

VIRGINIA MARINE RESOURCES COMMISSION

REPORT
OF THE
COMMITTEE ON LAW ENFORCEMENT

March 13, 1996

1. INTRODUCTION

This Committee was re-constituted at the January 1996 meeting of the Commission and charged with again investigating and making recommendations as to the handling of habitual offenders. There was seen to be a need to re-examine the existing policy for such cases, determining what information should be made available to the Commission in considering such matters, and determining whether a staff recommendation in such cases as appropriate.

The Committee met with the Assistant Chief of the Law Enforcement Division on February 7, 1996, reviewed the applicable statutes and the current situation in the light of past recommendations, and has conferred as to its conclusions and recommendations, which will be set out in the balance of this report.

The Committee finds that there remains a wide disparity among judges with regard to enforcement of the marine resources laws and regulations of the Commonwealth, and that a great number of judges continue to treat such violations leniently. The Committee feels however that there is increasing concern among watermen over possible sanctions from the Commission for multiple violations. Accordingly given the state of the resource, it is appropriate for the Commission to re-examine and restructure where appropriate, its policies in this regard, since it appears that action by the Commission represents the most effective sanction for discouraging lawlessness.

2. DISCUSSION

a. The framework for this problem is set by the applicable statutes. Va. Code Sec. 28.2-232 gives the Commission the power to revoke a person's license for violation of any provision of Title 28.2. Additionally, the Commission may prohibit the "issuance, reissuance or renewal of any license" as a result of any such violation. The powers may be exercised over "any and all licenses". The duration of a "revocation" may be fixed by the commission up to a maximum of two years, taking into account:

ii. evidence of abusive conduct and behavior towards Marine Patrol officers; and

iii. the severity of any damage that has occurred or might have occurred, to the natural resources, the public health or the seafood industry.

The section is unclear as to whether the prohibition on issuance, reissuance or renewal of a license may be for a period not to exceed two years, as well, or whether it could be for a greater period of time, or even permanent.

This section should be contrasted with 28.2-822 which speaks to "suspension" of licenses and allows the Commissioner to act in an emergency involving public health.

b. Our discussion showed that several of the issues raised by this Committee's report and recommendation in February of 1991 have been met and adequately addressed. These are as follows:

i. *When Marine Patrol officers discover a violation of Title 28 they should issue the appropriate citation to each person aboard the vessel involved in the harvesting.*

This recommendation has been successfully addressed. In the case of a possession violation, tickets are written for anyone the officer feels has a "custodial role" in the situation. There has been no difficulty maintaining this position in court. With culling violations both persons are ticketed. Crab violations are charged to the Captain. In all, this policy is being effectively implemented.

ii. *The Division's software program should be amended to permit adding a record of the court in which each summons is made returnable.*

This recommendation has been implemented.

iii. *The program might also profitably be amended so as to permit the entry of a signal of some kind (a letter or symbol) whereby it can be indicated if the citation involved abusive conduct and behavior toward the issuing MPO. These two simple changes should not involve great trouble or expense.*

This recommendation is being implemented.

iv. *In-house training should be utilized to bring at least one, and preferably two or more persons up to speed in complete and effective use of the existing program, so that reports can be produced in various ways.*

This recommendation has been implemented.

v. Pre-1989 data should be input to the data base on a gradual schedule, as time and personnel permit, in order to make it a more powerful and useful tool. At the rate of summons issued at the present time, the system will go a long way before it approaches overload.

This recommendation has been implemented.

3. NEW RECOMMENDATIONS

The Committee recommends that the Commission implement a change in the handling of repeat offenders, as follows:

1. The Committee recommends that the Commission adopt the following statement of policy:

The continuing decline in the health and numbers of our living marine resources justifies a strong policy with regard to habitual violators of marine resource laws and regulations. It is therefore the stated policy of this Commission that the harvesting of the wild marine resources of this Commonwealth is a privilege, not a right, and that any person who habitually violates the laws of this Commonwealth or the regulations of this Commission with regard to such harvesting should have that privilege suspended, and, in extreme cases, terminated.

2. The present interpretation of existing policy has been that an individual is brought before the Commission when he or she has accumulated three convictions over twelve months in the same fishery. The Committee recommends that the following be adopted in its place:

Any person accumulating three or more convictions relating to resource conservation or impeding a Marine Patrol Officer in the performance of duty under Title 28.2, or related regulations, which violations are committed within a period of twelve consecutive months shall be brought before the Commission at the earliest feasible time. A plea of guilty, or payment of fine without contesting it shall be conclusively presumed to indicate that the offender is in fact guilty. The Commission shall consider all aspects of the case, any mitigating, extenuating, or aggravating circumstances, and shall take such action as it deems appropriate.

DISCUSSION: First, under the present policy, the triggering event is a third conviction within twelve months. This presents the offender with an opportunity to continue a case until the twelve month period has expired, and thus avoid the policy. The changed

policy would make it clear that it is the date of the offense that triggers the action, not the date of the conviction.

Second, the present state of the resource justifies broadening the policy so that three convictions in any conservation area of the Code triggers an examination of the case.

Third, existing stated policy of issuing a warning only, absent aggravating circumstances, weakens the effectiveness of the process. Each case should be considered on its individual merits and judged accordingly, rather than having disposition being predetermined by a set policy.

3. The following existing policies should continue in force with changes as shown in *italics*:

i. Every such person should be commanded, when summonsed, to bring all of his or her licenses with them to the meeting.

ii. *The registration, licenses and permits of any such person who does not appear will be forthwith revoked until the person does appear and an order will be issued prohibiting the issuance, reissuance or renewal of any licenses to such person until the Commission takes final action on the case.*

iii. *Whenever any such person is brought before the Commission, that person's entire record of violations of conservation, health and safety laws and regulations over the preceding 36 months will be furnished to the Commission. The presenting officer shall present to the Commission the full court record of each of the triggering offenses.*

DISCUSSION: The change first makes clear that the individual involved is removed from the commercial fishery entirely during the period of revocation.

By furnishing a copy of the complete court record, the Commission will be informed as to whether the offended entered a guilty or not guilty plea, did or did not appear, and was or was not represented by counsel.

"Should" has been changed to "will" throughout.

iv. It will be made known to the Commission whether or not any violation involved abusive conduct and behavior towards an MPO, *or the severity of any damage that has occurred or might have occurred to the natural resources, the public health of the seafood industry.* If any such aggravating circumstances are found, and if the person brought before the Commission contests or disputes such aggravating

circumstances, he may have his case continued, at his option, so that he may have the opportunity to confront and cross-examine the MPO involved. However, the Commission should take the action in ii. above until the case is finally disposed of.

v. With regard to disposition of cases, the policy of the Commission should be:

1. In appropriate cases, the first time a three-time offender appears, the Commission, as a minimum, will impose a twelve month probation period.

2. If the person is a second "three-time-loser", or a probation violator, revocation will be for a minimum of ninety days;

3. If the person is a third time "three-time-loser", revocation will be for a minimum of one hundred eighty days;

4. Whenever any one or more of the violations involves abusive conduct or behavior, or severe damage has occurred or might have occurred to the natural resources, the public health of the seafood industry, the Commission will consider imposing heavier sanctions;

5. Staff may be called upon to give an opinion as to whether the individual's record falls within any of the above categories, but should not be asked for a recommendation as to appropriate sanctions.

DISCUSSION: v.(1) is in keeping with our feeling that the Commission should not tie its own hands as to the disposition of cases, but should consider each case on its own individual facts and circumstances.

v.(2) adds a person who is a "come back" after a first appearance and probation as the same as a second time "three time loser".

v.(1),(2), and (3) make the recommended disposition a minimum, again emphasizing the Commission's discretion in disposition.

v.(4) sets out aggravating circumstances as a separate additional consideration in any case.

v.(5) takes the law enforcement officer out of the role of prosecutor making recommendations, and limits his or her input to the facts of the case, a position with which the enforcement arm is much more comfortable.

vi. Notwithstanding the above policies, and specifically in addition thereto, the Law Enforcement Division shall bring before the Commission any person who has been convicted of violations which are so frequent, abusive, or particularly destructive of the resources as to warrant consideration of revocation or prohibition of licenses.

vii. Whenever revocation is invoked, revocation will be of all commercial registration, and all gear licenses and permits, and in order to assure that revocation is a meaningful sanction, all revocations will be made effective during an appropriate fishing or harvesting period, selected on the basis of the violations. If the individuals' appearance before the Commission is prior to or after the appropriate season, or if the period of revocation cannot be completed within the remainder of the season, the entire revocation should be carried over to the next appropriate season. An order will be issued prohibiting the issuance, reissuance, or renewal of any licenses to such person for the period of revocation. At the end of the period of revocation, the person should be required to come to the Commission office to reclaim the registration, licenses and permits.

DISCUSSION: Again the intent is to make it clear that a suspension or revocation is intended to take the person out of the commercial fishery for the period involved, and assures that the revocation or suspension has "teeth" in that it will be imposed at a time when loss of privilege has real meaning. Law enforcement does not feel that administration of this change will present a problem.

viii. These recommended policies should be adopted and implemented effective as of July 1, 1996 so as to allow an adequate period of time which will enable all persons concerned and affected by them to have full knowledge and forewarning of their effect.

ix. Distribution of these policies should be made as widely as possible in the interim, to assure that the industry is fully advised of them before they go into effect.

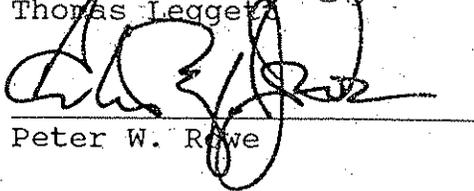
x. The Committee suggests that law enforcement would be enhanced if uniform measurement or enforcement devices, such as culling sticks, color charts, and the like, could be developed by the Commission staff for use by all concerned. These could perhaps be distributed at the time license are issued so that harvesters and enforcement officers would be using the same device. The Committee

such as culling sticks, color charts, and the like, could be developed by the Commission staff for use by all concerned. These could perhaps be distributed at the time license are issued so that harvesters and enforcement officers would be using the same device. The Committee recommends that staff investigate the feasibility and funding for such a program and report to the Commission at an early date.

The Committee recommends that the full Commission adopt these recommendations.

Respectfully submitted:



Thomas Leggett


Peter W. Rowe

March 13, 1996

§ 28.2-216. Hearings before Commission.

A. Any person whose rights, duties, or privileges, including matters relating to licenses, shellfish planting grounds, or fishing stands, have been or may be affected by any action or inaction of the Commission or Commissioner without a formal hearing may demand in writing a formal hearing of his complaint. The Commission shall hold a hearing on the complaint as soon as practicable. All known interested parties shall be afforded an opportunity to be heard before the Commission. All persons who have noted their interest with the Commission shall be informed of the hearing by first class mail at least five days prior to the scheduled date of the hearing. The notice shall indicate the time and place of the hearing and the issues involved. All parties shall have the opportunity to present evidence and argument. The proponents for any regulation or matter shall be heard first, then the opponents. The Commissioner, if present, or any member of the Commission, in his absence, shall preside over the hearing. The rules of evidence shall apply insofar as possible. Depositions may be taken and read as in actions at law.

B. The Commission or Commissioner shall have power to issue subpoenas and subpoenae duces tecum and, at the request of any party, shall issue such subpoena. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Commission in the manner prescribed in § 2.2-4022.

§ 28.2-232. Revocation of licenses.

The Commission may revoke and prohibit the issuance, reissuance, or renewal of any licenses if, after a hearing held after ten days' notice to the applicant or licensee, it finds that the person has violated any provision of this subtitle. The duration of the revocation and prohibition shall be fixed by the Commission up to a maximum of two years, taking into account (i) evidence of repeated or habitual disregard for conservation, health and safety laws and regulations; (ii) abusive conduct and behavior toward officers; and (iii) the severity of any damage that has occurred, or might have occurred, to the natural resources, the public health, or the seafood industry. An appeal from the Commission's decision may be taken to the courts as provided in Article 3 (§ 28.2-216 et seq.) of this chapter.