0956**, requests authorization to construct 925 linear feet of riprap revetment extending a maximum of 12 feet channelward of an existing deteriorated bulkhead adjacent to their property along the Rappahannock River in Essex County.

Permit fee..... \$ 100.00

**2E. SUSSEX SERVICE AUTHORITY, #99-2116**, requests authorization to install, by the directional bore method, 45 linear feet of submerged waterline crossing beneath Stony Creek and 50 linear feet of waterline crossing under Gally Swamp adjacent to the southbound lane of U.S. Route 301. Recommend our standard instream construction conditions and a royalty of \$95.00 for the encroachment beneath 95 linear feet of State-owned submerged bottom at a rate of \$1.00 per linear foot.

Royalty encroachment beneath for 95 ln. ft. of State-owned submerged bottom @ \$1.00 per ln. ft.....	\$ 95.00	
Permit fee.....		<u>100.00</u>
Total		195.00

**2F. U.S. DEPARTMENT OF TRANSPORTATION, #00-1115**, requests authorization to install 12 anchor plates and associated anchorage for 15 vessels at the James River Reserve Fleet. The mooring Unit #3 anchorage is located specifically at 37° 06' 40" N latitude and 76° 37' 36" W longitude in the James River offshore of Fort Eustis in the City of Newport News.

Permit fee.....\$100.00

**2G. H. P. MCNEAL, #00-1164**, requests authorization to construct and backfill 350 linear feet of vinyl sheetpile replacement bulkheading a maximum of two (2) feet channelward of the deteriorating structure at his property situated along Linkhorn Bay in Virginia Beach. Recommend a royalty in the amount of \$636.00 for the encroachment of the bulkhead and fill on 636 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty of \$636.00 for encroachment of bulkhead and fill of 636 sq. ft. State- owned subaqueous bottom @ \$1.00 per sq. ft.....	\$636.00
Permit fee.....	<u>100.00</u>
Total	\$736.00

**2H. CITY OF VIRGINIA BEACH, #00-1258**, requests authorization to install approximately 142 linear feet of riprap scour protection along pier foundations which support the Lake Gaston Pipeline aerial crossings of the Nottoway River, Assamoosick Swamp and the Black Water River in Southampton and Isle of Wight Counties. Recommend a time of year restriction from March 15 - June 30 to protect the Roanoke logperch, strick adherence to the Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992) and the exclusion of machinery in the streambed.

Permit fee.....\$100.00

**2I. NEWPORT NEWS SHIPBUILDING AND DRY DOCK CO., #00-0583**, requests authorization to dredge, by mechanical method, 300,000 cubic yards of State-owned bottom material (270,000 cubic yards of which is maintenance) from the James River to

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create and maintain maximum depths ranging from -25 feet to -70 feet at mean low water adjacent to their facility in Newport News. All dredged material will be transported directly to Craney Island for disposal. Recommend a royalty of \$13,500.00 for the new dredging of 30,000 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard. Further recommend the purchase and planting of 3,000 market-size clams as 1.33:1 mitigation for the impacts to 0.32 acres of clamming ground.

Dredge 30,000 cu. yds. State-owned subaqueous bottom material @ \$0.45 per cu. yd.....	\$13,500.00
Permit fee.....	<u>100.00</u>
Total	\$13,600.00

There being no comments from the audience, Commissioner Pruitt placed the page two items before the Commission.

Associate Member Hull moved that the page two items be approved as presented. Associate Member White seconded the motion. Motion carried unanimously.

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3. EXECUTIVE SESSION (not held).

- 4. ERLING ENGELSEN, #99-1991. Commission review on appeal of the June 27, 2000, decision by the Hampton Wetlands Board to approve in modified form a request to retain 26 linear feet of vinyl bulkhead and associated backfill along the boatramp at the Marina Cove Boat Basin situated along Harris Creek.

Tracy West, Environmental Engineer briefed the Commission on the appeal and indicated that the record from the Hampton Wetlands Board was in their packets, except for two large exhibits that were too large to photograph. However, Ms. Wood presented the two exhibits to the Commission for their review. She then presented slides of the project and requested permission to include two additional aerial photographs that would serve to orient the Commission to the site. She said staff did not consider that to be opening the record. The Commission agreed that the two additional slides could be shown.

Ms. West indicated that on June 27, 2000, the Hampton Wetlands Board held a public hearing to consider that portion of the bulkhead lying within their jurisdiction. Ms. West said that Ms.

Thomas (staff to the wetland board) provided a report at that meeting which recommended Mr. Englesen be allowed to retain the bulkhead, but the Board required that filter cloth be installed behind the structure. Ms. West also indicated that Ms. Thomas had discussed the issue of filter cloth with the Shoreline Erosion Advisory Service and they had indicated that the filter cloth provided protection to the environment by holding back the fill, which would also serve to strengthen the bulkhead. Ms. West pointed out that VIMS had also recommended the use of filter cloth. Mr. Engelsen had submitted a letter from Mr. Korte of Materials International, which stated that filter cloth was not necessary when using vinyl bulkheading because the interlocking mechanisms formed a seal that did not allow soil to leak through. She said the board had a discussion and voted to allow Mr. Englesen to retain the bulkhead, but required that the backfill be temporarily removed so that the filter cloth could be installed. Ms. West said on July 5, 2000, Mr. Engelsen appealed the Hampton Wetland Board's decision contending that the installation of filter cloth behind the vinyl bulkhead was excessive and unnecessary.

Ms. West stated that based on staff's review of the record, they did not believe the Wetlands Board erred procedurally in their decision to modify the project. In addition, the Board's decision accommodated the standards of use or development of wetlands contained in Section 28.2-1308 of the Code of Virginia and took into consideration the recommendations of both SEAS and VIMS. Therefore, based on the foregoing, staff recommended that the June 27, 2000 decision of the Hampton Wetlands Board be upheld.

Al Schlim, counsel for Mr. Englesen, addressed the Commission. He requested that the record be opened to consider new evidence as follows: (1) a letter from the real manufacturer that had provided the latest specifications; (2) staff had talked to a manufacturer regarding vinyl sheet bulkheading in Florida. He said what they had used was manufactured in Georgia (Mr. Schlim presented a sample for the Commission); (3) the bulkheading had been installed for 16 months. Mr. Schlim indicated that the only item of concern was 13 feet of filter cloth on either side of the boat ramp. He also indicated that during the 16 months, there had been no siltation and no contamination of the waterways.

Based on the information provided by Mr. Schlim, Commissioner Pruitt placed the request to open the record before the Commission. Associate Member Birkett moved that in order to evaluate the project thoroughly, the record should be opened to review the new evidence. Motion was seconded by Associate Member White. Motion carried unanimously. Mr. Schlim then presented an exhibit that showed the waterline and how the 13 feet was determined; he said the water was 2.6 feet deep at high tide. He also presented a letter and a sample of the ShoreGuard sheet from the manufacturer that Mr. Engelsen used in his bulkhead.

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Mr. Schlim then gave a brief demonstration on how the sample ShoreGuard sheets functioned and how it would give strength to the bulkhead without adding the filter cloth to the bulkhead. He also pointed out that they had contacted Virginia Marine Structures, a local contractor from Virginia Beach who built numerous bulkheads and marinas in the Tidewater area using the ShoreGuard sheet; he said the contractor stated that they never used filter cloth with that material. Mr. Schlim then provided information on the structure and design of the bulkhead. He also requested that Mr. Englesen be allowed to proceed without installing the filter cloth. If the Commission was not agreeable to that, then he asked that the matter be referred back to the Hampton Wetlands Board for further review. He also agreed to daily inspections for the next six months to determine if there was a problem. If there was, Mr. Englesen was willing to stipulate today that he would fix the problem.

Bill Synder, Chairman of the Hampton Wetlands Board, addressed the Commission and reminded them that the Commission was privy to information that the Board did not have when they made their decision. He said the Board followed staff's recommendation in making that decision. If it was remanded back to the board, they would review the matter again.

Commissioner Pruitt reiterated that the Wetlands Board followed the procedures of the Code. However, the Commission did open the record to receive information that the Hampton Wetlands Board did not have. He then placed the matter before the Commission.

Associate Member Ballard said based on the new information received today, the matter should be remanded back to the Hampton Wetlands Board for further deliberation. Motion was seconded by Mr. Birkett. Motion carried unanimously to remand the matter back to the Hampton Wetlands Board.

Remanded back to Wetlands Board

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**ITEM 5: ETTALEA KANTER, #00-0464**, requests authorization to construct a 60-foot long riprap groin adjacent to her property situated along Hampton Roads in the City of Hampton. The project is protested by an adjacent property owner.

Tracy West, Environmental Engineer, briefed the Commission and presented slides on the description and location of the property. Comments are a part of the verbatim record. Ms. West said that Mrs. Kanter was requesting to rebuild the groin adjacent to her property utilizing

the concrete rubble from another construction project proposed on her property. She said the proposed groin would not be capped or grouted. Ms. West indicated that the project was protested by Ms. Gail Greenberger, the adjacent property owner to the southeast. Ms. Greenberger was concerned that she had accreted a small beach since the groin structure had fallen into disrepair and the proposal might stop further sand from accreting sand in that area. In addition, she stated that the previous structure trapped seaweed on her property, which resulted in a foul smell as it decayed. Ms. Greenberger also said she did not believe that old concrete rubble was an appropriate building material for the groin.

Ms. West said, according to the VIMS Shoreline Advisory Report, the project, as originally proposed, warranted careful consideration. In their report, VIMS recommended that the stones used in the structure be large enough to stay in place without the use of grout; that the groin be low-profile in design, and that filter cloth be used to help stabilize the structure. Also, VIMS stated that, considering the direction of littoral drift in the area, repair of the groin may serve to trap sand on the Greenberger property rather than on the Kanter property.

Ms. West said the Hampton Wetlands Board discussed VIMS's comments during their May 23, 2000, meeting. At that meeting, Ms. Kanter's agent, Mr. John Spruil, agreed to all the permit conditions suggested by the Wetland Board staff. The Board also approved that portion of the project lying within the Board's jurisdiction with the following conditions: that the length of the concrete chunks used shall not exceed three times the width of the shortest side, that the armor material must weigh at least 200 pounds per stone, that grout would not be permitted, and that the jetty slope should be at 1.5:1. Ms. West further indicated that the Shoreline Development Best Management Practices Guidebook also recommended that filter cloth be used under stone groins for stabilization. The Guidebook stated that, "Rubble concrete may be used as riprap provided it is broken into appropriately sized units, all exposed rebar is cut flush with the unit and any asphalt material is removed prior to installation." Ms. West said there was some concern about the source of the rubble used in the construction of the groin because it was oddly-shaped adjacent to the sea wall. Staff was unsure how the contractor would meet the requirement to keep each individual unit no longer than three times its minimum dimension.

Ms. West said staff recommended that the Commission approve the project with the following conditions:

- broken concrete may only be used as core material for the groin. The core must be capped with quarry stone that is Class II or larger;
- Filter cloth must be placed under the structure;
- The groin must be a low-profile design. Specifically, the terminal elevation of the groin

shall be at or below the mean low water elevation.

John Spruil, representing the applicant, addressed the Commission. He said he was available to answer any questions and they intended to meet all of the aforementioned permit conditions.

Associate Member Ballard asked Mr. Spruil if he was willing to go along with the additional recommendations by staff. Mr. Spruil responded that they definitely would comply with the additional recommendations.

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

Associate Member Gordy moved to accept the recommendation of staff. Motion was seconded by Associate Member White. Motion carried, with Associate Member Cowart abstaining because he was not present for the presentation.

Permit fee..... \$ 25.00

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**6. HANOVER COUNTY DEPARTMENT OF PUBLIC UTILITIES, #99-1877**, requests authorization to install a treated wastewater diffuser structure in the Pamunkey River. The project is protested by the adjacent property owner and others.

Tony Watkinson, Assistant Chief-Habitat Management, briefed the Commission and presented slides of the proposed project. Mr. Watkinson provided information on the location, and nature of the proposed structure. Comments are a part of the verbatim record. Mr. Watkinson said the purpose of the proposed project was to provide an outfall structure for the proposed Totopotomoy Sewage Treatment Plant which is located seven miles from the project site. He said the sewage treatment plant would be designed to treat up to 10 million gallons of effluent per day. He said a permit was required by the Commission for that portion of the project that extended over State-owned submerged land in the Pamunkey River.

Mr. Watkinson indicated that the project was protested by numerous residents in the County, as well as property owners along the river, where the force main and discharge structure would be constructed. The protestants, Ms. Frances Broaddus Crutchfield and Mr. Henry R. Broaddus, had received notice from the County about condemnation proceedings and a condemnation

resolution in order to acquire the necessary easements and property located adjacent to the Pamunkey River. There were also concerns from the protestants about the potential impacts the project would have on water quality, rare and endangered mussel species, anadromous fish (especially shad), and recreational use of the waterway. The protestants were more concerned with the effluent coming from the pipes than the structure in the river.

Mr. Watkinson indicated that DEQ had issued the VPDES permit, with modifications that lowered the total suspended solids (TSS) limit, increased the dissolved oxygen (DO) limit and required that macroinvertebrate studies be conducted. The Water Control Board, considering those conditions along with design elements including the use of UV disinfection, in lieu of chlorination and Biological Nutrient Removal (BNR), concluded that the anticipated water quality met State Water Quality Standards. Therefore, there should be no impacts to anadromous fish, mussel species (subsequent surveys showed no endangered species were in the area) or to recreational use of the waterway as a result of the discharge. No other State agencies had expressed any opposition to the project. VIMS indicated that there should be no double handling of material in the water column, that all instreams construction activities should be avoided between mid-March through June in order to minimize impacts on anadromous fish, and that the river bank, and bottom contours should be returned to their preconstruction contours and stabilized. As such, staff recommended approval of those portions of the project that encroached over State-owned submerged land, with the following conditions to reduce the actual impacts associated with the installation of the discharge pipe and diffusers.

- All areas of State-owned bottom and adjacent lands disturbed by the installation of the structure be restored to their original contours and natural conditions within 30 days from the date of completion of the authorized work. All excess materials shall be removed to an approved upland site and contained in such a manner to prevent its reentry into State waters.
- No work in the associated with the installation of the pipeline shall occur between March 15 and June 30 to protect anadromous spawning species.

A discussion following regarding diffuser structures on State-owned submerged land and the impact that the structure might have on river. Comments are a part of the verbatim record.

Commissioner Pruitt asked if a public hearing had been held? Mr. Watkinson responded that a public hearing had been held.

Associate Member Ballard asked if VIMS had looked at the water quality resulting from the discharge and what effect it might have on marine and fishery resources. Mr. Watkinson responded that he had asked DEQ about the impacts of the effluent on anadromous fish and DEQ had said they felt the limits they were putting on the effluent should prevent any significant impact on the anadromous fish population.

Frank Harksen, Director of Public Utilities for Hanover County, provided the Commission with a detailed presentation on the County's plans for the wastewater treatment project and alternatives considered, the outfall line, the land use provisions, and the benefits to the County for the project. Comments are a part of the verbatim record. He said the County held a series of public hearings regarding the project.

John L. Marshall, attorney from the law firm, McSweeney, Burtch & Crump counsel for Ms. Crutchfield and Mr. Broaddus spoke. Mr. Marshall said although the water quality issue had been addressed by DEQ and the Water Control Board, he felt the Commission should require an independent water quality study. He said nothing had been done by VMRC staff to assess the impact on anadromous fish that spawn and grow, and then travel through an admitted dissolved oxygen sag. Mr. Marshall then requested the Commission to delay their decision until the DE permit could be reviewed. Other comments are a part of the verbatim record.

Henry Broaddus, owner of New Castle Farm, commented on the impact he thought the proposed project would have on the Pamunkey River. Other comments are a part of the verbatim record.

Francis Broaddus Crutchfield, the other landowner, provided comments regarding the land and the river. Ms. Crutchfield stated that for generations her family had worked to be good stewards of the land and river and that they had saved it as a historic treasure and wildlife refuge. They did not want it desecrated as a human dump. She then requested that the Commission not grant this permit without further study. Other comments are a part of the verbatim record.

Frank Harksen, Director of Hanover County Public Works, addressed the Commission in rebuttal. He said the DO sag was six miles downstream as determined by DE. He said the DO sag was addressed in the DE staff report addressed in a letter dated May 3, from Mr. Jerry Selly to the Water Control Board. Mr. Harksen said the report stated that the DO sag would not result in low dissolved oxygen levels in the receiving stream. He said the DO sag was downstream and the limits were 10 milligrams per liter, for BOD and 10 milligrams for

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suspended solids or the sustaining limits. He said the DO was 6.5 milligrams per liter and that was actually higher than the water quality standard, and the DO was being monitored on a daily basis. Other comments are a part of the verbatim record.

Associate Member Cowart asked if a minimum oxygen level had been established. Mr. Watkinson said the DE permit set the dissolved oxygen limit as 6.5 milligrams per liter. He said originally it was set at 5 milligrams, but was raised during the review process. Mr. Cowart then asked what was the average flow rate of the river per day. Mr. Watkinson said he did not recall that information from the report. Mr. Tom Barnard was unable to respond. However, Mr. Watkinson said the river was tidal.

Ron Taylor, a design engineer with Hayes and Sawyer, the project manager, addressed the Commission. He said the State based their permit on the minimum flow that occurred over a seven-day period, once in ten years (7Q10). He said he could not remember the exact number for average flow in the river, but it was around 250 cubic feet per second.

Associate Member Williams commented about the mandatory ban on shad and how the Commission had voted to extend the moratorium for another year. He said based on scientific information that migratory pathways were blocked by DO sags, it could be impossible for adults to reach or return to their spawning habitat, and impossible for the juvenile fish to migrate successfully to the Bay. He felt that they did have the necessary data to respond to this issue today.

After a discussion between Commission Members regarding water quality, the Commission, felt another report on the anticipated water quality impacts from DE was necessary. Comments are a part of the verbatim record. Mr. Pruitt commented that if a another report from DE was requested, VIMS should be included.

Associate Member Ballard moved that VMRC staff, DE, and VIMS' staff have a joint meeting to discuss the matter and that they bring a report to the Commission at the October meeting. Associate Member White seconded the motion. Motion carried unanimously.

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**ITEM 7: MR. AND MRS. GARLAND F. KARNES, #00-0512**, request authorization to construct a 14-foot by 10-foot open-sided covered deck at the channelward end of a proposed pier adjacent to their property along Rowes Creek in Gloucester County.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides on the location and description of the property. Comments are a part of the verbatim record. Mr. Neikirk said the applicants were proposing a 14-foot by 10-foot flat roof over a portion of the T-head of their proposed pier. In addition, the applicants were proposing a 10-foot by 20-foot L-head, covered with a flat roof. The purpose of the covered area was for storage and protection from the sun. However, the covered roof did not qualify under the statutory exemption provided and would require a permit from the Commission. Mr. Neikirk stated that the applicants said there was not enough room on the upland to accommodate their proposed project.

Mr. Neikirk indicated that the project did not involve any oyster planting grounds, and that no other State agencies had commented on the proposal. He said although the project was unopposed and there were no environmental impacts associated with the proposal, the structure was not considered to be water dependent. Based on that, staff recommended denial of the project.

Associate Member Birkett asked if there was any submerged aquatic vegetation (SAV) impacted by the proposed project? Mr. Neikirk responded no, it was muddy bottom.

The applicant was not present and the Commission was reluctant to render a decision. As a result, the Commission decided to continue the case until next month.

Associate Member Birkett moved to continue the case until next month. Associate Member Gordy seconded the motion. Motion carried unanimously.

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**ITEM 8: MR. AND MRS. R. S. BLACKWELL, #00-0834**, request authorization to construct a 36.5-foot by 19-foot private noncommercial open-sided boathouse with an attached 16-foot by 16-foot covered pavilion at the channelward end of their private pier situated along the Northwest Branch of Sarah Creek in Gloucester County.

Chip Neikirk, Environmental Engineer, briefed the Commission and presented slides on the location and description of the proposed project. Comments are a part of the verbatim record. Mr. Neikirk said there were currently three short piers extending from the Blackwell's property. The Blackwells proposed to remove two of the piers and construct a new U-shaped pier, with a

20-foot by 25-foot L-head that will extend 62 feet channelward from their existing bulkhead. In addition, a 36.5 foot by 19-foot open-sided boathouse was proposed to cover a boat-lift and an attached 16-foot by 16-foot open-sided pavilion was proposed to cover a portion of the L-head. The proposed boathouse was open-sided and appeared to be reasonably sized for the 30-foot vessel that the Blackwells intend to purchase. Mr. Neikirk said the Blackwells were requesting the pavilion in order to provide mobility, enjoyment of the dock, the pier, and surrounding areas, and to provide maximum protection from the sun.

Mr. Neikirk indicated that the proposed project was not protested and no State agencies had commented on the proposal. The project did not encroach over any public or privately leased oyster-planting ground. He said the boathouse was considered to be water dependent and staff would recommend its approval. Although the pavilion was unprotested and the environmental impacts associated with it were minimal, the structure was not considered to be water dependent. Therefore, staff could not recommend approval for the construction of a pavilion over State-owned submerged land.

Mr. Neikirk indicated that if protection from the sun were required on the dock, that staff would support a modified application seeking authorization to install a retractable awning.

Associate Member Birkett asked if there were any submerged aquatic vegetation (SAV) in the area. Mr. Neikirk responded no, only muddy bottom.

Jeff Watkins, with Riverworks from Gloucester, the contractor and agent on this project, then addressed the Commission. Comments are a part of the verbatim record.

Mr. Blackwell, the applicant, addressed the Commission. He said the main reason for installing the 16-foot by 16-foot cover was for protection from the sun. He also felt the retractable awning was a safety hazard. Comments are a part of the verbatim record.

Commissioner Pruitt asked if he was also taking out the pilings. Mr. Blackwell said they would remove the pilings. Mr. Pruitt asked if he would only have one dock. Mr. Blackwell said he was keeping the one located to the right. A discussion followed regarding the covered boathouse. Comments are a part of the verbatim record.

Mr. Watkins then readdressed the Commission and said the Corps of Engineers had looked into it and it had been approved by them.

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

Associate Member Gordy moved to approve the boathouse; and added that if shade was required, a retractable awning could be installed; and moved to deny the pavilion. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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9. **FLOYD MOORE, #00-0928**, requests authorization to construct a 26-foot long by 14-foot wide deck on the roof of a proposed 26-foot long by 16-foot wide open-sided boathouse at the terminus of a 110-foot long pier to be constructed adjacent to his property situated along the Rappahannock River in Essex County.

Heather Wood, Environmental Engineer, briefed the Commission and presented slides on the location and description of the proposed project. Ms. Wood said Mr. Moore proposed to construct a 110-foot long private pier, a 36-foot long by 12-foot wide open-pile timber boat ramp and a 26-foot long by 16-foot wide open-sided boathouse with an entertainment deck on the roof. Ms. Wood said during a routine staff visit at the property site, that staff noticed several existing open-sided boathouses in the vicinity of the proposed project. However, none had an entertainment deck. She said staff also noted that there were several observation decks on the roof of two nearby upland properties.

Ms. Wood indicated that, according to Section 28.2-1205 of the Code of Virginia, the Commission was to consider other factors, such as the public and private benefits of the proposed project and its effects on other permissible and reasonable uses of State waters and State-owned bottom lands. She also indicated that the VMRC Subaqueous Guidelines stated that "the Commission will consider the water dependency of the project." Ms. Wood said the proposed pier, boathouse and boat ramp were considered to be water dependent and as a result, staff recommended approval of them. The entertainment deck, however, was not water dependent, and staff recommended denial of the that portion of the project.

Floyd Moore and Teresa Moore, the applicants, addressed the Commission. Mr. Moore presented slides that showed similar boathouses with decks on top that were located in Essex County, close to where they lived. Mr. Moore also presented a slide that showed similarities to his proposed project. Mr. Moore said he had discussed the boathouse with his neighbors and there was no objection to the proposed project. Mrs. Moore gave other comments in support

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of the proposal. Comments are a part of the verbatim record.

Associate Member Birkett asked the Moores if they would consider not having the "A-roof" and using the roof of the boathouse as the deck. Mr. Moore responded that they came up with the idea from Evans Contracting, their builder. He said he would not have a problem with the suggestion. A brief discussion followed.

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

Associate Member Birkett commented that he did not see where the observation deck serving as a roof would be any more obtrusive to the public than the originally proposed "A-roof". He said the boathouse would have a roof anyway, therefore, there would be no more shading of the water area than the roof would normally shade. Mr. Birkett indicated that according to the drawing, the deck was smaller than the roof by two feet. Associate Member Birkett then moved to approve the application with a modification that removed the A-roof configuration and used the floor of the deck as the roof of the boathouse. Motion seconded by Associate Member McLeskey. Motion carried 6 to 1, with Mr. Ballard voting no.

Permit fee.....\$ 100.00

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**10. LUCY FRYER, #00-0816**, requests after-the-fact authorization to retain 86 linear feet of vinyl bulkhead adjacent to her property along Onancock Creek at 23450 Pine Street in the East Point area of Accomack County. A Coastal Primary Sand Dune and Beach permit is required.

Hank Badger, Environmental Engineer, reminded the Commission that Accomack County had not yet adopted the Model Coastal Primary Sand Dune Beach ordinance. As a result, it was the Commission's responsibility to consider the project. Mr. Badger then briefed the Commission and presented slides on the 86 linear feet of newly constructed vinyl bulkhead. Comments are a part of the verbatim record. After a routine field inspection of the project, Mr. Badger said that Mrs. Fryer was advised that her bulkhead required a Coastal Primary Sand Dune and Beach permit. Staff issued a Notice to Comply to Mrs. Fryer which directed removal of the illegal bulkhead and fill, and restoration of the area to its pre-existing conditions within 30 days. Mrs. Fryer then submitted a joint permit application to retain the 86 linear feet of

bulkheading and requested the Commissioner consider her after- the-fact application.

Mr. Badger stated that a public hearing was held on August 2, 2000, in the Accomack County Courthouse Mr. and Mrs. Fryer attended that hearing. There was no opposition to the project. He said VIMS indicated that the individual and cumulative impacts from this activity should be minimum. VIMS also stated that had they had the opportunity to evaluate the proposal prior to its construction, however, they would have recommended an alignment along the pre-existing upland scarp which would have resulted in the bulkhead being aligned landward of the beach.

Mr. Badger said while staff recommended that Mrs. Fryer be allowed to retain the bulkhead, they were convinced that Mrs. Fryer was well aware that a permit was needed prior to construction and that she made an intentional and conscious decision to proceed in the absence of that authorization. He said staff, therefore, recommended an appropriate civil charge in lieu of restoration or further enforcement.

The applicants were not present.

Associate Member Ballard asked Mr. Badger to elaborate on his comments regarding Mrs. Fryer being aware that a permit was needed. Mr. Badger responded that in Mrs. Fryer 's letter she stated that Mr. Roger Schwendeman, the contractor, had started to fill out an application prior to Hurricane Floyd for her and they had never submitted it. In addition, they were aware of the application process, but it wasn't until May, after the field visit, that she decided to send in an application, at staff's request.

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

Associate Member Gordy moved to accept staff's recommendation. Mrs. Gordy stated that she visited the property site and it had been in terrible condition before the bulkhead. However, she requested that the Commission make a decision on the civil charge. After a brief discussion regarding the matrix, Associate Member Ballard amended the motion to include the civil penalty of \$1800.00. Motion was seconded by Associate Member Ballard. Motion carried unanimously.

Civil penalty.....\$1,800.00

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**ITEM 11: BENNETT'S CREEK LANDING HOMEOWNERS ASSOCIATION, #00-1023**, requests authorization to install 15 uncovered boatlifts at their community marina situated along Bennett's Creek in the City of Suffolk. The project is protested by the adjacent waterfront property owners.

Heather Wood, Environmental Engineer, briefed the Commission and presented slides on the background and history of the community marina. The present capacity of the marina is 18 wetslips; with boatlifts installed in slips 1,2, and 17. Comments are a part of the verbatim record.

Ms. Wood stated that Mr. Evans, an APO and protestant, said that the existing lifts made it difficult for him to maneuver when docking and departing from his pier. Mr. Evans was also concerned that his inability to see smaller boats might lead to a collision. Mr. Scott, the protestant on the adjacent waterfront, informed staff that he was opposed to the project. He was concerned that the proposed project would also impact his view.

Ms. Wood stated that staff had conducted a site inspection of the facility and had confirmed that three boatlifts were installed at the marina. Also during the site visit, staff noticed that Mr. Evans had three large vessels (approximately 35 feet in length) moored at his private pier. Ms. Wood said this fact may recuse the question of whether Mr. Evan's pier was still considered a non-commercial pier, or whether it too should be treated as a community or commercial facility.

Ms. Wood said the Virginia Institute of Marine Science (VIMS) had indicated that the individual and cumulative impacts from the proposed moorings should be minimal. The Department of Conservation and Recreation indicated that the project was acceptable.

Ms. Wood said that according to Section 28.2-1205 of the Code of Virginia, the Commission shall consider, in addition to other factors, the public and private benefits of the proposed project and its effects on other reasonable and permissible uses of State waters and State-owned bottomlands and its effects on adjacent or nearby properties. Ms. Wood indicated that staff was sensitive to Mr. Evans' concerns regarding visibility, but staff did not believe the installation of the additional boatlifts would have a greater impact on navigation than the two existing lifts located on the upstream ends of the pier. In addition, the existing lifts appear to have little impact when approaching Mr. Evans' pier from either upstream or downstream. Accordingly, staff recommended approval of the project.

James L. Pittman, resident of Bennett's Creek Landing and a slip owner, addressed the Commission. He said staff had laid out the facts very well and he would just reiterate some points. Mr. Pittman pointed out that the marina had been in place for six years, and in 1996 the Commission granted them a permit to install five lifts, but only three lifts were ever installed. He said the situation is still the same now as it was when the Evans purchased their lot in 1997. Mr. Pittman mentioned that when the Evans' concerns were made known, the boat and slip owners met with the Evans to discuss their concerns. The two slip owners with boat lifts said they would try to accommodate the height of their boats and agreed to lower their boats approximately a half a foot. Other comments are a part of the verbatim record. Mr. Pittman then requested that their permit be granted.

John Evans, protestant, addressed the Commission. Mr. Evans presented a statement of opposition regarding safety and visibility signed by both he and Mr. Scott. In addition, he also said Earlene Corner was also in opposition to the proposal. He showed some photos which depicted how his visibility was affected. Mr. Evans said if the applicant would agree to keep the boom of the cross members on the lifts equal with the main pier, he would be acceptable to the compromise. He said he felt he could work with his neighbors if they could work with him.

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

Associate Member Cowart asked that if there was any opposition to keeping the cross members equal to the height of the dock. Mr. Evans responded that he planned to meet with the slipowners but he had not received any indication that they were willing to do that yet. An unidentified person approached the Commission and commented that there had been two meetings of the slip owners with Mr. Evans. He said the slip owners could come down about a half of a foot without jeopardizing their property in high water situations, but not as far as Mr. Evan would like (which is 18 to 24 inches).

Clyde Tysor, a resident of Bennett Creek Landing, addressed the Commission. He said he met with Mr. Evans on his pier and made the statement that if 4 to 6 inches would help, he was willing, but he felt a drop of 12 to 18 inches would jeopardize his boat.

Associate Member Ballard asked how large a boat would fit in those slips. Mr. Tysor responded that it was 37 feet from the main pier out to the last mooring pile. A discussion followed between Mr. Tysor and the Commission. Comments are a part of the verbatim record.

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

Associate Member McLeskey moved to approve the construction of the boat lifts, provided that the lifting beams were no higher than the dock. Motion was seconded by Associate Member Hull. Motion carried unanimously.

Encroachment of 1266ft. of additional finger piers @ \$0.30 sq. ft.....	\$379.80
Permit fee.....	<u>80.00</u>
Total	\$ 459.80

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**NOT AN AGENDA ITEM: CAPTAIN BOB JENSEN FROM THE RAPPAHANNOCK  
PRESERVATION SOCIETY PRESENTATION**

Mr. Jensen presented a video regarding the living resources on the Preservation Sanctuaries at Christchurch Rock and Steamer Rock. He also provided comments on the Reeftex design of the harvestable oyster reef module. Other comments are a part of verbatim record.

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**ITEM 12: PRIDE OF VIRGINIA, #99-0277.** Commission consideration of the Northumberland County Circuit Court directive to reconsider the civil charge assessed for the installation of pilings without proper authorization.

Jeff Madden, Environmental Engineer, briefed the Commission on the background of the civil charge assessed for the installation of pilings without a permit. The Commission at their October 26, 1999 meeting found that the applicant's activities did not qualify for maintenance and repair, and a permit was required for the pier construction. However, after much deliberation, the Commission approved the after-the-fact request in modified form. The modification of the permit required that the applicant, Mr. Stanley O'Bier, remove two rows of pilings (21 total pilings) nearest to the common property line shared between the Pride of Virginia and the adjacent Reedville Marina. The Commission's approval was contingent on the applicant's consent to the payment of a civil charge of \$10,000 as authorized by Section 28.2-1213(B) of the Code of Virginia. The applicant's agreement to the civil charge was to be in lieu

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of any further enforcement actions provided by the Code, and an assessment of \$100.00 for each separate piling that the applicant was permitted to retain. The approval was also conditioned on the applicant's agreement to take the necessary steps to prohibit the mooring, even temporarily, of any vessels alongside that portion of the permitted wharf that ran parallel with the shared property line. Also, that the removal of the two rows of pilings should be accomplished within 90 days of the Commission hearing.

Mr. Madden indicated that the applicant, Mr. Stanley O'Bier, appealed the October 26, 1999, decision to the Circuit Court of Northumberland County. On May 3, 2000, the Pride of Virginia matter was heard before Judge J. W. Stephens. The Court upheld the decision of the Commission in its entirety except for the portion pertaining to the civil charge. Judge Stephens remanded that portion of the matter back to the Commission with clear direction to reduce the civil charge upon which its approval was conditioned to a total of \$2,100.00.

Mr. Madden then read the Summary and Recommendation as follows:

In his deliberation, Judge Stephens determined that an appropriate civil charge in this matter was \$2,100. He explained that he arrived at that figure by applying a \$100 per piling figure to the two (2) rows of pilings that were to be removed (i.e. \$100 x 21 pilings). Staff and counsel believe that the basis for Judge Stephens' determination of the total figure, i.e. \$2,100 in this case, should have taken into account (1) that all of the pilings were in violation of Chapter 12 of Title 28.2 in the absence of a pre-construction permit, and (2) that the owner will incur the expense of removal of the pilings that are not permitted along with absorbing the cost of their initial installation. If Judge Stephens had done that, the total civil charge of \$2,100, applied to the 100 pilings which have been conditionally permitted, would be a civil charge of \$21 for each of the pilings installed prior to obtaining a permit. Staff recommends, and counsel concurs, that in future similar cases the Commission continue to consider determination of civil charges on a per piling basis for pilings which may be conditionally permitted, and that the record in those cases simply reflect a rationale for the dollar amount assessed per piling and the application of that amount to those pilings installed without a permit which are not being required to be removed. In the present case, staff recommends the Commission condition the permit on Mr. O'Bier's consent to and payment of a civil charge of \$2,100. Staff further recommends that the Commission indicate that this agreement to the total dollar value that Judge Stephens determined was appropriate, but that in keeping with VMRC policy to total value is being determined on the basis of \$21 per each of the 100 pilings that are to be conditionally permitted, rather than on the basis of \$100 per each of the 21 pilings that are to be removed. In light of the fact that the protestant and appellant have reached an agreement concerning the removal of

the pilings, staff further recommends that Mr. O'Bier be granted up to 155 days, but no later than January 31, 2001, to completely remove the two (2) rows of illegal pilings.

Mr. Madden then read into the record a letter from Mr. Charles Williams, the protestant. Mr. Madden said this was received by facsimile transmission yesterday, August 28, 2000. It reads, "Dear Mr. Madden: In response to your letter regarding the Pride of Virginia's illegal pilings, I would have no problem with staff's recommendation for the Commission's ruling or the Commission ruling to remove the pilings no later than January 31, 2001. Sincerely, Charles H. Williams, III."

Commissioner Pruitt asked about the applicant's position. Mr. Madden responded that in the Commission packet, there was correspondence from Mr. A. Davis Bugg, representing Mr. O'Bier. They concurred with the \$2,100 figure that the Judge ordered.

Mr. Madden said staff believed that A. Davis Bugg and his client, Stanley O'Bier, concur with the findings that the Judge rendered and were compliant with the recommendations of staff.

Associate Member Ballard then motioned that;

In light of the ruling on appeal by the Northumberland County Circuit Court, he moved that the Commission amend and reaffirm its October 26, 1999, motion to approve, in modified form, the Pride of Virginia Seafood Products' application to construct an open-pile commercial wharf at their property along Cockrell Creek.

In its October decision, the Commission duly asserted jurisdiction over the wharf reconstruction project and stated that its approval did not authorize the construction of any structure on the wharf without further evaluation and public interest review. The Commission also conditioned its approval on the removal of the two rows of pilings closest to the common property line shared with Mr. Charles Williams. Furthermore, the permittee was directed to take whatever steps were necessary to prohibit the mooring, even temporarily, of any vessel alongside the permitted wharf parallel to the common property line shared with Mr. Williams, and to ensure that no part of any vessel legally moored along the channelward face of the pier extended beyond that side of the wharf. In keeping with Judge Stephens' affirmative finding, these conditions remain unchanged.

However, the Commission had conditioned its approval on Mr. O'Bier's consent to pay a civil charge in the amount of \$10,000. Furthermore, we directed that removal of the two rows of pilings be completed within a period of ninety (90) days.

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Since the applicant (Mr. O'Bier) and the protestant (Mr. Williams) have apparently reached an agreement concerning an acceptable timeframe for removal of the pilings, I move that the Commission grant Mr. O'Bier 155 days, but in no case later than January 31, 2001, to completely remove the two rows of illegal pilings.

Furthermore, since the Court in its ruling determined that the appropriate civil charge into his matter was \$2,100, I move that the Commission condition issuance of the permit on the receipt of a civil charge from Mr. O'Bier in that amount. Such civil charge would be in lieu of any additional enforcement actions that might be available to the Commission. Motion was seconded by Associate Member Hull. Motion carried, with Associate Member Cowart abstaining.

Civil charge for 100 pilings ..... \$2,100.00  
@\$21.00 per piling

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**13. ROY COGGIN, #00-0622**, requests after-the-fact-authorization to retain a 39-foot long by 14-foot wide clear span bridge crossing with associated abutment scour protection over the South Branch of the North Fork of the Hardware River in Albemarle County.

Jeff Madden, Environmental Engineer, briefed the Commission on the after-the-fact application and presented slides on the location of the project. Comments are a part of the verbatim record. Mr. Madden explained that at one time Mr. Coggin own a 100 + acre farm that straddled the river. Mr. Coggin sold off a 22-acre portion of his holdings, which eliminated the ford he previously used to get from one side to the other of his property. The only other way Mr. Coggin could access his property was to drive 4 1/2 miles on Routes 712 and 760. Mr. Madden said Mr. and Mrs. Coggin built a 39-foot long by 14-foot wide clear span bridge so that the he could access to their property. After the bridge had been constructed, the County went by and noticed the bridge and Mr. Mark Graham of the County contacted VMRC staff and accompanied staff on a site visit. The Game Department stated that the environment impacts associated with the project were minimal.

Mr. Madden stated that the Albermarle Department of Engineering required Mr. Coggin to prepare and submit a Flood Plain Analysis to the County for review by the Planning Commission before they could issue the after-the-fact permit. He said Mr. Coggin relied on comments by the by VDOT staff that he did not need a permit. Mr. Madden felt that in talking

with Mr. Coggin did not know that VMRC had any jurisdiction over the bridge because it was on private property.

Mr. Madden further stated that based staff's review of the project, the County's assessment, and no report of any significant impacts, this project would likely have been approved if staff had the opportunity to review the application prior to construction. Therefore, staff recommended approval of the after-the fact request.

The applicant was not present. There were no protestants present.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to accept the after-the-fact application and that no civil charge be issued because the bridge was located approximately 100 miles above the fall line, in an area that is not widely known to be under VMRC's jurisdiction. He did not feel there was any intent on Mr.Coggin's part to circumvent the law. Therefore, he was not comfortable with assessing a civil charge. Associate Member Hull was in agreement with the motion, and therefore seconded it.

Commissioner Pruitt commented that his only question was whether the County had some protection if the property was further developed due to increasing use of the bridge. Mr. Madden responded that Mr. Coggin realized that it was rural, and he would have to go back to the County to further develop the property. Motion carried 7 to 1, with Associate Member Birkett abstaining.

Encroachment of 39' X 14' = 546 sq. ft x \$0.30	
of State-owned bottom.....	\$ 163.80
Permit fee.....	<u>25.00</u>
Total	\$ 188.80

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**15. OYSTER GROUND APPLICATION:** Otis P. Asal and Robert A. Scott have applied for 50.00 acres of Oyster Planting Ground in the Chesapeake Bay near the mouth of Old Plantation Creek in Northampton County. The application is protested by three (3) individuals.

FOR THE RECORD: Associate Member Ballard commented that he would be abstaining.

Gerry Showalter, Head-Engineering and Surveying, said there were originally five protestants, but after reviewing the survey, four of the protestants withdrew their objections. Mr. Showalter said it was thought that Messrs. Asal and Scott's application for oyster ground was in an area that would have blocked the channel into and out of Old Plantation Creek. However, after the ground was surveyed, there was no problem using the channel or interference with submerged aquatic vegetation (SAV). After the local petitioners saw the survey, they withdrew their objections. Mr. Showalter then indicated that there were two people from New Jersey that he had not heard from, but he thought they would not be opposed to the lease as surveyed.

Mr. Showalter then recommended the approval of the survey and assignment of the application.

Associate Member White commented that he had talked with people on both sides and he was familiar with the matter because it was in his district. He said he could not speak for Mrs. Campbell that lived in New Jersey, but the rest of the people were convinced that it was okay.

The applicants were not present. There being no opposition, Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved for approval of the application. Motion was seconded by Mrs. Gordy. Motion carried 7 to 1, Mr. Ballard abstaining.

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

Mr. Pruitt commented that the Commission had directed him to get in touch with Mr. McKinley. He had attempted to contact him on several of occasions. Mr. Pruitt said he talked with his wife yesterday. According to her, he had been in an accident and was unable to work. Mr. McKinley had two or three jobs lined up, but had not been able to work.

Associate Member Hull commented that he had not had any contact with Mr. McKinley directly, but he understood that he was laid up at this time and unable to perform any activities.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Hull moved to delay the matter for another 30 days until the next Commission meeting. The Commission would reevaluate the situation at that time. Motion was seconded by Associate Member White. Motion carried unanimously.

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**16. OYSTER GROUND APPLICATION:** John D. Watts, Jr. and Ralph E. Watts have applied for 5.00 acres of Oyster Planting Ground in Hungars Creek near Station Clark and Mattawoman Creek in Northampton County. The application was protested by Mr. Stanley Mlodynia along with a group of petitioners. We have met with Mr. Mlodynia and believe we may have resolved the issue.

Gerry Showalter, Head-Engineering and Surveying, commented that John and Ralph Watts applied for five acres of oyster ground in Hungars Creek and Station Clark and Mattowman Creek in Northampton County. He said the protestants have withdrawn their protests and the application removed. Mr. Showalter indicated that the Commission did not need to take any action.

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**17. DISCUSSION:** Request for a public hearing to be held at the September meeting to amend Regulation 4 VAC 20-754-10 et. seq., "Pertaining to Importation of Fish, Shellfish, or Crustacea", by making changes to the procedures for handling the certification of all shellfish imported from other States for introduction into the waters of the Commonwealth.

Jim Wesson, Head-Conservation and Replenishment, indicated that this matter was before the Commission for authorization to go to public hearing. The request was to amend the Regulation on Importation of Shellfish because of the continuing growth of the aquaculture industry. Dr. Wessen said the Regulation had a requirement that before shellfish were brought in from another State, they must be tested for diseases, and they were not allowed to come in unless they were zero. Dr. Wessen also indicated that the problem was whether or not the requirement was being followed because it never required that a copy of the test results be sent to the Marine Resources Commission. He said staff felt like because there had been a shortage, especially clam seed, there were more people bringing seed in from out of state and he thought most of them were not getting them tested. Therefore, VMRC was proposing to add this extra safety precaution requiring the test results before the shellfish are brought in.

Commissioner Pruitt asked if this had been discussed with Law Enforcement. Dr. Wesson said this request came from some law enforcement problems.

Associate Member Gordy moved for a public hearing. Motion was seconded by Associate Member White. Motion carried unanimously.

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**18. DISCUSSION:** Request for a public hearing to be held at the September meeting to amend Regulation 4 VAC 20-720-10 et. seq., "Pertaining to the Harvesting of Oysters" for the upcoming 2000-2001 Public Oyster Harvest Season.

Jim Wesson, Head Conservation and Replenishment, indicated that this request was done every year in August because all the regulations were time-dated and they were just adding in the new years. Dr. Wesson stated this year had turned out to be a good one even though there was a drought, but there was a rainy season and they felt the impacts of the diseases were lower. He said there was still enough salinity to get a good spatset. In fact, there were two good weeks in Great Wicomico and Piankatank Rivers, the seed would be as plentiful as last year. Dr. Wesson said the only changes recommended for the next year were adding two areas in the Piankatank above the bridge, two seed plant areas in the Yeocomico and to the hand tong areas seed plant areas in the Wicomico; enlarging the hand scrape area from Waterview Ridge up to Morattico Bar in those two seed plants areas. Also, enlarge the harvest area for Tangier in the Hurley's area.

Associate Member Cowart asked if there were plans to open Nomini this year. Dr. Wesson responded that they had been open and will stay the same.

Associate Member Ballard asked if the standing stock in the James River was down. Dr. Wesson responded that spatsets had been okay in the last two years. A discussion followed regarding the harvest in the James River. Comments are a part of the verbatim record.

Dale Taylor asked if the public hearing could include one rock below the bridge in the Rappahannock for dredging, hand scrape, or hand tongs? A discussion between the Commission members, staff and counsel indicated that this area could be included in the public hearing as the draft regulation was written.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to go to public hearing with the oyster seasons at the September meeting. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**19. PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4 VAC 20-890-10 et. seq., "Pertaining to Channeled Whelk," to establish a 2 3/4-inch diameter minimum size, and to allow for the use of conch pots in tributaries to the Chesapeake Bay.

Rob O'Reilly, Assistant Chief-Fisheries Management, said there had been many discussions on this issue, but he wanted to point out a couple things. He said the two issues the conch Committee wanted to forward to this public hearing was to allow channel whelk harvest by conch pot within the tributaries, which would be limited to conch pot license holders. This should not increase any congestion or have impacts on the conch stocks. The second item concerned the measurement standard regarding the broken tips on the channeled whelk. He said the length measurement did not seem suitable overall. The committee wanted to get a diametrical measurement established at 2 3/4 inches. Mr. O'Reilly said staff would work with the harvesters in the fall to determine how close the 2 3/4 inches correlated to the present length limit. Mr. O'Reilly also pointed out that on page two of the draft regulation, under "C", part one was crossed out, which established the tributaries as an open fishing area. On page 3, paragraph "A" incorporation in "A" and "B" of the new measurement of the diameter. He also indicated that the tolerance would stay the same--ten conch per bushel or bag, 30 per barrel.

Commissioner Pruitt mentioned that one of the problems they were having was that Delaware and Maryland measured differently and they were getting tickets on the same conch that were legal and asked if this regulation addressed that. Mr. O'Reilly responded that it would be an either or situation. He said Delaware had indicated that when possible their law enforcement officer used the length, but where there was heavy breakage, they would use the diameter. A discussion followed. Comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing. There being no speakers, Commissioner Pruitt closed the public hearing and placed the matter before the Commission.

Associate Member Hull moved to adopt Section 4 VAC 20-890-25, and 4 VAC 20-890-30 as permanent parts of Regulation 4 VAC 20-890-10 et. seq. Motion was seconded by Associate

Member White. Motion carried unanimously.

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- 20. PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4 VAC 20-900-10 et. seq., "Pertaining to Horseshoe Crab," to establish an annual harvest quota of 355,000 crabs.

Jack Travelstead, Chief-Fisheries Management, briefed the Commission on a study that was done by VIMS that documented how the use of bait bags could improved the efficiency of the horseshoe crab fishery and reduce the waste of the horseshoe crabs as bait. As a result of the VIMS study, the Commission adopted a regulation, effective October 1, 2000, that would require the use of bait bags in conch pots and required conch pot fisherman to use no more than one half of a female horseshoe crab or two halves of male crabs for bait. This would cut the need for horseshoe crabs as bait by 50 percent. This in turn, would cut the horseshoe crab quota by 50 percent to 355,000 horseshoe crabs. At the July meeting, the Commission adopted an emergency regulation to implement that change. Therefore, a public hearing was necessary today, and staff recommended adopting the emergency regulation as a permanent regulation to establish the horseshoe crab quota at 355,000.

Commissioner Pruitt opened the public hearing.

Kay Slaughter, Southern Environmental Law Center, addressed the Commission. She commended the VMRC staff for their professionalism and their response to her in this matter. Ms. Slaughter indicated that she was speaking on behalf of the Virginia Audubon Council. She commented that she was concerned that Virginia was out of compliance with the Interstate Fisheries Management Plan. She also commented that she felt Virginia should adopt the cap of 152,495 horseshoe crab quota established by ASMFC. Ms. Slaughter also gave comments on horseshoe crab landings for each state, the scientific assessments of the horseshoe crabs, the horseshoe crab as an important food source for migratory shorebirds, and the medical use of LAL necessary for the biomedical industry. Comments are a part of the verbatim record. Ms. Slaughter then urged Virginia to reconsider the emergency regulation for horseshoe crabs and establish the quota set by the Interstate Fisheries Management Plan.

Tyla Matteson, Chairman of the Virginia Chapter of the Sierra Club, spoke in opposition to the proposed annual horseshoe crab quote of 355,000. Ms. Matteson indicated that the club recommended that Virginia adopt the cap of 152,495 horseshoe crab landings established by the

Atlantic States Marine Fisheries Commission (ASMFC) that was determined to be Virginia's fair share. She gave additional comments on the importance of reducing the horseshoe crab quota that was established by ASMFC. Other comments are a part of the verbatim record. She then requested that Virginia uphold its responsibility to protect the horseshoe crabs.

Marshall Cox commented that he was appointed to the Horseshoe Crab Committee approximately a year ago. Mr. Cox gave comments regarding ASMFC's lack of data on the stock assessment. He said he did not feel a quota could be established without a stock assessment. Mr. Cox also commented that the watermen had done everything possible to conserve the resource.

Kelly Place gave comments in response to the historical data provided by Ms. Slaughter and Ms. Matteson on the horseshoe crab. Comments are a part of the verbatim record.

Douglas Jenkins, Twin Rivers Association in Northern Neck, indicated that Virginia should continue with the quota they established. He also stated that there were other sources of food for the shore birds, but the eel fishery needed the horseshoe crab for bait. Other comments are a part of the verbatim record.

Ric Stilwagen, Virginia Watermen's Association, commented that he felt the fishermen in Virginia were being blamed for the landings that came from other states. He then mentioned a letter presented to Governor Gilmore two years ago regarding the landings from other states in Virginia. He indicated that Virginia should consider a moratorium on the landings of the horseshoe crab not caught in Virginia. Other comments are a part of the verbatim record.

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

Associate Member Ballard moved to adopt the emergency regulation as a permanent regulation for capping horseshoe crab landings in the Commonwealth for the years 2000 and beyond at 355,000 horseshoe crabs. Motion seconded by Associate Member White. Motion carried unanimously.

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**DISCUSSION:** Adjustments to Spanish mackerel and king mackerel size and possession limits. Request for public hearing to consider amendments to Regulation 4VAC 20-540-10 et. seq., "Pertaining to Spanish and King Mackerel" to comply with the interstate fishery

management plans for these fisheries."

Lewis Gillingham, Fisheries Management Specialist, briefed the Commission on Spanish and king mackerel stocks. He referenced a letter received from NMFS Regional Administrator William Hograth regarding the recreational fishery's failure to take its fair share of Spanish mackerel in recent years. Comments are a part of the verbatim record.

Mr. Gillingham recommended that Virginia increase the Spanish mackerel possession limit from 10 to 15. Mr. Gillingham also indicated that the king mackerel possession and size limits had changed since the regulation was reviewed in 1995. Therefore, he recommended Virginia lower its possession limit to three king mackerel, the same as in federal waters. Also, the minimum size limit in federal waters is 24 inches (fork length) and Virginia should adopt a comparable size limit in total length. Mr. Gillingham also mentioned that both king and Spanish mackerel were caught in Virginia and in federal waters off the Virginia coast. He said fishermen often cross the 3-mile Territorial Sea boundary and with the difference in possession and size limits for mackerel between the two bodies of water was confusing, in this case, unwarranted, and should be the same.

Mr. Gillingham indicated that staff recommended advertising the above listed changes to 4 VAC 20-540-10 et. seq., "Pertaining to Spanish and King Mackerel" for a public hearing. Staff also recommended delaying the effective date on any changes approved by the Commission until 1 January 2001.

Commissioner Pruitt placed the matter before the Commission.

Associate Member White moved to go to public hearing. Motion seconded by Mr. Williams. Motion carried unanimously.

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**ITEM 22: REPORT OF THE COMMERCIAL HOOK AND LINE TASK FORCE.**

Jack Travelstead, Chief-Fisheries Management, indicated that there was no report from that task force today. However, an agreement was reached that another meeting of that group should occur and the report would be made available to the Commission at the next meeting. The meeting was scheduled for September 19, 2000.

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**ITEM 23: PUBLIC COMMENTS:**

Dr. H. L. Jones, residing at 94 Sandy Bay Drive, Poquoson, VA and a resident of Poquoson for 35 years, addressed the Commission for an appeal of the 10-day limit. He said the appeal was not clearly understood. He said a petition of 25 people was submitted concerning application number 07-1883 to the Poquoson Wetlands Board regarding a permit for a bulkhead on Lot 22 located in the Poquoson Shores Subdivision on River Crest Drive on August 16, 2000. Dr. Jones indicated that a petition, signed by 29 property owners, was hand carried to VMRC on Monday morning, August 28, 2000. Since the tenth day fell on Saturday, August 26, 2000, when the office was closed, Dr. Jones requested that the Commission accept the petition that was delivered on the next working day, which was August 26, 2000. Dr. Jones also stated that the decision by the Poquoson Wetlands Board was worthy of reconsideration because of the impact the development would have on the wetlands and the wildlife habitat which were protected by Virginia Law.

Commissioner Pruitt commented that this was a legal issue and referred the matter to the Attorney General's office. Mr. Josephson requested time to review Title I.

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David Hazlett commented that he bought a Dolphin in February of 1999 with all the equipment and the owner would not issue his license with the boat. Mr. Hazlett was interested in getting his crab pot and dredge license.

Mr. Travelstead commented that there was a case similar to this one approximately a year ago, where two people thought they had an agreement that the boat and license were being purchased. The purchaser ended up with the boat, and not the license. In that particular case, the Commission did agree to grant that gentleman licenses. Mr. Travelstead indicated that a precedent was set. After a brief discussion, the Commission decided to do some research on the matter and bring it back to the Commission next month.

Douglas Jenkins gave comments regarding the 2 5/8 inch cull ring. He said other watermen associations felt as he did, that there should be a uniform code for the whole state regarding using the 2 5/8 cull ring. Mr. Jenkins indicated that there was not a quorum at the last committee meeting, therefore, it was not voted on.

Mr. Insley indicated that there was not a quorum, but it was decided that there would be another meeting on September 18, 2000.

Commissioner Pruitt said the matter would be referred back to the crab committee. Mr. Cowart was asked to make note of the meeting.

Mr. Cowart indicated that the 2 5/8 inch cull ring matter was on the agenda for the next meeting. Mr. Cowart also stated that at some of the meetings, there was no quorum, and they could not vote on the issues. Mr. Cowart then suggested that a record of attendance at the meeting be maintained in order that replacements might be made. Commissioner Pruitt responded that he had asked that Mr. Travelstead get an attendance list and also record the meetings on tape.

Commissioner Pruitt asked Mr. McLeskey if he was interested in serving on the crab committee. Mr. McLeskey responded that he would like to learn more about the committee first before committing himself to serve.

Douglas Jenkins also gave comments regarding fishing 500 pots in the mainstem of the Bay versus fishing 300 pots or less in the rivers. Comments are a part of the verbatim record. Commissioner Pruitt suggested that Mr. Jenkins take the matter to the committee, then get a vote from the committee, and bring the matter back to the Commission for recommendation and they would act on the matter next month.

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Marshall Cox presented samples to the Commission of oysters that were 120 days old from an experimental oyster project. A discussion between Mr. Cox and the Commission followed. Comments are a part of the verbatim record. Mr. Cox said this project could be extended and could help the State.

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Mr. Josephson returned with an answer to the earlier situation with Dr. Jones and the Poquoson Wetlands Board. Mr. Josephson quoted Section 28.2-1311 of the Code of Virginia, subsection (B) which stated, "all requests for review or appeal should be made within 10 days of the date of the Board's decision." Mr. Josephson further commented that the Board's decision in this matter was August 16, and the vast majority of the signatures, except for one or two on the

petition for appeal, were dated August 27, 2000, which was eleven days. Mr. Josephson said had the signatures been dated properly, he thought the Monday delivery would have been okay, but the request for review was not made within a 10-day timeframe.

Dr. Jones said he was just notified that Mr. Grabb and Tracyie West determined the accedence of the 10-day regulation for both the date of signatures and the date of submission. Dr. Jones then requested that the Commission accept the appeal considering both.

Commissioner Pruitt indicated that he was unclear on Mr. Jones' request. Mr. Josephson further advised Dr. Jones of the requirements of the Code of Virginia in submitting a request for an appeal to the VMRC Commission within the 10 days required by Code. Mr. Josephson indicated that Dr. Jones's appeal was not dated within the 10-day timeframe.

Dr. Jones then asked where he could appeal the Commission's decision. Mr. Pruitt advised Dr. Jones to appeal the decision to the Circuit Court where he resided.

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Jack Travelstead, Chief-Fisheries Management, briefed the Commission on the ASMFC meeting. Mr. Travelstead indicated that there were eight items taken up by the ASMFC. He stated that Virginia must comply with the following measures: Scup, black sea bass, dogfish, striped bass, horseshoe crabs, bluefish, menhadden and lobster. Mr. Travelstead said some of the measures must be adopted by October 1, to maintain compliance with the Fishery Management Plan. Mr. Travelstead said the three emergency regulations that must be adopted were: 1) adjust the trip limits of scup, (Virginia must comply, but did not have a scup fishery), 2) black sea bass -- adjust the trip limits for the last quarter of this year, and 3) an emergency regulation to close all state waters to the taking of dogfish by October 1. Mr. Travelstead then requested that those three items be taken to public hearing next month.

Mr. Travelstead also presented a summary of the other items discussed at the meeting and prepared by the ASMFC staff that would give the Commission more background information on what was just presented.

Mr. Pruitt requested that Mr. Travelstead give the wording necessary to get a motion for a public hearing. Mr. Travelstead indicated that the wording of the motion should include, "implement the changes in the scup, black sea bass and spiny dogfish regulations."

**COMMISSION MEETING**

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Commissioner Pruitt then placed the matter before the Commission.

Associate Member Williams moved to have a public hearing. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Mr. Travelstead indicated that other ASMFC findings, regarding older striped bass and the slot limit in the recreational fishery, and that the eight-day closure in December for the commercial fishery were the measures that would not be needed for 2001-2002. He said on the horseshoe crab issue, ASMFC did agree to the Commission's request to take another look at allowing for transfers of quotas between states. He said on the Bluefish issue, the recreational bag limit would be adjusted upward next year from 10 to 15 fish. He said ASMFC had completed preparation of Amendment 1 for the menhaden fishery, which would be going out to public hearing within the next couple of months that might result in a quota base management system for that species and might have some impact on Virginia. Mr. Travelstead said we were potentially out of compliance on some regulations regarding lobster.

Commissioner Pruitt commented that this was one of the finest VMRC meetings that he had ever attended and he thanked the Commission members.

The meeting was adjourned at 4:20 p.m.

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William A. Pruitt, Commissioner

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LaVerne Lewis, Commission Secretary