

MINUTES

MARCH 26, 2002
NEWPORT NEWS, VA 23607

The regular Monthly meeting of the Marine Resources Commission was held on March 26, 2002 with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
S. Lake Cowart, Jr.)	
Laura Belle Gordy)	Members of the Commission
Henry Lane Hull)	
F. Wayne McLeskey)	
John W. White)	
Kenneth W. Williams)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
Bob Craft	Chief-Finance & Administration
Andy McNeil	Programmer Analyst, Sr.
Col. Steve Bowman	Chief-Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief-Law Enforcement
Capt. Randy Widgeon	Eastern Shore Supervisor
Capt. Warner Rhodes	Middle Area Supervisor
Capt. Ray Jewell	Northern Area Supervisor
Capt. Kenny Oliver	Southern Area Supervisor
Michael Dobson	Marine Patrol Officer
Chris Miller	Marine Patrol Officer

Virginia Institute of Marine Science:

Tom Barnard	Dr. Rom Lipcius
Eugene Burreson	Jacques van Montfrans

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Jack Travelstead
Dr. James Wesson
Roy Insley
Chad Boyce
Ellen Cosby
Tracy Patton

Chief-Fisheries Management
Head-Conservation & Replenishment
Head-Plans and Statistics
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist

Tony Watkinson
Gerry Showalter
Hank Badger
Kevin Curling
Mark Eversole
Lewis Gillingham
Jeff Madden
Chip Neikirk
Randy Owen
Ben Stagg

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

Scott Harper
Michael Hines

Virginian Pilot
The Daily Press

others present included:

George Washington
Capt. Bob Jensen
Douglas Jenkins
Karen Jenkins
Don Trotta
Tom Powers
Jeffrey Crockett
Kelly Place
Frances Porter
Bill Eskins
Ed Nealon
Dan Birley
Craig Palubinski
Russ Thorne
Bo Mickley
George Janek
Melanie Davenport
Sam Locklear
Dale Taylor

Nisan Murdock
Jim Shafer
Bob Wiggins
Mark Hodges
Chuck Newhouse
Claire Martin
Liz Galantich
Devlin Barrett
Lynn Young
Terry Thompson
Dayle Collins
Chris Ludford
Pete Freeman
Robert Brumbaugh
Robert Freeman
Marbary Harcum
Pat Genzler
Bruce Aitkenbeck

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Commissioner Pruitt called the March 26, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams. Commissioner Pruitt established that there was a quorum present.

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

**** APPROVAL OF AGENDA**

Associate Member Hull moved to approve the Agenda as distributed. Associate Member White seconded the motion and the motion carried unanimously, 8-0.

1. APPROVAL OF MINUTES – February 26, 2002.

Associate Member Cowart noted the following corrections to the Minutes:

Page 11902 – **15. ESTABLISHMENT OF 2002 BLUE CRAB HARVEST RESTRICTIONS**, “*Commercial Fishery - continue with the 17 barrel limit on the winter dredge fishery...*”

Page 11902 – **15. ESTABLISHMENT OF 2002 BLUE CRAB HARVEST RESTRICTIONS**, “*Commercial Fishery – the Commissioner shall have the authority to rescind the eight-hour workday and declare a state of emergency in order to allow those in the crab industry time to remove their pots from the water in the case of impending weather conditions which may destroy the pots.*”

Associate Member Ballard moved to approve the Minutes as corrected; Associate Member Birkett seconded the motion. The motion carried unanimously, 8-0.

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

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

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2A. SALEM STONE CORPORATION, #96-0236, requests reactivation and extension of a previously issued permit to relocate approximately 2,200 linear feet of Little Reed Island Creek adjacent to their quarry near High Rocks in Wythe County. Recommend approval with a new expiration date of January 5, 2004, and with all terms and conditions of the original permit to remain in effect.

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

2B. UNAMIN CORPORATION, #01-2034, requests authorization to reconstruct a storm damaged concrete weir and to dredge, by mechanical method, approximately 3,000 cubic yards of accumulated sediments from behind the upstream face of the weir, adjacent to their property situated along Back Creek, a tributary to the Potomac River, in Frederick County. Recommend a royalty in the amount of \$1,200.00 for the dredging of 3,000 cubic yards at a rate of \$0.45 per cubic yard.

PERMIT FEE.....\$100.00
ROYALTIES.....\$1,200.00

2C. COUNTY OF BRUNSWICK, #01-1193, requests authorization to construct a water intake structure extending 11 feet into the Meherrin River and to install, by directional bore method, a flexible waterline under Reedy Creek, and the Meherrin River as part of the proposed Brunswick Regional Waterworks facility and in conjunction with the proposed Brunswick Generating Station in Brunswick County. Recommend standard instream construction conditions.

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

2D. DOMINION TRANSMISSION, INC., #01-1163, requests authorization to cross, by both the open-cut and directional bore methods, sections of Neabsco and Powell's Creeks and the original riverbed of the Occoquan River, beneath the Occoquan Reservoir, to install a 20-inch diameter natural gas pipeline in Prince William and Fairfax Counties.

PERMIT FEE.....\$100.00
ROYALTIES.....\$311.00

2E. VULCAN CONSTRUCTION MATERIALS, #01-1314, requests authorization to maintenance dredge up to 12,390 cubic yards of State-owned subaqueous bottom adjacent to their facility in the Appomattox River in Prince George County. All dredge material is to be disposed of at one of three previously excavated upland sites.

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

2F. MARINE RESOURCES COMMISSION, #00-2040. The Fisheries Management Division requests authorization to place a maximum of 600 cubic yards of vitreous china, broken into shell-sized pieces, as a test to evaluate the suitability of this material as alternative cultch material. The china will be placed adjacent to the reef at Langley Air Force Base, which was approved by the Commission on January 23, 2001. Approval is recommended by staff provided the reef shells are monitored and results are quantified for comparison with other material, sub-straits and controlled surfaces.

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

2G. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-2103, requests a permit modification to allow for hydraulic dredging, as well as mechanical dredging as previously authorized, to remove 89,050 cubic yards of subaqueous bottom material from the Western Branch of the Elizabeth River to provide construction access for the Rt. 164 Pinners Point Interchange Bridge construction project and to install temporary timber fender piles adjacent to the new concrete pile bents of the proposed bridge for protection from construction barge traffic in the access channel. All dredged material will go to Craney Island for disposal as originally authorized. Recommend the booster pump and pipeline be marked in accordance with Coast Guard requirements, and all terms and conditions of the original permit to remain in effect.

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

2H. J. H. MILES & COMPANY, #01-2233, requests authorization to install 570 linear feet of steel sheet pile bulkhead and to dredge 3,606 cubic yards of subaqueous material to create a 675-foot long by 56-foot wide slip and channel to depths of minus twelve (-12) feet below mean low water adjacent to their property situated along the Elizabeth River in Norfolk. Dredged materials will be placed at the Craney Island Disposal Facility. Recommend a royalty in the amount of \$1,622.70 at a rate of \$0.45 per cubic yard.

PERMIT FEE.....\$100.00
ROYALTIES.....\$3,702.70

With regard to **Item 2A., SALEM STONE CORPORATION**, Counselor Josephson requested a clarification on the relocation of “...*approximately 2,200 linear feet of Little Reed Island Creek.*” Mr. Watkinson stated that the creek stream would be re-routed in order to operate the quarry for the project.

Commissioner Pruitt asked for comments from the audience, pro or con, on the proposed Page Two items. There being no comments offered, Commissioner Pruitt placed the items before the Commission for consideration. **Associate Member Gordy moved to approve the Page 2 items, as recommended by staff. Associate Member Cowart seconded the motion. The motion carried unanimously, 8-0.**

Commissioner Pruitt introduced and welcomed Mr. David Paylor, Deputy Secretary of Natural Resources for the Commonwealth of Virginia.

3. **JOHN F. SLOAN, #01-1589**, requests authorization to dredge approximately 465 cubic yards of subaqueous material to create a 292-foot long by 30-foot wide channel possessing depths of minus six (-6) feet at mean low water adjacent to his property at the mouth of Moran Creek in Lancaster County. The project is protested by the oyster planting ground leaseholder at the site. Continued from the December 18, 2001, meeting.

Mr. Tony Watkinson, Deputy Chief-Habitat Management, provided an overview of the project using a computer-generated presentation consisting of drawings and photos. Mr. Watkinson stated that the project site is located at the confluence of Moran Creek and the Corrotoman River, approximately four miles west of the Town of Kilmarnock. The applicant currently has a 100-foot long pier located in a small cove that is protected by a low marsh spit. The applicant's shoreline along the Corrotoman side has been hardened with a riprap revetment and there are four small stone groins on the spit itself. There is an extensive offshore bar that reaches almost all the way across the mouth of Moran Creek.

Mr. Watkinson stated that the applicant currently keeps a 27-foot sailboat that draws 4.5 feet of water at his pier. Mr. Sloan also owns a 36-foot sailboat which draws 5.5 feet of water and which he currently keeps in Reedville. Mr. Sloan proposes to dredge a channel from the existing six-foot contour in the creek to his pier in order to obtain adequate depths for his larger boat. Mr. Watkinson stated that the minimum depth adjacent to the applicant's pier is currently -3.2 feet at mean low water. Mr. Sloan recently extended his original pier to the 100-foot length in an attempt to gain adequate depths. The application states that the bottom material is predominantly sand (80%) which would be removed by a clamshell-equipped

crane mounted on a barge. The material will then be transferred to, and de-watered within, a contained area on the adjacent upland. The dredged material will ultimately be spread on the applicant's upland property.

Mr. Watkinson reported that the proposed channel cuts through a 29.78-acre oyster planting ground lease held by Mr. M. S. Harcum. Mr. Harcum's lease was renewed in 1997. In response to VMRC's notification of the applicant's request, Mr. Harcum submitted three letters objecting to the proposal. Mr. Harcum stated that he is trying to enhance his leased ground; that he has a resource on the lease and he provided receipts indicating that he has planted on the lease. He stated that damage would occur to his lease as a result of the dredging. Mr. Watkinson noted that it is not clear where all of the productive areas are located on the lease; a sounding of the proposed dredging area by the applicant did not indicate productivity.

Mr. Watkinson stated that during VMRC's initial review, staff questioned whether the applicant had considered piercing out further or installing an offshore mooring in an effort to minimize or avoid the potential impacts from dredging. Staff is concerned that the large sand bar offshore has the potential to migrate further into the creek, filling the dredge cut, and necessitating periodic maintenance dredging. In response to staff's concerns, Mr. Sloan submitted a revised drawing, proposing an additional 40-foot extension to the pier in the event the sand spit adjacent to the pier slumps into the channel. However, there was no reduction in the dredging as a result of the revision. Additionally, Mr. Sloan and his agent/contractor, Mr. Roger McKinley, have verbally indicated that they believe the spit and offshore bar are relatively stable and they feel that the channel will remain open.

Mr. Watkinson noted that VIMS has stated that it is preferable to pier out to reach desired depths and that dredging would be required periodically to maintain the new channel as wind, wave and currents restore the existing bottom contours. VIMS further recommends moving the disposal area to a more upland location, as the current proposal appears to be in an area indicative of periodic flooding during extreme high tide events.

Associate Member Hull inquired as to whether the existing pier would be removed to allow for the planned dredging. Mr. Watkinson stated that, to his knowledge, the pier would not be removed.

Mr. Watkinson stated that in an attempt to reach a compromise between the two parties, and minimize impacts to the oyster lease, staff suggested that the applicant consider lengthening the pier, thereby reducing the dredging volume. It appears to staff that the inshore, shallower portion of the dredging is being proposed to allow the barge access to off-load the dredge material on the upland, rather than to provide necessary mooring depths. Accordingly, by extending the pier 100 feet and limiting the dredge cut to the outermost part of the proposed channel, staff estimates the amount of material may be reduced by almost half. This may

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allow the material to be contained on the barge for off loading at an approved site for upland

disposal. Mr. Watkinson stated that Mr. Sloan has indicated he would consider pursuing this option, however, VMRC has not received any further communication or revised drawings depicting such a modification.

Mr. Watkinson noted that the Commission's Subaqueous Guidelines state that, "*Dredging in shellfish areas, both public and private...is discouraged.*" Standard Condition #10 in all VMRC permits states that, "*This permit is subject to any lease of oyster planting ground in effect on the date of this permit. Nothing in this permit shall be construed as allowing the Permittee to encroach on any lease without the consent of the leaseholder. The Permittee shall be liable for any damages to such lease.*" Mr. Harcum's lease is currently active, as evidenced by his meeting his renewal requirements in 1997.

Mr. Watkinson stated that staff concurs with VIMS that any channel cut in this area will likely fill in due to the proximity of the proposed channel to the sand spit and the large shoal area at the mouth of the creek. During the site inspection it was clear that the spit on Mr. Sloan's property had been overtopped on occasion and appeared to be migrating toward the area of the proposed dredge cut. This could very well result in the need for periodic maintenance dredging of the channel. In addition, the location of the de-watering area is in close proximity to vegetated tidal wetlands and could result in unauthorized fill of these areas should the containment structure fail. Accordingly, given the objections of the oyster ground leaseholder, the concerns over the potential need for future maintenance dredging, and the location of the proposed de-watering area, staff must recommend denial of the project as proposed.

Commissioner Pruitt asked for questions from the Commission. Counselor Josephson inquired as to whether the application before the Commission includes the 40-foot extension to the pier. Mr. Watkinson stated that the application does include the extension.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. **Mr. John F. Sloan**, the applicant, was sworn in by the Commissioner. He stated that he would prefer to dredge, but after further discussing the impacts of dredging with staff, he expressed his willingness to pier out. Associate Member Ballard inquired as to whether Mr. Sloan is willing to pier out to the six-foot water depth and eliminate any dredging. Mr. Sloan stated that he is willing to do so. He added that piercing out would not affect other boaters due to the remote location of the site.

Commissioner Pruitt swore in **Mr. M. S. Harcum**, opponent of the project. Mr. Harcum stated that his concerns are for the existing oyster ground leases he currently holds with the State and which have been in his family for many years. Mr. Harcum produced the receipts he holds for the oyster ground leases and stated that dredging would destroy the grounds. He noted that if Mr. Sloan were to pier out 40-50 feet, he would not damage the oysters.

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In response to Mr. Harcum's remarks, Mr. Sloan noted that in the two years he has owned and occupied his property, he has seen Mr. Harcum in the oyster beds on one occasion.

Associate Member White inquired as to how beneficial it would be for Mr. Sloan to pier out 40-50 feet; Mr. Sloan stated that this distance would not accomplish anything.

A discussion ensued with regard to Mr. Sloan's offer to pier out versus Mr. Harcum's concerns for the oyster grounds. Associate Member Hull stated that for a number of years the Commission has been very serious in its efforts to restore the oyster grounds in Virginia by building numerous reefs and creating public/private partnerships for oyster propagation. An oyster ground leaseholder is a public/private relationship whereby the Commonwealth owns the bottom of a body of water while it is leased to an individual under certain conditions. Mr. Harcum has produced receipts for oyster plantings that exhibit he is making the efforts expected of a leaseholder. Mr. Hull verified with Mr. Gerry Showalter, Head-Engineering/Surveying, that Mr. Harcum has renewed his leases and is a productive and conscientious oyster ground leaseholder.

With no further comments being offered, the matter was placed before the Commission for action. Associate Member Hull stated that he could not support the project without properly evaluating the impact of the originally proposed dredging being replaced with piercing out. Therefore, **Associate Member Hull moved to deny, without prejudice, the project requested by John F. Sloan, recommending that the applicant resubmit a request for the project with revisions reviewed by staff. Associate Member Cowart seconded the motion.** Associate Member Ballard stated that he felt there was an opportunity for compromise between Messrs. Sloan and Harcum, and suggested that the gentlemen meet for the purpose of developing a solution to the situation. **When put to a vote, the motion carried unanimously, 8-0.**

4. **TOTUSKEY MARINE TERMINAL, L.L.C., #01-1250**, requests authorization to construct a commercial, open-pile pier with a 20' x 20' platform, a 12' x 12' hopper and conveyor system extending seven (7) feet channelward of mean low water, adjacent to their property situated along Totuskey Creek in Richmond County. The project is protested by a nearby property owner.

Mr. Mark Eversole, Environmental Engineer Sr., stated that the project is located along Totuskey Creek, immediately downstream of the Route 3 bridge crossing, approximately two miles east of the Town of Warsaw. The current owners of the property have operated a marine terminal in this location since 1999, off-loading and transporting materials such as stone, fertilizers, farm products, and wood products, barged up Totuskey Creek from the Rappahannock River. Prior to that, Chesapeake Corporation owned and operated a timber transporting facility at the same location. The channel of Totuskey Creek has been

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periodically dredged from the Rappahannock River up toward the applicant's property by the U. S Army Corps of Engineers, most recently in 1969. Mr. Eversole noted that permits were previously issued by the Commission to the present owner for a commercial pier, dredging

of Totuskey Creek, and the placement of buoys in the Rappahannock River to accommodate barge traffic. Additionally, a permit was issued by the Commission to widen a bridge crossing to accommodate truck traffic entering and leaving the facility. The project currently before the Commission consists of a new commercial pier, hopper and conveyor system to improve, both economically and environmentally, the current method of off-loading barged material.

Mr. Eversole provided an overview of the project with drawings and photos illustrating the site and placement of the proposed pier, hopper and conveyor system. He noted that a spill skirt is proposed to prevent spillage into the creek. The application was received July 10, 2001, and shortly thereafter the applicant's agent requested that both VMRC and the Richmond County Wetlands Board hold the application and not take action until a later date. The applicant was pursuing changes to the current zoning of the associated upland property and requested that the application be held in abeyance until the zoning matter was concluded. The upland rezoning request was withdrawn and the application was approved as proposed during the January 24, 2002, Richmond County Wetlands Board meeting.

Mr. Eversole reported that in response to the public notice, a letter of opposition was received from Ms. Dorothy Walker, a nearby property owner. Both the applicant and the agent were made aware of the objection and have not been able to satisfy Mrs. Walker's objection. Ms. Walker's opposition is based on her concern that improved and more efficient off-loading facilities may, in turn, lead to increased use of the facility, resulting in the potential for more material being spilled into the creek during the off-loading process. Her letter refers to the water quality in Totuskey Creek which she states, *"has already been burdened enough with wastes."*

Mr. Eversole noted that VIMS has determined that the individual and cumulative adverse impacts resulting from this commercial structure will be minimal and that the proposed hopper and conveyor belt system should result in more efficient barge off-loading. In addition, VIMS comments that the amount of material that incidentally spills into the creek should be reduced. The Departments of Environmental Quality, Conservation and Recreation, Health (Wastewater Engineering) and Game and Inland Fisheries have all stated that the project is acceptable.

Mr. Eversole stated that it appears that the design of the pier, as an open pile structure, as well as the hopper and conveyor system with its spill skirt, maximizes the desired use for the applicant while minimizing the impacts on marine life, wetlands, and water quality. Therefore, staff recommends approval of this application with a royalty of \$1.00 per square foot for the encroachment of the structures over State-owned subaqueous bottom.

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The Commissioner asked if anyone in attendance wished to speak to this matter, pro or con. He then placed **Mr. Dan Birley**, Manager of Totuskey Marine Terminal, L.L.C., and **Mr. Craig Palubinski**, Agent, under oath. Mr. Palubinski stated that the purpose of the proposed hopper pier unloading facility is to facilitate a more efficient barge unloading operation. The

materials will unload faster and with the new spill skirt, will further reduce the potential for any spillage into the creek. The covered conveyor system will transport the material from the hopper to a truck and on to an upland storage area. Eventually, the conveyor system may be connected directly to the storage areas, therefore, further reducing the barge unloading time and costs. Mr. Palubinski added that the request does not represent an expansion of the terminal's functions, but rather an improvement to the previously permitted daily operations.

Mr. Douglas Jenkins, Sr., Twin Rivers Watermen's Association and nearby homeowner, was sworn in by Commissioner Pruitt. Mr. Jenkins stated that he felt the terminal's operations were necessary in the area and he does not object to them. He noted, however, that upon a recent purchase of gravel from the terminal, he received an advertisement stating that the terminal would soon be selling poultry liter. He stressed his concern for the potential impact that poultry liter spillage would have on water quality. He requested that the Commission stipulate a denial for offloading poultry liter in issuing this permit.

Commissioner Pruitt swore in **Ms. Terry Thompson**, neighboring homeowner, who stated that her concern is the terminal's outstanding permit for a pier with a hopper and conveyor that have not been constructed to date. With the request for an additional pier, Ms. Thompson noted the potential for the terminal to build too many structures. Rather than be issued another permit, she stated that the terminal should utilize its current permit to build the pier, hopper and conveyor system.

Mr. Dale Collins, nearby homeowner and President of the Friends of Totuskey Association, was placed under oath by the Commissioner. Mr. Collins stated his support for Mr. Jenkins' concerns with the offloading of poultry liter and other bio-active materials. He noted that opposite the creek from the terminal is a large residential area which should be regarded by the terminal when planning for expansion.

In rebuttal to the opponents' comments, **Mr. Dan Birley** stated that the issues with the fertilizers and poultry liter are not about the proposed permit before the Commission. He noted that there are ongoing issues with Westmoreland County with regard to handling fertilizer and other products and do not pertain to this matter. Currently the terminal site is zoned agricultural Mr. Birley briefly reviewed the current operations and permits held by the terminal. He reiterated that the objective of the permit is to provide a system for offloading in a more safe and efficient manner. At the request of the Commissioner, Mr. Palubinski explained the mechanics of the spill skirt planned for the system.

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Associate Member White inquired as to whether the terminal's Special Use Permit from the County contained any proffers, exclusions for any materials. Mr. Palubinski stated that the permit ruled out toxic materials, but that excluded pressure treated timber and fertilizer. Mr. White asked if there are plans to handle poultry liter. Mr. Palubinski stated that it is unknown at this time. He added that the terminal would seek permits for any material it

could handle safely and profitably.

Associate Member Ballard stated that he disagreed with the premise that the terminal is only requesting a permit for a hopper. He stated that the Commission must consider the affects of all permits on adjacent or nearby properties and water quality. If the terminal is not going to preclude unloading poultry liter, Mr. Ballard stated that it would be difficult for him to support the requested permit. He noted that there is a great potential for the liter to enter the water and negatively affect the water quality. In response to Mr. Ballard's concerns, Mr. Palubinski stated that installation of the hopper would be the best means to reduce the risk of spillage.

Associate Member Williams inquired as to what measures the terminal take to keep poultry liter from polluting the air and water. He stated that with the efforts being made by the Commission to improve water quality and increase the oyster beds in the Rappahannock River, it would not be advantageous for the Commonwealth to grant the permit with the possibility of the terminal handling poultry liter. Mr. Palubinski stressed the planned use of skirts, covered hoppers and contained systems. He stated that a contained structure would be erected to prevent the liter from blowing away.

Associate Member Cowart requested an explanation of the other pending application. Mr. Palubinski stated that the application was filed about a year ago and approved by VMRC to erect a wood chip pier. The dolphins for the pier have been installed and the pier will be built when the terminal goes to offloading on that site.

Associate Member Hull inquired as to the length of the terminal's waterfront and total acreage. Mr. Palubinski stated that it is close to 1,000 feet; nearly 17 acres.

In response to Associate Member McLeskey's question with regard to the classification of poultry liter, Mr. Palubinski stated that the terminal is currently zoned for agriculture and can process products handled by farmers, including poultry liter.

Associate Member Gordy inquired as to new laws pertaining to chicken house waste. Mr. Palubinski stated that this matter is being discussed and litigated, therefore, the terminal is not handling any fertilizer materials at this time.

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There being no further comments in this regard, Commissioner Pruitt placed the matter before the Commission for action. Associate Member Cowart noted his concern for the impacts that poultry liter may have on the environment and inquired of Counsel whether the Commission can zone out certain conditions in granting the project permit. Commissioner Pruitt asked a representative of VIMS to comment on the impacts in evaluating the project. Mr. Tom Barnard, VIMS, stated that a reduction in off-loading pollution by agricultural

products is anticipated with the installation of the new equipment. Counsel stated that 1) with the applicant's consent, the permit could be restricted; and 2) to restrict the permit without the applicant's consent would, in effect, be a denial of the permit and would need to be based on one or more of the factors cited in Virginia Code Section 28.2-1205. Associate Member Birkett noted that the Terminal is currently zoned for agricultural products and may unload any bio-chemical product at this time; granting the permit to install a system to curtail the spillage would be a responsible measure on the part of the Commission.

Associate Member McLeskey suggested that before a decision is made, the Commission be provided engineering drawings of the proposed system to determine the type and efficiency of the hoppers being planned. A discussion ensued with regard to the hopper system, the covering and operation of same. Mr. Watkinson noted that the issue of poultry liter is being discussed for the first time at this meeting. Associate Members Gordy and Ballard expressed their concern for the poultry liter issue.

Associate Member Gordy moved to table the project requested by Totuskey Marine Terminal, L.L.C., until the May 28, 2002 meeting of the Commission. Associate Member White seconded the motion. Counsel noted that the project permit could restrict structures and engineering devices in order to minimize the impact on water quality. **When put to a vote, the motion carried unanimously, 8-0.**

5. **WOODROW W. HAILEY, #01-1944**, requests authorization to construct a 16' x 34' open-sided boathouse adjacent to a private, non-commercial, open-pile pier adjacent to his property situated along an unnamed tributary to Queens Creek in Mathews County. The project is protested by an adjacent property owner.

Kevin Curling, Environmental Engineer Sr., stated that the applicant has requested a postponement. It appears that the opponent to the project may withdraw his protest at which time the project would meet the exemption and would not require a public hearing.

Associate Member Williams moved to postpone consideration of the project requested by Woodrow W. Hailey. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.

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6. **PETER GALANTICH, #02-0039**, requests authorization to construct a 16-foot by 43.5-foot open-sided boathouse at the channelward end of a proposed 6-foot by 131-foot open-pile private pier adjacent to his property situated along the James River in the City of Newport News. The project is protested by an adjoining property owner.

Mr. Ben Stagg, Environmental Engineer Sr., reported that the applicant and the protester have reached a compromise in this matter. The project is now in compliance with the

Virginia Code and will not require a public hearing.

7. **BETTY WRIGHT, #01-1758**, requests authorization to construct a 12-foot wide by 26-foot long private, noncommercial, concrete grate boat ramp adjacent to her property situated along Bridge Creek in Northumberland County. The project is protested by an adjacent property owner.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. He stated that Mr. and Mrs. Wright's property is located along the western shore of Bridge Creek approximately four miles northwest of Reedville.

The applicants own a 13-foot and a 22-foot Boston Whaler. In addition, their son owns a 24-foot Sea Ray. In order to launch and retrieve their boats, the Wrights would like to construct a 26-foot long by 12-foot wide pre-cast concrete boat ramp. Mr. Madden stated that the nearest public boat ramp referred to as "Shell Landing," is at the mouth of Cockrell Creek, and is at least ten miles away from the applicant's residence by water. The Wrights have indicated that they would like to be able to haul their boats in an emergency and to be able to launch and recover the smaller boat without traveling to the public boat ramp in the Fleeton area.

Mr. Madden stated that on April 10, 2001, the Army Corps of Engineers received a complaint that the applicants had placed an unpermitted oyster shell ramp at the exact location where they're requesting the current ramp. The Corps conducted a site visit and directed the property owners to remove the shell ramp and submit a Joint Permit Application for a suitable boat ramp structure. The Wrights complied and submitted an application (#01-1259) to construct a 26-foot long by 12-foot wide poured, concrete slab boat ramp. VMRC received a letter from Mr. Lynn Young, the adjacent property owner immediately south and upriver of the Wrights. Mr. Young noted the pile of oyster shells and said that he believed the initial construction of the shell ramp destroyed wetlands and that any subsequent ramp would also have significant impacts on intertidal wetlands.

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On August 2, 2001, the Northumberland County Wetlands Board heard testimony from Mr. Young and the public. The Board voted unanimously to deny the initial project finding that there were potential alternatives to the concrete slab boat ramp that incorporated less impervious surface and which would not cover over as much vegetation as initially proposed.

Mr. Madden stated that on October 3, 2001, staff received a new application (#01-1758) requesting authorization to utilize a concrete cattle exclusion device as a boat ramp that

would allow wetland vegetation to grow up through the structure. The applicants believe that a portion of the wetland vegetation displaced by the installation of the grate structure would be recruited from the persistent stand of *Spartina alterniflora* immediately adjacent to the project site.

Mr. Young submitted another letter of protest dated November 19, 2001, maintaining his objection to the project. Mr. Madden noted that VIMS has indicated on two separate occasions that the structure would not result in any significant adverse environmental impacts.

The subsequent application submitted by the Wrights utilizing a cattle guard instead of the concrete slab was approved by a unanimous vote at the December 6, 2001 meeting of the Northumberland County Wetlands Board. No other agency has protested the project.

Mr. Madden stated that while there would be a measure of wetland impacts, VIMS has indicated in their reports that those impacts would not be significant. In addition, the applicant has researched and proposed a revised structure that would have a lesser impact on the environment than he originally proposed. Accordingly, staff recommends that the Commission approve the project as proposed.

Associate Member Ballard inquired as to whether oyster shells were used in the applicant's unpermitted ramp; Mr. Madden stated that they were. Mr. Ballard asked if any fill-in of the wetlands took place. Mr. Madden stated that to his knowledge, there was none. Associate Member Hull asked if the *Spartina* growing between the grates of the cattle guard would be destroyed by having vehicles drive over it. Mr. Madden stated that the applicant's use will be very infrequent and the impact to the vegetation will be minor.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. **Mr. Ed Nealon**, Nealon Marine Consulting, agent for the applicants, requested support of the project by the Commission.

Mr. Lynn A. Young, stated that he was not protesting the boat ramp, but rather the location planned for the ramp. He stated his concerns for the wetlands and suggested that the ramp be moved 12 feet over from the proposed site.

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Associate Member Hull inquired of Mr. Nealon as to how often the proposed boat ramp will be used. In reply, Mr. Nealon stated that it would be used occasionally, primarily for emergencies. Mr. Hull asked if the applicant would be willing to move the location over. Mr. Nealon stated that he didn't feel the wetlands would be destroyed and, therefore, there was no need to move the boat ramp location. Associate Member Ballard inquired as to what construction method would be used to install the grate. Mr. Nealon stated that it would be laid in the water to rest on the sandy bottom.

Following the aforementioned comments, Commissioner Pruitt placed the matter before the

Commission for action. **Associate Member Ballard moved to authorize the project requested by Betty Wright, as recommended by staff. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

The Commission recessed for lunch at 11:40 a.m. Commissioner Pruitt reconvened the meeting at 12:55 p.m.

8. PUBLIC COMMENTS

The following individuals presented their concerns to the Commission and are recorded verbatim as part of the permanent record of this meeting:

Chris Ludford – Requested information on the status of the rockfish quota; Mr. Travelstead provided same. Mr. Ludford then requested the closing of the ocean immediately in order to assure that the fishing season will last through the summer season.

Doug Jenkins, President, Twin Rivers Watermen’s Association – Supported comments made by Mr. Ludford concerning the rockfish quota. Noted the water conditions in the Potomac River which restrict fish from swimming into the river’s tributaries. Mr. Jenkins also commented on the need to improve the monitoring of commercial and recreational fisheries in order for the quotas and regulated seasons to benefit both user groups more fairly.

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

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9. SPECIAL PRESENTATIONS

Colonel Steven Bowman, Chief, Law Enforcement, presented Certificates of Distinguished Service to M.P.O. Ronald W. Garrett (29.5 years of service) and Franklin D. Wilson (23 years of service.) The Officers are retiring from the Commission on April 1, 2002.

10. Public Hearing: Proposed amendments to Regulation 4 VAC 20-950-10 et seq., “Pertaining to Black Sea Bass,” to modify the possession limits of the 2nd, 3rd, and 4th

quarters of 2002.

Mr. Chad Boyce, Fisheries Management Specialist, stated that on February 21, 2002, the ASMFC's Black Sea Bass Management Board met to consider Addendum VI to the Black Sea Bass Fishery Management Plan. The Board approved Addendum VI with modifications to the commercial possession limits. One modification is the increase of the trigger percentage from 40% to 60%. Another modification allows for a weekly poundage, as well as a daily poundage. After the trigger has been reached, the possession limit would be adjusted likewise. Mr. Boyce reviewed the black sea bass commercial possession limits and trigger percentages for the second, third and fourth quarters:

<u>Quarter</u>	<u>2002 Initial Possession Limit</u>	<u>Trigger</u>	<u>Adjusted Possession Limit</u>
II	1,500 pounds/day OR 6,000 pounds/week	60%	150 pounds/day OR 1,000 pounds/week
III	500 pounds/day OR 3,000 pounds/week	60%	100 pounds/day OR 700 pounds/week
IV	750 pounds/day OR 4,000 pounds/week	60%	100 pounds/day OR 700 pounds/week

Mr. Boyce noted that the proposed changes to Regulation 4 VAC 20-950-10 et seq. are a compromise between setting limits that will allow the fishery to proceed throughout the entire designated fishing period, and setting the limits so low that they impact different user groups significantly.

Mr. Boyce reported that staff has received two written responses to the proposed adjustments which are in favor of a 1500 pound daily possession limit for quarter two. No written responses were received from quarters three and four. However, staff has received verbal responses indicating that the weekly limit would be desirable for quarters three and four, and the daily limit would be desirable for quarter two.

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Mr. Boyce stated that another modification being proposed by staff is slight adjustments to the Marine Resources Commission's Interactive Voice Recording system (IVRS). Black sea fishermen are required to report all of their harvests to the IVRS within 24 hours of landing. Staff has drafted language in the regulation that would require all vessels that land or offload black sea bass to call the Marine Resources Law Enforcement Operations Division within one hour of landing or offloading and report the name of the vessel and fisherman, estimated weight of black sea bass to be landed or offloaded, and the location where the catch will be landed or offloaded. Additionally, the actual weight of each catch must be reported to the IVRS within 24 hours of landing or offloading. Mr. Boyce noted that staff felt that these modifications to the reporting procedures would allow law enforcement to better monitor each catch, as well as the dates and times of landing or offloading each catch of black sea

bass.

Mr. Boyce stated that in order to maintain compliance with the ASMFC Black Sea Bass Management Plan, staff recommends adoption of modified Regulation 4 VAC 20-950-10 et seq. with the amended commercial weekly possession limits, and updated black sea bass reporting procedures.

Commissioner Pruitt opened the Public Hearing on this matter. The following individuals presented their concerns to the Commission and are recorded verbatim as part of the permanent record of this meeting:

Mark Hodges – Noted that the fishery is very diverse with the numerous types of user groups in the industry. Due to the distance fishermen are traveling to harvest their catch, he favors the weekly limit and requested the following limits:

- Quarter Two - 1,500 pounds per day; 1,000 pounds per week at trigger;
- Quarter Three - 3,000 pounds per week; 700 pounds per week at trigger;
- Quarter Four – 4,000 pounds per week; 700 pounds per week at trigger;

Mr. Boyce noted that Mr. Hodges' request was for a daily limit prior to and a weekly limit after the trigger is met in Quarter Two. He inquired of Colonel Bowman whether Law Enforcement would be able to regulate such limits. Colonel Bowman stated that a trip limit is much easier to monitor; the requested change would require more paperwork.

With no further comments from those in attendance, Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. **Associate Member Williams moved to approve the proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to modify the possession limits of the 2nd, 3rd, and 4th quarters of 2002, as recommended by staff. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

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11. **Public Hearing:** Proposal to adopt provisions (establishment of York Spit Reef Broodstock Management Area) of Emergency Regulation 4 VAC 20-560-10 et seq., "Pertaining to Shellfish Management Areas," as a permanent part of this regulation.

Mr. Chad Boyce, Fisheries Management Specialist, stated that at the February 26, 2002 Commission Meeting, the Commission adopted Emergency Regulation 4 VAC 20-560-10 et seq. This emergency regulation contained provisions to establish the York Spit Reef Broodstock Management Area, and must now be adopted on a permanent basis to allow the regulation to remain in effect.

Mr. Boyce noted that the Commission also approved a procurement procedure that allowed staff to contract with three watermen in order to harvest clams from a proposed Army Corps

of Engineers dredge site, and replant those clams on the York Spit Reef Broodstock Management Area. The staff received eight written requests from individuals desiring to participate in the effort to harvest clams from the proposed dredge area within Newport News Channel. A random drawing was held to select the three individuals to participate in the project. Staff contacted each person, beginning with the first person selected in the drawing, to see if they were still interested in the project. Once contacted, five of the eight persons opted to not participate. Two persons were unable to be contacted and one person was very interested in the project. Mr. Philip Bleeker was the only person interested in the project and staff scheduled a meeting with him on Thursday, March 7, 2002. Due to the lack of overall interest in the project, staff decided to contract with Mr. Bleeker to conduct a one-day survey of the dredge area and then determine if the project should proceed or terminate, based on the survey results.

Mr. Boyce reported that the survey was conducted on March 11, 2002, and found extremely low clam abundance in the proposed dredge area. A total of 110 grabs were made with standard patent tong gear, and a total of 105 clams were captured. This equates to a catch per unit effort of less than one (0.9) clam per grab.

Mr. Boyce stated that staff recommends the adoption of Regulation 4VAC 20-560-10 et seq. to establish York Spit Reef Broodstock Management Area. Once the clam relay season opens, VMRC will use the money intended to purchase clams from the dredge area for purchasing clams directly from buyers and then stock the broodstock area.

Commissioner Pruitt opened the Public Hearing on this matter. With no comments from those in attendance, Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. **Associate Member Williams moved to approve the provisions (establishment of York Spit Reef Broodstock Management Area) of Emergency Regulation 4 VAC 20-560-10 et seq., "Pertaining to Shellfish Management Areas," as a permanent part of this regulation, as recommended by staff. Associate Member Birkett seconded the motion; motion carried unanimously, 8-0.**

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In consideration of the request made by Mr. Chris Ludford with regard to immediately closing the ocean for rockfish season, Commissioner Pruitt solicited comments from the Commission and the audience. Associate Member Williams stated that he felt it was not necessary to close the ocean at this time as most of the fish have gone.

Mr. Jeff Crockett stated that he agreed with the concerns raised by Mr. Ludford, however, he is unsure of an immediate closure as it would be too sudden to notify all the fishermen. He added that he hoped in the next year the Commission would devise a system to provide more equality in fishing.

Mr. Chris Ludford noted that although the Chincoteague and Wachapreague fishermen (below Cape Charles) have not contributed to the problems, yet, they are greatly affected by the resulting decisions made by the Commission.

Mr. Kelly Place stated that he believed Virginia should make an effort to better regulate fishing in the ocean as a gesture to the ASMFC; he suggested the elimination of tag transfers. Mr. Place stated that he would like to see all of the options that were discussed at the October and November Commission Meetings brought forward for discussion at the April Commission Meeting as this will be the last meeting before ASMFC meets to evaluate the existing fishery.

In agreement with the concerns raised by those speaking today, Commissioner Pruitt suggested that the matter be reviewed by the Finfish Management Advisory Committee and that the Committee present its recommendations to the Commission in April.

- 12. Discussion:** FMAC-endorsed proposal to extend the small mesh gill net exemption, from April 30 to May 31, for the harvest of river herring in upriver areas. Request for April 23, 2002 Public Hearing.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that this request is for an extension of the current exemption to the 2 7/8-inch minimum gill net mesh size requirement, to continue for the month of May.

Mr. Travelstead noted that Regulation 4 VAC 20-430-10 et seq., "Pertaining to the Marking and Minimum Mesh Size of Gill Nets," provides that it shall be unlawful for any person to place, set or fish any gill net with a stretched mesh of less than 2 7/8 inches, except that from February 1 through April 30 it shall be lawful for any person to place, set and fish any gill net with a stretched mesh size as small as 2 inches, solely for the harvest of river herring and only in the upper reaches of the James, Mattaponi, Pamunkey and Rappahannock Rivers.

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Commissioner Pruitt referred the matter to the Commission for action. **Associate Member Hull moved for a public hearing to be held April 23, 2002 on the FMAC-endorsed proposal to extend the small mesh gill net exemption, from April 30 to May 31, for the harvest of river herring in upriver areas. The motion was seconded by Associate Member White and carried unanimously, 8-0.**

- 13. Discussion:** Request by the Virginia Seafood Council for a May 28, 2002, Public Hearing, concerning additional testing of *Crassostrea ariakensis* in Virginia waters.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that The Virginia Seafood Council has contacted staff to request time on the Commission Meeting Agenda to seek approval for a public hearing in May, 2002 for permission to perform in-water testing of the non-native

oyster, *Crassostrea ariakensis*.

It appears very likely now that the National Academy of Science will conduct an examination of the ecological and socioeconomic risks and benefits of a *C. ariakensis* introduction. Now that funding has been procured from a number of sources, the study will begin this summer. Results of the study will not be available for about one year.

Mr. Travelstead stated that in 1993 Governor Wilder signed an agreement which details the Chesapeake Bay Program's policy on first-time introductions of non-indigenous species. The document, entitled "Chesapeake Bay Policy for the Introduction of Non-Indigenous Aquatic Species" recommends a formal review of any introduction by an ad hoc panel established by the Chesapeake Bay Program's Living Resources Subcommittee. The ad hoc panel was established two months ago in anticipation of the Seafood Council's proposal. Dr. Eugene Burreson serves as Virginia's representative on the panel. Once the Virginia Seafood Council's proposal is received, it will be forwarded to the ad hoc panel that, under the 1993 agreement, must complete its review in 45-60 days. Mr. Travelstead distributed a copy of correspondence received from Mr. Frank Dawson, Chairman of the panel, dated March 21, 2002, a copy of which is filed with the permanent record of this meeting. He stated that the issues outlined in this correspondence would be addressed by the Virginia Seafood Council's proposal.

Mr. Travelstead added that the Army Corps of Engineers has also expressed great interest in non-native oyster introductions. The Corps recently announced that it would require a permit for any in-water testing of non-native oysters. The Corps believes that Section 10 of the Rivers and Harbors Act of 1899 authorizes them to require permits for the placement of in-water structures such as aquaculture cages or floats used to hold oysters. It is not clear at this time whether the members of the Seafood Council who propose to conduct the testing have applied for and procured the Corps permits.

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Mr. Travelstead stated that staff recommends that the written proposal from the Virginia Seafood Council be forwarded to the Chesapeake Bay Program ad hoc panel for review and that a public hearing on the proposal be held in May, 2002.

Commissioner Pruitt invited brief comments from those in attendance and which are recorded verbatim as part of the permanent record of this meeting:

Frances Porter, Virginia Seafood Council, stated that the Council is currently planning to continue its trials in the summer of 2002, which to date, by industry standards, have been very successful. She requested that a public hearing on this matter be scheduled for the Commission's regular meeting in June 2002. At that time, the Council will present its formal request for a controlled, scale up deployment of triploid non-natives in the summer. Finalized plans will be provided to the Commission in the coming weeks.

Commissioner Pruitt called for comments, pro or con, on this matter from those in

attendance. Hearing none, he referred the matter to the Commission for action. **Associate Member Hull moved for a public hearing to be held June 18, 2002, as requested by the Virginia Seafood Council, concerning additional testing of *Crassostrea ariakensis* in Virginia waters. The motion was seconded by Associate Member Williams and carried, 7-0. Associate Member Ballard abstained from the vote.**

- 14. Public Hearing:** Establishment of 2002 blue crab harvest restrictions, with proposed amendments to Regulation 4 VAC 20-752-10 et seq., "Pertaining to the Hampton Roads and Bayside Eastern Shore Blue Crab Management Areas;" and Regulation 4 VAC 20-300-10 et seq., "Pertaining to Crab Catch Limits."

Mr. Jack Travelstead, Chief-Fisheries Management, stated that during the February 26, 2002 Commission Meeting, the Commission agreed to consider additional blue crab restrictions for 2002 that were designed to offer additional protections for the spawning populations of female blue crabs in the Chesapeake Bay. Two general options were described: 1) an expansion of the existing blue crab sanctuary-corridor in the main stem of the Bay and 2) a one-week prohibition on the possession of female sponge crabs. A variation on number 2, above, includes a daily catch limit on female sponge crabs during the month of July that is conservationally equivalent to the one-week ban. All three options were advertised.

Mr. Travelstead stated that since May 2001, measures have been implemented by the Commission and produced the estimated harvest reduction as follows:

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Virginia Blue Crab Sanctuary (original)	3.04% (revised)
Winter Dredge Fishery Catch Limit	0.28%
Peeler Pot Reduction (400 to 300 pots)	0.23%
8-hour work day	5.72%
3-inch minimum size for peeler crabs	2.32%
Recreational Limits(Licensed & Unlicensed crabbers)	unknown
Total:	11.59%
Proposed Expansion of Sanctuary	1.03% (revised)
One-Week Sponge Crab Ban	0.75%
Grand Total:	13.37%

Mr. Travelstead noted that the expansion of the Virginia Blue Crab Sanctuary increases the

closed area from 661 square miles to 947 square miles. As with the current sanctuary, commercial and recreational crabbing are prohibited in the Sanctuary from June 1-September 15.

Mr. Travelstead stated that the boundaries of the new sanctuary approximate the 30-foot depth contour; however, a series of straight lines are used to improve enforcement of the border. Additionally a rectangular area directly off the mouth of the Bay is proposed as part of the expansion. Though the area is not surveyed, it is known from other sampling efforts that blue crabs spawn in this area as well.

Mr. Travelstead explained that the benefit of the expanded sanctuary is its significant protection of spawning female crabs. The current sanctuary protects about 50 percent of the female spawning stock in Virginia, while the sanctuary, as expanded, will protect 70 percent of the spawning stock.

The proposed one-week ban on the harvest and possession of sponge crabs provides further protection for the stock, increases the probability of a successful spawn. During the one-week ban, the harvest of female crabs in the lower Bay will likely cease altogether. To avoid this total cessation of crabbing, some have recommended a daily catch limit on sponge crabs during July that would be conservationally equivalent to the one-week ban but not have the severe economic impact of a total ban. Staff has calculated that an eight-bushel limit on sponge crabs per person in July is equivalent to a total ban on sponge crabs during the third week in July.

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Mr. Travelstead stated that staff recommends adoption of the Virginia Bay-Wide Blue Crab Spawning Sanctuary as advertised and adoption of a total ban on possession of female sponge crabs during the third week in July. A June 1st effective date for the regulation is recommended.

Associate Member Ballard inquired as to feedback received from industry on the one-week closure versus the eight-bushel limit. Mr. Travelstead stated that he received one call in support of the one-week closure and one call in support of the eight bushels. Associate Member Hull asked Colonel Bowman to comment on the proposed methods. Colonel Bowman stated that there is no preference as the officers will have to check the boats regardless of the method used.

Commissioner Pruitt opened the Public Hearing on this matter. The following individuals presented their concerns to the Commission and are recorded verbatim as part of the permanent record of this meeting:

Jeff Crockett – Noted his reservations for expanding the sanctuary, removing an area of the

bay that the watermen cannot afford to lose. Additionally, this measure will result in too many watermen harvesting in a smaller location. He questioned the percentage amounts to be credited to the fishery by enactment of the amendments.

Doug Jenkins – With the fishery being 4% ahead of the reduction requirements, Mr. Jenkins stated that an expansion of the sanctuary is not necessary at the time. He suggested that the watermen should be allowed to continue to make their living and, if need be, close the sanctuary altogether in the future.

Kelly Place – Inquired as to whether the previous proposal made by VIMS wherein the fishery would receive percentage reductions by utilizing corridors from the main sanctuary to some of the grass beds on the side is still on the table; if so, what type of percentage reduction would the fishery receive? Which corridors would be the most likely candidates?

Commissioner Pruitt noted that the fishery is on target per the Bi-State Committee's tabulations. He noted that to get the Bill carried over in the General Assembly, the sponge crab issue had to be addressed by the Commission. Dr. Rom Lipcius of VIMS stated that the sanctuary corridors did not get out of the Crab Management Advisory Committee. However, VIMS continues to work on the corridors. Mr. Place asked if it is possible to develop a compromise between the proposed amendments and the utilization of sanctuary corridors. Commissioner Pruitt noted that the fishery percentages are in place for the year. The Commission does not have to act on the proposed amendments today. Mr. Place suggested that the Commission take 30%-40% of the areas noted on the map along with at least one of the five proposed corridors for analysis and as a measure of good faith.

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There being no further comments, Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. Associate Member Cowart noted that the Blue Crab Management Advisory Committee has not met to discuss the piece of legislation introduced by Senator Chichester. He noted that there is support in Virginia for a ban on catching the sponge crabs. To this point, VMRC has accomplished answering the proposed legislation which most of the down-the-bay crabbers would not be able to make a living with. Mr. Cowart noted his disagreement with the percentages for credit in the fishery, stating that the figures are too low. He stated that if the Commission decides not to adopt measures this year, the industry may be faced with a blue crab ban if and when the legislation is passed next year.

Commissioner Pruitt noted his concern for the small attendance at today's meeting, stating his belief that the public may have assumed the Commission reached its decision on the matter in March. He then suggested that the proposed amendments be referred to the Blue Crab Management Advisory Committee for further evaluation. He encouraged the Associate Members to attend the committee meeting. Meanwhile, Mr. O'Reilly and Dr. Lipcius would be given time to fully evaluate the sanctuary corridors and resulting credit percentages for presentation to the Commission in April.

Dr. Lipcius noted that the percentages were originally calculated conservatively and that the revised figures given today are the actual figures. To determine the lines, VIMS considered that Law Enforcement would need something that was straightforward to enforce, resulting in the straight flight lines encompassing the 30-foot areas and connecting off of the existing channel markers. To avoid a “zig-zag” map, the 30-foot lines are straight and inflated out to shallow waters, giving the perception that the numbers should be higher. However, the lines can be shifted to eliminate the shallow waters without affecting the numbers.

Commissioner Pruitt stated that the current sanctuary protects 50% of the female spawning stock; the expanded 947 square miles of bay will go to 75% of the spawning stock. Virginia has been very conservative in calculating percentages for credit with the Bi-State Committee. The Commissioner stated that this is a very serious matter and that he would like to review all data closely with Dr. Lipcius.

Associate Member Hull moved for the Commission to defer this matter until the April Commission Meeting on the premise that the Blue Crab Management Advisory Committee will meet, as well as members of the VMRC and VIMS staff, to further evaluate and present recommendations to the Commission. The Public Hearing will be continued. The motion was seconded by Associate Member White. When put to a vote, the motion carried, unanimously, 8-0.

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- 15. Request for exception to the limited entry criteria for the Black Drum Fishery.** Regulation 4VAC 20-320-10 et seq., “Pertaining to the Taking of Black Drum”, establishes a 120,000 pound commercial harvest quota and limits entry in the commercial fishery, in order to prevent over-capitalization and to improve economic benefits to full-time participants in the fishery.

Ms. Tracy Patton, Fisheries Management Specialist, stated that commercial harvest permits are required to participate in the commercial Black Drum Fishery and are only issued to applicants meeting the following criteria:

1. The applicant shall be a registered commercial fisherman and shall have held a Black Drum Permit in at least one year from 1988 to 1993;
2. The applicant shall have documented catch of black drum in at least one year for which a Black Drum Permit was held from 1988 to 1993;
3. The applicant shall have reported, in accordance with this regulation, any black drum fishery activity in 1992 and 1993, if a Black Drum Permit was held in those years.

Ms. Patton stated that staff recommends approval of the following transfer requests of the Black Drum Permit to the following individuals:

- **Timothy N. Bell** (CrI# 764994-3926) **Eastville, VA**

Mr. Norman Bell is retiring from the fishing business and would like to transfer his Black Drum Permit to his son, Mr. Timothy N. Bell.

- **Deborah M. Stiles** (CrI# 333502-4955) **Quinby, VA**

Ms. Deborah M. Stiles would like to receive the transfer of her deceased father's Black Drum Permit.

Associate Member White moved to approve the Black Drum Permit transfers requested by Timothy N. Bell and Deborah M. Stiles. The motion was seconded by Associate Member Birkett. The motion carried, unanimously, 8-0.

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**** DATE OF NEXT COMMISSION MEETING: APRIL 23, 2002**

Commissioner Pruitt stated that the Commission would hold its next meeting on Tuesday, April 23, 2002.

**** ADJOURNMENT**

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

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary