

MINUTES

Commission Meeting**December 22, 2003
Newport News, VA**

The meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt)	Commissioner
Chad Ballard)	
Gordon M. Birkett)	
Ernest N. Bowden, Jr.)	Associate Members
Russell Garrison)	
J. T. Holland)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin/Finance Div.
Jane McCroskey	Deputy Chief, Admin/Finance Div.
Linda Hancock	Human Resources Manager
Michele Guilford	Human Resources Analyst
Donna Bean	Business Manager
Tia Williams	Fiscal Technician
Teri Short	Business Manager
Debbie Sparks	Licensing Supervisor
Jack Travelstead	Chief, Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Jim Wesson	Head-Conservation/Replenishment
Roy Insley	Head, Plans/Statistics Dept.
Stephanie Iverson	Fisheries Management Specialist
Chad Boyce	Fisheries Management Specialist
Cory Routh	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Joey Thompson	Admin and Program Specialist
Betty Warren	Admin and Program Specialist
Todd Watkins	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement Div.
Lt. Col. Lewis Jones	Assistant Chief-Law Enforcement
Captain Ray Jewell	Supervisor-Northern Area
1 st Sgt. Ben Major	Assist. Supervisor - Southern Area

Commission Meeting

**12599
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1st Sgt. Steve Pope
MPO Paul Newman
MPO Robert Flinchum
MPO Adam Friend
MPO Howard Goode
MPO Minor Stone
MPO Sandie Walker
MPO Tim Litz
MPO Doug Thompson
MPO Mike Morris
MPO Jeff Copperthite

Assist. Supervisor - Middle Area
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer
Marine Police Officer

Bob Grabb
Tony Watkinson
Chip Neikirk
Kevin Curling
Jeff Madden
Jay Woodward
Benny Stagg
Traycie West
Hank Badger
Justin Worrell

Chief, Habitat Management Div.
Deputy Chief, Habitat Mgt. Div.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Tom Barnard
Lyle Varnell
Walter Priest

Other present included:

Lois Strickland
Walter Beck
Delpha Hicks
ELaine Lang
Lyell Jett
Don Richwine
Helen Scerbo
Charles I. Folk
Joe Parrish
Susan Gaston
Jeff Smith
Bill Culpepper
Todd Smith

Butch Boykin
James Krom
Robert L. Montague
Bruce Seaman
Don Caskie
Dale Taylor
Chuck Roadley
Ken Moore
Eric Markowski
Tom Langley
Sammie Williams
Kenneth Williams
Jason Smith

Marvin Milton
Kenneth Kregman
John Lang
Jane Crowther
G. Lewis Filling
Mark Scerbo
John Lain
Bob Kerr
Margaret S. Garner
Stan Roberts
Willis Kirk
Lee Smith
Buddy Carson

Commission Meeting

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Buddy Carson, Sr.
W. C. Tice
Douglas F. Jenkins, Sr.
Zeb Cox
J. Parks, Jr.

L. R. Carson III
Tom Powers
Russell Gaskins
Guy Pruitt
and others

Frank A. Kearney
Roger Parks
Kelly Place
Bob Allen

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Commissioner Pruitt called the meeting to order at 9:30 a.m. with only five Associate Members present. Associate Members Cowart, McLeskey, and Jones were absent.

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Associate Member Garrison gave the invocation and led the pledge of allegiance to the flag.

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Commissioner Pruitt swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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Approval of Agenda: Commissioner Pruitt asked if there were any changes to the agenda. There were no changes.

Associate Member Ballard moved to approve the agenda. Associate Member Holland seconded the motion. The motion carried, 5-0.

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1. MINUTES:

Associate Member Birkett moved to approve the minutes for the November 18, 2003 Commission meeting. Associate Member Holland seconded the motion. The motion carried, 4-0. Associate Member Ballard abstained from voting, because he was absent from the November 18th meeting.

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2. PERMITS:

Bob Grabb, Chief-Habitat Management, gave the presentation on page two items, A through E, and his comments are part of the verbatim record. Page two items are projects that cost more than \$50,000, not protested, and staff has recommended approval.

Commissioner Pruitt asked Mr. Grabb why the page one item, **MID-ATLANTIC HOLDINGS, #03-1107** had been made a page two item. Mr. Grabb explained that the developers had been concerned with the number of slips staff was recommending since the shoreline was in common ownership, not individuals, and the VMRC staff had initially recommended cutting out 11 slips. He further explained that since the project met all local rules, and they would be allowed 27 slips, under the zoning rules the staff was now recommending approval of the 24 slips.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con. There were none.

There being no further comments either pro or con on the page two items from the public, **Associate Member Holland moved to approve page two items, A through E. Associate Member Birkett seconded the motion. The motion carried 5-0.**

2A. VULCAN CONSTRUCTION MATERIALS, INC., #97-1346, requests a modification to a previously authorized project to allow maintenance dredging of spilled aggregate on an as-needed basis of a maximum of 3,000 cubic yards of material adjacent to their off-loading pier situated along the Eastern Branch of the Elizabeth River in the City of Norfolk.

Modification, no fees applicable.

2B. HAMPTON YACHT CLUB, #98-1507, requests reactivation and extension of their previously authorized project to realign three (3) existing permitted concrete floating finger piers and replace 42 fixed timber wetslips and a 37-foot long by 27-foot wide timber deck totaling 5,236 square feet with concrete floating piers to accommodate 43 wetslips and a 37-foot wide by 32-foot concrete floating deck totaling 6,510 square feet. The renovation will require the dredging of 1,600 cubic yards of State-owned submerged bottom to the minus eight (-8) feet contour). All dredged material will be transported to Craney Island for disposal.

Reactivation and extension, no fees applicable.

2C. JAMES COVINGTON, #03-1915, requests authorization to install a private mooring buoy at 37° 37' 57.2" north latitude, 76° 19' 11.9" west longitude, approximately 800 feet channelward of his property situated along Fishing Bay in Middlesex County. The proposed mooring is located on Additional Public Ground defined in §28.2-646 of the Virginia Code.

Permit Fee.....\$25.00

2D. JOHN E. McPHERSON, 03-1984, requests authorization to dredge 5,000 cubic yards of subaqueous material to maintain and deepen to minus nine (-9) feet, a previously authorized 50-foot by 1,000-foot navigation channel adjacent to his property along Fishing Bay in Middlesex County. The proposed dredging is located on Additional Public Ground defined in §28.2-646 of the Virginia Code. Recommend approval with dredging royalty of \$1,800.00 for the new dredging of 3,000 cubic yards of State-owned subaqueous land at \$0.60 per cubic yard.

Dredging Royalty Fee (3,000 cu. yds. @ \$0.60 per cu. yd.).....	\$1,800.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,900.00

2E. MID-ATLANTIC HOLDINGS, #03-1107, requests authorization to construct a 24-slip community facility at their property situated along Queen's Creek in York County.

Encroachment Royalty (3,656 sq. ft. @ \$1.00/sq. ft.).....	\$3,656.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,756.00

3. CLOSED SESSION. Commissioner Pruitt asked if there was a need to hold a closed session. No one had anything, so no closed session was held.

4. DONALD BRITTON, ET AL, #03-1873. Commission review of the October 23, 2003, decision by the Accomack County Wetlands Board to approve the filling of 4,500 square feet of vegetated wetlands along Chincoteague Channel in the Town of Chincoteague, Accomack County.

Bob Grabb, Chief-Habitat Management, explained that the applicant's counsel, Jon Paulson, had a conflict with the meeting date being on Monday, December 22 and was unable to attend; therefore, the applicant had requested a deferral until the January meeting. He said that the staff had no objection to the request.

Associate Member Holland moved to approve the requested deferral. Associate Member Garrison seconded the motion. The motion carried, 5-0.

Deferred, no fees applicable at this time.

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5. **APM TERMINALS VIRGINIA, INC., #02-1913**, requests authorization to develop a marine container terminal facility and to maintenance dredge on an as-needed basis, adjacent to their property situated along the Elizabeth River in Portsmouth.

Traycie West, Environmental Engineer, Sr., gave the presentation with slides and her comments are a part of the verbatim record.

Ms. West explained that the property was located along the western bank of the Elizabeth River, south of the U.S. Coast Guard Support Center in Portsmouth. The site encompasses approximately 576 total acres.

Ms. West said that the applicant had requested authorization to develop a marine container terminal facility to include a 3,750-foot long by 115-foot wide open-pile wharf, 3,750 linear feet of bulkhead with 90,169 square feet of associated backfill, four (4) 20-foot by 20-foot industrial cluster dolphins with associated 125-foot long by 3-foot wide maintenance access walkways, and dredge 10.3 million cubic yards of State-owned submerged lands from a 189 acre area to create depths of -54 feet below MLW in the access channel and -59 feet below MLW at the mooring basin parallel to the wharf. In addition, the applicant was also requesting authorization to maintenance dredge to these same depths on an as-needed basis. All dredged materials were to be placed within the Corps' Craney Island Dredged Material Management Area.

Ms. West explained that the facility was designed to accommodate the new class of container vessels that require minimum channels depths of -50 feet below mean low water. Post-Panamax vessels draft approximately 50-feet, and range in length from 1,050 to 1,150 feet long and are approximately 141 feet wide. This width accommodates 17 rows of containers. Suezmax vessels also draft approximately 50 feet. They are over 1,150 feet long and are approximately 173 feet wide, allowing for 21 rows of containers.

Ms. West said that according to the information provided in the Joint Permit Application, vessels of this size have limited access to the Atlantic Coast of the United States due to a lack of ports able to handle such large capacity shipping vessels. In addition, the Virginia Port Authority predicts, based on industry growth estimates and the capacity of it's current facilities, that it would not be able to meet the demands of the industry beyond 2008.

Ms. West said that in October 2003, Dr. Wesson evaluated the availability of shell and the density of clam resources in the area of the dredge cut. Dr. Wesson determined that the shell found in the area were not accessible for recovery. In addition, he estimated average clam densities of 1 clam/meter within the area to be dredged. While harvesting in the Elizabeth River is prohibited, the clams in the area of the dredge cut are, in effect, serving

as broodstock. As a result, Fisheries Management staff recommended that, should the application be approved, mitigation for the loss be required and that the standard mitigation ratio of 1.33:1 be applied.

Ms. West stated that VIMS provided extensive comments regarding impacts that could be expected due to the duration of dredging operations and changes to the benthic community and other biological resources in the area. In summary, VIMS stated that this area of the Elizabeth River is productive and they encouraged all efforts to offset unavoidable impacts.

Ms. West said that the U.S. Coast Guard, the Department of the Navy, the Department of Conservation and Recreation, and the Department of Health had no comments on the project. The Department of Environmental Quality intended to issue a permit shortly. Comments were also received from the Elizabeth River Project and the Chesapeake Bay Foundation.

Ms. West said that the Portsmouth Wetlands Board considered the proposal at a public hearing on July 11, 2003. The project was approved subject to the submission of a formal mitigation plan, to include monitoring prior to and after project commencement. In addition, the applicant must secure a performance bond to provide surety throughout the construction of the mitigation, and a warranty bond for surety throughout the monitoring period. As of December 15, 2003, these special conditions have not been fulfilled.

Ms. West stated that given the scope and nature of a proposal of this magnitude, it appeared that the applicant had minimized the impacts to State-owned submerged lands to the greatest extent practicable while still allowing for construction of a viable marine port facility capable of accommodating large shipping vessels. Therefore, staff recommended approval of the project as proposed with several special conditions.

Ms. West explained that due to the amount of the dredging proposed, there could be extensive loss of clam broodstock resources in the area. In accordance with recommendations received from our Fisheries Management Division, staff recommended that the applicant mitigate for the loss of clam resources at a ratio of 1.33:1, in keeping with adopted Commission policy utilizing this ratio, a total of 1,017,294 clams are required to mitigate for the loss.

Ms. West stated that the Fisheries Management staff further recommended that the clams be planted at the Middle Ground Light Broodstock Area in the James River over a three-year period. This staggered approach to mitigate for the loss would reduce the impact of a single large purchase of clams on the market. Bi-annual plantings in the spring and fall of each year were also recommended to take advantage of optimum planting temperatures, minimize mortality during handling, and to further reduce the impact to the market. Spring planting should occur between March 1 and June 30 and fall planting

between October 1 and November 30 of each year. Approximately 169,549 clams should be planted per effort.

Ms. West said it was also recommended that clam size be restricted to clams between 1" and 2 7/8" in order to conform to VMRC Regulation 450-01-0077 requirements. In addition, VMRC Fisheries Management staff should be present on-board the vessel while planting occurs.

Ms. West said that staff also recommended royalties in the amount of \$180,388.00 for the filling of 90,169 square foot at a rate of \$2.00 per square foot for the placement of the bulkhead and the associated backfill, \$324,475.00 for the encroachment over 324,475 square foot of State-owned submerged lands at \$1.00 per square foot for the wharf, \$1,600 for the placement of four (4) 400 square foot industrial mooring dolphins on State-owned subaqueous bottom at a rate of \$1.00 per square foot, and \$750.00 for encroachment over 750 square feet of State-owned submerged lands at a rate of \$1.00 per square foot for the open-pile walkways associated with the dolphins.

Ms. West said that in addition, a dredging royalty of \$2,832,500.00 was recommended for the removal of the 10.3 million cubic yards of State-owned material. In accordance with action taken by the Virginia General Assembly and included in budget language during the 2003 legislative session, the dredging royalty assessment is based on \$0.20 per cubic yard for 7,210,000 cubic yards of material with no commercial value and \$0.45 per cubic yard for the remaining 3,090,000 cubic yards of material. This portion of the dredged total would appear to have commercial value and the Corps planned to use it to expand and raise the dikes at Craney Island.

Associate Member Ballard asked about the language in the Code regarding the per cubic yard fees being recommended. Ms. West read a portion of the Appropriations Act, which says, "...when the activity or project for which a permit is requested involved the removal of bottom material in excess of 7.0 million cubic yards to develop a private marine cargo terminal, the permit shall specify a royalty of not more than 20 cents per cubic yard of bottom material removed so long as the dredged material has no commercial value." She explained that she did not read the rest of the section as it pertained only to where it would be deposited and how it can be used.

John Lain, Legal Counsel for APM Terminals, was present and his comments are a part of the verbatim record. Mr. Lain explained, that the applicant objected to the \$0.45 per cubic yard royalty assessed and the materials commercial value determination. He said, that in accordance with the Corps of Engineers' requirements, the applicant was already paying to have the material moved to the Craney Island Disposal Site. He stated that the applicant can not keep the material and if they could, it was not useable and they could not see any commercial value. He explained that they were asking that the twenty cents per cubic yard assessment be made on the entire cubic yardage. He suggested that the

matter be continued for 30 days so that he, the applicant and staff can continue to discuss the issue of commercial value.

Chuck Roadley, Williamsburg Environmental Group, representing the applicant was present and he was sworn in.

Associate Member Ballard asked Mr. Lain, who should make the determination. Mr. Lain explained that they were surprised at the determination for commercial value and that it had not been discussed in depth. Associate Member Ballard asked if the permit was conditioned regarding this issue and there was still no resolution, what would happen then. Mr. Lain explained that the applicant would appeal it as a violation of the budget bill.

Associate Member Holland asked if the applicant wanted to table the issue and then discuss. Mr. Lain stated that they just wanted to clear up the determination of commercial value. He said they first of all wanted to ask for the board's approval with a determination of no commercial value and were not asking for a deferral.

Commissioner Pruitt asked if there was anyone present who objected to this project. There was no one present in opposition.

Bob Craft, Chief-Administration and Finance, was present and his comments are a part of the verbatim record. Mr. Craft said that he did not understand when they say the funds are going to the General Fund. He went on to explain that the budget bill speaks to the nature of the material as to commercial value, not to whether it is being used. He said that the value of the material is up to the board making the decision and the money would be paid into the Waterway Improvement Fund to be distributed as established.

Jane McCroskey, Assistant Chief-Administration and Finance, was present and her comments are a part of the verbatim record. She stated that the funds would not go to the General Funds, but to the Waterway Improvement Fund.

Commissioner Pruitt said that it needed to be determined if the material is valuable.

Bob Grabb, Chief-Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb explained that the applicant's agent had made an assessment that 30% was sandy material and 70% was fine material. He said that staff had used the 30% sandy material amount provided in the APM Terminals letter, dated January 13, 2003. He further explained that even though the material could not be sold, it still does not take away from the nature of the material.

Commissioner Pruitt said that the board could not agree to the 30 days continuance and a decision needed to be made. He said that he agreed with Associate Member Holland when he suggested deferring the matter and making a decision at that time.

Associate Member Garrison stated that from his experience he found that the clay would not dry out so that it is useable, but sandy material would dry out so that it could be used. He explained that the Corps of Engineers would be using this material for dikes, and therefore, it was of commercial value.

John Lain requested a short break. **Commissioner Pruitt announced that the Commission would continue with this item after Item 6, the Town of Urbanna.**
(See p. 12611)

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6. **TOWN OF URBANNA, #03-1545**, requests authorization to renovate the Upton's Point Marina facility situated along Urbanna Creek in the Town of Urbanna. Three nearby property owners protest the project.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the Town of Urbanna owned the Upton's Point Marina, which is located on a narrow strip of land between Urbanna Creek and Jamison Cove, near the mouth of Urbanna Creek. The marina had previously been named Jamison's Cove Marina.

Mr. Neikirk said that the proposed renovations include: widening the wharf to 8 feet wide, replacing a 24-foot pier in Jamison Cove with a 24-foot by 40-foot marginal wharf, the construction of 198 linear feet of replacement bulkheading, a 30-foot by 20-foot concrete boat ramp with a 6-foot by 55-foot tending pier, a 70-foot by 8-foot extension to the existing pier to accommodate larger vessels and a sewage pump-out facility, a 660 square foot triangular shaped dinghy dock, and the modification and widening of the pier access walkways. The number of slips is proposed to remain at 36. The redevelopment is designed to improve water access to Urbanna citizens and to accommodate transient boaters visiting the town. A citizens group participated in the development of the plans and the project is being partially funded through the Boating Infrastructure Grant program.

Mr. Neikirk stated that the marina is adjacent to the 10-foot deep Urbanna Creek federal project channel. Jamison Cove, which also abuts the marina property, is a shallow tidal tributary of Urbanna Creek. A low concrete bridge crossing at the mouth of Jamison Cove essentially eliminates boating access to any vessels larger than a canoe. The development along Urbanna Creek includes a mixture of residential and waterfront commercial properties.

Mr. Neikirk explained that R. Latane Montague, III, R. Latane Montague, IV, and Francis Breckinridge Montague, the owners of adjoining and nearby properties were protesting

the project. The Montagues were primarily concerned with the construction of the 20-foot by 40-foot pier on Jamison Cove and the extension of the dock to accommodate larger vessels.

Mr. Neikirk said that VIMS stated that the environmental impacts associated with the proposal should be minimal. They suggested, however, moving the small boats and dinghies out of the wetland fringe area.

Mr. Neikirk stated that the Health Department found the project acceptable and the Department of Environmental Quality had determined that the water quality impacts would be minimal and temporary and decided that a Virginia Water Protection permit would not be required.

Mr. Neikirk said that the marina is located in an area that was presently condemned for the direct marketing of shellfish and the project did not encroach on any public or privately leased shellfish ground.

Mr. Neikirk explained that this project involved the redevelopment of an existing marina with no increase in the number of wetslips. The proposed sewage pump-out facility would be an added amenity for the local boating community. As such, staff believed the adverse impacts of the facility would be similar or less than those associated with the existing deteriorated marina.

Mr. Neikirk said that due to the proximity of the federal project channel, the proposed piers would not encroach any further channelward than the existing piers. The approximately 70-foot extension of the pier in a southern direction, parallel to the channel, appeared to be the only reasonable design to accommodate larger transient vessels visiting the marina. Staff did not believe the pier would adversely affect navigation.

Mr. Neikirk said that although the environmental impacts associated with the 20-foot by 40-foot pier on Jamison Cove should be minimal, staff believed the pier was excessive for the intended use of providing access for boats that can be carried. In 1990 the Commission heard a request to construct a 6-foot by 30-foot pier at this location. The Commission found the 30-foot request to be excessive and approved the application in a modified form, reducing the length to 20 feet.

Mr. Neikirk explained that accordingly, staff recommended approval of the project with a condition that the Jamison Cove pier remain of the same dimensions, with the exception that it may have a pierhead with dimensions not to exceed 250 square feet.

Representatives for the Town of Urbanna were present and all sworn in.

Don Caskie, licensed engineer representing the Town of Urbanna, was present and his comments are a part of the verbatim record. Mr. Caskie introduced a drawing of the project for his discussion. He said the drawing showed an example of various size vessels that would be utilizing the facility. He explained that the dingy pier was being proposed to keep people from putting their small boats on the highland grassy areas. He said this was considered an educational facility and that this was a good location because there were canoes and kayaks available for the children to use.

Ken Moore, Mayor of the Town of Urbanna, was present and his comments are a part of the verbatim record. Mr. Moore stated that this was a significant investment and very important to the residents giving them the opportunity for waterfront activity. He further explained that the economic benefits to the town would be the added business and a source of revenue. He said the project was designed by the citizens and done in a way to minimize impacts to the surrounding area and the existing facility.

Lewis Filling, past Mayor for the Town of Urbanna and a resident, was present and his comments are a part of the verbatim record. He explained that 550 citizens were in favor and there were only 3 objections. He said that in order to keep a scenic overlook and be able to enjoy the beauty, the platform would need to be wider than 6 feet. He said that this project was being funded by the Town, State and federal monies and considered a worthwhile program.

Commissioner Pruitt asked for questions by the board of the town representatives. Associate Member Birkett asked if there were any other public boat ramps. Mr. Filling responded, no.

Commissioner Pruitt asked if anyone was present in opposition. Mr. Robert Montague, protestant and adjoining property owner, was present and sworn in. His comments are a part of the verbatim record. Mr. Montague explained that he was not just representing himself, but other members of his family as well. He said that he was an adjoining property owner. He said that he welcomed most of the changes and the town's efforts, but that some were not beneficial. He explained that the proposed platform dock was too large and the existing dock should be adequate. He said that there was a need to retain as much "natural" as possible and the proposed platform dock does not achieve this end. He suggested maybe a floating dock or ramp could be utilized. He further explained that the 110 feet pier extension was larger than was necessary and should be shortened to be less intrusive to the area and the existing facility. He said navigability needed to be maintained for everyone. He also suggested elimination of some of the finger piers. He said that he agreed with everything else and wanted the town to proceed. He said it was the responsibility of the town to provide some facilities. He said that the project, as proposed, would limit any future expansion plans for his property, if he or his family wished to pursue them.

Dale Taylor, resident and member of the Wetlands Board, was present and his comments are a part of the verbatim record. Mr. Taylor stated that no wetlands were involved and the project would not interfere with boating in the area. He explained that sometimes 50 to 60 sailboats came into the area. He said that the tour boat "Miss Anna" could come into the facility. He further explained that "big drafts" could not come into the existing facility.

Don Richwine, resident and adjoining property owner, was present and his comments are a part of the verbatim record. Mr. Richwine confirmed the town's, Mr. Montague's and his property lines for clarification for the board.

After much discussion about possible changes to the pier and platform, **Associate Member Birkett moved to approve the project stipulating that the pier be shortened by 30 feet and the platform be widened to 8' and remain the same length. Associate Member Ballard seconded the motion. The motion carried, 5-0.**

Permit Fee.....\$100.00

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The Commission continued with Item 5 at this point. (See p. 12607)

- 5. APM TERMINALS VIRGINIA, INC., #02-1913**, requests authorization to develop a marine container terminal facility and to maintenance dredge on an as-needed basis, adjacent to their property situated along the Elizabeth River in Portsmouth.

Commissioner Pruitt asked John Lain, Legal Counsel for APM Terminals, to continue his presentation to the board. Mr. Lain explained that the bottom line in the dispute was over the commercial value of the material. He said it was a waste material and they still felt that continued discussion on this issue was necessary. He stated that the applicant is still requesting approval of the project with the board's determination of non-commercial value or to allow a 30-day period for further discussion.

Commissioner Pruitt asked the board for a motion. **Associate Member Holland moved to table the entire matter until the next meeting. Associate Member Ballard seconded the motion and explained that he was reluctant to piecemeal approval of the project since there was only one issue to discuss because he agreed with the project. The motion carried, 5-0.**

Tabled, no fees are applicable at this time.

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7. **LEWISSETTA MARINA, INC., #03-2326**, requests authorization to reconstruct a 21-foot wide by 30-foot long commercial T-head and construct two (2) new 38-foot long by 6-foot wide finger piers. Additional after-the-fact authorization is sought to retain a 40-foot long by 5-foot wide commercial finger pier adjacent to their property situated along the Coan River in Northumberland County. An adjacent property owner protested the project.

Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides and his comments are a part of the verbatim record.

Mr. Madden explained that the Lewissetta Marina, which is owned and operated by Mr. and Mrs. Mark Scerbo, is located at the end of VDOT Route 624 on a peninsula of land at the confluence of the Coan River and the Potomac River, approximately 12 miles north of the town of Heathsville. The marina provides wet and dry boat storage, vessel repair services, launching facilities, dockside refueling and has an onshore convenience store adjacent to the project site.

Mr. Madden said that the fuel dock, which was damaged by Hurricane Isabel, also provided NOAA with access to a weather station located on the T-head. The hurricane shattered the T-head decking leaving the fuel pumps and their supply lines exposed and unusable. Immediately following the hurricane the owners had the fuel pumps relocated behind the damaged T-head in their present location.

Mr. Madden said that following the relocation of the fuel pumps, the owners elected to construct a 40-foot long, by five (5)-foot wide, tapered finger pier to re-establish their fuel business and enable customers to safely access the pumps and the nearby convenience store. Shortly after construction, Habitat staff was alerted of the presence of the newly constructed unauthorized finger pier. During a follow-up site visit, the owners told staff that their reason for constructing the pier was to get their fuel business, a major source of the marina's revenue, back on line for the busy fishing season underway. The owners also indicated that the hurricane gave them an opportunity to reassess the design of the T-head. They proposed the current design, which incorporated the illegal finger pier and the two additional finger piers, into a design that allows five boats to simultaneously dock at the fuel pier while taking on fuel and provisions from the convenience store.

Mr. Madden stated that Mr. William G. Allen protested the project. Mr. Allen's property was located immediately adjacent to and upstream of the marine property, along the west shore of the peninsula. Mr. Allen's property is approximately 900 feet from the T-head fuel pier. In a letter dated November 15, 2003, Mr. Allen indicated that he would prefer that each of the three tending piers be built in an easterly orientation. Mr. Allen was also concerned about any additional development of the marina to the west and towards his property.

Mr. Madden said that the Virginia Department of Health had indicated they considered the project acceptable and recommended that the Commission consider requiring the applicant to post signs informing patrons that the slips at the fuel pier are for temporary use only and that no overnight mooring is allowed.

Mr. Madden said that VIMS had suggested that the applicant file a fuel spill contingency plan for the fueling operations.

Mr. Madden stated that no other State agencies had commented on the project.

Mr. Madden explained that while staff was concerned over the after-the-fact nature of the fuel pier, the redesign was something staff would have permitted. Staff believed that the new construction with a westerly orientation should have no apparent impact on Mr. Allen's ability to enjoy his property. Accordingly, staff recommended approval of the two new 38-foot long, tending piers, the reconstruction of the T-head deck and, the 40-foot long, after-the-fact tending pier contingent upon; the filing of an approved fuel spill contingency plan, a special condition restricting overnight mooring, and that the Commission consider triple permit fees, encroachment royalties for the 40-foot tending pier and an appropriate civil charge of \$600.00 given the minimal environmental impact and the minimal degree of non-compliance.

Charles Folk, permitting agent for the applicant, was present and his comments are a part of the verbatim record. Commissioner Pruitt asked if staff recommendation was acceptable. Mr. Folk said that one item, the civil charge, was not acceptable. The damage from the storm had put a lot of hardship on the Serbos and this was a facility that provided a service to the community. He explained that VMRC had been using this facility for docking and fueling their own vessels. He explained that this was a very active marina.

Mr. Mark Scerbo, owner of the marina, was present and his comments are a part of the verbatim record. He said that he had been wrong and was willing to pay the civil charge.

Associate Member Garrison asked if the County required a permit. Mr. Folk explained that the County Emergency Plan allowed for reconstruction without a permit. Associate Member Garrison explained that the County was not the final approval and other principalities need to be consulted regarding this matter.

Commissioner Pruitt asked if the applicant understood why this action was being taken for this project. Mr. Scerbo said he understood and agreed with the board's decision.

Associate Member Garrison moved to approve the project with staff recommendations. Associate Member Holland seconded the motion. The motion carried, 5-0.

Encroachment Royalty (1,086 sq. ft. @\$0.50/sq.ft.).....	\$543.00
ATF Structure Encroachment Royalty (200 sq. ft. # \$1.50/sq. ft.).....	\$300.00
Permit Fee (After-the-fact triple fees).....	\$300.00
Civil Charge.....	\$600.00
Total Fees.....	\$1,743.00

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8. BAYMARK CONSTRUCTION CORP., #03-1185, requests authorization to install five (5) 230-foot long stone offshore breakwaters and nourish the beach adjacent to their property along the Chesapeake Bay near Allegood Pond in the Town of Cape Charles, Northampton County. The Arlington Plantation Homeowner’s Association and a nearby oyster ground leaseholder protested the project.

Associate Member Ballard announced that he would be abstaining from voting on this matter.

Commissioner Pruitt announced that since the number of board members present was only 5, there would be a five-minute break to allow for the members to take a break and meet the quorum requirement. Upon returning from the break, Commissioner Pruitt announced that Associate Member Ballard had not returned, but with his presence, the quorum requirement was met.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides for this project. His comments are a part of the verbatim record.

Associate Member Ballard returned to the meeting.

Mr. Badger explained that Bay Creek was a 1,700-acre mixed-use, residential development with a 224-slip marina, two golf courses and a community beach. The development surrounds the town of Cape Charles from Kings Creek to Plantation Creek.

Mr. Badger said that the Chesapeake Bay shoreline at Bay Creek was experiencing severe erosion at present with the loss of dunes and trees and erosion was also threatening to breach the beach to Allegood Pond, a fresh water environment. The average erosion rate over the last hundred years had been greater than three feet per year. There was a great deal of sand in the littoral system and the net sand movement along the shore was to the south.

Mr. Badger said that the applicant proposed to construct five (5) breakwaters and nourish the beach with 66,600 cubic yards of beach quality, medium grain sand. The sand would be trucked in from a nearby borrow pit that would become a small lake in the development.

Mr. Badger said that the Commission's staff had received a protest letter from Mr. Dave Griffith, an adjacent oyster/clam ground leaseholder. The objections raised by Mr. Griffith, included the loss of submerged aquatic vegetation (SAV) and possible silting of his aquaculture clam beds from the proposed beach nourishment.

Mr. Badger stated that a protest letter was also received from the Arlington Plantation Home Owners Association, a subdivision on the south side of Plantation Creek. They had concerns that the beach nourishment could impact the shallow channel into Plantation Creek.

Mr. Badger said that VIMS had reviewed the application and stated that the individual and cumulative adverse impacts resulting from this project could be locally significant in the short term, but if properly designed and constructed, should have minimal long term adverse impacts. VIMS indicated the project offered the best long-term method for slowing erosion along this reach of shoreline.

Mr. Badger explained that VIMS also stated there were areas within the project that support SAV. The SAV was relatively stable and the breakwater/beach nourishment activities could adversely affect some portion of that resource. They recommended the breakwaters be relocated as much as possible to avoid the SAV beds and that some type of compensation for this loss may be appropriate depending on the actual losses were resulting from this project. VIMS further stated that once the breakwaters and beach sand were placed and the shoreline had adjusted to the structures, the amount of sand moving in a southerly direction should be reduced. They also recommend the tombolos and upper beach berm areas have sufficient elevation to support the growth of dune grasses and that these areas be planted as part of any proposed mitigation.

Mr. Badger said staff requested additional information from the applicant and their agent to address these issues. The applicant provided a survey showing the location of the SAV beds and redesigned the northern breakwater to avoid all of the eelgrass impacts. However, their survey showed a potential impact of 15,715 square feet to the widgeon grass beds.

Mr. Badger said that the applicant was willing to plant dune grasses in the areas as recommended by VIMS and to mitigate for the adverse impacts to the widgeon grasses once construction was completed.

Mr. Badger said that on September 11, 2003, the Cape Charles Wetlands Board approved the portion of the project involving intertidal areas, with the stipulation that the applicant use a sediment control barrier during construction to reduce the sand movement along the shoreline and that dune grasses be planted on the upper beach berm. No other agency had expressed opposition to the project.

Mr. Badger explained that the southern movement of sand along this shoreline and the shoaling of Plantation Creek had been a historical problem. At present, it was difficult for small boats to enter the creek at low water. VIMS had commented that there was a large amount of sand in the littoral system already, and that the sand's southern movement should be reduced after the construction was completed and stabilized.

Mr. Badger said that based upon this information, staff believed this project would have minimal effect on the ongoing shoaling problems at the mouth of the creek and that the breakwater system should help reduce the southern movement of sand onto Mr. Griffith's oyster lease. Accordingly, staff recommended approval of the project as proposed, with the following conditions:

- 1) Any Submerged Aquatic Vegetation (SAV) that would be directly impacted by the breakwaters or beach nourishment shall be compensated at a 2:1 ratio (area),
- 2) A SAV Mitigation Plan acceptable to staff and VIMS should be prepared and submitted. It must include monitoring and a plan for replanting, as necessary, for a period of three (3) years. The applicant shall follow the guidelines established by Regulation 4 VAC 20-337-10, et seq. "Submerged Aquatic Vegetation Transplantation Guidelines" in the development of the required SAV mitigation plan,
- 3) During construction a turbidity curtain should be placed along the southern end of the project to help reduce the possible siltation of the nearby oyster ground lease.

Tom Langley with Langley and McDonald, Inc., engineering agent for the project, was present and his comments are a part of the verbatim record. Mr. Langley said that he would be brief and said they agreed with what the staff had said regarding the project. He said it was good that VIMS was involved in the mitigation plan. He said that they were also concerned for the tiger beetle, but felt the beetle situation would improve with the breakwater. He said, with the breakwaters and the beach fill, the area will be more stabilized and improved. Commissioner Pruitt asked if the applicant accepted the staff recommendations. Mr. Langley responded, yes.

Marvin Milton, representing the Arlington Plantation Homeowners Association, was present and his comments are a part of the verbatim record. Mr. Milton explained that the letter they had sent was not made in opposition to the project, but to express concerns and asked that some responsibility be placed on the applicant if adverse impacts occur because of the project. In response to Associate Member Garrison's question to the history of the channel, he stated that to his knowledge this area had remained stable and that in conversations with others who have been in the area for 40 or 50 years, they had confirmed this area's stability.

In rebuttal, Mr. Langley said that they requested the approval of the staff recommendations.

Associate Member Holland moved to accept staff recommendations. Associate Member Garrison seconded the motion. The motion carried, 4-0. Associate Member Ballard abstained from voting.

Beach Nourishment Royalty (19,067 sq. ft. @\$0.05/sq. ft.)...	\$ 953.35
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,953.35

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At 12 noon, Commissioner Pruitt announced that the board would break for lunch. The meeting was resumed at 12:45 p.m. Associate Member Birkett assumed the role of Chairman, as Commissioner Pruitt had not returned from the break.

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- 9. **TOWN OF BLACKSBURG, #00-1695**, requests authorization to cross Toms Creek in 11 locations with a sanitary sewer collection pipeline that will be encased in concrete and buried a minimum of two (2) feet below the natural creek bed. Several residents along the proposed pipeline route protested the project.

Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward said that he did not have any aerial photographs for the presentation.

Mr. Woodward explained that the proposed project was Phase 1 of a centralized sewer system, which would provide wastewater collection service to residents in the Tom's Creek drainage basin on the northwest side of Blacksburg. Phase 1 was also known as the Tom's Creek Interceptor and includes four trunk lines involving a total of 30 stream crossings of Tom's Creek and several smaller tributaries to the creek. Only 11 of the crossings of Tom's Creek fall under Commission jurisdiction. The remainder of the crossings were all in areas where the upstream drainage did not exceed 5 square miles, and therefore, in accordance with Commission policy did not require a VMRC permit.

Mr. Woodward said that the 24-inch to 30-inch diameter pipeline would be installed in the dry, using cofferdams, and would be encased in concrete and buried 3 feet below the natural creek bed in all but one location, where it would be a minimum of 2 feet below the bed. The creek bed and banks were to be restored to pre-existing conditions upon completion of construction.

Mr. Woodward said that staff had received letters of opposition from two property owners in the area, one of which represented 4 individuals, and one Adjacent Property Owner form, which indicated opposition to the project. The letters expressed concern that the Town did not consider the alternatives of a decentralized sewer system for this area and felt that the proposed project would have damaging effects on wetlands, springs and the creek itself from leakage and infiltration.

Mr. Woodward said that the Commission's staff also received a letter from a member of the Tom's Creek Basin Sewerage Options Working Group that was appointed by the Town to study sewer options. That letter goes into some detail about costs and other information that "could be useful" to the Commission in their review. That letter did not object to the project.

Mr. Woodward stated that on October 14, 2003, the Blacksburg Town Council voted 4-3 to approve the Tom's Creek Gravity Sewer System. The Council meeting lasted over 3 hours, with 33 citizens providing comment, as well as Council's staff report that included the Planning Commission's recommendation for approval of the project.

Mr. Woodward said that the Department of Environmental Quality, on November 22, 2000, approved the Tom's Creek Wastewater Collection System and, on March 29, 2002, approved an associated pump station for the system.

Mr. Woodward explained that the Department of Health, on October 23, 2000, approved the collection system and, on March 14, 2002, approved the associated pump station.

Mr. Woodward said that the Department of Conservation and Recreation recommended the implementation of and strict adherence to erosion and sediment control during all land disturbing activities to minimize impacts to the Laura's Clubtail, a rare state dragonfly, which had been documented in the project area.

Mr. Woodward said that the U. S. Army Corps of Engineers, on November 13, 2000, had issued Nationwide Permits 12 and 33 for the project.

Mr. Woodward said that staff began the standard public interest review of this application on September 25, 2000. Upon receipt of the first protest letter, which indicated that the Town Council had yet to formally endorse the centralized system, staff contacted the agent for the project and informed them that the Commission would not consider the request until it had been approved locally. In the meantime, the State agencies responsible for water quality and public health approved the project. In addition, the U. S. Army Corps of Engineers, who had jurisdiction over all 41 of the stream crossings, as well as the adjacent nontidal wetlands, had approved the project.

Mr. Woodward said that the pipeline would be installed in the dry, within cofferdams, protected by a concrete encasement and buried a minimum of 3 feet below the creek bed

in all but one location. All crossings are required to meet standard in-stream construction conditions to further protect the beds and banks of waterways. Accordingly, staff recommended approval of the 11 associated jurisdictional crossings of Tom’s Creek with the following conditions:

- 1) All in-stream construction activities shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half of the waterway shall be obstructed at any point in time.
- 2) The cofferdams and any excess material shall be removed to approved upland areas upon completion of the construction, and the stream bed and banks shall be restored to pre-existing contours and conditions.
- 3) Construction shall be performed during low-flow conditions and during the period between June 1 and September 30 to the greatest extent practicable.
- 4) The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) shall be followed throughout construction.

There were no questions of staff. Joe Parrish, agent for the Town of Blacksburg, was present and sworn in. His comments are a part of the verbatim record. Mr. Parrish explained that the VMRC staff had covered everything and he would be glad to answer any questions the board members might have. There were no questions for Mr. Parrish.

Associate Member Birkett asked if anyone was present in opposition. There was no one present in opposition to the project.

Associate Member Holland moved to approve the project. Associate Member Garrison seconded the motion. The motion carried, 4-0.

Permit Fee.....\$100.00

Commissioner Pruitt returned to the meeting at approximately 1:05 p.m.

- 10. JOAN T. KARTER AND RONALD M. PONT, #2003-011, request authorization to lease 5.55 acres of Oyster Planting Ground along Chincoteague Channel in the Town of Chincoteague, Accomack County. A nearby property owner protested the project.**

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Badger announced that the applicants were not present.

Mr. Badger explained that the application was located on South Main Street, five tenths (0.5) of a mile north of the Town Marina along the east side of Chincoteague Channel. The water depths are from minus two tenths (-0.2) of a foot near the upland, to minus six (-6) feet near the channel, (mean low water). The bottom is a hard sand and mud mix with some shells near the upland.

Mr. Badger said that, on February 17, 2003, staff received an application for oyster planting ground from Ms. Karter and Mr. Pont for 15 acres. The application was bounded on the north by an oyster ground lease in the name of Carl Meixner (Plat File #18250); east by mean low water; south by an oyster ground lease in the name of Danna Roeske (Plat File #14698) and on the west by Chincoteague Channel.

Mr. Badger stated that since there were private piers in the area of the application, staff asked the applicants to reduce the scope of their project. Mr. Pont looked over two sites within the application and decided the southern portion had bottom that was suitable for nursery clams. The survey was made on August 7 and 14, 2003 and contained 5.55 acres.

Mr. Badger said that the proposed lease was in the Department of Health's "Condemned Shellfish Area Number 20, Chincoteague Island-Adjacent Areas". However, under 28.2-810 and 28.2-811 Code of Virginia, the shellfish in this portion of Chincoteague Channel could be relayed to an approved clean area with a permit from VMRC.

Mr. Badger said that staff received a letter from John C. Lang on August 28, 2003 protesting the oyster ground application. Mr. and Mrs. Lang operate a Bed and Breakfast, named "Payton Place", south of the proposed lease. The Langs had concerns with the amount of plastic that was associated with clam aquaculture and the possibility that the plastic could end up on their property as trash. They also indicated that the clamming activity would take away some of the vista for their Bed and Breakfast guests.

Mr. Badger said that staff had contacted the applicants with the Lang's concerns. After many discussions with both parties they could not come to an agreement. The Langs preferred the proposed lease be moved farther north, cutting the lease in about half (2.8 ac. +/-). Ms. Karter and Mr. Pont have agreed to move the south line north, so that the line would be 300 feet north and parallel to the Lang's pier. This alignment would reduce the acreage from 5.55 acres to 4.46+/- acres.

Mr. Badger explained that staff remains concerned with the amount of plastic in state waters due to shellfish aquaculture activities and their aesthetics, at this time, PVC can be

used to mark clam beds and lease lines of the oyster planting grounds. Ms. Karter and Mr. Pont have reduced their application from the original 15 acres to 5.55 acres to accommodate staff's concerns (piers), and are willing to further reduce the area again to 4.46+/- acres to help address the Langs' concerns.

Therefore, Mr. Badger stated that staff recommended approval of the oyster planting ground lease starting 300 feet north of and parallel to the Lang's pier and continuing north as shown on the revised drawing, containing 4.46 +/- acres.

Commissioner Pruitt asked if anyone in opposition was present. John C. Lang and Elaine Lang, protestants, were present and were sworn in. Their comments are a part of the verbatim record.

John C. Lang explained that they were the owners of the Bed and Breakfast Inn, named "Payton Place". He said that they were concerned with the clam nursery operation. He said the activity would discourage wildlife and would not enhance it. He expressed concerns for the safety of children who explore in the area. He explained that tests by the Health Department show that pollutants do exist in the area. He said that they prefer a more northern site be utilized. He stated that the proposed project site would affect their business and interrupt their access for nature exploration. There were no questions from the board.

Elaine Lang explained that she had been a resident of Chincoteague for 35 years. She explained that this was an unspoiled area, a seagrass vista. She also explained that the point is a catch basin for the seagrass. She said that on the other side there are plenty of clam beds. She said she was concerned about the trash that could end up on her property from the aquaculture activity and that she would have to clean up other's trash. There were no questions from the board.

Commissioner Pruitt asked if anyone else wish to speak on this matter. There was no one else wishing to address the Commission on this matter.

Associate Member Bowden explained that the applicants had been reasonable and agreeable and had reduced the acreage as requested. He moved to approve the oyster ground application with the condition that the applicants come back in 90 days with a reasonable relay area. Associate Member Garrison seconded the motion.

There was some discussion about problems of abandoned nets resulting from aquaculture operations in the area. Associate Member Bowden said that General Assembly action would be necessary to solve the overall problem. Commissioner Pruitt stated that for now it would have to be done on a case-by-case basis. Mr. Grabb explained that this was really a Law Enforcement issue and ownership was not always easy to establish. Carl

Josephson, Assistant Attorney General and Counsel for VMRC, said it would have to be treated as a violation and the permit revoked. Their comments are a part of the verbatim record.

The motion carried, 5-0.

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11. PUBLIC COMMENTS: Commissioner Pruitt asked for any public comments. There was no one present to comment for the Public Comment period.

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12. PUBLIC HEARING: Proposed amendment to Regulation 4VAC20-720 -10, et seq., "Pertaining to Restrictions on Oyster Harvest", to adjust the oyster harvest season in the James River.

Dr. James Wesson, Head-Conservation and Replenishment Department, gave the presentation and his comments are a part of the verbatim record. Mr. Wesson explained that at the November meeting there had been a request for a change in the James River Hand Scrape Area. He explained that the watermen wanted to move the season from February - March to January - February. He explained that when he originally surveyed the buyers, they had indicated to him that the price per bushel of oysters was better for the watermen in the months of February and March. He said he again surveyed the buyers and they had responded the same, that the price is better for the watermen during February - March. He said that this season time period was not based on biology, just on economics.

Commissioner Pruitt opened the public hearing.

Douglas Jenkins, Twin Rivers Watermen Associate representative, was present and his comments are a part of the verbatim record. He said the request was made because the water is warmer in March and watermen want that time to work on their crab pot gear. He said that the price per bushel and market should not be a deciding factor in this matter.

Associate Member Bowden asked Dr. Wesson if a lot of people were pro or con. Dr. Wesson said that he had only talked with two watermen in the area and they were in favor of the February - March season.

Associate Member Garrison asked if it is important now, why not before.

Russell Gaskins, waterman, was present and his comments are a part of the verbatim record. He said the watermen wanted the season as January - February so they could work on their crab gear in March.

Associate Member Bowden moved to approve the change to the season from February and March to January and February. Associate Member Garrison seconded the motion. The motion carried, 5-0.

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Commissioner Pruitt announced that special presentations would be made at this point.

Colonel Steve Bowman, Chief-Law Enforcement, presented Marine Police Officer, Howard Goode with his service certificate for over 30 years of service with the VMRC Law Enforcement Division and congratulated him on his retirement.

Commissioner Pruitt presented Bob Craft, Chief-Administration and Finance, with his service certificate for over 30 years of service with the State and congratulated him on his retirement that would be effective January 1, 2004. Mrs. Cathy Craft was present for her husband's presentation ceremony.

Commissioner Pruitt announced and congratulated Jack Travelstead, Chief-Fisheries Management, on his receiving the Captain David Hart award at the meeting in New York of the Atlantic States Marine Fisheries Commission the previous week. This was given to him for his contributions towards the betterment of the marine fisheries.

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13. MR. WILLIS KIRK: Request for a Summer Flounder Endorsement License

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead stated that there were no records to support Mr. Kirk's request and that staff recommended the denial of the request.

Willis Kirk, waterman, was present and his comments are a part of the verbatim record. Mr. Kirk explained that during the time period requirement he had scalloped in 1993, the boat was dry docked in 1994, he rebuilt the motor and fished for shrimp in 1995 and in 1996 he packed in Virginia.

Associate Member Ballard asked Mr. Travelstead if other people were cut from the fisheries and if so, how many. Mr. Travelstead said he was not sure of the number of boats who landed periodically during the 93-95 qualifying period. He said 90 vessels consistently landed flounder and quite a few more than that qualified.

Commissioner Pruitt asked Carl Josephson, VMRC Counsel, whether anything could be done for Mr. Kirk. Mr. Josephson said a regulation change was necessary to establish the criteria for exceptions. He stated that this had been done for other fisheries in the past.

Bill Culpepper, packer, was present and his comments in support of Mr. Kirk's request are a part of the verbatim record. He explained that Mr. Kirk had packed for him for 14 years and his father before him. He said Mr. Kirk, in order to make a living, had to go elsewhere.

Commissioner Pruitt asked for a motion.

Associate Member Birkett stated that the regulation ties the board's hands and there was nothing that could be done for Mr. Kirk.

Commissioner Pruitt asked Mr. Travelstead about the ramifications of making a change in the regulation. Mr. Travelstead explained that the possible number of vessels coming and seeking an exception were about 1,000 vessels that have Federal permits to fish. He explained that it was possible that they would all come forward and request exceptions, and if allowed, the exceptions, the quota would be caught rapidly. He said there was a need to save the quota for Virginia.

Associate Member Garrison expressed his concern that in the year 2020 the license to get into the fishery would still be based on 93-95 harvest records.

Commissioner Pruitt suggested that the matter be referred to the Finfish Management Advisory Committee (FMAC) to look at the long reaching implications. The general consensus of the board was to have FMAC look at the issue. No further action was taken.

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Jeff Smith, government representative for Omega Protein, was present, and his comments are a part of the verbatim record. He expressed their appreciation at the hospitality shown to Susan Gaston when she comes to the meetings representing Omega Protein. He introduced Jane Crowther and explained that she would be giving a presentation.

Jane Crowther, Omega Protein representative, gave a presentation and her comments are a part of the verbatim record. Ms. Crowther discussed the Reedville, Virginia facility expansion, the menhaden fishery, the improvements being made to refined oils, research being done on Omega 3 and the health benefits of Omega 3.

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At approximately 2:10 p.m., Commissioner Pruitt announced a short 10-minute break of the board to maintain the required quorum for the meeting.

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14. Request for emergency relief from the provisions of Regulation 4VAC20-20-10 et seq., pertaining to the Licensing of Fixed Fishing Devices"

Rob O'Reilly, Assistant Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. O'Reilly explained that this was a request for a public hearing to amend the regulation requirement to set and fish nets for the year 2004, allowing for a one-year waiver.

Associate Member Garrison moved to advertise the public hearing for January. Associate Member Birkett seconded the motion. The motion carried, 5-0.

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15. Public Hearing: Proposed amendments to Regulation 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to establish provisions for the 2004 harvest season.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. Travelstead explained that last month the board had directed staff to advertise changes to the Striped Bass regulation for the 2004 season. The proposed amendments covered five provisions as follows:

1. Reduction in the commercial and recreational harvest quotas as determined by the Harvest Control Model as required by the ASMFC Interstate Striped Bass Fishery Management Plan;
2. Changes in the recreational fishery size limits to ensure that the new recreational fishery quota is not exceeded;
3. Modification of the commercial fishery ITQ from a tag quota to a poundage quota;
4. Establishment of new reporting requirements to ensure that the individual commercial quotas are not exceeded; and,
5. Prohibition on the possession of bay-area tagged fish in the ocean, except by special permit.

Mr. Travelstead said that the most contentious issue before you is the proposal to modify the commercial fishery Individual Transferable Quota (ITQ) program from a "number of tags used" to a pounds quota. Under the current program, each fisherman's harvest is limited to a specific number of fish, and each fish must be tagged. When his tags are

used, the fisherman must stop fishing, a provision that is easy to enforce. This system, unfortunately, encourages fishermen to target the largest possible fish for his tags, a practice we call high-grading or high-targeting. Those fishermen who have access to larger fish, or who are able to “migrate” to the lower Bay, tend to harvest more pounds of striped bass than those who fish up-river on the small fish. This has created an inequity between fishermen that noticeably has been contested for many years.

Mr. Travelstead stated that an individual poundage quota system could have many benefits: It repairs the inequity between fishermen, it greatly reduces the incentive to target larger fish, and there could be reduced fishermen expenses, since they would travel less in the search for larger fish. Unfortunately, the poundage quota system presents new challenges to enforcement. With tags no longer serving as the enforcing tools, quotas could only be monitored from fishermen’s monthly harvest report. Consequently, staff cannot support amending the regulation to establish a poundage quota system, unless the following additional requirements are adopted:

1. Check-in Stations: All permitted striped bass buyers qualify (51 now). Self marketers (harvesters and buyers) must report to a different buyer. All harvesters must take catch to one of these buyers but are not required to sell to them.

Buyer should record: weight of catch, number of fish, numbers of tags used, name of fisherman and CFRL#; buyer’s permit number and date of weigh in of striped bass.

2. Buyers report information daily to VMRC by electronic format directly to VMRC database. (Another option: hire additional staff for data entry)
3. Fisherman maintains information listed in 1), above, on log sheet, with verification by check-in station. Running total of pounds harvested and tags used maintained on log sheet at all times.
4. Current monthly mandatory harvest reporting continues but is supplemented by log sheet.
5. Fishery closes in July (approximately two weeks) for auditing purposes.
6. Tagging of fish still required; additional tags not issued until audit verifies use of first allotment of tags. Tags not used at end of year must be returned before following year’s tags are issued.

Amount of tags returned and used must equal the total allotment.

7. Once used, labels must be cut from tags.

8. Transfer of tags will not occur on a daily basis. Up to two weeks will be needed for audits, and the transferor must contact VMRC by telephone to initiate transfer process. Minimum pounds that can be transferred = 200 pounds.
9. Implementation of this program will require: 1) development of reporting software, 2) automation of buyers or hiring of additional staff, 3) programming of VMRC data bases, 4) purchase of additional tags, 5) development and printing of new reporting forms.

Mr. Travelstead stated that the Finfish Management Advisory Committee (FMAC), at its December 8th meeting, reviewed the above measures and endorsed waiting until 2005 to implement a new program. The committee did not take further action on the specific details of the new program but will consider them at a future meeting.

Mr. Travelstead said that there have been many complaints about the abuse of tags in the ocean fishery this year and regulatory changes have been requested to prevent a reoccurrence next year. The problem involves fishermen using bay tags on large ocean fish. Bay tags can no longer legally be used in the ocean, as mandated by Atlantic States Marine Fisheries Commission (ASMFC). To adequately enforce this measure, staff recommended prohibiting possession of bay tagged striped bass in the three-mile limit. Since some fishermen who fish in the Bay must enter the 3-mile limit to return to port (e.g. Rudie Inlet), staff suggested that an additional provision be made to allow for transit to the port of landing, requiring that a transit permit be issued by the Commissioner.

Mr. Travelstead said that staff agreed with FMAC that changing to a poundage system should wait until 2005 and recommended adoption of the draft regulation. The proposed amendments would:

1. Lower the commercial and recreational quotas to 1,364,154 pounds each.
2. Establish a slot limit of 18-28 inches on one of the two-fish possession limit in the recreational fishery during the fall season.
3. Prohibit possession of bay tags in the three-mile limit.
4. Recommended effective date: January 1, 2004.

Commissioner Pruitt asked for questions of staff from the board members.

Associate Member Garrison said that he understood when the staff said wait until 2005, but when will the matter come back before the board? Mr. Travelstead explained that staff would come back next fall and at that time a public hearing would be held. He explained that the General Assembly, when they meet in March, could provide the necessary money to implement a poundage system, if they raise the license fees.

Commissioner Pruitt opened the public hearing.

Tom Powers, representing the CCA, was present and his comments are a part of the verbatim record. Mr. Powers said that the State needed to keep in compliance and maintain the stocks. He said that they support the option which would be fair to most of the recreational fishermen and that would mean most days with a smaller minimum size. He stated that it was not clear that a poundage system should be adopted. He explained that in Maryland, who now uses a poundage system wish they had the same system as Virginia. And he said that a decision should not be made until funding and how to handle a poundage system was settled. He explained that on a personal note, FMAC said that if VMRC does the poundage system to not put it into effect until January 2005. And he further explained that not all FMAC members supported the poundage system. He said that there must be an allowance for the transporting of fish across closed waters to a landing point.

Kelly Place, representing the Coastal Virginia Watermen Association, was present and his comments are a part of the verbatim record. Mr. Place said that there is a problem now with the targeting of large fish. He agreed that Mr. Travelstead's 10 points were needed. He said that there would be problems with check stations because this was not logistically possible. He said that it would not pay weigh stations to take this responsibility if they were not buying the fish. He said that there are already ways to enforce the reporting system in place. He said that he would be writing a letter regarding all his concerns. He explained that ASMFC requires payback if a state goes over their allotted quota and will subtract the overage from the next year's quota.

Douglas F. Jenkins, Sr., representing the Twin Rivers Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that staff presented 9 points, but did not mention one. He said that was that the buyer record must show weight, number of fish caught, and serial number. He said that he was upset that if it was decided to go to a poundage system that the board would adopt these points. He said the Virginia quota should be equally divided between the Bay and Coastal fisheries. He said that staff's proposal was only making it complicated. Commissioner Pruitt explained that the staff did not suggest going to the poundage system but were only responding to the Commission's request. Mr. Jenkins said that the recreational fishery is only monitored by a phone survey. He said that staff is biased against the commercial fishery and that they are required to tag and weigh their fish. He said that he did not think much of the 20% reduction when there are plenty of fish in the Bay.

Vernon Haywood, waterman, was present and his comments are a part of the verbatim record. Mr. Haywood stated that the weight/poundage system would cause a paper nightmare. He said those individuals that he spoke with were not in favor of the change. He said that fee increases would affect the watermen. He stated that the tag system works, and all systems have flaws.

Leroy Carson, III, Maryland waterman, was present and his comments are a part of the verbatim record. He said that the problem with the tag system started with the tag transfer system. He said that if the system is not broke then it did not need to be fixed.

Eddie Gaskins, Buyer and Waterman, was present and his comments are a part of the verbatim record. Mr. Gaskins said that he thought the 20% reduction was based on 1970 harvest data.

Rob O'Reilly, Assistant Chief-Fisheries Management, explained that the 20% quota reduction was based on landings during 1972 to 1979. He further explained that in 1995 and 1996 the quota was up, and the reason was the harvest control model resulted in the change by the ASMFC. His comments are a part of the verbatim record.

Kenneth Wayne Williams, Waterman, was present and his comments are a part of the verbatim record. Mr. Williams said that the poundage system is not a good system. He explained that there are problems with the tagging system that need fixing but not by changing to the poundage system. He agreed that the matter should be tabled and reviewed again in 2005.

Commissioner Pruitt closed the public hearing.

Associate Member Bowden said that he agreed with some of what had been said but there were some comments he did not agree with. He explained that a simpler regulation would be easier to enforce. He said that he agreed with all 9 points, but that they did need some work. **Associate Member Bowden made a motion to revert the matter back to the Finfish Management Advisory Committee (FMAC) to work on recommendations that staff can bring back to the Commission for a public hearing prior to the 2005 season. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Associate Member Ballard moved to adopt the Regulation 4VAC 20-252-10 as presented, pages 1-19. Associate Member Birkett seconded the motion.

At this point there was some discussion about the quota reduction. Associate Member Holland stated that he agreed with Associate Member Bowden and did not agree with the 20% reduction. Associate Member Garrison stated that he agreed with Associate Member Holland that the reduction was unfair. Associate Member Bowden stated that the staff needed to argue against the reduction and to take a stand. He stated he was against the motion. Their comments are a part of the verbatim record.

The motion carried, 4-1. Associate Member Bowden voted No.

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Commission Meeting

**12629
December 22, 2003**

There being no further business, the meeting adjourned at approximately 3:29 p.m. The next meeting will be held Tuesday, January 27, 2004.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary