

MINUTES

JULY 23, 2002
NEWPORT NEWS, VA 23607

The regular Monthly meeting of the Marine Resources Commission was held on July 23, 2002 with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
S. 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	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
Robert Craft	Chief-Administration and Finance
Jane McCroskey	Deputy Chief-Administration and Finance
Andy McNeil	Programmer Analyst Sr.
Col. Steve Bowman	Chief-Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief-Law Enforcement
Capt. M. Ray Jewell	Northern Area Supervisor
Capt. Randy Widgeon	Eastern Shore Area Supervisor
Capt. Warner Rhodes	Middle Area Supervisor
1 st Sgt. Benjamin Major	Southern Area Supervisor
M.P.O. Dennis Knuteson	Marine Police Officer
M.P.O. Tommy Moore	Marine Police Officer
Virginia Institute of Marine Science:	
Thomas Barnard, Jr.	Dr. Eugene Burreson
Lyle Varnell	
Jack Travelstead	Chief-Fisheries Management
Rob O'Reilly	Deputy Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics

COMMISSION MEETING

12008
JULY 23, 2002

Cory Routh
Ellen Cosby

Fisheries Management Specialist
Fisheries Management Specialist

Tony Watkinson
Gerry Showalter
Hank Badger
Chad Boyce
Kevin Curling
Mark Eversole
Jeff Madden
Chip Neikirk
Randy Owen
Ben Stagg
Tracy West
Jay Woodward

Acting Chief-Habitat Management
Head-Engineering/Surveying
Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.
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Environmental Engineer Sr.
Environmental Engineer Sr.
Environmental Engineer Sr.

others present included:

Rebecca Francese
Matthew Smith
George Cornwell
Lee Anderson
Abby Anderson
Chuck Roadley
Popie Martin
Steve Martin
Liz Ketcham
Eddie Walcott
Katherine Landman
John Blandin
Jim Georgo
Dan Baco, Jr.
Dan Baco, Sr.
Edward Boyce

William Mickley
Eric Speth
Maurice Laurier
George Janek
Charles Springett
Carrington Burgess
Catherine Sobotka
Celia Friedland
Ricky Edgerton
Wayne Taylor
Tony Armstrong
Johnny Wiseman
Louis Elliott
Mrs. Louis Elliott
Walter Hodges

Commissioner Pruitt called the July 23, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams.

Associate Member Hull gave the Invocation and Associate Member Cowart led the Pledge of Allegiance. Commissioner Pruitt swore in the staff and those representatives of the Virginia Institute of Marine Science (VIMS) who were expected to testify at the meeting.

COMMISSION MEETING**JULY 23, 2002****** APPROVAL OF AGENDA**

Commissioner Pruitt called for changes/deletions to the proposed Agenda. Mr. Tony Watkinson, Acting Chief, Habitat Management, stated that staff received a request from the Regatta Point Yacht Club, #01-2177, (Agenda Item 4.) to withdraw the application. Staff also received a request from Steve Palmer, #02-0689, (Agenda Item 11.) to continue the hearing to a later date. Commissioner Pruitt called upon Mr. Palmer to state his case for a continuance.

Mr. Stephen A. Palmer, applicant, stated that he filed a *Motion to Continue* on July 18, 2002 citing his reasons for the request (a copy of which is filed with the permanent record of this meeting.) Mr. Curling presented a letter received from Mr. Palmer's attorney, Mr. William E. Johnson, requesting that the matter be heard at the October 22, 2002 meeting of the Commission. (A copy of this correspondence is filed with the permanent record of this meeting.) Commissioner Pruitt called for protests to the continuance of Mr. Palmer's case. There being none, the Commissioner referred the request to the Commission for consideration. **Associate Member Hull moved that the matter of Stephen A. Palmer, #02-0689, be continued to the October 22, 2002 meeting of the Commission. Associate Member White seconded the motion; motion carried unanimously, 8-0.**

Associate Member Hull moved for approval of the Agenda to include the deletion of Item 4. Regatta Point Yacht Club, #01-2177, and the continuance of Item 11. Steve Palmer, #02-0689. Associate Member White seconded the motion; motion carried unanimously, 8-0.

1. APPROVAL OF MINUTES – June 18, 2002 and July 11, 2002

Associate Member White moved to approve the Minutes of the June 18, 2002 Commission Meeting as distributed. Associate Member Hull seconded the motion; motion carried 6-0. Associate Member Ballard noted his absence for the meeting. Associate Member McLeskey noted his absence for part of the meeting.

Associate Member White moved to approve the Minutes of the July 11, 2002 Special Commission Meeting as distributed. Associate Member Hull seconded the motion; motion carried 7-0. Associate Member Gordy noted her absence for the meeting.

2. PERMITS (Projects over \$50,000.00 with no objections and with staff recommendation for approval).

Mr. Tony Watkinson, Acting Chief-Habitat Management, briefed the Commission on the following Page Two items:

2A. UNITED STATES GYPSUM COMPANY, #02-1079, requests authorization to construct a 120-foot by 39-foot clear span bridge across McHenry Creek to facilitate realignment of State Route 745 in Washington County. Recommend a royalty in the amount of \$612.00 for the encroachment over 2,040 square feet of State-owned subaqueous land at a rate of \$0.30 per square foot.

PERMIT FEE.....\$100.00
ROYALTIES.....\$612.00

2B. U.S ARMY CORPS. OF ENGINEERS, #01-1614, requests a modification to their existing permit to dredge an additional 2000 cubic yards of sandy material from the Federal navigation channel at the mouth of the Coan River in Northumberland County. The Permittee has determined from a more recent bathymetric survey that the additional material will need to be dredged from channel area to achieve the desired depth. The additional sandy material will be hydraulically pumped on the previously permitted Public Ground #78 as part of the oyster replenishment program.

PERMIT FEE.....N/A
ROYALTIES.....N/A

2C. JAMESTOWN-YORKTOWN FOUNDATION, #02-0920, requests authorization to maintenance dredge up to 38,800 cubic yards of State-owned subaqueous material from an access channel to the Jamestown Settlement within the James River in James City County. All dredge spoil to be placed in an adjacent, previously used, dredge disposal site within the James River. Recommend a time of year restriction from March 15 through June 30 of each year to protect anadromous fish.

PERMIT FEE.....\$100.00
ROYALTIES.....N/A

2D. MICHAEL BOGESE, JR., #02-0804, requests authorization to stabilize approximately 4,400 linear feet of eroding shoreline through the installation of a series of breakwaters and sills, and associated beach nourishment and to construct a 12-foot by 38-foot concrete boat ramp at the applicant’s property situated along the James River in Charles City County. The proposed sills will impact 30,660 square feet of State-owned subaqueous lands; the breakwaters will impact 10,710 square feet of State-owned subaqueous lands; the beach nourishment (2,648 cubic yards) will impact 71,500 square feet of State-owned subaqueous lands; and the boat ramp will impact 240 square feet of State-owned subaqueous lands. Recommend approval with

a proposed royalty of \$3,575.00 for the beach nourishment impacting 71,500 square feet of State-owned subaqueous lands at a rate of \$0.05 per square foot.

PERMIT FEE.....\$100.00
ROYALTIES.....\$3,575.00

2E. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-2103, requests a permit modification to install a single, temporary, commercial mooring buoy, located at 36° 51' 23.40" North Latitude and 76° 20' 22.57" West Longitude in the Western Branch of the Elizabeth River to provide construction barge mooring during the Route 164 Pinners Point Interchange Bridge project. Recommend approval provided the buoy is marked in accordance with U. S. Coast Guard requirements. All other terms and conditions of the original permit are to remain in effect.

PERMIT FEE.....N/A
ROYALTIES.....N/A

2F. WATERMAN'S MUSEUM, #02-0503, requests authorization to replace an existing pier with a 215-foot long by 8-foot wide open-pile commercial pier with a 20-foot long by 36-foot wide dock head and a 114-foot long by 8-foot wide finger pier adjacent to their property situated along the York River in York County.

PERMIT FEE.....\$100.00
ROYALTIES.....\$1,005.60

2G. YORK RIVER YACHT HAVEN, #02-0978, requests authorization to renovate piers 2, 3, 4, and 5 located on the south and east sides of the marina located along Sarah Creek in Gloucester County. Proposed renovations include the removal of the old pier pilings and decking and replacement with floating piers. The new floating piers are also proposed to include shellfish aquaculture upweller units. The new piers are proposed to be slightly re-oriented, but the channelward encroachment is proposed to be similar to that which has previously been permitted. The renovation would result in the net reduction of 49 slips. Recommend approval with the assessment of an annual royalty of \$2,294.30 for the encroachment associated with piers 3, 4, and a portion of pier 5 over 45,886 square feet of State-owned submerged land at an annual rate of \$0.05 per square foot.

PERMIT FEE.....\$100.00
ROYALTIES (ANNUALLY).....\$2,294.30

2.H. TOWN OF CHINCOTEAGUE, #02-1030, requests authorization to construct and backfill 384 linear feet of vinyl replacement bulkhead a maximum of two (2) feet

channelward of a deteriorating bulkhead adjacent to Town property along Chincoteague Channel, 100 yards north of the bridge in the Town of Chincoteague.

PERMIT FEE.....\$100.00
ROYALTIES.....N/A

Commissioner Pruitt asked for comments from the audience, pro or con, on the proposed Page Two items. There being no comments offered, Commissioner Pruitt placed the items before the Commission for consideration.

Associate Member Birkett moved for approval of the Page 2 Items -- (2A.) United States Gypsum Company, #02-1079, (2B.) U. S. Army Corps of Engineers, #01-1614, (2C.) Jamestown-Yorktown Foundation, #02-0920, (2D.) Michael Bogese, Jr., #02-0804, (2E.) Virginia Department of Transportation, #00-2103, (2F.) Waterman’s Museum, #02-0503, (2G.) York River Yacht Haven, #02-0978, and (2H.) Town of Chincoteague, #02-1030 -- as recommended by staff. Associate Member Williams seconded the motion; motion carried unanimously, 8-0.

- 3. **LEE ANDERSON, #99-2156**, requested authorization to install 60 linear feet of bulkhead and a 58 linear foot return wall on his property situated along the Chesapeake Bay in the City of Hampton. Coastal Primary Sand Dune and Beach Permit required.

Ms. Tracy West, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. She stated that the property is located along the Chesapeake Bay, in the Malo Beach section of Hampton. The Anderson home is built on piles on the beach.

Ms. West stated that the Commission originally heard Mr. Anderson’s request for authorization for a bulkhead on February 1, 2000. At that time, Mr. Anderson proposed to install 53 linear feet of bulkhead aligned approximately eight feet seaward of an existing detached garage. The Commission denied the application, finding that the proposal neither met the criteria of Section 28.2-1403(10)(B)(2) of the Code of Virginia nor conformed with the standards for use of coastal primary sand dunes and beaches, and that it would likely impair the natural function and contour of the beach/dune system. A *Notice of Appeal* was received on March 2, 2000. Before the case was heard in Hampton Circuit Court, the parties signed an agreement, dated December 2, 2000, allowing submission of a revised application for presentation to the Commission. Ms. West noted that following the signed agreement, revised drawings were received on April 5, 2002. She noted that a new feature had been added to the application, an 8-foot by 14-foot enclosure to protect utility lines.

Ms. West stated that the City of Hampton is considering adoption of the Model Coastal Primary Sand Dune/Beaches Ordinance, however, it has not done so to date. As a result, the Commission must review the impacts to the beach areas associated with this project.

Staff conducted a public hearing on the proposal on May 21, 2002, in the city of Hampton. The meeting was attended by Mr. & Mrs. Anderson, Ms. Rebecca Francese of Waterway Surveys, Mr. Ed Haughton of the City of Hampton, and VMRC staff. Mr. Anderson presented several handouts at that time.

The VIMS report stated that, *“if the bulkhead is placed as close to the garage as possible, and the utility enclosure is an acceptable method for protecting the utility lines, then the impacts to the beach resources will be minimized and unavoidable.”*

In summary, Ms. West stated that placement of fill material and the construction of a new bulkhead in a jurisdictional beach is not supported by the Commission's Coastal Primary Sand/Dune/Beach Guidelines. However, it appears that the applicant has few alternatives. The applicant has previously nourished the beach at his property, however, storms have continued to cause erosion at the garage.

Ms. West stated that although Agency guidelines discourage structures such as bulkheads that could adversely affect dunes or beaches, and VMRC has been reluctant to recommend approval of such structures in the past, it appears there may be little alternative for the protection of structures and property along this section of shoreline. Since enactment of the dune ordinance, numerous homes have been authorized along Malo beach, however, many homes with bulkheads already existed and all lots had been previously platted. Furthermore, substantial improvements have been made to North First Street and sewer lines have been installed for all beachfront owners. Ms. West noted that approval of homes on open pilings had seemed equitable given the previous development along the shoreline. It was anticipated that homes on pilings would be consistent with VMRC guidelines while allowing development of the property in a manner that would have the least amount of impact on the beach.

Ms. West stated that it now appears that conditions are such along the shoreline that bulkheads between the open pile supported homes and parking areas adjacent to the street may be justified in certain cases along this stretch of shoreline. In this case, the bulkhead appears to be located as close to the street as possible without moving an existing garage structure. Furthermore, the lot to the south was previously bulkheaded and the proposed bulkhead is in fact located closer to North First Street than the adjacent structure. Finally, the impacts of the bulkhead appear to have been minimized and unavoidable in this situation.

Ms. West stated that the applicant has relocated the proposed bulkhead structure closer to the garage, however, the utility enclosure represents a new feature which was not considered by

the Commission previously. Staff is concerned that the utility enclosure may interrupt littoral transport of sand along the beach. Therefore, staff recommends approval of the bulkhead structure, but denial of the utility enclosure.

Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

Mr. Lee Marion Anderson, applicant, briefly stated the need for approval of this project, citing the likelihood of continued damage to the beach resources.

Ms. Rebecca Francese, Waterway Surveys & Engineering, attested to the benefits for the bulkhead designed to balance between a preservation of the applicant's private property and minimize any potential adverse impacts to the beach environment. Ms. Francese stressed the safety needs for enclosing the utility lines.

Matthew W. Smith, Esquire, Jones, Blechman, Woltz and Kelly, P.C., reiterated the safety measures incorporated into the proposed plans for the project.

Commissioner Pruitt called for comments in opposition to the application. There being none, the Commissioner then placed the matter before the Commission for consideration. Stating his concern for safety with exposed utility lines, **Associate Member Ballard moved to approve the application of Lee Anderson, #99-2156, to include the bulkhead structure and the utility protection enclosure. Associate Member Gordy seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

4. **REGATTA POINT YACHT CLUB, #01-2177**, requests authorization to install fuel pumps and associated fuel lines to a previously authorized floating pier at their marina facility located near the mouth of Broad Creek in Middlesex County. The project is protested by several nearby property owners.

The applicant withdrew its request for a permit.

5. **NORTHWEST BRANCH OF TANNERS CREEK, L.L.C., #02-0089**, requests authorization to dredge, by clamshell method, 8,620 cubic yards of State-owned subaqueous bottom in a 2,900-foot long by 30-foot wide channel with a 950-foot long by 30-foot wide spur channel to maximum depths of minus four (-4) feet at mean low water adjacent to their property situated along the Northwest Branch of

COMMISSION MEETING**JULY 23, 2002**

Tanners Creek in the City of Norfolk. The material will be placed at Craney Island. The project is protested by an adjoining property owner and a concerned citizen's group.

Ms. Traycie West, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. She stated that the Northwest Branch of Tanners Creek is a tributary located along the northern shore of the Lafayette River, immediately upstream of the Hampton Boulevard Bridge, with mean low water depths generally averaging around one foot. Ms. West added that depths outside the creek, in the Lafayette River, quickly drop off to more than twelve feet. As proposed, the 30-foot wide main channel will be dredged to a depth of minus four (-4) feet at mean low water and will extend to connect to the minus four (-4) foot contour. The 30-foot wide spur channel will also be dredged to a maximum depth of minus four (-4) feet at mean low water.

Ms. West noted that no wetland areas are proposed to be impacted by this proposal. The entire project will take place in State-owned subaqueous bottom areas. The dredging will be conducted mechanically, by the clamshell method, with the spoils being transported to Craney Island for disposal. The material to be dredged is comprised of silt, sand, and clay.

Ms. West reported that there are 31 residential lots with frontage along this branch of Tanners Creek. Seventeen lot owners are participating and one property owner is against the proposal. Additionally, there is one oyster ground lease in the waterway. The leaseholders were notified and no response was received.

Ms. West stated that the project is protested by Wetlands Watch, Inc., a citizen's action group. Their objections concern the cumulative impacts of dredging projects on the intertidal wetlands and shallow water habitat areas within the Lafayette River watershed. Specifically related to this proposal, concerns focus on dredging occurring in waters two-feet deep or less. The U.S. Fish and Wildlife Service, when commenting on the dredging project in nearby Crab Creek, noted that shallow water areas less than two feet in depth at MLW are defined as high value habitat that is becoming scarce and unnecessary habitat losses should be avoided. However, it should be noted that the character of this creek is different from Crab Creek, and the U.S. FWS did not comment on this particular proposal.

Ms. West added that Wetlands Watch, Inc. also expressed concerns regarding reduced flushing and the large boat basins proposed. Staff was also concerned about several of the larger boat basins, and most have been reduced in size from their original configuration in response to staff's request.

Ms. Kate Landman, a property owner on the creek, is also opposed to the project. Ms. Landman states that she does not believe the project meets the Wetlands Guidelines with regard to protection of shellfish and water quality. She also believes that the channel will

result in an increased potential for shoreline erosion due to increased boat traffic, and that the proposal inaccurately reflects the number of participants in the project. Staff was also concerned regarding the suggestion that persons not wishing to participate in the project were shown on the plans submitted for review as participants. The agent, Mr. Jim Georgo, stated that the original plans submitted in January 2002 did include the Landsman's, and that they were eliminated from all subsequent plans when it was clear they did not wish to participate.

Dr. James Wesson, VMRC Department Head, Conservation and Replenishment, does not believe the dredging will adversely affect the Lafayette River Oyster Reef which is located across the Lafayette River.

Ms. West stated that VIMS made several recommendations regarding the boat basins and access channels to those basins. Based on these comments, the agent submitted revised drawings reducing the dredge cuts where possible.

The Department of Environmental Quality has determined that a Virginia Water Protection Permit will not be required. The Department of Health has stated that the project is acceptable and the Department of Conservation and Recreation have stated that the project will not adversely affect their programs.

In summary, Ms. West stated that staff believes the proposed dredging project is reasonable. There are no wetland impacts proposed. Through several revisions, it appears the applicants have attempted to minimize any adverse impacts associated with the project. Accordingly, staff recommends approval with the following special conditions:

- 1) Requirements for a pre-dredging conference and a post-dredging bathymetric survey shall be included in the permit.
- 2) A royalty of \$0.45 per cubic yard for the dredging of State-owned subaqueous bottom shall be assessed.

Commissioner Pruitt called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

Mr. Ed Walcott, applicant, stated that he was available for questions from the Commission and staff.

Ms. Katherine Landman, resident, presented her concerns for ongoing erosion, as well as lack of protection for shellfish and water quality. Ms. Landman also requested that a "No Wake Zone" be considered to reduce potential impacts to the banks of the creek.

COMMISSION MEETING

JULY 23, 2002

Mr. John Blandin, Wetlands Watch, Inc., presented his concerns for the wetlands and reviewed guidelines he felt should be considered in evaluating the project.

In response to the protestants, Mr. Walcott assured the Commission that all due considerations were made for the environment and the creek's resources in planning the proposed project.

There being no further comments, Commissioner Pruitt placed the matter before the Commission for consideration. **Associate Member Gordy moved to approve the application of Northwest Branch of Tanners Creek, L.L.C., #02-0089, as recommended by staff and to include a "No Wake Zone" recommendation be made to the local government. Associate Member McLeskey seconded the motion, motion carried unanimously, 8-0.**

6. **E. L. BOYCE, #02-0952**, requests authorization to extend an existing pier 40 feet channelward and construct a 42-foot by 18-foot open-sided boathouse at the channelward end of the pier situated along Elmington Creek in Gloucester County. The project is protested by an adjacent property owner.

Mr. Chip Neikirk, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Mr. and Mrs. Boyce's property is located on the southern shore of Elmington Creek, a tributary of the North River in Gloucester County. Elmington Creek is approximately 350 feet wide at the project site. The channel is located near the northern shore, across from the project site, with depths of approximately minus three (-3) feet at mean low water. Mr. Neikirk noted that Mr. Boyce stated in his application that the water is less than three (3) feet deep at mean low water at the channelward end of the existing pier and by extending the pier he will gain about seven (7) inches of depth. Mr. Boyce stated that the additional depth is necessary to operate a boat lift with a new 29-foot boat he intends to purchase.

Mr. Neikirk stated that the Boyce's existing pier is 84 feet long and extends approximately 60 feet channelward of mean low water. They propose to construct two 6-foot wide finger piers around a 16-foot by 40-foot boatslip. They also propose to construct a 30-foot by 12-foot pier-head on the east side of the pier. The pier-head is designed to include a davit type lift for a personal watercraft. A 42-foot by 18-foot open-sided boathouse is proposed to cover a 16,000 pound capacity boatlift.

Mr. Neikirk added that development along Elmington Creek is primarily residential and there are several private piers along the creek. No boathouses are visible from the project site, however, there are boathouses along the North River in the vicinity of Elmington Creek.

Mr. Neikirk stated that the project is protested by Mr. John B. Kimberly, III, who objects to the boathouse and does not believe the pier extension will reach deeper water. The project will not encroach on any public or privately leased oyster ground. No state agencies have commented on the project.

Mr. Neikirk stated that staff was originally concerned with the encroachment of the pier and the size of the proposed pier-head. In response, the applicants reduced the width of the pier-head from 16 feet to 12 feet. After visiting the site and reviewing the navigation charts and aerial photographs, staff believes the creek's natural channel is located along the opposite shoreline and the pier will not adversely affect navigation.

Mr. Neikirk added that although the boathouse is slightly larger than necessary to cover the applicants' 29-foot boat, Mr. Boyce stated that he would like to have it large enough to cover a larger boat he may purchase in the future. The proposed open-sided design should minimize the visual impacts associated with the structure and the navigational and environmental impacts should not exceed those associated with the existing pier and uncovered boatlift, which are statutorily authorized. Accordingly staff recommends approval of the project.

Commissioner Pruitt called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

Mr. Edward Lee Boyce, applicant, noted Mr. Neikirk's professional performance in this matter. He also requested that the Commission consider his original request for a 16-foot pier head.

There being no one wishing to speak in opposition, the Commissioner placed the matter before the Commission for consideration. **Associate Member McLeskey moved to approve the application of E. L. Boyce, #02-0952, as recommended by staff, and to include the 16-foot pier head. Associate Member Birkett seconded the motion; motion carried, 7-0.** Associate Member Cowart abstained from the vote due to his brief absence during the discussion.

- 7. AMHERST COUNTY RECREATION AND PARKS DEPARTMENT, #01-1753**, requests authorization to convert two existing, abandoned Virginia Blue Ridge Railway bridges which span the Tye River and the Piney River into foot bridges. The crossings are being retrofitted as part of a seven-mile trail through portions of Amherst and Nelson Counties. The Tye River crossing is protested by an adjacent property owner.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Amherst and Nelson Counties have agreed to cooperate in the development of a seven-mile trail along the abandoned Virginia Blue Ridge Railway line between the communities of Piney River and Tye River in Nelson County. While the limited access, gated trail, begins and ends in Nelson County a large portion of the trail meanders through Amherst County. The trail will be limited to pedestrians, bicycles and riders on horseback. No vehicular traffic will be allowed along the trail. To complete the trail, the applicant has secured easements to four (4) existing, privately owned, railroad bridges which will be refurbished to accommodate pedestrian bridges. The renovations consist mainly of reinforcing the in-stream piers with concrete and Class II riprap scour protection, bridge maintenance and the construction of decking, railings and similar infrastructure to safely allow pedestrian and mounted horseback riders to safely cross the four rivers.

Mr. Madden stated that while there are four bridge crossings, staff considers only two of the crossings jurisdictional, the 36-foot long crossing of the Piney River and the 55-foot long crossing of the Tye River. It is the Tye River Crossing that is protested by Mr. Louis R. Elliot, Jr., an adjacent property owner. Mr. Elliot owns property along the east bank of the Tye River approximately 150 feet upstream and adjacent to the existing railway bridge easement over the Tye River. Mr. Elliott's shoreline has a near vertical 25 (+) foot high, unarmored bluff.

Mr. Madden reported that in his initial October 22, 2001 letter, Mr. Elliott expressed his concern over the project's proximity to his property, invasion of privacy, safety issues and the potential decrease in property value. In a follow-up letter dated March 18, 2002, staff was informed that the applicant and the protestant were negotiating. On March 22, 2002, Mr. Elliot broadened the scope of his objection to include the potential environmental impact to his property resulting from changes in stream flow resulting from the installation of the riprap around the pier in the Tye River and potential pollution from increased public use of the trail.

Mr. Madden stated that the Virginia Department of Game and Inland Fisheries reviewed the project and commented that it was acceptable and would have no impact upon resources under their jurisdiction. No other State agencies have commented on the project.

Mr. Madden noted that staff is sensitive to the issues raised by Mr. Elliott surrounding the new use of the previously abandoned bridge, however, his concerns over his invasion of privacy, safety and the potential decrease in property values are not directly related to the portions of this project within the Commission's jurisdiction. Such issues are more closely related to the general use of the trail and should be addressed with the developer and managers of the trail. Additionally, staff believes it is unlikely that the proposed riprap will adversely impact Mr. Elliot's upstream property. Accordingly, staff recommends approval of the project.

In the brief absence of the Commissioner, Associate Member White called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

Mrs. Mary Porter Martin, Virginia Blue Ridge Railway Trail Foundation, addressed the Commission on the benefits to be derived from the development of a trail connecting the Blue Ridge Parkway with the James River. The trail planned through Amherst and Nelson Counties would be a seven-mile section of the thirty-mile trail.

Mr. Steven Martin, Virginia Blue Ridge Railway Trail Foundation, addressed the concerns raised for environmental impacts to the area in developing the trail. He noted that he and his wife are donating the railway bed and bridges to the two counties to be used for the trail.

Mr. Louis R. Elliott, Jr., adjacent property owner, expressed his concerns for this project, noting that the proposed trail would be 100 yards from his home and would result in an invasion of privacy, a reduction in feeling safe, and a decrease in property value. He provided photographs illustrating the serene setting of the area. (The photographs are filed with the permanent record of this meeting.)

Mrs. Louis Elliott, adjacent property owner, presented a photograph depicting the current erosion and environmental change in the Tye River. She stressed her concern for additional impacts with the development of the proposed trail. (The photograph is filed with the permanent record of this meeting.)

Associate Member McLeskey inquired as to who is responsible for the existing bridge over the Tye River. The Martins indicated that they own the bridge and would be responsible should the bridge collapse. A brief discussion ensued as to the proximity of the Elliott's property to the planned trail site. **Ms. Liz Ketcham**, Nelson County Project Manager, clarified the map site locations for the Commission.

Associate Member Hull inquired of the Martins the timeframe which occurred with the purchase of their property and the formation of "Rails For Trails." Mr. Martin stated that they purchased the property in 1987 and shortly thereafter interest began to grow for developing a trail; however, funds were not available at the time. Mr. Martin reiterated the course of events since 1997 to date in developing plans for the trail. At the inquiry of Mr. Hull, Mr. Elliott stated that they purchased their property in 1995 and were not aware of the plans for a proposed trail.

Commissioner Pruitt inquired of Mr. Madden as to whether the Department of Conservation and Recreation had rendered an opinion on the project. Mr. Madden stated that the Department documented the presence of the green floater in the Tye River, upstream from Bridge No. 3, and recommended strict adherence to erosion sediment control measures. Mr.

Madden stated that as part of the permit process, the applicant would be required to follow erosion and sediment control measures.

Commissioner Pruitt noted that the project has worthwhile merits for the community; that the environmental impacts are being addressed; and that the concerns of the Elliott's as adjacent property owners are understandable. Commissioner Pruitt then placed the matter before the Commission for consideration. **Associate Member Ballard moved to approve the application of Amherst County Recreation and Parks Department, #01-1753, as recommended by staff, to include compliance with all environmental requirements. Associate Member Cowart seconded the motion; the motion carried unanimously, 8-0.**

8. **DONNA W. HOWLETT, #02-1184**, requests authorization to install up to 50 linear feet of stone riprap revetment landward of mean low water at her property situated along Wathall Channel of the Appomattox River in Chesterfield County. Wetlands Permit required.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the applicant's property is located along Wathall Channel of the Appomattox River in the Enon Church Area of the Bermuda District within Chesterfield County. The proposed riprap is to be placed in front of an existing deteriorated wooden bulkhead at the site. The applicant proposes all work to be done by barge from the river. The applicant also proposes to remove an existing deteriorated pier and construct a new pier extending 40 feet from the existing bulkhead. The pier as proposed meets the permit exemption requirements provided within the *Code of Virginia*.

Mr. Stagg stated that Chesterfield County has not yet adopted the *Model Wetland Ordinance*. Therefore, the Commission is charged with reviewing the wetlands impacts associated with the project. He added that staff held a public hearing at the Chesterfield County Administration Building on July 22, 2002, to accept comments on the project.

Mr. Stagg noted that the applicant's house and deck are constructed immediately landward of the bulkhead structure along a high bluff. It would appear any failure of the bank along this property could result in serious structural impact to the house and attached deck. The VIMS Shoreline Permit Report states that the individual and cumulative adverse impacts are minimal for the proposed project. No other agencies have commented.

In summary, Mr. Stagg stated that staff recommends approval of the project to include a buried toe below mean low water elevation, filter cloth, and a minimum of Class II Stone for the revetment and revised drawings depicting the same.

Commissioner Pruitt called for comments from the audience, pro or con. There being none, the Commissioner placed the matter before the Commission for consideration. **Associate Member Williams moved to approve the application of Donna W. Howlett, #02-1184, as recommended by staff. Associate Member White seconded the motion; the motion carried unanimously, 8-0.**

9. **WAYNE K. TAYLOR, #01-2142.** Restoration Hearing related to placement of 150 feet of concrete panel bulkhead 7-10 feet channelward of an existing metal sheet bulkhead and the backfilling of the area between the two bulkheads within the intertidal area of the applicants property situated along the Appomattox River in Prince George County.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Mr. Taylor's property is situated along the Appomattox River between Hopewell and Colonial Heights in Prince George County. There are a number of residential lots along this reach of the southern shoreline. The Federal Reformatory is to the north of the site.

Mr. Stagg stated that pursuant to a phone conversation with a property owner in the area received in mid-September, 2001, staff visited the site on September 21, 2001 and observed what appeared to be unauthorized structures at Mr. Taylor's property. Subsequently, Mr. Taylor was notified and a second site visit, with Mr. Taylor present, was conducted on October 4, 2001. On October 16, 2001, a *Sworn Complaint* was issued and a *Notice to Comply* was sent by certified mail to Mr. Taylor, requesting removal of the unauthorized concrete structures within 60 days. VMRC also informed Mr. Taylor that upon completion of the removal, the submission of a Joint Permit Application requesting authorization for a properly designed shoreline erosion structure would be accepted. Mr. Stagg noted that in subsequent correspondence with Mr. Taylor, staff provided additional information on shoreline erosion guidelines, pertinent sections of the *Code of Virginia*, related to both subaqueous and wetland encroachment permit requirements, as well as information on previously authorized bulkheads at other properties along this reach of shoreline.

Mr. Stagg reported that VMRC received a Joint Permit Application on December 5, 2001, requesting authorization to retain the concrete structures as installed and backfill the area behind the structures. Staff acknowledged receipt of the application and reiterated that review of an appropriate shoreline erosion control project would be considered. Staff inquired why a second bulkhead was needed which extended up to six feet channelward of an existing stable metal bulkhead. Staff agreed to visit the site at low tide to verify that the area in question was intertidal in nature.

COMMISSION MEETING**JULY 23, 2002**

Mr. Stagg stated that on February 28, 2002 staff visited the site with Tom Barnard of VIMS. During this visit, staff observed that the area between the concrete structures and the metal bulkhead had been backfilled impacting approximately 900 square feet of intertidal area adjacent to the river. A second *Sworn Complaint* and *Notice To Comply* were issued on March 8, 2002 requesting removal of the concrete structures and backfill within 30 days.

By letter dated May 31, 2002, Mr. Taylor was informed that staff had suspended any further processing of the after-the-fact permit application, pending removal of the structures and advised Mr. Taylor that unless the structures and backfill were removed and the area restored to pre-construction conditions, a Restoration Hearing would be scheduled before the Commission on July 23, 2002.

Mr. Stagg noted that Prince George County has not yet adopted the *Model Wetland Ordinance*. Therefore, the Commission is charged with reviewing the wetlands impacts associated with this project.

Mr. Staff added that Mr. Taylor has an existing functioning steel bulkhead at this location. The unauthorized concrete structures are not of the type or installed in a manner that would have likely warranted approval through the normal permit process. Additionally, Mr. Taylor was informed in the first *Notice to Comply* and in subsequent correspondence, that a VMRC permit was necessary.

In their *Shoreline Permit Report* for the after-the-fact application, VIMS noted that the concrete bulkhead contains numerous gaps and with the lack of filter cloth the fill material may leach into the river and be lost from the structure. The structure and backfill impact approximately 1,000 square feet of non-vegetated wetlands. VIMS further states that had they had the opportunity to comment prior to the construction of the bulkhead, they would have recommended that the structures be aligned no more than two feet channelward of the existing steel bulkhead with use of filter cloth.

Mr. Stagg stated that in conformance with Chapter 12, Article 4, Section 28.2-1317 (D) of the *Code of Virginia*, staff recommends that the Commission order removal of the unauthorized concrete structures, removal of the backfill channelward of the existing metal bulkhead, and restoration of the shoreline to pre-construction conditions. Staff further recommends that a reasonable bond or letter of credit be required in an amount and with surety and conditions satisfactory to secure compliance with any conditions set forth in the restoration order.

Additionally, Mr. Stagg stated that in conformance with the Chapter 12, Article 4, Section 28.2-1320 (B) of the *Code of Virginia*, the Commission may wish to consider an appropriate civil charge based upon moderate environmental impact and a significant degree of non-compliance.

COMMISSION MEETING

JULY 23, 2002

For clarification, Associate Member Cowart reviewed with Mr. Stagg Mr. Taylor's actions with regard to the placement of the concrete panel bulkhead and the required permit process. In response to an inquiry by Associate Member Ballard, Mr. Watkinson commented that the typical cost of bulkhead construction was in the \$100.00 per linear foot range, and the same cost may be appropriate for removal.

Commissioner Pruitt called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

Mr. Wayne K. Taylor, applicant, stated that in conversation with the Corps of Engineers, he mistakenly understood that he could backfill the project area only to realize that upon receipt of the actual permit, he was not permitted to do so. Mr. Taylor presented photographs of the project as noted. (The photographs are filed with the permanent record of this meeting.)

A discussion ensued with Mr. Taylor with regard to the work Mr. Taylor performed, the permit process that should have been followed, and the possible ways in which the area could be corrected in order to meet environmental concerns and avoid extensive costs to the applicant. Mr. Stagg noted that while the area could possibly be mitigated, the Commission may want to consider a civil penalty in this matter.

Commissioner Pruitt noted that Chapter 13, Article 4. of the *Code of Virginia*, clearly provides for the Commission to address the matter of non-compliance. Associate Member Ballard restated the applicant's non-compliance and noted his concern for same. Counselor Josephson noted that should the Commission approve processing the "after-the-fact" permanent application and the permit is denied, then the restoration order would have to be issued.

There being no further discussion, Commissioner Pruitt placed the matter before the Commission for consideration. **Associate Member Ballard moved to continue the restoration hearing for Wayne K. Taylor, #01-2142, until a full public interest review of the application can be held. Associate Member Williams seconded the motion; the motion carried unanimously, 8-0.**

Commissioner Pruitt advised the applicant to not perform any further work on the site until the public review is held and the Commission has acted on a new application in this matter.

The Commission recessed for lunch at 12:20 p.m. and reconvened at 1:00 p.m.

COMMISSION MEETING**JULY 23, 2002**

- 10. TABBS CREEK CIVIC ASSOCIATION, #95-1672**, requests an after-the-fact permit modification to dredge an additional 48 cubic yards of State-owned subaqueous material and install two (2) temporary mooring piles in order to prepare an unauthorized off-load area associated with a current maintenance dredging permit for a channel into the mouth of Tabbs Creek in Lancaster County.

Mr. Jay Woodward, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that in December of 1995, the Tabbs Creek Civic Association (TCCA) applied for a permit to dredge the mouth of Tabbs Creek to improve access. The Commission approved the project at its June 25, 1996 meeting, authorizing the removal of 5,500 cubic yards of material by hydraulic dredge with contained upland disposal on property situated in the adjacent subdivision of Dungeon Thicket, just south of the creek mouth. The project was completed in the summer of 1997, and a post-dredge bathymetric survey was submitted, as required by the permit, on August 25, 1997. Mr. Woodward stated that the letter accompanying the survey indicated that the hydraulic dredge encountered some hard, coarse material and, therefore, was unable to provide the maximum depths of minus eight (-8) feet at some areas of the permitted channel. The project was modified in July and November of 1997, to allow for the installation of private aids to navigation (day boards and buoys) and in May of 1998, to allow for maintenance dredging of the channel. The 1998 modification also included a request for a five-year permit extension. All modification requests were approved by the full Commission as Page 2 items, with all terms and conditions of the original permit remaining in effect, and a new permit expiration date of May 26, 2003.

Mr. Woodward reported that on September 13, 2001, staff received an application from TCCA to dredge approximately 700 cubic yards of material, using a clamshell bucket, from the previously authorized channel in order to remove the heavier, coarser material that the hydraulic dredge could not remove. The request was made in order to gain the maximum depths originally permitted. He noted that since the original 1995 permit was still active, with no additional material to be removed over what was initially authorized, staff advised TCCA by letter on October 5, 2001 that no additional permits would be required, provided the material would be transported to and contained within the previously authorized disposal area within Dungeon Thicket. Staff asked for verification of this in the letter, but never received a response. The letter also advised TCCA that their request was being forwarded to the Lancaster County Wetlands Board, the Department of Environmental Quality and the U. S. Army Corps of Engineers, in the event additional authorization was required from these agencies.

Mr. Woodward stated that after receiving notification from Mr. Carrington Burgess of TCCA that a violation of their permit had occurred, an on-site inspection was conducted. On May 23, 2002 staff met on-site at the property of Ms. Maxine Somervell with Mr. Burgess and Mr. Charles Springett of TCCA, and Ms. Trina Sobotka, Mr. Don Clarke and Mr. Guy

COMMISSION MEETING

Stinchcomb of Mama's Potomac Dredging, L.C., contractor for the job. Also present, at the request of staff, were Ms. Deborah Barnes of the Department of Environmental Quality and Mr. Pete Ranson of Lancaster County. The U. S. Army Corps of Engineers was already aware of the situation, but was unable to attend the meeting.

Mr. Woodward stated that the on-site inspection revealed that approximately 50 cubic yards of subaqueous material had been excavated from an unauthorized off loading area measuring approximately 40 feet long by 15 feet wide along the shoreline. In addition, the subaqueous material was cast aside onto the adjacent State-owned subaqueous creek bottom in three distinct piles, and two timber mooring pilings had been driven into the creek bottom channelward of mean low water to serve as temporary tie-off piles for the hopper barge.

On May 31, 2002, staff issued a *Sworn Complaint* and *Notice to Comply*, which included immediate remediation measures necessary to minimize further environmental impacts which had been requested during the site inspection, and a directive to submit an after-the-fact request to modify the offload site, remove the additional material, and install the two temporary mooring piles.

Mr. Woodward reported that on June 4, 2002, staff re-inspected the site to confirm that the remediation measures had been accomplished, specifically the removal of the additional dredged material from the adjacent State bottom. Staff received the after-the-fact permit modification request on June 10, 2002, and initiated the required public interest review.

Mr. Woodward added that VIMS indicated that approximately 600 square feet of subaqueous bottom had been impacted by the removal of approximately 50 cubic yards of material and approximately 1,500 square feet of subaqueous impact resulting from the subsequent uncontained overboard disposal. VIMS also indicated that at least 100 square feet of vegetated tidal wetlands, predominantly saltmarsh cordgrass, were impacted due to crushing by equipment and minor erosion adjacent to the dredge cut. While VIMS would not have supported dredging for barge access or overboard disposal of material, they believe that the impacts associated with the unauthorized activities will be short term, provided the original bottom contours are restored after project completion and incidental spilling of dredge material is minimized during offloading. VIMS further recommends that saltmarsh cordgrass be planted along the shoreline if the vegetation does not recover within a reasonable period of time.

Mr. Woodward noted that the Department of Environmental Quality is pursuing the violation independently and has not made a final decision on the matter at this time. Additionally, the Lancaster County Wetlands Board approved the project at its July 11, 2002 meeting and assessed a civil charge of \$500 to the contractor for the project on June 13, 2002, during a restoration hearing.

No other State agencies have provided comments and no comments have been received from the public.

In summary, Mr. Woodward stated that staff is concerned that TCCA, with their long permitting history and relationship with VMRC, would make unauthorized changes to their permit without prior approval. He noted that when TCCA applied to remove the additional material from the channel using a clamshell bucket in September 2001, TCCA was advised that additional information must be submitted for a change in offloading and disposal sites. Staff is also distressed that the dredging contractor would work without the benefit of seeing the permit documents or knowing exactly what was authorized. Finally, staff is concerned to learn that the TCCA was not present to oversee the dredging operation.

Mr. Woodward stated that while it is unlikely that staff would have recommended approval of an offload site that would require the dredging of the near-shore area for access, staff believes the long term impacts of the unauthorized activities on the marine environment will be minimal. He stated that both TCCA and Mama's Potomac Dredging have been very cooperative since the violation was brought to our attention by the permittee. The remediation efforts were done according to staff's verbal and written directions in a timely fashion. Accordingly, staff recommends approval of the after-the-fact change in offloading site, removal of the additional 50 cubic yards of subaqueous material, and the installation of the temporary mooring piles with the following special conditions:

1. The hole created for barge access shall be filled in using clean sand material, with prior inspection by VMRC staff, and the temporary mooring piles shall be removed within 30 days of completion of the dredging;
2. A final inspection must be conducted by staff upon completion of the above requirements prior to the contractor leaving the site. Staff must be formally notified within 48 hours of completion of the restoration activities required above, in order to schedule a timely inspection.

Mr. Woodward stated that in addition, staff recommends a royalty in the amount of \$67.50 for the removal of 50 cubic yards of State-owned subaqueous material at a rate of \$1.35 per cubic yard (triple the normal rate of \$0.45 per cubic yard.) He added that staff would also recommend that the Commission consider civil charges against both the Tabbs Creek Civic Association and Mama's Potomac Dredging, L.C. in amounts relative to the major degree of deviation from the permit and the moderate degree of environmental impact of the unauthorized activities.

In the brief absence of the Commissioner, Associate Member White called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

COMMISSION MEETING**JULY 23, 2002**

Mr. Charles Springett, Tabbs Creek Civic Association, stated that the Association was founded to raise money for the creek dredging as it was felt that such would greatly benefit the homeowners along the creek. Mr. Springett described the process that had been followed by the Association.

Ms. Catherine Sobotka, Mama's Potomac Dredging, L.C., stated that her company regretted the events that represented non-compliance, and explained that the decision to continue the work was made by workers who used poor judgment at the time. She also asked that in levying the civil penalty, the Commission consider the fact that her company is very small, operating on a very tight budget.

There being no further discussion, Association Member White placed the matter before the Commission for consideration. **Associate Member Ballard moved to issue an after-the-fact permit to Tabbs Creek Civic Association, #95-1672, conditioned upon payment of a civil charge in the amount of \$1,800.00 to be individually levied upon and paid by both the Tabbs Creek Civic Association and Mama's Potomac Dredging, L.C., said charge being based upon minimal environmental impact and major degree of non-compliance. Associate Member Birkett seconded the motion; the motion carried unanimously, 8-0.**

- 11. STEVE PALMER, #02-0689**, requests authorization to retain an 11-foot by 12-foot storage shed located at the channelward end of a private, non-commercial pier located along West Landing Creek in Mathews County. The project is protested by two residents in the vicinity.

At the request of the applicant and by unanimous vote of the Commission, this matter is to be continued until the Commission Meeting scheduled for October 22, 2002.

12. PUBLIC COMMENTS

Commissioner Pruitt opened the floor for public comments.

Mr. Tony Armstrong, commercial fisherman, requested that the Commission extend the clam season to August 30, 2002. He also requested that the Commission consider opening up the Hampton Flats at the beginning of September 2002 for one month. Mr. Armstrong inquired as to the status of dredging in the Norfolk terminal area around the Elizabeth River.

COMMISSION MEETING**JULY 23, 2002**

Associate Member Williams stated that the Clam Management Advisory Committee (CMAC) has scheduled a meeting for August 22, 2002 to discuss some of the issues Mr. Armstrong has raised.

Mr. Roy Insley, Head-Plans and Statistics, stated that it would not be prudent to open the Hampton Flats Management Area without first performing a survey of the area data. He stated that staff could recommend a two-week extension of the general relay area. Meanwhile, the needed survey to recommend further extensions would be available for the upcoming CMAC meeting. Mr. Insley noted that an Emergency Regulation would be required to extend the clam season beyond August 15, 2002.

Mr. John Wiseman, Roy Davis Seafood, distributed to the Commission production numbers by months for clams purchased during the period of March 1, 2002 thru July 17, 2002. (A copy of this document is filed with the permanent record of this meeting.) Mr. Wiseman also requested an extension of the clam season.

Associate Member Williams moved to extend the clam season from August 15, 2002 to August 30, 2002 by Emergency Regulation. Associate Member Gordy seconded the motion; motion carried unanimously, 8-0.

Ms. Catherine Sobotka, Mama's Potomac Dredging, L.C., #95-1672, addressed the Commission regarding her need to commence working in order to pay the \$1,800.00 civil charge levied by the Commission in the matter of Tabbs Creek Civic Association, #95-1672.

Associate Member Gordy moved to re-open the matter of Tabbs Creek Civic Association, #95-1672. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.

Following an explanation made by Ms. Sobotka with regard to her company's financial status, a discussion ensued as to arrangements for payment of the civil charge. **Associate Member Birkett moved to approve an after-the-fact permit for Tabbs Creek Civic Association, #95-1672, conditioned upon agreement by Ms. Catherine Sobotka to pay within 45 days of the permit issuance the \$1,800.00 civil charge levied upon Mama's Potomac Dredging, L.C. Associate Member Gordy seconded the motion; the motion carried, 7-1.**

Associate Member Hull requested a presentation by VIMS be made in August on the current existence of the snakehead fish in Virginia. Dr. Eugene Burreson, VIMS, stated that the fish is a fresh water species, and that he would try to obtain available data. Commissioner Pruitt instructed Mr. Travelstead to contact the Department of Game and Inland Fisheries in this regard.

There being no further comments, Commissioner Pruitt closed the Public Comments portion of the meeting.

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

A. Matching Funds for Wallop-Breaux Federal Grant - Mr. Jack Travelstead, Chief-Fisheries Management, reported that due to budget cuts VMRC has lost its state generated funds used to match Wallop-Breaux grant funds. He stated that there is approximately \$40,000.00 remaining in the Marine Improvement Fund. Staff suggests applying the \$40,000.00 along with \$60,000.00 from the Recreational Fishing Development Fund (RFAB) to meet the match requirement for the Wallop-Breaux Grant funds. Mr. Travelstead briefly reviewed the projects that are funded by the grant.

Mr. Travelstead stated that the RFAB members voted unanimously to apply the \$60,000.00 towards the grant match. The Commercial Fishing Advisory Board (CFAB) members were reluctant to support applying the total of \$40,000.00, but would support applying up to \$10,000.00.

Mr. Travelstead stated that staff is recommending that the Commission allocate \$60,000.00 from the Saltwater Recreational Fishing Development Fund and \$40,000.00 from the Marine Improvement Fund. The total expenditure of \$100,000.00 will be used as a match for the designated federal funds.

Associate Member Cowart moved to approve the allocation of \$60,000.00 from the Saltwater Recreational Fishing Development Fund and \$40,000.00 from the Marine Improvement Funds to be used as a match for the designated federal Wallop-Breaux funds. Associate Member Hull seconded the motion; motion carried, 7-0. Associate Member McLeskey noted his absence for part of the presentation in this matter.

Associate Member Cowart urged the commercial and recreational fishing industries to lobby the General Assembly next year to enhance the fishing resources in the State of Virginia.

B. Messick Point Boat Launching Facility Project/Glebe Point Fishing Pier Improvements Project - Mr. Cory Routh, Fisheries Management Specialist, presented recommendations of the Recreational Fishing Advisory Board (RFAB.) He stated that at the May 28, 2002 meeting, the Commission approved several projects recommended for funding by the RFAB. Four boating and fishing access projects were recommended, but did not receive final approval because of pending Habitat Division permit approvals. Mr. Routh reported that two of the projects, the Elizabeth River Boat Landing and the Crane's Creek

Boat Landing still have pending permits. However, the Messick Point Boat Landing Facility project in the City of Poquoson, and the Glebe Point Fishing Pier Improvements project, in Northumberland County, have been permitted and require approval for funding by the Commission.

Associate Member Hull moved to approve the following expenditures from the Saltwater Recreational Fishing Development Fund as recommended by the Recreational Fishing Advisory Board: (1) \$413,970.00 to the City of Poquoson for the Messick Point Boat Landing Facility project; and (2) \$8,500.00 to Northumberland County for the Glebe Point Fishing Pier Improvement project. Associate Member Cowart seconded the motion; motion carried unanimously, 8-0.

Commissioner Pruitt called for public comments on the funding of the Messick Point Boat Landing facility and Glebe Point Fishing Pier improvements. There were no comments, pro or con, offered on either matter.

- 14. PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," requiring purse seine vessels to submit Captain's Daily Fishing Reports.

Mrs. Ellen Cosby, Fisheries Management Specialist, presented the proposed amendment to Regulation 4 VAC 20-610-10 et seq. to require the submission of *Captain's Daily Fishing Reports* by all purse seine and snapper rig vessel owners in Virginia. She noted that Amendment 1 to the "Interstate Fishery Management Plan" of the ASMFC for Atlantic Menhaden states that, "*All Menhaden purse seine and bait seine vessels (snapper rigs) shall be required to submit the Captain's Daily Fishing Reports.*" Implementation of the measure would be a compliance criterion for VMRC. At the inquiry of Associate Member Cowart, Mrs. Cosby stated that Virginia captains have been filing the reports on a voluntary basis and have been notified that the reports will become mandatory.

Commissioner Pruitt opened the Public Hearing on the matter. With no comments offered, the Commissioner closed the Public hearing and placed the matter before the Commission for discussion and consideration.

Associate Member Ballard moved for adoption of amended Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," requiring purse seine vessels to submit Captain's Daily Fishing Reports. Associate Member Williams seconded the motion; motion carried unanimously, 8-0.

COMMISSION MEETING

JULY 23, 2002

15. **PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-670-30 clarifying provisions pertaining to recreational crabbing.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that this item was brought to the attention of the Commission at the June 25, 2002 meeting. Mr. Travelstead distributed copies of Mr. Tom Powers' comments submitted via electronic mail on July 23, 2002, a copy of which is filed with the permanent record of this meeting.

Mr. Travelstead noted that in June, the Commission adopted an emergency regulation clarifying that the daily time limits (8-hour workday) for commercial crab potting do not apply to persons setting and fishing recreational crab pots. At that meeting, the Commission directed staff to advertise for public comments on the emergency amendments as a permanent part of Regulation 4 VAC 20-670-30, and directed the advertisement of another amendment which would exempt recreational crab potters from the closures of the lower bay blue crab sanctuary established by Section 28.2-709 of the *Code of Virginia*. Mr. Travelstead noted that staff concurred with the proposed amendment, and added that nothing could be found in the record indicating an intention of the Commission to apply the sanctuary closure to recreational crabbers. Mr. Travelstead stated that a 2001 survey conducted by Old Dominion University determined that recreational harvests represented only 3.9% of the total harvest, making it difficult to argue that recreational crabbers should be restricted by the sanctuary originally intended by the General Assembly to apply only to commercial crabbers.

Commissioner Pruitt opened the Public Hearing on the matter. With no comments offered, the Commissioner closed the Public hearing and placed the matter before the Commission for discussion and action. **Associate Member McLeskey moved for adoption of amended Regulation 4 VAC 20-670-30 exempting licensed recreational crabbers from the 8-hour workday and the original blue crab sanctuary as established by Section of 28.2-709 of the Code of Virginia.** Associate Member Williams expressed his concern for law enforcement's ability to determine whether crabbing activities are commercial or recreational. He stated he felt that both the commercial and recreational crabbers should be treated equally in this matter. **Associate Member White seconded the motion; motion carried, 7-1.**

** **DATE OF NEXT COMMISSION MEETING: AUGUST 27, 2002**

COMMISSION MEETING

12033
JULY 23, 2002

**** ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 2 :15p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary