

## MINUTES

**Commission Meeting****November 18, 2003  
Newport News, VA**

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

William A. Pruitt )	Commissioner
Gordon M. Birkett )	
Ernest N. Bowden, Jr. )	Associate Members
Russell Garrison )	
J. T. Holland )	
F. Wayne McLeskey )	
Fred Fisher	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin/Finance Div.
Jack Travelstead	Chief, Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Roy Insley	Head, Plans/Statistics Dept.
Stephanie Iverson	Fisheries Management Specialist
Tracy Patton	Fisheries Management Specialist
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Cory Routh	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement Div.
MPO Robert Berryman	Marine Police Officer
MPO George Daniel	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Jay Woodward	Environmental Engineer, Sr.
Benny Stagg	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Tom Barnard  
Lyle Varnell

Other present included:

George Janek	Ricky Woody	Stan Roberts
Robin Bedanbaugh	Joan T. Karter	Ronald M. Pont
Raymond Britton	Angie Carleton	Doug Stamper
Michelle Newman	Amanda Glazebrook	V. Keith Lockwood
Susan Gaston	Russell Gaskins	Roger Parr
Harry Doernte		

and others

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Commissioner Pruitt called the meeting to order at 9:35 a.m. with only five Associate Members present. Associate Members Cowart, Ballard, and Jones were absent.

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Tracy West, Environmental Engineer-Habitat Management, gave the invocation and Associate Member Birkett led the pledge of allegiance to the flag.

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

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**Approval of Agenda:** Commissioner Pruitt asked if there were any changes to the agenda. Bob Grabb, Chief-Habitat Management, explained the various changes in the agenda for Habitat Management. Mr. Grabb said that Items 2C and 2D were being removed because the permits had not expired and could be handled administratively. He said that M. W. Schwartz, which would be Item 2E, was being added for the board's

consideration. Jack Travelstead, Chief-Fisheries Management, stated that he did not have any changes. Their comments are a part of the verbatim record.

**Associate Member Holland moved to approve the agenda with the requested changes. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

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**1. MINUTES: Associate Member Holland moved to approve the minutes for the October 28, 2003 Commission meeting. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

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**2. PERMITS:**

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

Associate Member Garrison asked when the VDOT, 03-1612, project would begin and Richard Carroll Woody, II, Natural Resources Program Manager for VDOT, stated that the public notice for bid would go out January 4<sup>th</sup> and bids considered after that. Associate Member Garrison asked when the project would be completed. Mr. Woody stated that both projects would take approximately 36 months. Mr. Woody's comments are a part of the verbatim record.

Robin Bedanbaugh of KCS Technology, representing VDOT, was present and his comments are a part of the verbatim record.

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

**2A. COLONNA YACHTS, #98-2040**, requests reactivation and extension of a previously authorized project to replace and backfill a 430-foot long section of a timber bulkhead with steel sheet-pile bulkheading, 205 feet of which may extend a maximum of two (2) feet channelward of the existing bulkhead and 225 feet of which may extend a maximum of three (3) feet channelward of the existing bulkhead, adjacent to the facility situated along the Eastern Branch of the Elizabeth River in Norfolk.

**Permit fee not applicable, reactivation and extension**

**2B. VIRGINIA DEPARTMENT OF TRANSPORTATION, #03-1612**, requests authorization to construct four-lane bridges over Thorofare Creek, the Pamunkey River, West Point Creek and the Mattaponi River adjacent to the existing Route 33 Bridges, to have 55 foot vertical clearance above the rivers; construct a temporary construction trestle; install two (2) mooring buoys in the Pamunkey River and one (1) mooring in the Mattaponi River in the Counties of New Kent, King William, King and Queen and the Town of West Point.

**Permit fee not applicable**

**2C. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-0899**, requests a three- year extension of their permit to construct the Route 164/Route 58 Pinner’s Point Interchange project in the Western Branch of the Elizabeth River in Portsmouth. The access dredging is complete and the extension will allow the remainder of the 2,500-foot long by 120-foot wide extension of the West Norfolk Bridge to be completed. Recommend approval with a new expiration date of February 27, 2007 and with all terms and conditions of the original permit to remain in effect.

**Not heard by the Commission**

**2D. SALEM STONE CORPORATION, #96-0236**, requests a two-year extension of their permit to relocate 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, 2006 and with all terms and conditions of the original permit to remain in effect.

**Not heard by the Commission**

**2E. M. W. SCHWARZ, #03-2066**, requests authorization to construct and backfill 1,163 linear feet of vinyl sheetpile replacement bulkheading, aligned a maximum of two (2) feet channelward of the deteriorating structure, at his property situated along Linkhorn Bay in Virginia Beach. Recommend approval with a royalty in the amount of \$2,292.00 for the filling of 2,292 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

<b>Permit fee.....</b>	<b>\$100.00</b>
<b>Royalty fee.....</b>	<b>\$2,292.00</b>
<b>Total fees.....</b>	<b>\$2,392.00</b>

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**Commissioner Pruitt introduced Fred Fisher who was present, in the absence of Carl Josephson, as legal counsel for VMRC.**

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- 3. **CLOSED SESSION.** Commissioner Pruitt asked if it was necessary to hold a closed session. No one had anything to discuss, so no closed session was held.

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- 4. **DANIEL R. NEWTON, #03-1389.** The Commission review of the July 24, 2003, decision of the Accomack County Wetlands Board to approve the filling 6,000 square feet of vegetated wetlands along Chesconessex Creek in the Schooner Bay area of Accomack County. Continued from the October 28, 2003 Commission Meeting.

**Bob Grabb, Chief-Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb explained that this case had been deferred the past several months by the Board at the applicant's request and the applicant was again asking for a deferral pending approval of a modified roadway alignment by the mortgage company. He further explained that this request was for an indefinite deferral. Associate Member Holland moved to defer the case indefinitely as requested. Associate Member Birkett seconded the motion. The motion carried, 5-0.**

**No fees applicable, indefinitely deferred.**

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- 5. **JACK KISE, #03-1859.** The Commission review of the October 1, 2003, decision of the Portsmouth Wetlands Board to approve work of unknown dimensions in wetlands on property situated along the Western Branch of the Elizabeth River in Portsmouth.

**Bob Grabb, Chief-Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb explained that the applicant had requested an indefinite deferral and staff supported that request. Associate Member Garrison moved to defer the case indefinitely as requested. Associate Member Holland seconded the motion. The motion carried, 5-0.**

**No fees applicable, indefinitely deferred.**

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- 6. **JAMES W. WYNE, ET AL, #03-1113,** requests authorization to dredge 748 cubic yards of subaqueous material to create a 600-foot long by 33-foot wide

channel with maximum depths of minus six (-6) feet at mean low water into Ewell's Prong of White House Creek in Lancaster County. The sandy material will be removed by clamshell and transported to a previously approved upland site off Route 354 in Bertrand. Two nearby residents protest the project.

**Bob Grabb, Chief-Habitat Management, was present and his comments are part of the verbatim record. Mr. Grabb explained that the applicant had requested his application be withdrawn and that no action was necessary by the board since the application was being withdrawn. He further explained that this matter could come back at a later date because of the dredging required.**

**No fees applicable, withdrawn by applicant.**

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- 9. **MID-ATLANTIC HOLDINGS, #03-1107**, requests authorization to construct a 372-foot long by 8-foot wide open-pile pier with twelve (12) 10-foot long by 3-foot wide finger piers, 56 associated mooring piles and a 16-foot by 20-foot deck area to create a 24-slip community facility situated along Queen's Creek in York County. Recommend a royalty of \$3,656.00 for encroachment over of 3,656 square feet of State-owned submerged lands at a rate of \$1.00 per square foot.

**Bob Grabb, Chief-Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb explained that the applicant had requested a deferral of the matter until the December meeting. Associate Member Birkett moved to approve the deferral request. Associate Member Holland seconded the motion. The motion carried, 5-0.**

**No fees applicable at this time, deferred until December meeting.**

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- 7. **ARMY CORPS OF ENGINEERS, #03-0623**, requests authorization to hydraulically place approximately 25,000 cubic yards of sandy dredged material generated from the Queens Creek Federal Project Channel along the western and southern shorelines of Hills Bay, adjacent to Queens Creek in Mathews County. An adjoining property owner protested the project.

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

Mr. Curling explained that Queens Creek is a large tributary of Hill's Bay in Mathews County. The majority of Queens Creek is residential, however, there is also a commercial marina and a public landing. The Federal Project Channel was originally dredged in 1969

and it connects the public landing in Queens Creek with navigable waters in Hill's Bay. Placement of the dredged material along the shoreline was originally authorized under permit #90-1211, which expired on September 30, 2000. The channel was most recently dredged in 1991 and 1996. Material was deposited along both shorelines in 1991 and only the southern shore was used during 1996.

Mr. Curling further explained that this area of Hill's Bay and the surrounding shoreline are highly dynamic, as evidenced by the fact that none of the previously deposited material remains along the shoreline. Approximately half of the previously authorized area along the southern shoreline is presently vegetated.

Mr. Curling said that the physical dredging of the federal navigation channel was authorized by Section 28.2-1203(3) of the Code of Virginia, and as such did not require a permit of the Marine Resources Commission. Authorization was required, however, for the overboard disposal of dredged material along the adjacent shorelines.

Mr. Curling stated that Mr. and Mrs. Burns, the adjacent property owners to the western disposal site, protest the project. They contend that during the disposal in 1991, the material was not properly contained, that it was not sandy material, and that it migrated in front of their property, making the nearshore area unusable.

Mr. Curling said that the Virginia Institute of Marine Science noted that while the impacts of the proposed maintenance dredging and beach nourishment would be significant, they would be temporary in nature. They also noted that if significant shellfish populations or other benthic populations were present, then the appropriate time of year restrictions should be imposed.

Mr. Curling explained that the two oyster ground leaseholders in the area were notified, but had not responded. The vacant ground in the vicinity is within the Hills Bay Additional Public Ground (Section 28.2-642, Code of Virginia).

Mr. Curling stated that there was presently no submerged aquatic vegetation in the area of the channel or disposal sites; however, SAV had been present at various times since 1971.

Mr. Curling stated that in 1988, the material in the channel and at the disposal sites was classified as clean sand with little or no fines, while the material in the turning basin was characterized as inorganic clays of high plasticity. While the previous proposal was to only dredge the outer channel, which experiences excessive shoaling, the current proposal included dredging the entire channel.

Mr. Curling said that the Mathews County Wetlands Board approved the project at their public hearing on October 1, 2003.

Mr. Curling said that the Department of Conservation and Recreation noted the presence of the federally threatened Northeastern beach tiger beetle (Cicindela dorsalis dorsalis) and recommended coordination with the United States Fish and Wildlife Service (USFWS). No other state-listed threatened or endangered plant or insect species were noted in the area.

Mr. Curling stated that the Department of Health indicated that the proposed project was acceptable.

Mr. Curling further explained that while Mr. and Mrs. Burns felt that the disposal adversely affected their use and enjoyment of the water, staff had been unable to verify the conditions they describe. Such impacts seem to be inconsistent with proper disposal of beach quality material. The property owners along the southern shoreline have not reported similar problems.

Mr. Curling explained that it was noted in 1990 that the project appeared to be consistent with the Commonwealth's policy on the utilization of beach quality dredged material on eroded shorelines and beaches wherever practicable. Given the overriding public benefit associated with the dredging of the Queens Creek Channel and the minimal impact the project has had on the marine environment, staff recommended approval of the project, for five years, with the following recommendations:

- 1) Only material dredged from the outer channel can be deposited along the shoreline. Spoils from the inner channel must be disposed of in an approved upland site. (The demarcation between the inner and outer channel denoted by a line between Daymarker #7 and Flashing Red Mark #8).

- 2) The vegetated shoreline along the southern area shall not be included as part of the approved disposal site. If any other areas become vegetated they will also not be included as approved disposal sites.

- 3) The Commission will be informed in writing at least fifteen working days before the commencement of each maintenance dredging operation and shall certify that an adequate area for the placement of dredged material is available. Commission staff must approve the site and the dredged material placement plan before the commencement of each maintenance dredging operation.

- 4) This permit specifically excludes authorization for any construction activities or structural improvements, county or private, on the areas of State-owned subaqueous bottoms, which may be elevated above the elevation of mean low water as a result of the authorized disposal operations.

Doug Stamper, Project Manager for the USACOE, was present and his comments are a part of the verbatim record. Mr. Stamper explained that the disposal was consistent with



the spoil management plan established in the 1980's. He further explained that they had been in contact with Mrs. Burns and told her, if there were further problems, to contact them.

**After further questions and discussion, Associate Member Holland moved to approved the project with staff recommendations. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

**Permit fee.....\$100.00**

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Bob Grabb, Chief-Habitat Management, asked that Item 8, U. S. Army Corps of Engineers, 02-0552, be continued until after 10:30 a.m. as the USACOE personnel were at another meeting and were due to arrive to this meeting at that time. He suggested that the board continue with Item 10, Joan Karter.

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- 10. JOAN T. KARTER, #03-1105**, requests after-the-fact authorization to retain a 16-foot by 16-foot two-story dock house on a 22-foot by 22-foot open-pile platform situated adjacent to her property along Chincoteague Channel in the Town of Chincoteague, Accomack County.

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

Mr. Badger explained that the agency first received a Joint Permit Application from Ms. Joan Everingham, now Ms. Joan Karter, (VMRC #82-0590) on August 2, 1982. Mr. Raymond Britton was listed as her agent. That application was for a 64-foot long by 5-foot wide open-pile, private pier with a 24-foot by 16-foot T-head. The project description also made reference to a 12-foot by 12-foot enclosed gazebo, but the application drawings did not depict a gazebo at all.

Mr. Badger said that at the time of that application an adjacent property owner to the north had protested the project. That protest was based on the premise that the pier and gazebo would be used for access to Ms. Karter's business establishment (a sandwich shop) as well as the fact the gazebo would hamper their view.

Mr. Badger stated that since the proposed pier was authorized by statute, VMRC sent Ms. Karter the standard no permit necessary letter for a private pier on August 17, 1982.

Mr. Badger explained that the Corps of Engineers authorized the pier construction in November 1982. Their permit only mentioned the pier, too. None of the regulatory agencies explicitly authorized a gazebo.

Mr. Badger further explained that agency records indicated the Corps requested a processing number for another application by Ms. Everingham (VMRC #82-0977) later that same year. It does not appear, however, that a copy was ever sent to VMRC. This project description also mentioned a gazebo. Staff contacted the Corps of Engineers' Eastern Shore office for a copy of that application, but they were never able to supply any additional information. Staff had not been able to locate any correspondence relating to this application from the Corps of Engineers or in our own archives.

Mr. Badger explained that while on a routine field inspection of an adjacent property, staff discovered that the existing structure had been enlarged. On May 5, 2003, staff conducted a field inspection with Ms. Karter and her agent, Mr. Britton. Staff determined that a non-water dependent, 16-foot by 16-foot, two-story dock house on a 22-foot by 22-foot open-pile platform had been built channelward of an existing permitted bulkhead, which extended over State subaqueous bottom. A Notice to Comply was issued to Ms. Karter on July 9, 2003, which directed removal of the illegal structures within 30 days.

Mr. Badger stated that since Ms. Karter then indicated to staff that she would like the full Commission to consider her after-the-fact application. Staff then agreed to withhold further enforcement actions in abeyance pending Commission action on her application.

Mr. Badger said that Mr. Britton had indicated that the original 12-foot by 12-foot closed-sided dock house was in need of repair. He went on to state that the current two story, 16-foot by 16-foot structure did not disturb any more subaqueous bottom than the original house, since the platform it sits on was the same size as the original dock. Ms. Karter stated she was unaware that a permit was needed since the structure was being built over existing decking and would not shade any more than the existing platform.

Mr. Badger stated that there no protests to the current after-the-fact application and VIMS had indicated that the adverse impacts would be minor. Given the surrounding level of shoreline development, cumulative impacts should also be negligible.

Mr. Badger explained that the Town of Chincoteague had not issued the necessary building permit for the structure, and had decided to withhold their action until the Commission had made its determination. Obviously, if the structure is removed, no building permit would be required unless it was relocated onto the adjacent upland.

Mr. Badger stated that when reviewing proposals to build over State-owned submerged land, staff considered, among other things, the water dependency, the intended use of the proposed structures and the degree of encroachment. The intended goal of this review was

to limit the encroachment of non-water dependent structures to the minimum amount necessary to reasonably achieve the intended use.

Mr. Badger stated that the proposed dock house was clearly a non-water dependent structure. Ms. Karter even stated in her application that the structure would be used as a refuge (a quiet place with no phones). Mr. Badger explained that although the original structure was never authorized, and was apparently constructed 20 years ago, the violation was never discovered. In addition, some mention of the “gazebo” was apparently made in the original applications. Given that history, staff was unwilling to seek full restoration. Nevertheless, similar confusion does not seem to apply to the current enlargement. As a result, staff recommended that Ms. Karter be directed to reduce the structure to its original one-story, 12-foot by 12-foot dimensions.

Ms. Joan Karter, applicant, was present and her comments are a part of the verbatim record. Ms. Karter explained that the structure had been built 20 years ago and it was only used for personal use by herself, her children, and now her grandchildren.

Ronald Pont, builder for the project, was present and his comments are a part of the verbatim record. Mr. Pont stated that he was not a professional builder. He further explained that he tried to retain as much of the original building as possible, the roof was original, but it was too difficult. He offered two photos into evidence.

No one else was present from the public to comment, either pro or con.

Associate Member Bowden stated that he had visited the site and that it was his understanding that in Chincoteague a building permit was not required if the project was under \$3,000.00. He further stated that he felt it would be a tremendous endeavor to put the structure back to 12 by 12 and that there was minimal impact, therefore, he recommended approval and a \$600 civil charge. Associate Member Garrison stated that he recommended a \$1,000.00 civil charge, but otherwise he agreed with Mr. Bowden. Associate Member Bowden stated that the dock dimensions were never changed and made larger and there was no more impact.

**Associate Member Bowden moved to grant the after-the-fact permit with a \$600 civil charge. Associate Member Birkett seconded the motion. The motion carried, 5-0.**

Commissioner Pruitt asked the applicant if she agreed with the action of the Commission and she responded, yes.

<b>Permit fee.....</b>	<b>\$25.00</b>
<b>Civil Charge (after-the-fact).....</b>	<b>\$600.00</b>
<b>Total fees.....</b>	<b>\$625.00</b>

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Commissioner Pruitt announced a fifteen-minute break while awaiting the arrival of the individuals involved in the next case to be heard. He announced that even though 3 members (Associate Members Cowart, Ballard, and Jones) of the board were absent, there was still a quorum.

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8. **ARMY CORPS OF ENGINEERS, #02-0552**, requests a modification of their previously issued permit to allow disposal of dredged materials at the Wolf Trap Overboard Placement Area located in the Chesapeake Bay in Mathews County through December 31<sup>st</sup>.

Traycie West, Environmental Engineer-Habitat Management, gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that at the February 25, 2003, Commission meeting, the Corps of Engineers was granted approval to dispose of up to 600,000 cubic yards of dredged materials arising from the routine maintenance of the York River Entrance Channel at the Wolf Trap (Alternate) Overboard Placement Area located east of Mathews County in the Chesapeake Bay. This authorization was granted for five years and with a condition that limited disposal operations to the months of February through May and September through November in any given year.

Ms. West stated that the time-of-year restriction was imposed at the recommendation of the Virginia Institute of Marine Science in order to minimize the adverse environmental effects the disposal activities would have on blue crab stocks. The VIMS report stated that both the channel and the disposal area lie within the primary Chesapeake Bay blue crab spawning mitigation corridor and that both the dredging and disposal operation had the potential to adversely affect significant numbers of migrating adult females.

Ms. West said that the Entrance Channel dredging operations were interrupted due to Hurricane Isabel. Apparently, the Corps dredge was pulled from the York River Entrance Channel project and redirected to the Oregon Inlet project in North Carolina. Now, in order to complete the dredging of the channel, dredging operations may extend into December. The Corps had stated that they were willing to work with the agency to ensure that crab dredging activities were not interrupted.

Ms. West explained that the Commission had evaluated and adopted several regulations in recent years in an effort to address a documented twelve-year decline in spawning stocks of blue crabs. As recently as August, 2002, the Commission re-adopted and amended regulations establishing the Hampton Roads Blue Crab Sanctuary, the Virginia

Blue Crab Sanctuary, and provisions to control the harvest of crabs from these areas. In addition, Virginia watermen landed about 28 million pounds of crabs in 2002, the second lowest catch since 1994 and about 3 million pounds below the 1994-2001 average.

Ms. West expressed concerns with the proposal to dispose of materials at the Wolf Trap Overboard Placement Area outside of the originally recommended time-of-year. The Army Corps of Engineers staff had indicated that dredging operations at the York River were almost complete. An extension would only be used as a last resort and only if absolutely necessary. VIMS October 2003 crab trawl survey results verified that mature female blue crabs are already within the Wolf Trap disposal area.

Ms. West stated that VIMS further commented that the crabs would bury themselves when the water temperature reached 50 degrees Fahrenheit. Any further burial by dredged material disposal would likely kill any crabs already buried. The adverse impacts will be less if the water temperature remains above 50 degrees. VIMS suggested that, should the extension be granted, that there be no further disposal of material at the Wolf Trap Overboard Placement Area once the water temperature drops to 50 degrees Fahrenheit.

Ms. West said that given the decline in spawning stocks and the reduced catch in 2002, staff believed that it would not be prudent to authorize any additional adverse impacts to the crab fishery at this time. As a result, staff recommended that the Commission deny the Corps' request to dredge in the time-of-year restriction in order to maintain protection for migrating female blue crabs.

Ms. West explained that staff recommended that the applicant consider alternate disposal methods, such as ocean disposal at the Norfolk disposal site or at other offshore sites such as the Dam Neck Disposal Site.

Ms. West said that should the Commission find that the request for an extension should be granted, staff recommended that the permit be conditioned to require the Corps to monitor the water temperature at the Wolf Trap Overboard Placement Area and cease all overboard disposal operations once the surface water temperature reached 50 degrees Fahrenheit.

Ms. West explained that she requested Lewis Gillingham to find out the water temperatures for the previous day and at Sewells Point it was 56 degrees and in the Maryland's portion of the Bay it was 53 degrees.

Keith Lockwood, Environmental Advisor for the USACOE, was present and his comments are a part of the verbatim record. Mr. Lockwood explained that they would need 2 additional weeks in December to finish the 5 days of dredging and follow-up clean with further dredging. He said that the contractor was pulled to Oregon Inlet because of the storm in September by the Wilmington District and if they could not finish up in the

York River in December, then it would be February 1 before they could finish dredging because the crabs are still overwintering. He said that the dredging is actively going on and is a 24-hour a day operation. He further stated that the cost would be \$400,000 more than the budget had allotted for the project, therefore, no additional money would mean that the dredging cannot be finished in the current fiscal year. He also explained that not completing the dredging until the next fiscal year could lead to possible navigational impacts. He said the basic contract is for 275,000 cubic yards, but there was 40,000 cubic yards caused by the storm needed to be dredged to minimize environmental and navigational impacts. He said that they would work with the Commission to not interfere with the crab dredge season and would mark areas, if necessary, to alert the crabbers of the activity and the location where the spoil was being deposited.

Associate Member Bowden reminded everyone that in shallower water the temperature is different from deeper water temperature.

Commissioner Pruitt said that he was concerned about the 50 degrees theory of crabs burying themselves and that he thought that this was when the crabs were moving. Mr. Lockwood explained that according to VIMS this was the temperature that crabs buried themselves into the bottom.

Tom Barnard, a Virginia Institute of Marine Science representative, was present and his comments are a part of the verbatim record. Mr. Barnard recommended that the bottom temperature be used rather than the surface temperature, because surface is colder than bottom.

Commissioner Pruitt stated that December is usually the best month for the crab dredge season. He said that if the weather is warmer than there is no problem, but if colder then that would present a problem.

Associate Member Holland asked Mr. Lockwood if the extension was not granted would the dredging project be continued? Mr. Lockwood said yes, that they would make every effort to complete the job in the time allowed.

Associate Member McLeskey asked Mr. Lockwood about the staff recommendation for using an ocean disposal site. Mr. Lockwood explained that that was a recommendation made when the permit was approved. He further explained that after this experience, he would be investigating other alternatives to allow more time for dredging, because a time of year restriction was very difficult to work around when problems arise.

Commissioner Pruitt asked for any other public comments and there were none.

**After much discussion and questions regarding the temperature restriction and other issues, Associate Member Holland moved to grant the extension, with the proviso that no disposal be allowed at Wolftrap, if the water temperature at the**

**bottom was 50 or less degrees Fahrenheit. Associate Member Birkett seconded the motion. Associate Member McLeskey asked for clarification of the motion and asked if the motion was asking for surface or bottom temperature. Associate Member Holland confirmed that it was for bottom temperature. Motion carried, 5-0.**

**No fees applicable, modification.**

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At 11:30 a.m., the Commission took a forty-five minute lunch break.

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## **11. PUBLIC COMMENTS**

**1. Russell Gaskins, Waterman Association Representative, requested that the Commission consider changing the season dates for the James River Hand Scrape area from February and March, 2004 to January and February, 2004 because some watermen wanted to start crabbing in March. His comments are a part of the verbatim record.**

Jack Travelstead, Chief-Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead explained he had not been able to get in contact with Dr. Wesson to discuss this matter with him but stated that there was sufficient time to approve and advertise a public hearing for the December meeting.

**Associate Member Birkett moved to approve the advertisement of a public hearing, for the requested regulation change, to be held at the December meeting. Associate Member Holland seconded the motion. The motion carried, 5-0.**

**2. Harry Doernte requested the regulation be amended or a public hearing be held in December to discuss items on the Black Sea Bass Fisheries that were missed in the motion at the October 28, 2003 Commission meeting.**

Mr. Doernte went into great detail about what he felt the board had not taken action on in the previous public hearing in October. His comments are a part of the verbatim record and here is a summary of the items that were missing from the motion at the October meeting with his support comments.

1) Require return of permit after individual transferable quota (ITQ) is harvested.

Unanimous approval by staff and at the public hearing.

- 2) Eliminate requirement that permittee be on board the permitted vessel.

Unanimous approval -- 14 of 42 permittees are inc. or corp. Who must be on board?

- 3) Require verification of Vessel Trip Reports (VTR) reports when VTR of sea bass exceeds dealer reports. Use the higher of the verified VTR reports for dealer reports to calculate the ITQ.

Unanimous approval--8 of top 10 permits used VRT weights and got over 86,000 pounds more quota than dealer weights. Give until 1/20 to prove -- effective 2/10/04.

- 4) Allow for temporary and permanent transfers of ITQ's only prior to the start of the 2004 season.

Controversial--15 out-of-state permits. Transfer quota and fish somewhere else? Conservation--catch it or loose it.

- 5) Increase the bycatch fishery quota from 42,073 pounds to 84,146 pounds and increase trip limit to 500 pounds. Reduce trip limit to 100 pounds when 75 percent of the bycatch quota is taken.

Controversial--approved motion took top 4 boats from bycatch fishery and left their quota (15%) there to be doubled and took quota from directed fishery to compensate.

- 6) Provide 17,000 pounds for allocation to persons granted a directed fishery permit for medical hardship.

Controversial--no comment.

- 7) Use landings in 2002 and require landings in 3 of 6 years to reallocate the directed fishery ITQ's.

See #5 response.

- 8) Penalize sea bass potters for soak time by not allocating the increased quota to potters.

Controversial--negative word choice to degrade topic? Why not conservation allowance for other gear types? Conservation was main issue--market glut was secondary. Increased quota for potters was result of soaking. Allow drop-potters 1/3 to 1/2 of increase. They accumulated fish before season opened and left pots overnight. Class fish can be verified by VTR soak time.

- 9) Cap on Quota.



- 10) Change wording of 20-950-46.
- 11) Value consideration by gear type.

Associate Member Holland asked why Associate Member Bowden made the motion the way he did? Associate Member Bowden explained he did not agree with items discussed and did not make them a part of the motion made at the October meeting. His comments are a part of the verbatim record and summarized below by item:

- 1) No other fishery is done that way. You keep the permit and get a new allocation the next year. The action was unnecessary.
- 2) It's a second year of a 2-year fishery plan and all federal permits are issued to the vessel.
- 3) Oversight--some individuals did not deem necessary.
- 4) One year fishery and 1/2 interest of 10,000 pounds goes back to the coastal quota and the individual loses.
5. Everybody got an increase -- not what they wanted necessarily, but there was no unfair advantage anyone.
- 6) Suggestion made by Jack--pounds go back to the system.
- 7) Few people impacted, no savings or loss by doing.
- 8) This was not fair and not out of the ordinary.
- 9) This was really not fair--bass potters are most predominant and entitled to quota.
- 10) Don't know about this, but could affect the entire regulation.
- 11) Should never award to one who makes the most money.

Harry Doernte stated that the Code says, economic value is one consideration of an FMP. Associate Member Bowden explained that the Code was being interpreted too broadly.

Associate Member Holland stated that he did not see a need to revisit the matter. Associate Member Garrison agreed.

**Associate Member Ernie Bowden moved to deny the request to reconsider the Black Sea Bass regulation. Associate Member Holland seconded the motion. The motion carried, 5-0.**

**Commissioner Pruitt asked for any further comments from the public regarding other matters. There were no other parties wishing to address the Commission.**

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**12. Striped Bass: request for public hearing to consider proposals for the 2004 season.**

Jack Travelstead, Chief-Fisheries Management, gave the presentation, and his comments are a part of the verbatim record. Mr. Travelstead explained that he would have more details for the December meeting, so he would be brief in his presentation. He explained that a regulation needed to be established for 2004. He said that ASMFC had amended the Striped Bass Plan with Amendment 6. He said they were lifting the freeze, and the quotas would be established using models done in the 1990's. He explained that the quota would be going down 20 percent, therefore, changes were required. He stated that the options listed in the evaluation were suggested to achieve the 20 percent reduction required. He said there was desire to change the current system from tags to poundage. He said it was felt that there was fairness and equity going to the poundage quota. He explained that this change could cause problems with enforcement as tags are easier to work with because, if you run out of tags you stop fishing, and if a poundage system is allowed you must rely on reporting. He said there would need to be a system devised to stop cheating on reporting, such as a daily call-in reporting system. He said that FMAC would be meeting on December 8<sup>th</sup> to work on additional measures. He explained that FMAC approved going to public hearing by a vote of 8 to 1. He further explained that Law Enforcement was concerned about using the poundage quota. He stated that staff recommended taking these matters to a public hearing.

Associate Member Bowden asked Colonel Bowman what problems there would be for Law Enforcement. Colonel Steve Bowman, Chief-Law Enforcement, was present and his comments are a part of the verbatim record. Colonel Bowman said he was concerned with how poundage tracking would be handled. He asked if weighmasters would be used, who could be trusted, where would offloading points be located, and what about maintaining a chain of custody. He explained how this would be handled would need to be considered, if changing to the poundage system. Associate Member Bowden asked if he would be willing to meet with industry and recreational people. Colonel Bowman responded, yes.

Commissioner Pruitt stated that there was an FMAC meeting scheduled for December 8, and the next Commission meeting was scheduled for Monday, December 22<sup>nd</sup>.

Associate Member Bowden explained that equity was needed. He stated that fishermen were allowed 2,500 pounds, currently, and there was no benefit or economic advantage to weight. He explained that some use the tags and catch more poundage. He said that

fraud could not be eliminated completely. He stated that there needed to be a meeting with staff and industry.

Associate Member Garrison said that what Associate Member Bowden said was more than fair. He said that the tags have been a sore issue. He stated that Law Enforcement would need 25 people to handle the enforcement, but this cannot be provided this year. Maybe, next year. He stated that he felt that the tag system needed to be amended.

Walter Coles Burroughs was present and his comments are a part of the verbatim record. He said Jack had said that it can be handled by weight. He said that he agreed with the poundage system.

Tom Powers was present, and his comments are a part of the verbatim record. He expressed his concern that the Commission would be acting too quickly making a change to poundage. He said that staff would only have 4 weeks with the holidays, and for FMAC to get information around in just 1 month is not long enough. He suggested April or May to hold a public hearing, as FMAC has only one meeting scheduled before December 2003 meeting.

Associate Member Bowden suggested that safeguards were needed, such as a 4-tier system with checkpoints and reporting by dealers. He said this discussion had been going on for 8 years, not just one month, and there was a need to go ahead.

Associate Member Garrison said he agreed with Associate Member Bowden that there was a need for a system different from the tag system.

Associate Member Holland stated that he agreed with holding a public hearing but wanted input from Law Enforcement.

Commissioner Pruitt stated that he was concerned that the ASMFC's trend was turning Virginia into the nursery grounds in the Bay.

**Associate Member Bowden moved to take the matter to public hearing, with what was discussed today and tags versus poundage. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

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Commissioner Pruitt took a moment to announce that this would be Cory Routh's last Commission meeting and to congratulate him on his new job with the City of Virginia Beach. Associate Member Garrison complimented Cory on how he had handled his job with VMRC.

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**13. Recommendations of the Recreational Fishing Advisory Board.**

Cory Routh, Fisheries Management Specialist, was present and his comments are a part of the verbatim record. He went over some of the items, noting that there had been two projects added since the briefing packages were mailed to the members, Items 1A and 2A. He further explained that Item 1A was a study that had been requested by VMRC. He also explained that 2A was a request by Law Enforcement for vessels. He said that E & I were pending Habitat permits. He said that for Items F - H, the ODU project by Dr. Jones wanted to finance equipment that would be added to their inventory, and the Recreational Board had problems with buying equipment with the funds. He stated that the Recreational Board had met and made the following recommendations for the board's consideration:

**The following projects were recommended for funding by the RFAB.**

- 1A. Request for use of returned funds to conduct a seagrass survey, as requested by VMRC. Dr. Bob Orth, VIMS. **\$15,000. VOTE: Unanimous**
- 2A. Request from the Virginia Marine Police for additional funds to purchase shallow draft vessels. Originally approved for \$27,679 during the May 2003 VMRC meeting. **\$8060. VOTE: Unanimous**
- A. 2004 Children's Fishing Clinic. NN Rotary Club & CCA, Rob Cowling. **\$6,000. VOTE: Unanimous.**
- B. 2004 Tidewater Youth Fishing Day. CCA, Bill Dieffenbach. **\$6,000. VOTE: Unanimous.**
- C. 2004 Challenger Little League Marine science Educational Booths. CCA. Richard Welton. **\$750. VOTE: 6 to 2**
- D. 2004 Virginia Game Fish Tagging Program. VMRC/VIMS, Claude Bain and John Lucy. **\$57,408. VOTE: 6 to 2**
- J. An Assessment of the Economic Importance of Virginia's Commercial and Recreational Fisheries. VIMS. James Kirkley. **\$235,241. VOTE: Unanimous.**
- K. Early Summer Kids Fishing Program. Northhampton County Anglers Club Melvin Dudley. **\$830. VOTE: Unanimous.**

**Recommended projects pending appropriate habitat permits.**

- E. Cape Charles Fun Pier; Extension and Repair. Town of Cape Charles, Jennie Rogers Moore. **\$300,000. VOTE: Unanimous.**
- I. Conversion of a Protective Wavescreen into a Saltwater Fishing Pier. City of Newport News. Michael Poplawski. **\$170,250. VOTE: Unanimous.**

**The following projects were not recommended for funding by the RFAB at this time.**

- F. How Seagrass Beds Support Healthy Fish Growth; A Study of Trophic Structure in the Chesapeake Bay Using Stable Isotopes. ODU, Dr. Cynthia Jones. **\$80,334. VOTE: Unanimous.**
- G. Saltwater Boating Access Maintenance Program. VDGIF. James Adams. **\$47,100. VOTE : Deferred. The committee deferred a decision until their January meeting to provide an opportunity to the applicant to address additional questions concerning the proposal. The applicant was not present at the November 10<sup>th</sup> meeting.**
- H. Mill Creek Boat Landing; Dredging and Bulkhead Protection. VDGIF. James Adams. **\$132,500. VOTE: Deferred. See item G.**

Commissioner Pruitt opened the matter to the public for comment. There were no public comments.

After further discussion, Associate Member Garrison moved to accept the Recreational Board recommendations. Motion failed for lack of a second.

**Associate Member Bowden moved to accept the Recreational Board recommendations, with one exception, and that was to approve Item F minus the \$10,000 for the freezer. Associate Member McLeskey seconded the motion. Associate Member Garrison asked how does this apply to what is spent, will this go overbudget.? Mr. Routh responded, no. Motion carried, 4-1. Associate Member Garrison voted No.**

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**14. Report of the Crab Dredge Exception Committee.**

Stephanie Iverson, Fisheries Management Specialist, was present, and her comments are part of the verbatim record. Ms. Iverson explained that the Crab Dredge Exception Board had met on November 13, with 3 members present, Pete Nixon, Peter Freeman, and Associate Member Chad Ballard. She stated that there were 18 harvesters looking for exceptions, and they had all received certified letters announcing the meeting. She said

that 6 responded back, wanting the exceptions and 2 called back saying they were no longer interested in getting the exception. She stated that 4 of the 6 who returned exception requests attended the meeting, and all six were granted the requested exceptions. She said that there were 211 permittees eligible for the upcoming season. She explained that in the regulation it says that when the number gets under 220 or 225 more can be added to the fishery. She further explained that there were 2 sections in the regulation addressing this and one says 220 and the other 225. She stated that the Crab Committee members felt that this needed to be reconciled in the regulation to be either 220 or 225. She said they also wanted to make another change in the regulation that would not require harvesters to report. She explained that they felt this put too much burden on the harvester and caused fraudulent reporting because, in order to keep the license, they had to keep reporting something.

Commissioner Pruitt asked what the members wanted to do, go over the report line for line or accept the report as presented.

**Associate Member Holland moved to accept the report of the Crab Committee. Associate Member Birkett seconded the motion. The motion carried, 5-0.**

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The being no further business, the meeting adjourned at approximately 1:39 p.m. The next meeting will be held Monday, December 22, 2003.

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary