

MINUTES

DECEMBER 17, 2002
NEWPORT NEWS, VIRGINIA

The December 17, 2002 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Russell Garrison)	Members of the Commission
Laura Belle Gordy)	
Cynthia M. Jones)	
F. Wayne McLeskey)	
K. Wayne Williams)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Jane McCroskey	Deputy Chief, Admin-Finance
Linda Hancock	Human Resources Manager
Pat Leonard	Personnel Analyst
Debbie Kyte	Business Manager A
Donna Bean	Business Manager B
Gloria Daniel.	Fiscal Technician
Enes Morgan	Fiscal Technician
Debbie Sparks	Fiscal Technician, Sr.
Jack Travelstead	Chief, Fisheries Management
Rob O' Reilly	Deputy Chief, Fisheries Mgt.
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Jim Wesson	Head, Conservation-Replenishment
Ellen Cosby	Fisheries Management Specialist
Claude Bain	Head-Saltwater Tournament
Roy Insley	Head-Plans and Statistics
Allen Godshall	Fisheries Management Specialist
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement

Commission Meeting

**12192
December 17, 2002**

Capt. Warner Rhodes
Capt. Ray Jewell
Capt. Randy Widgeon
Sgt. Ben Majors
MPO Jimmy Davis
MPO James Vanlandingham

Supervisor, Middle Area
Assist. Supervisor, Northern Area
Supervisor, Eastern Shore Area
Assist. Supervisor, Southern Area
Marine Police Officer
Marine Police Officer

Robert Grabb
Tony Watkinson
Hank Badger
Kevin Curling
Mark Eversole
Jeff Madden
Chip Neikirk
Randy Owen
Traycie West
Jay Woodward
Benny Stagg
Gerry Showalter

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

Virginia Institute of Marine Science (VIMS):

Thomas Barnard, Jr.
Lyle Varnell
Dr. Eugene Burreson

others present included:

Mike Kelly
Flynn Cunningham
Craig Jones
Sam Daniels
Frances Porter
Mark Hodges
Jim Hayd
David Portlock
David Bleeker
Roger Peele
Rich Puchalski
Dennis Newsomer
Derrick Hoy
Gary Pruitt
Joe DelCampo

David Hansen
Carol Brower
Daizzell Rickmond
Ron E. Meadows, et. als.
Roger Park
Dan Dise
George Washington
Don Lancaster
Patsy Bleeker
Robert W. Crisher
Jim Dawson
Joey Mahmoud
Paul Jones
Steven Powell
Jack Stallings

Anna Drake
Chuck Roadley
Lawrence Latney
Tom Powers
Ernest Bowden, Jr.
Keith Aldridge
Douglas F. Jenkins
Mike McGee
Chris Ludford
Rick Smith
William J. Ryan
Bryan Piercy
Kelly Place
Russell Gaskins

Warren M. Cosby, Jr. Lawrence Latney

and others.

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Commissioner Pruitt called the meeting to order at 9:30 a.m. Associate Member Cowart was absent from the meeting. Gerry Showalter, Chief Engineer-Engineering and Surveying, gave the invocation. Associate Member Birkett led the pledge of allegiance to the flag.

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The minutes of the November 26, 2002 Commission meeting were approved as circulated. **Associate Member Birkett made the motion, which was seconded by Associate Member Williams. The motion carried, 7-0.**

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The agenda was approved with the changes requested. Jack Travelstead, Chief-Fisheries Management, reminded the Commissioner that Item 8. Public Comments needed to be moved to the last item on the agenda and Bob Grabb, Chief-Habitat Management reported to the Commission that the applicant for Item 3. East Tennessee Natural Gas had called requesting that this item be held at 1 p.m. Associate Member Ballard moved to approve the amended agenda. Associate Member Williams seconded the motion. The motion carried, 7-0.

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

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Bob Grabb, Chief-Habitat Management, explained the page two items, which are \$50,000 or more in total project cost and the staff recommends approval. His comments are a part of the verbatim record.

There were no questions by the Commission and no comments from the public. Commissioner Pruitt asked for the motion. **Associate Member Williams, moved to approve page two items as presented by staff. The motion was seconded by Associate Member Gordy and carried, 7-0.**

Commission Meeting

2A. ARMY TRANSPORTATION CENTER, 02-0377, request for authorization to construct a 48-foot wide by 1,045-foot long three-lane highway bridge, for additional road access to Fort Eustis Military Reservation. A portion of the proposed three-lane highway bridge will impact 15,600 square feet of State-owned subaqueous lands of the Warwick River in the City of Newport News. Additionally, the applicant requested authorization to construct a 33-foot wide construction bridge, which will result in the temporary impacts of 10,735 square feet of State-owned subaqueous lands. The temporary bridge would be removed and the area restored to pre-construction conditions upon completion of the permanent bridge.

Permit Fees.....\$100.00

2B. MARINE HYDRAULICS, INC., #02-0877, request for a modification to widen by 30 feet a previously authorized dredged mooring basin, resulting in a dredged area of 1,390 feet long and 450 feet wide. Proposed depths in the basin would remain the same as the originally approved depth of -39 feet below mean low water. Staff recommended an additional royalty in the amount of \$25,722.00 for additional dredging of 57,160 cubic yards of material at a rate of \$0.45 per cubic yard.

Royalty Fees (57,160 cu. yds. @ \$0.45/cu. yd.).....\$25,722.00

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EXECUTIVE SESSION:

Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:

Items 3, 4, and 10:

EAST TENNESSEE NATURAL GAS, #01-2113, request for authorization to install a total of 29 gas pipeline crossings under 25 jurisdictional, State-owned, subaqueous stream and river beds in five counties in southwestern Virginia associated with the proposed Patriot Project. The pipeline expansion and extension project will traverse Smyth, Wythe, Carroll, Patrick, and Henry Counties and is protested by numerous residents along the proposed route from Tennessee to North Carolina. Consideration of this project was a continuation of the December 3, 2002 Commission meeting held in Patrick County, Virginia.

PORT MYERS, LLC, #02-1631. The Commission review on an appeal by 25 freeholders

of the November 13, 2002 decision by the York County Wetlands Board to authorize a community pier over wetlands situated along Chisman Creek.

BLACK SEA BASS. The Adoption of 2003 Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass."

The motion was seconded by Associate Member Birkett and carried unanimously, 7-0.

Associate Member Ballard moved for the following:

**CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION**

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member Williams seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Ballard, Birkett, Pruitt, Garrison, Gordy, and McLeskey.

NAYS: None

ABSENT DURING VOTE: Associate Members Cowart and Jones.

ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Member Cowart.

The motion carried unanimously, 6-0.

Clerk/Secretary
Virginia Marine Resources Commission

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Commissioner Pruitt recognized Dr. Eugene Burreson of the Virginia Institute of Marine Science (VIMS) and the fact that he was retiring from his position and explained that Dr. Burreson planned to continue with his research work at VIMS.

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Commissioner Pruitt presented Pat Leonard with a certification of service recognizing her long service with the Virginia Marine Resources Commission of 32 plus years. Mrs. Leonard will be retired as of January 1, 2003.

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Commissioner Pruitt presented Gerry Showalter with a certificate of service recognizing his long service with the Virginia Marine Resources Commission and Virginia Department of Transportation of 44 plus years. Mr. Showalter will be retired as of January 1, 2003.

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3. EAST TENNESSEE NATURAL GAS, #01-2113, requests authorization to install a total of 29 gas pipeline crossings under 25 jurisdictional, State-owned, subaqueous stream and river beds in five counties in southwestern Virginia associated with the proposed Patriot Project. The pipeline expansion and extension project will traverse Smyth, Wythe, Carroll, Patrick, and Henry Counties and is protested by numerous residents along the proposed route from Tennessee to North Carolina.

Associate Members Williams and Jones both announced that they would be abstaining from voting on this item, since they did not attend the December 3rd board meeting in Patrick County.

Jay Woodward, Environmental Engineer Sr., gave the presentation. His comments are a part of the verbatim record.

Mr. Woodward explained that while there was little doubt this large pipeline project would

result in disruption to the environment along the proposed route during construction and the majority of the impacts would be to upland areas and to smaller water bodies, which were outside of the Commission's jurisdiction. He explained that the Commission would only consider the impacts to the jurisdictional, State-owned, subaqueous bottom and aquatic resources within the larger streams, those perennial streams which have an upstream drainage of 5 square miles or greater. Staff had worked closely with all of the other state and federal advisory and regulatory agencies over the past year to modify the proposed construction techniques. He said that the modifications to the proposed construction techniques were made to ensure that the unavoidable impacts to the stream beds, waters, and aquatic organisms within the jurisdiction of the Marine Resources Commission had been avoided or minimized. He explained that the unavoidable impacts should be short-term in nature, once the pipeline was installed and the stream beds and banks had been restored to pre-construction conditions and contours. He stated that the mitigation plan developed by the applicant and endorsed by the Department of Game and Inland Fisheries should further ensure that the impacts are further reduced and compensated.

Mr. Woodward said that staff felt sympathetic to the landowners whose upland property would be impacted by the project, but the Commission was without jurisdiction to address those issues. He explained that those issues were considered by the Federal Energy Regulatory Commission in its decision to approve the Certificate of Public Convenience and Necessity for the Patriot Project.

Commissioner Pruitt asked Jay Woodward to read the staff recommendations into the record. Mr. Woodward stated staff recommended approval of the application for a Virginia Marine Resources Commission Subaqueous Bed Permit, with the following conditions:

- 1) There shall be no 'wet trench' or open-cut excavation of stream beds in live streams and no disposal of excavated material onto the stream beds under any circumstances.
- 2) The stream beds and banks shall be restored to pre-existing contours and conditions upon completion of construction.
- 3) All construction materials and equipment shall be removed to upland areas upon completion of the construction.
- 4) Construction shall be performed during low-flow conditions to the greatest extent practicable.
- 5) The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) and the approved Sediment and Erosion Control Plan for the Patriot Project will be followed throughout construction.
- 6) The approved Patriot Project Stream Mitigation Plan (as amended) will be made part of the permit and will apply to the authorized crossings.
- 7) Any proposed deviation in crossing method or location resulting from failure of the Horizontal Directional Drill (HDD) crossings must be formally

- authorized by the Commission.
- 8) A royalty in the amount of \$1,364.00 for the encroachment under 1,364 linear feet of State-owned subaqueous bottom is assessed at a rate of \$1.00 per linear foot.

At this point Commissioner Pruitt closed the public hearing and stated that no additional information would be heard unless the members of the board needed to ask questions. Associate Member Garrison spoke from the podium and had several questions of the applicant's representatives, such as the need for more power, problems with towers for construction, confusion over Dept. of Game and Inland Fisheries Commission having regulatory jurisdiction, discussion of Table 3-3 regarding the waterbody crossings, etc. His question are a part of the verbatim record. Mr. Ricky Smith and Mr. Dennis Newcomer both of East Tennessee Natural Gas were present and their responses are a part of the verbatim record. Mr. Joey Mahmoud, a biologist with PBS & J, representing East Tennessee Natural Gas was present and his responses were a part of the verbatim record.

Timothy Hayes, Attorney for Applicant, was present and his comments are a part of the verbatim record. Mr. Hayes was asked by Commissioner Pruitt if something will be needed from Conservation and Recreation for the pipeline crossing of the parks. Mr. Hayes responded that an easement was needed to go through the parks.

Associate Member Ballard asked Mr. Josephson, VMRC counsel, about the limits of the Commission's authority.

Mr. Carl Josephson, Assistant Attorney General, said that the Commission's authority, as provided by the state code in Chapter 12 of Title 28.2, and in section 28.2-1204 authorizes the issuance of permits for reasonable uses of state-owned bottomland. In Section 28.2-1205 of the Code of Virginia are the factors that the

Commission needs to take into consideration when deciding whether to issue a permit. His other comments regarding this question are a part of the verbatim record.

Associate Member Ballard moved to approve the project per staff recommendations and in conformance with the Federal Energy Regulatory Commission order to include all special conditions plus those added by staff. Associate Member Birkett seconded the motion. After further discussion by the board members and questions answered by the ETNG representatives, the motion was amended to allow for the construction of the temporary construction bridges. The amended motion carried, 4-1 with Associate Member Gordy voting no and Commissioner Pruitt and Associate Members Jones and Williams abstaining.

Royalty Fee..(1,364 linear feet @\$1.00/linear foot).....\$1,364.00

Permit Fee.....	\$100.00
Total Fees.....	\$1,464.00

4. PORT MYERS, LLC, #02-1631. Commission review on an appeal by 25 freeholders for the November 13, 2002, decision by the York County Wetlands Board to authorize a community pier over wetlands situated along Chisman Creek.

Traycie West gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that the project site will be located within a small cove off of Chisman Creek adjacent to a common property parcel in the Port Myers subdivision in the Seaford area of York County. She said that the proposed pier would be a community facility. She explained that it was designed to provide for passive recreational access to the waterway by the residents of the subdivision. She commented that there would be no slips or mooring facilities at the proposed pier, however, fishing, crabbing, and other related activities would be possible from the pier.

Ms. West stated that the pier was originally proposed to be a total of 113 feet long, but was shortened to 82 feet long after discussions in September between the agent, Mr. Chuck Roadley of Williamsburg Environmental Group, and the Concerned Citizens of Heritage Hamlet.

Ms. West said that the notice of appeal, which was submitted by Ms. Flynn

Cunningham on behalf of the Concerned Citizens of Heritage Hamlet, was received on November 22, 2002. She stated that as such, it was considered timely under the provisions of Section 28.2-1311(B) of the Code of Virginia.

Ms West further explained that the petition for appeal stated that the Concerned Citizens of Heritage Hamlet believed the Board erred when they decided on the application without having the entire subdivision plat before them. She said it was the opinion of the petitioners that the Board could not adequately consider possible alternative locations for the pier without a full plat of the Port Myers subdivision. She also stated that the plans before the Board were not clear as to whether the tidal wetlands along the shoreline were held as common property or if the waterfront properties within Port Myers were riparian properties.

Ms. West said that in addition, the petitioners were objecting to County zoning officials approving the community pier prior to the property owner obtaining all necessary environmental permits. She said some of the Wetland Board members stated during the hearing that they believed they did not have the option to deny the authorization for the community pier since it had already been approved by other County authorities.

Ms. West said that according to Mr. Roadley's testimony at the hearing, alternative sites were considered by his client, however, the current site was chosen because it allowed for the pier to cross a narrow band of vegetated wetlands.

Ms. West said that in addition, the Wetlands Board thoroughly discussed the cumulative impacts of the community pier and the private open-pile piers that the waterfront property owners may or may not construct.

Ms. West explained that according to VIMS, the individual and cumulative adverse impacts resulting from the construction of the pier would be minimal.

Ms. West said that based on staff's review of the record of information that was before the York County Wetlands Board on November 16, 2002, they were unable to conclude that the Board had erred procedurally. She said that the Wetland Board discussed, at length, the impacts of the community pier and the private piers that may be constructed by the residents who own waterfront parcels in the subdivision. They also considered the testimony that the community pier would be sited specifically in an effort to minimize impacts to vegetated wetlands. As such, it appeared that the Board's decision was appropriate. Staff recommended that the Wetland Board's decision be upheld.

Associate Member Birkett asked for any questions of staff. Carl Josephson asked where was it stated in the record that Wetlands Board member said that since zoning was approved, the board did not have authority to approve. Ms. West said she was present at the Wetlands Board meeting and heard Mr. Maxwell make the comment.

Gwen Cunningham, representing Concerned Citizens of Hamlet residents, was present and her comments are a part of the verbatim record.

Associate Member Ballard stated a motion was needed to open the record allowing the Commission to accept new testimony from Ms. Cunningham. Associate Member Birkett asked for a motion as to whether to open the record. Associate Member Ballard stated that he felt that the Commission had a complete record of what the Wetlands Board heard and moved not to open the record. Associate Member Gordy seconded the motion and the motion carried, 7-0.

Chuck Roadley, Williamsburg Environmental Group, representing the applicant, was present and his comments are a part of the verbatim record. Mr. Roadley asked if the board had any questions and further stated that he felt that staff's presentation covered the matter.

Anna Drake, staff representative for Wetlands Board of York County, was present and her comments are a part of the verbatim record. She stated that the board did consider riparian rights and felt that it did not affect the board's decision. Associate Member Gordy asked if

the 7 or 8 individual residents will be allowed to build private piers, if they have the community pier? Ms. Drake commented that they have not given up their riparian rights. Associate Member Ballard asked if the board's hands were tied because of the zoning approval. Ms. Drake said the board had said that it would not have an affect on their decision.

Associate Member Birkett asked for any further comments, there being none, he asked for a motion. **Associate Ballard stated that having considered all the material and the staff's presentation, he felt the Wetlands Board had fulfilled its duty in accordance with the Code of Virginia and moved to uphold the Wetlands Board decision. Associate Member Williams seconded the motion. There being no further discussion, the motion carried, 7-0.**

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5. BEACH DRIVE ASSOCIATION, #00-1823, requests after-the-fact authorization to retain previously constructed and unauthorized structures, which include a 5-foot by 65-foot open-pile community pier with a 5-foot by 10-foot 7-inch L-head, and a 10-foot by 143.5-foot wood boat ramp of which 45 feet extends channel-ward of mean low water within and adjacent to the Rappahannock River in Essex County.

Benny Stagg, Environmental Engineer, gave the presentation and slides. His comments are a part of the verbatim record.

Mr. Stagg said that the Beach Drive Association property is located along the Rappahannock River south of the town of Tappahannock in Essex County. He said that the ramp represents an extension of the roadway/easement within the subdivision that leads to the water. He explained that there was no parking at the ramp/pier site and staff had been advised that the property owners normally launch their boats and return their vehicles and trailers to their respective lots. He also said that the shoreline consists of a non-vegetated sand beach and that there are no slips associated with the pier. He explained that the association proposed to use the pier in conjunction with boat tending during launch and for fishing and river access and enjoyment for property owners.

Mr. Stagg explained that a Joint Permit Application was submitted by the Beach Drive Association agent, Lucille A. Morelli, on September 28, 2000, requesting authorization to construct a 5-foot by 65-foot community pier with an 8-foot by 12-foot L-head next to an existing 150-foot boat ramp at the end of a roadway easement. He said Staff conducted a field site visit on October 12, 2000, to evaluate the project. He explained that subsequently, staff could not verify that any permit had been issued for the existing wooden boat ramp. He stated that in a letter dated October 17, 2000, staff had requested additional information concerning the ramp construction to include any permit documentation and the approximate

date of construction. He said that Staff also requested additional information on adjoining property owners. He said that in a second letter, dated June 18, 2002, staff requested the additional information concerning the ramp and requested an onsite meeting to address these issues. He said that staff eventually received a phone call from Mr. Donald Wood, an Association representative, indicating that the pier had already been constructed.

Mr. Stagg said that on July 31, 2002, staff met with Mr. Wood on the site to discuss the project. He explained that a Sworn Complaint, dated August 8, 2002, and a Notice To Comply, dated August 9, 2002, were issued to the Association requesting removal of the pier and boat ramp within 30-days. He explained that in lieu of removal and further enforcement action, the applicant was informed that submittal of an after-the-fact request would be accepted. He said that staff requested that additional information accompanying any such request include new drawings reflecting all actual work performed, contractor information and why the work was performed without the necessary authorization and permit. He explained that a request to retain the structures was received, on September 6, 2002, along with numerous additional documents concerning the pier and ramp construction.

Mr. Stagg stated that according to documentation provided by the applicant, the existing wooden boatramp was constructed in 1975 by Mr. Jim Gunn of Coastal Design and Construction Company.

Mr. Stagg explained that Mr. Melvin E. Weiner, who was treasurer of the Association at the time, noted that the drawings indicated that Mr. Gunn would obtain all necessary permits. He said that staff had been unable to find any permit for the ramp structure. He said that there appeared to have been a lack of communication between the agent, Ms. Morelli, and the applicant concerning obtaining a VMRC permit for the pier construction. He stated that Ms. Morelli was unable to explain why staff's request in October of 2000 for additional information was not addressed. He said that the Association did obtain a building permit from Essex County on March 1, 2001, for the pier construction. He stated that the pier was subsequently constructed by Carey Lamb of Tappahannock.

Mr. Stagg said that the Department of Conservation and Recreation evaluated the project for potential impact to any natural heritage resources within the area, any endangered plant and insect species, any planned recreational facilities, or any streams on the National Park Service Nationwide Inventory, Final Lists of Rivers, potential Scenic Rivers or existing or potential State Scenic Byways. He explained that they noted that there was documentation of a Bald Eagle nest site in the general vicinity and recommended coordination with the United States Fish and Wildlife Service and the Virginia Department of Game and Inland Fisheries.

Mr. Stagg said that the Virginia Institute of Marine Science stated the individual and cumulative adverse impacts of the ramp and pier were minimal and the Virginia Department

of Health, Office of Environmental Health, had determined that the project was acceptable.

Mr. Stagg explained that the boat ramp was constructed before a wetlands permit was required for non-vegetated wetland impacts (1982), therefore, no wetlands permit was required. He said that since the proposed pier in the original Joint Permit Application was not to extend landward of mean low water, the Essex County Wetlands Board did not exert jurisdiction. He stated that no other agencies or interested parties had commented on the proposal.

Mr. Stagg stated that while the ramp represents a structure constructed over 25 years ago, the pier was more recently properly applied for and the applicant should have known that a permit was required from VMRC. He explained that staff recommended after-the-fact approval of the wooden boat ramp and the pier to include a royalty of \$126.30 based upon 421 square feet of encroachment of the pier over State-owned subaqueous land at a rate of \$0.30 per square foot. He said in addition, staff recommended a triple permit fee and consideration of an appropriate civil charge based upon minimal environmental impact and moderate to major degree of deviation or non-compliance.

Donald L. Wood, President of Beach Drive Association, was present and his comments are a part of the verbatim record. Mr. Wood explained that this was a confusing issue. He further explained, that when first started, only the Corps of Engineers permit was obtained and the party handling the matter at the time must have thought that took care of everything. He asked the Commission for approval.

Since there was no further public comment, Commissioner Pruitt asked for any discussion by the board members. Associate Member Garrison commented that the staff needed to contact the Board's and County Administrators' offices to remind them of the Wetlands Symposium in February at Hampton University.

Associate Member Garrison moved to approve as presented with a moderate civil charge. Associate Member Gordy seconded the motion. Motion carried, 6-0. Associate Member Birkett abstained from voting for personal and business reasons.

Royalty Fee (421 sq. ft. \$0.30/sq. ft).....	\$126.30
Permit Fee.....	\$75.00
Civil Charge.....	\$1,200.00
Total Fees.....	\$1,401.30

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6. COURTLAND FARM- LOUDOUN, LLC, #02-1387, request for authorization to install, by the directional bore method, a 4-inch diameter, encased sanitary sewer force main

pipeline, a minimum of 15 feet beneath a 150-foot wide section of Goose Creek, approximately 4,000 feet downstream of the Route 15 bridge crossing in Loudoun County. The project was protested by citizens of Loudoun County.

Mark Eversole, Environmental Engineer, gave the presentation and slides. His comments are a part of the verbatim record.

Mr. Eversole told the board that the project was located near the community of Oatlands, approximately six miles south of the Town of Leesburg. He said that the area can best be described as a former agricultural and forested area which is being subdivided and developed as the Leesburg area and most of northern Virginia continues to experience rapid growth. He explained that the project consisted of a 4-inch diameter force main designed to carry treated sewage effluent from a development on the north side of Goose Creek to large holding ponds on the south side of the creek. He said that once constructed, this line will be dedicated to and operated by the Loudoun County Sanitation Authority.

Mr. Eversole explained that Loudoun County supported the development having approved the proposed village and sewage disposal system on November 4, 2002.

Mr. Eversole said that the application was received on July 15, 2002. The adjacent property owners were notified, and a public notice was placed in The Washington Post, a newspaper having general circulation in the project area. Letters of opposition were received from the Banshee Reeks Nature Preserve, which borders the development, and area residents. He said that in addition, a letter was received from Delegate Robert Marshall, in response to calls from his constituents. He explained that both the applicant and their agent were made aware of all the objections and they had attempted, albeit unsuccessfully, to address and resolve the issues.

Mr. Eversole stated that the opposition for the project centered on potential wetland and floodplain impacts as well as the effects to Goose Creek and downstream water quality in the event the line were to rupture. He said that in addition, the proximity of the development itself to Goose Creek, a State Scenic River, had been noted as an area of concern.

Mr. Eversole pointed out that the Departments of Environmental Quality and Health (Wastewater Engineering) had both stated that the project was acceptable. He said that the Department of Conservation and Recreation also found the project acceptable, although they recommended that the applicant coordinate with the Department of Game and Inland Fisheries to comply with protected species legislation, as well as adhering to all Erosion and Sediment Control regulations. He stated that the Army Corps of Engineers and the Goose Creek Scenic River Advisory Board had both found the proposal acceptable.

Mr. Eversole explained that when reviewing proposals for overhead and subaqueous crossings, staff relies on the Commission's Subaqueous Guidelines for direction and endeavors to safeguard fisheries by minimizing impacts on aquatic habitat and promoting public health, safety and welfare, while accommodating economic development.

Mr. Eversole said that the Guidelines state that subaqueous crossings are normally permitted if reasonable measures are taken to protect aquatic resources. He explained that the proposed force main is to be installed by the directional bore method, a minimum of 15 feet beneath the stream channel. Bore pits and all boring equipment will be located 200 feet away from either side of the creek. He said that in addition, the sewage will be treated at an on-site wastewater treatment plant located on an upland portion of the property, prior to being carried beneath Goose Creek. He commented that in light of the foregoing, staff recommended approval of the application with a royalty of \$150.00 for the submerged crossing of 150 linear feet of Goose Creek, at a rate of \$1.00 per linear foot.

Mike Kelly, Vice President of the Williamsburg Environmental Group, agent for the applicant, was present and his comments are a part of the verbatim record. Mr. Kelly stated that staff had done a great job and he agreed with the recommendations of staff.

Darryl Rickmond, Rickmond Engineering, was present and his comments are a part of the verbatim record.

No one else was present to comment and after some discussion, Associate Member Birkett asked for a motion. Associate Member Gordy moved to approve the permit. Associate Member Garrison seconded the motion. The motion carried, 7-0.

Royalty Fees..(150 linear ft. @ \$1.00/linear foot).....	\$150.00
Permit Fee.....	\$100.00
Total Fees.....	\$250.00

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7. RAMONA H. EDDINS, #02-1031, request for authorization to dredge an existing pool on an as-needed basis, by removing an estimated 25 cubic yards of State-owned submerged lands annually to maintain depths of minus seven (-7) feet below ordinary high water, adjacent to her property situated along the Conway River at the boundary of Greene and Madison Counties. The project was protested by an adjacent property owner.

Jeffrey Madden, Environmental Engineer, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Madden said that the project was located approximately five miles north of the town of

Stanardsville, along the Conway River and east of the Route 230 bridge crossing. He explained that in 1998, the applicant received authorization to dredge accumulated flood debris from a natural scour pool to create a baptismal pool for use by area churches. He explained that according to applicant, the depth of the scour pool after the initial dredging ranged from minus 4 feet to 6 feet. He said that the applicant would like to be allowed to dredge, on an as needed basis, as much as 25 cubic yards of river cobble annually to maintain a minus seven (-7)- foot depth below ordinary high water. He said the applicant believed that maintaining that depth was necessary for baptisms, handicap access to the pool, and for its use as a swimming hole. He explained that if authorized, the applicant would place the dredged material in an upland disposal area on her property.

Mr. Madden explained that the project was protested by Ms. Celia Dollarhide the adjacent property owner on the north bank of the Conway River directly across from the dredge site. He said that in her letter of July 17, 2002, Ms. Dollarhide opposed the dredging of the scour pool, stating that it currently had a water level far in excess of the depth necessary for the stated purpose.

Mr. Madden stated that the Virginia Department of Game and Inland Fisheries did not support issuance of permits for such advance maintenance instream work unless it directly addressed a demonstrated need to eliminate a continued threat to life or property. He said their report said that the pool was a natural feature in the river and would likely maintain an ambient depth of minus two(-2) feet to minus five (-5) feet below ordinary high water over time. He said that the Game Department also commented that the current depth was sufficient to conduct river baptisms.

Mr. Madden stated that no other agency had expressed opposition to the project.

Mr. Madden explained that while staff acknowledged that the deep scour pool would provide a community service as a swimming hole and baptismal pool, the advance maintenance dredging did not address a continued threat to life or property. Accordingly, he said that staff was recommending denial of the project.

Neither the applicant nor those opposed to the project were present.

Commissioner Pruitt, expressed his concern regarding taking action on a case for which staff recommends denial and the applicant and those in opposition are not present. Mr. Madden explained that the applicant had told him in a phone conversation that he would not be in attendance at the hearing and he was made aware of staff's recommendation. He decided that since Mr. Madden had spoken with the applicant to go forward with the case.

Associate Member Birkett asked for questions or a motion. **After some discussion and questions, Associate Member Garrison moved to deny the permit in accordance with**

the staff recommendation and in keeping with the recommendation of Virginia Department of Game and Inland Fisheries. Associate Member Gordy seconded the motion. The motion carried, 7-0.

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8. PUBLIC COMMENTS: (Heard at the end of the meeting)

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9. ADOPTION OF 2003 REGULATION 4 VAC 20-252-10 ET SEQ., "PERTAINING TO THE TAKING OF STRIPED BASS," FOR THE COASTAL AREA.

Rob O'Reilly, Deputy Chief -Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly said that last month staff presented you with a comprehensive description of the issue, and there was extensive public comment on allocation of the 2003 Coastal area striped bass quota. He stated that a copy of last month's evaluation was in the books.

Mr. O'Reilly commented that the draft Regulation 4 VAC 20-252-150 established the 129,397-pound quota that had been recently approved by the Atlantic States Marine Fisheries Commission (ASMFC). He explained that options for allocating this quota were commented on by the public last month, which are:

- 1) Allocate the 129,397-pound Coastal Area quota among current Chesapeake System Striped Bass ITQ holders (508 as of November 21, 2002), such that each ITQ holder would receive approximately 16 additional tags. (Note that 15 ITQ holders have transferred out since February 1, 2002).
- 2) Allocate the 129,397-pound Coastal Area quota only among recent Coastal Area harvesters. There were 174 fishermen who harvested from the Coastal Area during either 2001 or 2002. This option would provide roughly 46 tags to each of the 174 current Chesapeake System Striped Bass ITQ holders. (Note: 3 previously eligible fishermen have transferred out of the ITQ program).
- 3) Allocate the 129,397-pound Coastal Area quota only among Coastal Area harvesters who have a history of harvesting from the Coastal Area during any three years from 1993 through 1997. Under this option, 22 current Chesapeake System Striped Bass ITQ holders would receive 367 tags each for harvesting Coastal Area striped bass. (Note: 1 previously eligible fisherman transferred out of the ITQ program and database information allowed 1 fisherman

to achieve 3 years of harvest, since your last meeting).

4) Allocate the 129,397-pound Coastal Area quota only among recent (2001-2002) Coastal Area harvesters who also have a history of harvesting striped bass from the Coastal Area during any 3 years from 1993-1997. This option provides 449 tags to each of 18 eligible current Chesapeake System Striped Bass ITQ holders. (Note: Same as for 3), above.

Mr. O'Reilly said that all options required that any current (2002) Chesapeake System ITQ holder who accepted a share of the initial, 2003 Coastal Area quota of 129,397 pounds forfeit at least an equal share of the 2003 Chesapeake System commercial striped bass tags. He explained that this would mean that the equivalent of 8,085 tags would be added to the Chesapeake System allocation of tags in 2003.

Mr. O'Reilly stated that last month it was apparent that there was recognition that the 129,397-pound quota was far less than the harvests realized from the Coastal area in the last several years, meaning that either fewer fishermen could be permitted for the Coastal area quota or everyone in the current Chesapeake ITQ system would receive a very few (16) additional tags for the Coastal area. He said that last month's evaluation provided a description of benefits and detriments associated with the various Coastal area quota allocation options.

Mr. O'Reilly stated that last month there seemed to be recognition that some harvesters can be considered as dedicated, directed Coastal area harvesters of striped bass in past and recent years. He said that, however, there still seemed to be some concerns with the exact allocation systems proposed by options 3 and 4, as recipients of tags under these options could gain an unfair economic advantage, in comparison to Chesapeake System ITQ holders.

Mr. O'Reilly explained that on a Coastal Area tag per Chesapeake System tag basis, there will be less of an economic advantage associated with the Coastal harvesters of striped bass in 2003 than ever before. He further explained that this purported inequity among area-specific harvest income is directly attributable to the minimum size limits in these two areas. He continued by explaining that a 28-inch size limit was established for the Coastal area in 1990, whereas the Chesapeake has been managed by an 18-inch minimum size limit. He said that the average size of striped bass harvested from the Coastal area had also increased, as the overall abundance of the three migratory stocks increased, and that means more large striped bass are available than previously.

Mr. O'Reilly explained that a remaining problem associated with the 2003 allocation scheme for the Coastal area fishery involves the number of potential participants. He said that the

FMAC had supported the fundamental basis of options 3 and 4, above, and staff supported option 4, on the basis that past and current participation were appropriate requirements for

allocation of this quota. He stated that the ASMFC did recently raise the Coastal area quota from 98,000 pounds to 129,397 pounds, and that meant the number of tags for allocation increased by 32% (from 6119 tags to 8085 tags). He said that an individual share rose from 340 tags to 449 tags, under option 4, given the ASMFC action.

Mr. O'Reilly explained that staff proposes that approximately equal allocations of tags to gill net fishermen in both areas, Coastal and Chesapeake, can be accomplished using the basis of Option 4. He said that given that an additional 8,085 tags will be added to the Chesapeake System allocation in 2003, via the forfeiture requirement specified in draft Regulation 4 VAC 20-130-D, a Chesapeake System gill net fisherman will receive 247 tags.

Mr. O'Reilly said that Staff proposed to modify Option 4, whereby the 129,397-pound Coastal Area quota would be allocated to recent (2001-2002) Coastal Area harvesters who also have a history of harvesting striped bass from the Coastal Area during any 2 years (rather than 3 years) from 1993-1997. He explained that this option provides 260 tags to 32 eligible current Chesapeake System Striped Bass ITQ holders, compared to the 18 harvesters who were recommended for allocation last month. Table 1 lists these fishermen as Harvester 1 – 18 and harvester 23 – 35 (Note: harvesters 4 and 32 only receives a $\frac{1}{4}$ share of tags (65 tags) which allows harvesters 40 and 41 to receive a $\frac{3}{4}$ share of tags). He stated that there are two current haul seine Chesapeake ITQ holders among the 32 potential Coastal tag holders, but they will also receive the same allotment of Coastal area tags as a gill net share. He commented that this meant that each Coastal area permittee would receive 260 tags, except for harvesters 4 and 32 ($\frac{1}{4}$ share) and 40 and 41 ($\frac{3}{4}$ share), and would, in turn, forfeit 236 Chesapeake area tags.

Mr. O'Reilly explained that last month's evaluation summarized the amendments to Regulation 4 VAC 20-252 that are necessary to implement the Coastal area fishery in 2003. The draft regulation included the modifications of the entry requirements and updated quota (see 4 VAC 20-252-130 D and 4 VAC 20-252-150 B).

Mr. O'Reilly stated that Staff recommended that the Commission adopt draft Regulation 4 VAC 20-252-10 Et Seq., as a permanent regulation, thereby establishing 32 Coastal area commercial striped bass ITQs for 2003, in accordance with a modified Option 4.

Mr. O'Reilly explained that written comments had been received since the last meeting and questioned whether could be added to the record. Carl Josephson stated that the Public Hearing was closed and a motion would be needed to open the record. Associate Member Gordy moved to accept the written comments received by staff. Associate Member Williams seconded the motion and stated that if we accept written comments then we must allow the members of the public that are present to comment. Associate Member Ballard stated accepting written and spoken comments would constitute a public hearing. Carl Josephson said that it does open to a public hearing which had not been advertised. The motion was

withdrawn by Associate Member Gordy.

Associate Member Williams moved to accept option 1. Associate Member Garrison seconded the motion.

Mr. O'Reilly explained that the option 1 that Associate Member Williams made a motion to approve would not use all of the quota. Associate Member Jones expressed her concern that resources are unused and wasted.

Associate Member Ballard stated that he disagreed with Associate Member Williams and made a substitute motion to adopt the staff recommendation of modified Option 4. The motion was seconded by Associate Member Jones. After some more discussion the substitute motion carried, 4 to 3.

Vote Count:	Birkett - Yes	Jones - Yes	Ballard - Yes
	Garrison - No	Gordy - Yes	Williams - No
	McLeskey - No		

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10. Black Sea Bass: Adoption of 2003 Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass."

Jack Travelstead, Chief-Fisheries Management Division gave the presentation and his comments are a part of the verbatim record. He explained that this was the matter continued from last month's meeting.

Mr. Travelstead explained that the Commission books contained a complete copy of the black sea bass materials provided the last meeting. He further explained that several letters had been added, which arrived over the last 10 days, commenting on the proposed rules. Mr. Travelstead asked if additional written comments would be accepted. Associate Member Williams stated that the public hearing had been held and additional information would not be accepted. Associate Member Ballard and Commissioner Pruitt confirmed that the public hearing was closed.

Mr. Travelstead stated that staff had additional analysis information on the Individual Fishery Quota (IFQ) option using a modified time period of July 1, 1997 through June 30, 2000, as was requested by the Commission. He said that the analysis will compare quota allocations calculated with the time frame originally described (July 1, 1997-December 31, 2001).

Mr. Travelstead explained that the changes to the regulation were mostly corrections. He explained that corrected figures for directed fishery should be 619,703 and the bycatch

fishery should be 46,697. He said that on page 9 subsection E, wording was added to require the reporting of the date of landing. And he explained that in cases of an individual owning more than one vessel that both qualify for the direct fishery, the individual can combine the quota to one vessel with a declaration being made at the beginning of the season.

After further discussion and questions of staff, Commissioner Pruitt asked for a motion from the Commission. **Associate Member Ballard stated that staff had done a good job analyzing, rationale, etc. and he moved to approve staff's recommendation. The motion was seconded by Associate Member Birkett. The motion carried 5 to 2.**

Voting:	Ballard	Yes	Garrison	No	Jones	Yes
	Birkett	Yes	Gordy	Yes	McLeskey	Yes
	Williams	No				

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11. PUBLIC HEARING: Consideration of 2003 Regulations for Red Drum.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. Mr. Gillingham explained the 3 options to the Commission, which were:

- | | |
|-------------------------|--------------|
| 20" to 26" total length | 5-fish limit |
| 18" to 26" total length | 3-fish limit |
| 18" to 25" total length | 5-fish limit |

Mr. Gillingham explained that staff was recommending the option of 18 to 25 inches with a 5 fish limit. He also said that the Potomac River Fisheries Commission had adopted this conservation measure and that the State of Maryland was considering it.

Tom Powers, CCA representative, was present and his comments are a part of the verbatim record. He said that for conservation the 3 fish limit was needed.

Ernest Bowden, representing the pound netters, was present and his comments are a part of the verbatim record. He spoke in favor of the 18" limit.

Commissioner Pruitt closed the public hearing and said that the matter was before the Commission. **Associate Member Garrison made the motion to approve the 2nd option, which was 1 to 36 with a 3 fish limit. Associate Member Gordy seconded the motion. The motion carried, 7-0.**

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12. PUBLIC HEARING: Consideration of proposed regulation to reduce effort in the American Shad Coastal Intercept Fishery.

Rob O'Reilly, Deputy-Chief-Fisheries Management Division, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly explained that last month the Commission directed staff to advertise a range of options, concerning the proposed regulation to reduce effort in the American shad (shad) coastal intercept fishery, for public review.

That Public Notice Mr. O'Reilly stated specifies the 2003 and 2004 quota (168,039 pounds), for the Coastal area fishery. For the Virginia intercept shad fishery, the coastal area is defined as the area east of the Colregs Demarcation Line, which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island (see draft Regulation 4 VAC 20-530-20).

Mr. O'Reilly explained that the Virginia landings data shows that the average (1992-2001) Virginia American shad landings from the coastal intercept fishery were 280,065 pounds. A 40% reduction from this average landing means that landings in 2003 and 2004 cannot exceed 168,039 pounds annually. FMAC and staff support the establishment of this annual landings quota, for 2003 and 2004, and the ASMFC does allow this reduction in landings as an effort reduction measure.

Mr. O'Reilly said that the Public Notice also advertised participation strategies that range from a wide-open access option to a highly limited entry system (please see Options 1 and 5 C. 3 of Attachment I). FMAC and staff support the establishment of a limited entry system as the most appropriate method to afford traditional, directed shad fishermen (those who have primarily fished for shad during 1992-2001) opportunities to land shad in 2003 and 2004. After December 31, 2004, no state will be permitted by ASMFC to harvest shad from coastal waters. This means that Virginia and other coastal states will need to implement regulations that make it unlawful for any person to take, catch or possess American shad from the coastal area after December 31, 2004.

Mr. O'Reilly stated that in July and August staff provided the FMAC with several options for reducing coastal shad fishery landings by 40% from historical (1992-2001) landings. Those options are listed in Attachment I. Proposed reduction options ranged from a wide-open participation strategy (option 1) to a strict limited entry strategy that requires 4 years of participation, with 5000 pounds of landings each of those years, from 1993 – 2001. From Attachment 1, this latter option is option 5 C 3., and it would allow only 10 harvesters to participate in the 2003-2004 fisheries.

Mr. O'Reilly commented that in July the FMAC did not choose a particular option as a preferred option, as many members stated they needed to share the information with others in their association. Some members stated that anyone should be allowed to land shad, and the VMRC could close the fishery when the quota was reached. One problem with that management option is that traditional, directed coastal shad fishermen may not get an opportunity to harvest shad. Recent landings data (see attached Table) and effort data (see attached Figure) indicate there is potential for the 168,039 pounds to be taken early in the season, with unrestricted participation. For example, landings in 2001 were 242,381 pounds, and landings in 1999 were 228,632 pounds. Any overages of the quota in 2003 will be subtracted from the 168,039-pound quota for 2004.

Mr. O'Reilly further explained that at its August 20 meeting the FMAC voted unanimously to endorse option 5 C 1. This option establishes a limited fishery for those fishermen who landed at least 5000 pounds during at least 2 years, from 1993-2001 (see Attachment I). This option allows 26 fishermen to participate in a directed fishery for coastal shad in 2003 and 2004. This number of eligible fishermen also reflects the extent of directed fishermen in recent years. Based on recent landings data (2001-02) we have identified 62 different fishermen who landed American shad in one or both of those years. Of this amount, 41 could be characterized as by-catch fishermen, in that their total individual annual landings are less than 500 pounds. There was some discussion as to whether a possession (trip) limit should be established for directed fishery permittees. However, it is apparent that the variability in shad abundance, both temporally and spatially, precludes the establishment of a specific possession limit. Such a limit could well result in a marked quota underage.

Mr. O'Reilly told the Commission that the FMAC also unanimously supported the by-catch allowance for 2003 and 2004, as listed under "Other" in Attachment 1. The by-catch allowance would be limited to 8000 pounds of the total allowable landings

(168,039 pounds), for each of the two years, and draft Regulation 4 VAC 20-530-23 A. proposes that there be a 10 shad limit for by-catch fishermen. The committee also unanimously supported a maximum footage of gill net (4800 feet or four 1200-foot nets), with allowable mesh sizes from 5 through 6 inches stretched measure (draft Regulation 4 VAC 20-530-23 E).

Mr. O'Reilly explained that Staff's proposals establishes a two-tiered coastal shad harvest system, wherein a permit would be issued to harvesters with a history of directed effort on coastal American shad (Option 5 C of Attachment I), and these harvesters would not be restricted to a maximum landings amount per trip. In addition, a by-catch vessel possession limit of up to 10 American shad permit would be established for those fishermen who do not qualify for a directed fishery permit, with a maximum allowable landings of 8000 pounds in 2003 and 2004.

Mr. O'Reilly told the board that the draft regulation establishes permit requirements (draft Regulation 4 VAC 20-530-23 A - C), for the directed harvest of American shad, and also contains reporting requirements (draft Regulation 4 VAC 20-530-29). Permitted fishermen will be required to report their landings, via an interactive voice recording system, within the day that harvest occurred. In addition, directed fishery permittees shall be required to sell only to permitted buyers (see below). Self-marketing of shad harvest will be unlawful, as it would impair staff's ability to assess the real-time harvest amount (see draft Regulation 4 VAC 20-530-223 D).

He explained that in addition to the harvester permitting system, the VMRC will also require Virginia buyers to obtain a permit for the purchase of American shad. In recent years there has been a limited number of buyers, with only 13 buyers in 2002. A buyer permitting system will enable VMRC staff to corroborate the directed harvester reports of landings and keep track of the by-catch landings. Since staff is not recommending by-catch harvester permits, buyers can be called directly to obtain those landings, as total landings approach the quota. The fishery will be closed as soon as it has been projected and announced that the quota has been met.

Mr. O'Reilly explained that Staff recommended the adoption of the draft Regulation 4 VAC 20-530-10 Et Seq. with an effective date of January 1, 2003.

Commissioner Pruitt opened the public hearing and asked for any comments from the public.

Douglas Jenkins, representing the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. He talked about shad bycatch and gill net to gill net losing bushel bycatch. Mr. Travelstead explained that Mr. Jenkin's issue was not before the Commission now and that VIMS was studying this issue and they would be bringing back this information about the study to FMAC in January 2003.

Steve Powell, commercial fishermen, was present and his comments are a part of the verbatim record. Mr. Powell requested that Rob O'Reilly clarify Option 5 for them.

Ernest Bowden, representing the Eastern Shore Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Bowden stated that the state should go with the reduction, that the fish are not being consumed by young people and the fishery is losing markets for the fish. He said that the matter was all political and had nothing to with science. He said state should take a stand and fight.

George Washington, representing Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Washington that the government needs to stop regulating the fish. He said ladders don't work, the fish are too weak and dams need to be removed. He also said that there is a problem with the shad fishery but it is curable.

Russell Gaskins, poundnetter in the Rappahannock River, was present and his comments are a part of the verbatim record. Mr. Gaskins said that a bycatch is needed.

Commissioner Pruitt closed the public hearing and asked for a motion from the Commission. **Associate Member Garrison moved to approve the staff's recommendation, Associate Member Ballard seconded the motion. The motion carried, 7-0.**

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13. PUBLIC HEARING: Consideration of the proposed amendments to the regulation to open the Temple's Bay Hand Scrape area to the harvesting of oysters.

The presentation was given by Dr. Jim Wesson, Dept. Head, Conservation and Replenishment. He explained that at the November Commission meeting, an emergency regulation was passed to allow hand scraping on the southern side of the Rappahannock River near Temples Bay. He said in the commission books was the updated version of the regulation along with some editorial changes in other places where the changes had to be clarified. He said staff recommended approval of Regulation 4VAC 20-720-10 Et. Seq., as amended, and open the Temples Bay area to the harvesting of oysters through January 15, 2003 and other editorial changes.

Associate Member Birkett moved to accept the staff recommendation. The motion was seconded by Garrison and carried, 7-0.

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14. PUBLIC HEARING: Consideration of proposed amendments to the regulation to increase weight limit on oyster dredges from 100 pounds to 150 pounds.

Presentation was given by Dr. Jim Wesson, Dept. Head, Conservation and Replenishment. He explained that at the November Commission meeting, an emergency regulation was passed to increase the maximum weight limit for an oyster dredge from 100 to 150lbs. This weight more accurately reflects the weights of oyster dredges currently in use on public grounds. He explained that staff recommends approval of Regulation 4VAC 20-720-10, Et. Seq., as amended, which would increase the maximum from 100 pounds to 150 pounds.

Associate Member Birkett moved to accept the recommendation of staff. The motion was seconded by Associate Member Garrison. Motion carried, 7-0.

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15. Report of the Hard Clam Aquaculture task force.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He explained that there nothing in the Commission books as the task force meeting was just held the night before. He explained the following items that were discussed by the task force:

1. Over wintering of Virginia seed clams in southern states and importation back to Virginia (seed leaving VA with dermo, can they come back?). Task Force does not recommend changing the current regulation.
2. Importation of Hawaiian seed clams produced from Virginia Broodstock.
 - a. paper trail or chain of custody documenting Virginia broodstock genetics
 - b. requirements pertaining to hitchhiker issueMike McGee wants the regulation amended to allow Hawaiian clams in with a proper paper trail.
3. Need for Virginia Aquaculture Permit:
 - a. documentation of imports
 - b. in-state seed production
 - c. direct contact for regulatory changes.
 - d. fees collected can be used for implementation of testing programs.
4. Clams imported from southern states through a relay process; do they meet disease certification requirement.
5. Exemption for Chincoteague Bay clams when from Maryland from the disease certification process.
6. Transplanting of clams from seaside to bayside (refers to planted clams being picked up and transplanted, not to clams straight out of a hatchery).

Commissioner Pruitt asked Associate Member Jones as chair for her comments. Dr. Jones said there was a lack of consistency, wanted to see that the Aquaculture application will be considered in the future, and that the next meeting is on the Eastern Shore with a site visit scheduled at that time.

Associate Member Ballard stated that he was not participating in the discussion.

Commissioner Pruitt stated that the matter will be continued until the Task Force gets more information and finishes their study.

No action was taken on this matter.

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8. PUBLIC COMMENTS:

Commissioner Pruitt stated that all parties interested in making presentations would be allowed to do so and after all presentations are made then the Commission would discuss and make decisions.

George Washington, representing the Virginia Watermen's Association, discussed the opening areas on the Rappahannock River below the Norris bridge (Rt. 3). His comments are a part of the verbatim record.

He said that there was a 7-mile stretch not being used and he requested that the southside be opened to harvest for a specific period of time.

David Bleeker, oyster harvester, presented samples of oysters that had been taken below the bridge that had been closed for 10 years. He explained that the rocks were suffering and needed to be worked. He said that the state has paid for turning and cleaning in the past. He said that stocks were magnificent from Temples Bay and below the bridge. He said today they were asking for an emergency regulatory action to allow harvest from December 23 to January 31 with a 4 bushel catch limit per boat. His comments are a part of the verbatim record.

Jack Travelstead, Chief-Fisheries Management, said he is concerned that we have been managing oysters by emergency action. He said that others in the public sector are left, do not have the option to get advice from the Virginia Institute of Marine Science, and actions by staff are done on the spur of the moment.

Associate Member Birkett asked for comments from Dr. Wesson. Dr. Wesson said he felt the same as Jack and that a large investment had been made in this area and needed data with the oyster stocks so low.

Commissioner Pruitt ask if there was any action the Commission wanted to take. **No action was taken on this matter.**

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Dan Dise, representing the Tangier Watermen's Association, explained that the watermen were asking for emergency action to remove the restriction for dredging oysters that says the boat can not leave the dock until one-half hour before sunrise and that a bycatch be allowed for clams and crabs. His comments are a part of the verbatim record.

He said that the time restriction cuts into their harvest time because some times it takes a long time to get to the oyster rocks that are a far distance from where they dock. He said right

now there is no bycatch allowed of either clams or crabs and requests that a bycatch limit of 100 clams and 2 bushel crabs be allowed.

Jack Travelstead, Chief-Fisheries Management, that these were minor issues, but haven't talked to staff or Law Enforcement.

Commissioner Pruitt stated that the matter needed to advertised and go through normal process, but he could see a need for a bycatch limit. Commissioner Pruitt asked if there was action the Commission wanted to take on this matter.

Associate Member McLeskey asked what was the purpose of the 1/2 hour? Mr. Travelstead said would have to look at the issue. **Associate Member McLeskey stated that he would like to see this eliminated and made a motion to remove the 1/2 hour restriction. The motion failed because there was no second.** Dr. Wesson explained he believed that the reason for this restriction was because of concerns by private leasholders of the boats going across leases.

Commissioner Pruitt stated that the Commission will hear the matter next year and no action was taken at this time.

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Bryan Peele, Black Sea Bass fisherman representing himself, requested an exemption for him being allowed into the directed fishery. He said that since he shared a quota in the past he did not qualify. His comments are a part of the verbatim record.

Jack Travelstead, Chief-Fisheries Management, explained that Mr. Peele was basically asking for an exemption which is not allowed for and he further explained that Mr. Peele was eligible for the bycatch fishery of 100 pounds per day.

Mr. Peele stated that unless he has at least 900 pounds limit its not financially worth it and he got into the fishery to make a living and he needs to be able to pay for his boat. Associate Member Garrison expressed his concern that this is what's perplexing because of the young people getting into the fishery. Commissioner Pruitt stated that the regulation doesn't allow for this and can't help Mr. Peele.

Warren Cosby, Upper River Association, discussed striped bass quota and how Virginia Bay fishery being penalized. He talked about ASMFC and lost poundage because of the penalty. His comments are a part of the verbatim record.

Rob O'Reilly, Deputy Chief-Fisheries Management, asked him if he had talked with Bob Beal about the 98,000 quota. Mr. Cosby said he hadn't been able to reach Mr. Beale until

recently to get the record. He said that that the 98,000 quota was not new and that it had been in effect since 1996 and he had heard Mr. O'Reilly say it was new quota.

Mr. O'Reilly explained that amendment 5 was asking for combined quota and Bay quota was in Virginia. He said VMRC wanted to combine the quota and ASMFC had agreed as long as assurances could be made for transfer of effort and not to give additional quota.

No action taken on this matter.

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William Ryan, Maryland Clammer, requested a waiver for a restriction that no Maryland clam boat be allowed in Virginia waters. He explained that there was no viable harvest in Maryland and no harbor available in Maryland. His comments are a part of the verbatim record.

Commissioner Pruitt explained that the problem that was some Maryland clammers were caught with clams in Virginia on the way to Greenbackville.

Associate Member Ballard asked if in the Code? Commissioner Pruitt responded yes.

Mike McGee, buyer of the Maryland clams, asked that the Commission make an effort to help these Maryland watermen out of this situation.

Jack Travelstead, Chief-Fisheries Management, explained that Dr. Bob Orth of VIMS in monitoring seagrasses found circular scarring near the Virginia-Maryland line made by hydraulic dredges. Mr. Travelstead said that staff recommended granting permits in accordance with the Code of Virginia.

Randy Widgeon, Eastern Shore Law Enforcement Area Supervisor, stated that Law Enforcement did not have a problem with issuing these permits.

Carl Josephson, VMRC Counsel, stated that this would be a permit for transiting State waters.

Commissioner Pruitt asked how many were involved? Mr. Travelstead stated 5 individuals.

Associate Member Gordy moved to grant permission for transit from Chincoteague Bay to Maryland. Associate Member Birkett seconded by the motion. The motion carried.

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Frances Porter representing the Virginia Seafood Council (VSC) requested that the Commission grant a public hearing to discuss a third Test Project for the Non-Native oysters (*C. Ariakensis*) to be sponsored by the Council. She requested that the hearing be held at the Commission regular monthly meeting on February 25, 2003.

Associate Member Gordy moved to hold public hearing as requested by VSC in February 2003. The motion was seconded by Associate Member Birkett. Motion carried.

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The meeting adjourned at 5:37 p.m.

William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary