

**MINUTES**

**JANUARY 22, 2002**  
**NEWPORT NEWS, VA 23607**

The regular Monthly meeting of the Marine Resources Commission was held on January 22, 2002 with the following present:

|                          |   |                                |
|--------------------------|---|--------------------------------|
| William A. Pruitt        | ) | Commissioner                   |
| Chadwick Ballard, Jr.    | ) |                                |
| Gordon M. Birkett        | ) |                                |
| S. Lake Cowart, Jr.      | ) |                                |
| Henry Lane Hull          | ) | Members of the Commission      |
| F. Wayne McLeskey        | ) |                                |
| John W. White            | ) |                                |
| Kenneth W. Williams      | ) |                                |
| Carl Josephson           |   | Assistant Attorney General     |
| Wilford Kale             |   | Senior Staff Adviser           |
| Stephanie Montgomery CPS |   | Commission Secretary           |
| Andy McNeil              |   | Programmer Analyst, Sr.        |
| Bob Craft                |   | Chief-Finance & Administration |
| 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                  |
| Capt. Kenny Oliver       |   | Southern Area                  |
| Paul Newman              |   | Marine Patrol Officer          |
| W. R. Davis              |   | Marine Patrol Officer          |

Virginia Institute of Marine Science:

|                     |                 |
|---------------------|-----------------|
| Dr. Stan Allen      | Dr. Rom Lipcius |
| Tom Barnard         | Lyle Varnell    |
| Dr. Eugene Burreson |                 |

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Jack Travelstead  
 Rob O'Reilly  
 Dr. James Wesson  
 Roy Insley  
 Cory Routh  
 Chad Boyce  
 Ellen Cosby

Chief-Fisheries Management  
 Deputy Chief-Fisheries Management  
 Head-Conservation & Replenishment  
 Head-Plans and Statistics  
 Fishery Management Specialist, Sr.  
 Fishery Management Specialist  
 Fishery Management Specialist

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

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

Nate Custer  
 Scott Hager  
 Sherry Hamilton  
 Michael Hines  
 Bill Quinn

WTKR Television  
 Virginian Pilot  
 Gazette Journal  
 The Daily Press  
 WTKR Television

others present included:

Ed Nealon  
 Roger McKinley  
 Earl Sutherland  
 Jordan Daly, Esq.  
 Janet Bailey  
 David Bailey  
 Scott Newsome  
 Carolyn Good Day  
 James Eskridge  
 Craig Callahan  
 Frank O'Roark  
 Nancy Marshall  
 Bart Marshall

Robert Williams  
 Patrice Lawler  
 Alan Diamonstein, Esq.  
 E. S. Hudnall  
 Michael Parks  
 George Washington  
 Don Porter  
 Tim Hayes  
 Johnie Bowden  
 Bill Bailey  
 Alfred Dise  
 Larry Parks  
 Bobby Parks

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Thomas Fitzgerald  
 Jim Hall  
 Susan Hall  
 Gerald Forrest  
 Dennis Crockett  
 Donald Crockett  
 Norman Parks  
 Burke Landon  
 Shawn Landon  
 David Blecker  
 Bob Jensen  
 C. J. Lindemann  
 Jim Haydon  
 Jeffrey Crockett  
 Richard Harding  
 Leslie Crockett  
 Ben Johnson  
 Guy Pruitt  
 Louis Taylor  
 Sherry Taylor  
 Ralph Bonniville  
 Ronald Owens  
 Scott McDonald  
 Kelly Place  
 Donnie Thrift  
 Rob Brumbaugh  
 Larry Snider  
 Jan Marshall  
 Sammy Taylor  
 David Hart  
 Ernest Bowden  
 Danny McCulloch, and others.

Steve Pruitt  
 Mickey Daley  
 Keith Olsten  
 Michael Parks  
 Timothy Thomas  
 Bill Brown  
 Carlton Pruitt  
 Bruce Parks, Jr.  
 Allen Parks  
 William Scott  
 Douglas Jenkins  
 Bob Fuelstad  
 Rob Savage  
 Louis Whittaker  
 Bill Quinn  
 Craig Callahan  
 Robert Johnson  
 Terry Barlett  
 Frances Porter  
 Russell Gaskins  
 Terry Brown  
 Kenneth Brown  
 Chris Lundforth  
 Tom Powers  
 John Graham  
 Donald Clark  
 Steve Jones  
 Page Hogge  
 Warren Cosby  
 Robert Johnson  
 Aubrey Justis

Commissioner Pruitt called the January 22, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Hull, McLeskey, White and Williams. Commissioner Pruitt established that there was a quorum, noting that Associate Member Gordy was excused from today's meeting.

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

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**\*\* APPROVAL OF AGENDA**

In order to accommodate those traveling and who may wish to speak to Items 8. and 9., Commissioner Pruitt suggested that the Agenda be revised to place these items behind Items 10. and 11.

**Associate Member Hull moved to revise the Agenda to place Items 8. and 9. behind Items 10. and 11. Associate Member Cowart seconded the motion and the motion carried unanimously, 7-0.**

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**1. APPROVAL OF MINUTES – December 18, 2001 meeting.**

Associate Member Williams noted the following correction to the Minutes:

Page 1182, **11. REPORT OF THE VMRC STRIPED BASS TASK FORCE**, *“Associate Member Hull moved to advertise for a January Public Hearing on the recommendations of the Striped Bass Task Force. The motion was seconded by Associate Member White. Associate Member Williams indicated that he would vote against the motion due to the fact that the species is a recovered species.”*

**Associate Member White moved to approve the Minutes as corrected; Associate Member Cowart seconded the motion. The motion carried, 5-0.** Associate Members Ballard and Cowart noted their abstentions due to their absences from the December 18, 2001 meeting.

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

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Mr. Tony Watkinson, Deputy Chief-Habitat Management, briefed the Commission on the following Page Two items for projects over \$50,000.00 with no objections and with staff recommendation for approval.

**2A.MARINE DEVELOPMENT, LLC, #01-1848**, requests authorization to dredge approximately 770 cubic yards of subaqueous material to create a 160-foot long by 45-foot wide basin with maximum depths of minus six (-6) feet below mean low water, to construct a 100-foot long by 120-foot wide floating pier with two (2) 8-foot long by 4-foot wide access gangways, and a 40-foot long by 10-foot wide open-pile tending pier adjacent to their property situated along Little Creek in the City of Norfolk. Recommend a royalty of \$0.45 per cubic yard for the dredging of 770 cubic yards and \$0.50 per square foot for 1,400 square feet of open-pile piers.

Associate Member White inquired as to where the materials would be disposed of for this project. Ms. Tracy West, Environmental Engineer Sr., stated that the materials would be disposed of on uplands at the site.

|                 |             |
|-----------------|-------------|
| PERMIT FEE..... | \$100.00    |
| ROYALTIES.....  | \$ 1,046.50 |

**2B.EAST COAST TRANSPORT, INC., #01-1282**, requests authorization to dredge a total of 2,000 cubic yards of State-owned submerged lands with upland disposal, to install a raw water intake structure extending 160 feet channelward of ordinary high water in the James River, and install, by directional bore method, a 24-inch diameter raw water transport pipe under the James River, Bear Garden Creek, the Middle Fork of Cunningham Creek, and the South Fork of Cunningham Creek in Buckingham and Fluvanna Counties, in association with the development of an electrical generation facility. Staff recommends approval with standard instream construction conditions, as well as a time-of-year restriction prohibiting instream work on the intake structure from May 15 - July 31 to protect aquatic resources, as well as the assessment of a one-time dredging royalty in the amount of \$900.00 and an annual encroachment royalty of \$599.80.

|                 |             |
|-----------------|-------------|
| PERMIT FEE..... | \$100.00    |
| ROYALTIES.....  | \$ 1,499.00 |

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**2C. CHESAPEAKE BAY FOUNDATION, #01-1946**, requests authorization to install two (2) offshore stone breakwaters totaling 226 linear feet, three (3) stone riprap revetments totaling 399 linear feet and one (1) 132-foot long stone groin adjacent to their property on the northwest side of Port Isobel Island along Tangier Sound in Accomack County.

PERMIT FEE..... \$100.00

**2D. CITY OF ALEXANDRIA, #01-1901**, requests authorization to install three (3) dolphins to aid navigation of vessels mooring at Chart House pier, to install a fender system to the existing pier and to remove a section of the existing pier and raise the pier approximately two (2) feet to the height of the remainder of the pier, adjacent to the Chart House Restaurant situated along the Potomac River in the City of Alexandria.

PERMIT FEE..... \$100.00

There being no comments from the public on these matters, pro or con, Commissioner Pruitt placed the Page Two items before the Commission. **Associate Member Hull moved to approve the items as recommended by staff. Associate Member Williams seconded the motion which carried unanimously, 7-0.**

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**EXECUTIVE SESSION**

**Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to Agenda Items 3, 4, 5 and 6. The motion was seconded by Associate Member White and carried unanimously, 7-0.**

Upon the Board’s return from Executive Session, **Associate Member Ballard moved for the following:**

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

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

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

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

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

were heard, discussed or considered in the closed meeting by the Commission.

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

AYES: Ballard, Birkett, Cowart, Hull, McLeskey, Pruitt, White, Williams

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

**The motion carried unanimously, 7-0.**

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Commissioner  
Virginia Marine Resources Commission

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3. **K & J MARINE, INC., #97-1431**, requests after-the-fact authorization to modify a previously issued permit to retain three (3) sections of pier measuring 8' x 24', 7' x 15', and 5' x 33', and installation of 12 mooring piles, including the creation of an additional unauthorized wet slip situated along Lower Machodoc Creek, in Westmoreland County.

Mr. Mark Eversole, Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. Mr. Eversole reported that a permit was issued to Mr. James Hall, of K & J Marine, in January 1998, authorizing a replacement bulkhead, concrete boat ramp, and repair and replacement (in the same footprint) of a 75-foot commercial pier and 12 mooring piles. There was an additional existing pier immediately west of the boat ramp, to which no changes or additions were requested or authorized.

Mr. Eversole further reported that in July of 2000, staff performed a routine compliance check which revealed that while the bulkhead and boat ramp were in compliance, the 75-foot pier had been rebuilt with a T-Head measuring 264 square feet larger than authorized and that additional piers totaling 270 square feet and a wet slip had been added to the pier west of the ramp. Mr. Hall was present during the compliance check, and was informed that he was in violation of the permit conditions.

A Sworn Complaint and Notice to Comply were issued on September 19, 2000, directing Mr. Hall to remove the unauthorized sections of pier within 60 days, or to apply for an after-the-fact modification of his existing permit, to retain the unauthorized portions of the piers. In reviewing the issues of the project, Mr. Eversole stated that an application to retain the unauthorized portions of the piers was submitted by Mr. Hall on October 5, 2000. Adjacent property owners were notified, and a public notice was placed in the Westmoreland News, a newspaper having general circulation in the project area. The Land Use Office of Westmoreland County alerted VMRC staff of on-going discussions between the County and Mr. Hall, involving the zoning of his property, and the possibility of a need to rezone the property, and/or apply for a special exemption from the Westmoreland County Board of Supervisors. VMRC staff then informed Mr. Hall that all county issues would have to be resolved before any action would be taken by the Commission. In a letter dated February 7, 2001, Mr. Trenton Funkhouser of the Westmoreland County Land Use Office, outlined the agreements reached by both parties.

Mr. Eversole stated that the Virginia Department of Health had originally recommended denial of the project, based on a lack of compliance with their Sanitary Regulations for Marinas and Boat Moorings. In response, Mr. Hall provided an alternate pump-out agreement, resulting in Health Department approval of the project, dated December 11, 2001.

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The Department of Conservation and Recreation does not object to the project. Mr. Eversole noted that the project is not protested and the only privately leased oyster grounds in the immediate vicinity of the project are those of K & J Marine, Inc.

Mr. Eversole stated that staff recommends that Mr. Hall be allowed to retain his additional pier sections and wet slip, however, staff is convinced that Mr. Hall was well aware that a permit was needed prior to construction of the additional sections of pier. Having just gone through the process of gaining local wetlands board permits as well as VMRC permits for similar work, staff can only conclude that Mr. Hall made an intentional and conscious decision to proceed in the absence of that authorization.

Mr. Eversole added that should the Commission feel that a civil charge is warranted, in lieu of further enforcement, staff would recommend a charge based on findings of minimal environmental impact, but a major degree of non-compliance.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. At the request of Associate Member Cowart, the letter received from Mr. Trenton Funkhouser was entered into the permanent record of this meeting and is attached as noted.

**Mr. Jimmy L. Hall**, owner of K & J Marine, Inc. was sworn in by Commissioner Pruitt. Mr. Hall provided a brief history of the impending project and the requests currently before the Commission. He stated that because his construction was laid over the original footprint, he thought it was permissible to do so without VMRC permits, and stressed that he did obtain all permits required by Westmoreland County. Associate Member Ballard inquired as to the business nature of K & J Marine, Inc. Mr. Hall stated that he is licensed for a commercial crab and fishing business on site. The property is not utilized as a boat marina; only family members moor their boats in the existing slips.

With no further comments from the public, Commissioner Pruitt placed the matter before the Commission. **Associate Member Ballard moved to approve the project as recommended by staff and, in lieu of further enforcement action, allow payment of a civil charge of \$1,800.00 based on minimal environmental impact, but major non-compliance; approval of the project being subject to payment of the civil penalty. Associate Member Williams seconded the motion; motion carried unanimously, 7-0.** Commissioner Pruitt directed Mr. Hall to contact Mr. Eversole with regard to compliance with the motion.

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4. **THOMAS FITZGERALD, #01-0558**, requests authorization to construct an approximately 1,224 square foot, open-sided, private, noncommercial boathouse over an existing private pier adjacent to his property situated along Cockrell Creek in Northumberland County.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. Mr. Madden stated that the project is located along the east shore of Cockrell Creek, approximately ½-mile northwest of Reedville. The proposed boathouse and associated wet slip are intended to provide protection for a 32-foot long, custom built, power boat with a nine-foot (9) beam.

Mr. Madden stated that on March 28, 2001, staff received a Joint Permit Application from Mr. Fitzgerald requesting authorization to construct a 36-foot long by 18-foot wide open sided, private, noncommercial boathouse designed to shelter a single boat slip. Staff reviewed the application and enclosures and based on the measurements provided, determined that the 648 square-foot boathouse met the statutory exemption contained in §28.2-1203 (5) of the Code of Virginia. As such, staff routed correspondence to Mr. Fitzgerald dated April 26, 2001, indicating that no authorization would be required for the boathouse as originally designed.

Mr. Madden further stated that on June 6, 2001, staff received revised drawings from Mr. Fitzgerald requesting that he be granted authorization to extend the eaves of his boathouse over the six-foot (6) wide pier and catwalk. Staff calculated that the revised dimensions of the boathouse noted on the drawing would be 36-feet long by and 30-feet wide or 1,080 square feet. Assuming a two-foot overhang, the total encroachment of the boathouse roof would be 34 feet wide by 36 feet long or 1,224 square feet. As designed, the new proposal would not qualify for the statutory exemption.

Mr. Madden added that while the length seemed appropriate for a 32-foot long boat, staff requested that the applicant reevaluate his need for a 34-foot wide roof to accommodate a vessel with a nine-foot (9) beam. On August 20, 2001, Mr. Ed Nealon, agent for the applicant, indicated that his client wanted the larger boathouse to protect his pier, associated boating and fishing equipment, and to provide additional protection for the boat that the open-sided design would not offer. On August 13, 2001, the Northumberland County Board of Supervisors approved Mr. Fitzgerald's request for a Special Exception and authorized the construction of the revised boathouse proposal.

Mr. Madden reported that in the period following the August 13, 2001 decision of the Northumberland County Board of Supervisors, Mr. Fitzgerald had constructed the boathouse

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as originally designed. However, as a result of a recent inspection, staff realized that while the original drawing called for an 18-foot wide slip, the drawings actually included eaves extending approximately one (1) foot beyond the dimensions shown in the drawing. As a result, the encroachment of the boathouse as it exists is approximately 720 square feet. Mr. Madden noted that no other agency has objected to the project and the adjacent property owners do not object to the boathouse.

Mr. Madden stated that staff believes the original proposal for a covered wet slip twice the dimension of a vessel's beam, is more than adequate to protect the applicant's boat. Secondly, the boat is on a lift that would further reduce the boat's exposure to the elements, and the boating and fishing related equipment could be kept in the nearby house or in dock boxes. Accordingly, staff recommends denial of the applicant's request to extend the eaves of his existing boathouse and approval of the as-built structure.

In the brief absence of the Commissioner, Associate Member White asked if anyone in attendance wished to speak to this matter, pro or con. **Mr. Ed Nealon**, Nealon Marine and Consulting, and agent for the applicant, was sworn in by Associate Member White. Mr. Nealon cited the Northumberland County code governing the construction of the boathouse, stating that the applicant is in complete compliance with the codes of Northumberland County and the State of Virginia.

Associate Member White questioned as to whether the existing pilings would be cut off to accommodate an extension of the boathouse eaves. Mr. Nealon stated that the pilings would be cut and replaced with 2'x6's or 2'x8's to support the eaves.

Counselor Josephson noted that the Commission is not necessarily bound by the codes of Northumberland County; the applicant must follow the requirements of State law. Associate Member Ballard inquired as to the applicant's reason for the extension project. Mr. Nealon stated that an extension of the boathouse would protect both the pier and the boat. Associate Member Hull asked why the slip would be twice the width of the bow of the boat. Mr. Nealon noted that the applicant intends to purchase a larger boat, and that the proposed structure would be the standard, permitted Northumberland County boathouse. Mr. Birkett asked if there were any SAV's in the area; Mr. Madden stated that there were not.

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With no further response from those in attendance, Commissioner Pruitt placed the matter before the Commission. **Associate Member Ballard moved to approve the structure as built, but not to approve the extension of the eaves. Associate Member Cowart seconded the motion.** For the benefit of Mr. Nealon, Associate Member Hull cited Virginia Code § 28.2-1203 A.5., "... *In cases in which such roofs will exceed 700 square feet in coverage, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204.*" **The motion carried unanimously, 7-0.**

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5. **MR. AND MRS. DAVID BAILEY, #01-1590**, request authorization to dredge 581 cubic yards of state-owned submerged land with upland disposal to create a 245-foot long by 25-foot wide box cut channel with an average depth of minus four (-4) feet at mean low water adjacent to their property situated along a cove of Dividing Creek in Northumberland County. The project is protested by three adjacent property owners.

Before beginning his presentation, Mr. Jeff Madden, Environmental Engineer Sr., distributed a revised project drawing (2-1-A) to the Commission, a copy of which is attached to the permanent record of this meeting. Mr. Madden also noted that the briefing packet did not include the project's Plan View of the Dredge Cut (Revised January 16, 2002), a copy of which is attached to the permanent record.

Mr. Madden provided an overview of the project and showed drawings and photos using a computer generated presentation. He stated that the project is located in a small, relatively undisturbed cove along the southern shore of Dividing Creek. There are five separate parcels of land that border the cove. With the exception of a riprap revetment, aligned above mean low water, along a portion of the eastside of the cove, the remainder of the intertidal area around the cove consists of either mud/sand flat or a *Spartina alterniflora* fringe. The only structure currently aligned beyond mean low water within the cove is a derelict pier adjacent the property of Mr. Frank O'Roark.

Mr. Madden noted that the applicants are prospective owners who currently have a contract to purchase the property (Tax Map Parcel No.17) currently owned by Mr. Bud Hudnall. If the Bailey's eventually purchase the parcel, they would like to dredge an access channel to a 40-foot long private pier they intend to construct in the cove and adjacent to the dwelling on the parcel.

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In describing the issues and objections to the project, Mr. Madden stated that staff had

received protest letters from Barton, Nancy and Steve Marshall who own property on the west shore at the mouth of the cove, as well as Linwood Earl Whitney, et al. In addition, Ms. Carolyn Day, the adjacent property owner on the east shore at the mouth of the cove, and her daughter testified against the project at the November 2001, meeting of the Northumberland County Wetlands Board. Both the Marshall and Day properties are immediately adjacent to the box cut channel. Ms. Day testified that she believed the proposed dredge channel would directly impact the mudflats along their shoreline. The Day's and the Marshall's feel that as the sides of the box cut channel subside, their mudflats will slump into the newly dredged channel. Both families have lived along the cove for decades and believe that dredging the channel will significantly alter the pristine nature of their undisturbed cove.

Mr. Madden reported that Mr. Frank O'Roark indicated he was not in favor of the project. The remaining property owner Ms. Isabel Gough has no comment on the project. Initially the applicant proposed to dredge approximately 982 cubic yards of material to create an 8,150 square foot dredged area. The original channel was to be 245-feet long by 30-feet wide, with a box cut to an average depth of minus five (-5) feet at mean low water. Included in this dredged area was an 800 square-foot area in the vicinity of the applicants' proposed pier to create a basin with suitable depths for a wet slip and to enable the contractor's barge to approach the shoreline to off load the spoil material.

As a result of the concerns lodged by the protestors at the Wetlands Board meeting, the applicant reduced the depth of the dredge cut from minus five feet (-5) mean low water to minus four (-4) foot mean low water. In addition, the channel width was reduced from 30 feet to 25 feet which appears to be the minimum width necessary for the contractor's barge. By narrowing the channel and reducing the proposed depth, the amount of dredge material was reduced to approximately 581 cubic yards. The contractor expects the top width of the design channel to widen and the bottom width to settle out to a width of 20 feet (+/-) after slumping.

Mr. Madden also reported that VIMS has stated that the individual and cumulative impacts resulting from a portion of the project warrants careful consideration since the cove appears stable, with persistent intertidal vegetation, and since submerged aquatic vegetation has been documented downstream of the dredge cut. In a September 28, 2001 report VIMS recommended that the applicant utilize his riparian area to the greatest extent possible to reduce the amount of dredging required to establish navigation into the cove.

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Associate Member Cowart asked for a clarification of the dimensions of the proposed box cut. For the Commission's benefit, Mr. Madden presented an extensive overview of the site,

inclusive of property owner locations, the revised dimensions of the proposed box cut, and the projected changes to the channel resulting from the project. Additionally, Mr. Madden noted that in a follow up report dated November 1, 2001, VIMS stated that while a reduction in the scope of the project would likely hasten the recovery of the cove to a natural state following dredging, some issues persist. The report indicated that a predicted increase in boating activity into the cove would likely increase the wave energy in the quiet, low energy area. The report recommended that the appropriate buffer distance be maintained between the vegetated intertidal wetlands adjacent to the dredge cut and the edge of the design channel. Furthermore VIMS indicated that the channel should be minimized and based on the dimensions of the boat using the channel. No other agency has objected to the project.

Mr. Madden stated that while the applicant has reduced the scope of the project, staff is unable to recommend approval of the project over the objections of three of the five property owners in the cove. Staff believes that the channel is excessively wide for the ingress and egress of a single boat. Mr. Madden further stated that the close proximity of the cut channel to the adjacent intertidal mudflats could result in the loss of adjacent property due to slumping of the slopes of the cut channel as well as possible changes to the flow of sediment along the shoreline. Accordingly staff recommends denial of the project as currently proposed due to the potential adverse effects on adjacent or nearby properties which must be considered as directed by §28.2-1205 of the Code of Virginia.

Commissioner Pruitt swore in Mr. David Bailey. Mr. Alan Diamonstein, attorney for the applicant, noted that he had reviewed the issue individually and had spoken with the seller of the property. He stated that at that time, Mr. Marshall had signed an approval for the dredging. Mr. Diamonstein gave a brief overview of the efforts made on behalf of the Baileys. He added that in his estimation, neither the environment nor the adjacent property owners would suffer by the Baileys building a pier for their boat on their property. Mr. Diamonstein noted a petition signed by 19 property owners living in close proximity to the impending Bailey property and who were in favor of the project. He stated that along with counsel, the Baileys have asked all adjacent property owners to meet with them to discuss the changes and aspects of the dredging project.

Mr. Daly distributed a copy of correspondence dated January 4, 2002, addressed to Mr. Frank O’Roark from Janet Bailey, and the above-referenced petition, copies of which are attached to the permanent record of this meeting. Mr. Daly then gave an overview of the revised plan for the dredging project, noting that originally the project called for a 245-foot

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long, 30-foot wide, and 5-foot deep channel; the dredging has been changed to 25 feet wide, 4 feet deep. He stated that in the past the cove served as a boat harbor and was used by a fisherman to moor his trawler. This has not occurred over the last 15 years and the cove has

filled in resulting in the referenced “pristine nature” which now exists. Mr. Daly stressed that other than the initial sloping from the dredge cut, the project would not result in significant wake causing further shoreline erosion. He noted that there are no SAV’s located within the harbor itself, and the affects on any settlement lifted up into the water can be minimized by synchronizing the dredging with high tides.

When asked by Associate Member Hull about moving existing stakes in the creek, Mr. Daly stated that the stakes along Mrs. Day’s property would not be relocated. Commissioner Pruitt swore in **Mr. Roger H. McKinley**, Landmark Services, Inc. and agent for Mr. and Mrs. Bailey. Mr. McKinley clarified the dimensions of the channel for the Commission.

In closing, Mr. Daly presented photographs of past projects completed in the area of the Bailey's impending property, noting that not all VIMS requirements were met in each project. The Bailey’s project exceeds the requirements noted by the VIMS report. Mr. Daly added that the Bailey’s have taken numerous steps to alleviate the concerns of the neighbors, VMRC staff members and the VIMS.

Having been sworn in by Commissioner Pruitt, the following protestants of the project presented their concerns to the Commission and are recorded verbatim as part of the permanent record of this meeting:

**Mr. Frank O’Roark** stated that he purchased his property a year ago. Mr. O’Roark’s primary objections to the dredging project are the possible result of a quiet, secluded cove becoming a boat harbor/marina, and any future erosion that may occur on the shoreline.

**Mr. Scott Newsome** presented an overview of the family history along the cove of Dividing Creek. His major objective to the project is the impact the disturbance to the bottom of the creek will have, such as changes in the current and possible undertow, and changes to the cove over time. Mr. Newsome submitted correspondence from his sister, Luann Hanchin, a copy of which is attached to the permanent record of this meeting.

**Ms. Carolyn Gough Day** stated that her father purchased the family property in 1935. She exhibited a real estate survey of the property that depicts a decrease in the value of the property in recent years. A copy of the survey is attached to the meeting permanent record. She also provided pictures of the property as it appeared in the last 10+ years. Ms. Day

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disputed the fact that the waterman brought his trawler into the cove, noting that he anchored the trawler just outside the cove and used a skiff within the cove. She read a letter from her nine-year old grandson, Grayson Hanchin, a copy of which is attached to the permanent record of this meeting. Ms. Day implored the Commission to consider the family histories

and value of the small cove.

**Mr. Bart Marshall** stated that he owned property with a major shoreline on the cove. His emphasis in registering his family's oppositions to the project included the extent of opposition by a large majority of property owners and members of the community; the fact that there is no eminent domain for the State in this matter; and the environmental impact to the cove, as well as the financial impact to the property owners along the shoreline. Associate Member Hull inquired as to whether the Dividing Creek Association had taken a position against this project. Mr. Marshall stated that no formal position has been taken by the Association.

**Mrs. Nancy Marshall** stated that she and her husband have a life-estate interest in the property owned by their son, Bart Marshall. She restated the family's historical value and aura of the cove. Mrs. Marshall asked the Commission to "Just say 'No!'" to the proposed project.

In rebuttal to the project opposition, **Mr. Bud Hudnall** was sworn in by the Commissioner. Mr. Hudnall stated that years ago the waterman previously mentioned operated a small oyster business in the cove; those purchasing oysters reached the business by boating inside the cove. The cove could be utilized as a boat harbor and could serve as a safe haven for boats during hurricane season. Mr. Hudnall noted that he has offered to pay 25% of the project cost in order to place his boat in the cove during hurricanes. He presented a petition in support of the project with 19 signatures of property owners who are concerned that the cove will become land locked and a problem with mosquitoes will develop. The petitioners have also noted that the cove has a working marsh for fish and crabs that should be protected. (A copy of the petition is filed with the permanent record of this meeting.)

**Mr. David Bailey**, the applicant, was sworn in by the Commissioner. He stated that the concerns of the objections appear to be for erosion. The project is well within the State and Northumberland County guidelines that were implemented to relieve erosion concerns. Mr. Bailey stated that they are simply trying to improve the property and revert the cove back to its original state as a boat harbor for very slow moving boats. Associate Member Hull inquired as to the size of the Bailey's boat. Mr. Bailey stated that his boat would be 22 feet.

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Mr. Marshall stated that he was present for the Northumberland Wetlands Board Hearing during which time the board member did not make the statement concerning the waterman bringing his 40-foot boat into the cove. He added that such assertions by earlier speakers could cause doubt for the signers of the petition presented by Mr. Hudnall.

In closing, Mr. Daly restated that the channel cut would afford the Bailey's access for their boat. He noted that neighbor opposition to the project does not include all neighbors as exhibited by the petition submitted by Mr. Hudnall. Commissioner Pruitt inquired of Mr. Madden as to whether the applicant lessened his original request; Mr. Madden stated, "Yes."

Commissioner Pruitt placed the matter before the Commission, citing §28.2-1205 of the Code of Virginia as a guide in deciding the case. In noting his familiarity with Dividing Creek and the cove, Associate Member Hull stated that he visited the site over the weekend and feels that very few of the photographs showed the affects of the fallen tree and the sand accumulation. He stated that he did not feel a marina could be established within the cove. He added that there are archaeological remnants of a pier indicating that boats of substantial size did come into the cove. Associate Member Hull stated that he felt the project would not be detrimental to the neighbors' property as it would only serve to keep the creek open as it should be. He stated that in discussing with Associate Member Cowart, the suggestion was made to keep the dredging depth at three feet to minimize the collapsing into the cut when it is made. A "no wake" regulation should also be initiated for the cove. **Associate Member Hull moved for approval of the project with a dredge cut of 3.5 feet deep, 25 feet wide, and a request for a "No Wake Zone" through the Department of Game and Inland Fisheries and the Northumberland Board of Supervisors. Associate Member White seconded the motion. When put to a vote, the motion carried unanimously, 7-0.**

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The Commission recessed for lunch at 12:20 p.m. Associate Member McLeskey was excused from the meeting at this point. Commissioner Pruitt reconvened the meeting at 1:10 p.m.

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6. **OAKHILL PROPERTIES, #01-1489** requests authorization to lay and anchor a 12-inch diameter plastic waterline across the original streambed of the North Fork of Goose Creek, within Sleeter Lake, in Loudoun County. The project is protested by an adjacent property owner and the North Fork Goose Creek Committee.

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Mr. Eversole Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. He distributed copies of the protest letter submitted by adjacent property owners, Mr. and Mrs. K. F. Sterrett, who were unable to attend the meeting. (A copy of this letter is attached to the permanent record of the meeting.) Mr. Eversole stated that the project is located near the Town of Round Hill, approximately 15 miles west of the Town of Leesburg. The area can best be described as a

former agricultural and forested area which is being subdivided and developed, as has the Leesburg area and most of Northern Virginia which continues to experience rapid growth. This project consists of a new water transmission line that will extend water service to new residential communities. Once constructed, this line will be dedicated to, and become a part of the Town of Round Hill's Public Utility System.

Sleeter Lake, an 83-acre man-made lake, was created by impounding the North Fork of Goose Creek. The applicant plans to develop residential communities on both the eastern and western sides of the lake.

Mr. Eversole reported that the initial application was received August 15, 2001, and proposed both a 12-inch diameter water line and a 4-inch diameter, plastic sanitary sewer force main to be laid and anchored along the bottom of the lake. Adjacent property owners were notified, and a public notice was placed in the "Loudoun Times Mirror." Letters of opposition were received from adjacent property owners and the general public, as well as several civic environmental groups. Both the applicant and their agent were made aware of all the objections, and had attempted albeit unsuccessfully, to resolve the issue.

Opposition centered on the exposed nature of the sewer force main, and the effects to the lake and surrounding environment in the event of a rupture in the line. Protestants feared the potential for large amounts of raw sewerage that might escape into the lake prior to breaks in the line being detected, and during repair efforts.

Mr. Eversole added that in an effort to gain the support of those in opposition to the project, the applicant submitted revised plans in November 2001, in which the sanitary sewer force main was deleted and the location of the water line was shifted slightly northward, resulting in a shorter crossing of the lake. The applicant is currently studying alternative overland routes for the sanitary sewer lines. Letters were sent to those in protest of the project, outlining modifications to the plan, and requesting a written response, should their reasons for protest remain valid. Follow-up letters of objection were received from an adjacent property owner and the North Fork Goose Creek Watershed Committee. The Departments of Environmental Quality, Conservation and Recreation, and Health (Wastewater Engineering) have all stated that the project is acceptable.

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In summary, Mr. Eversole reported that in reviewing proposals for overhead and subaqueous crossings, staff relies on the Commission approved Subaqueous Guidelines for direction, to safeguard fisheries by minimizing impacts on aquatic habitat, and to promote public health, safety and welfare, while accommodating the economic needs of the Commonwealth.

The Guidelines state that subaqueous crossings are normally permitted if reasonable measures are taken to protect aquatic resources. Though staff originally had concerns with

the proposed sanitary sewer crossing, this modified application for a waterline crossing of Sleeter Lake, achieves the applicant's goal of providing water service to both sides of the lake, while presenting little or no environmental impacts. Staff recommends approval of the application with a royalty of \$40.00 for the crossing of 40 linear feet of the original streambed of the North Fork of Goose Creek.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. Hearing no comments, the Commissioner placed the matter before the Commission. **Associate Member Williams moved to approve the project as recommended by staff; Associate Member White seconded the motion. Motion carried unanimously, 6-0.**

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## 7. PUBLIC COMMENTS

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

**Mr. Douglas Jenkins**, Twin River Watermen's Association, addressed the Commission on the recreational quota for striped bass. He cited the increase in numbers of recreational fishermen and large fish catches since 1993. Mr. Jenkins recommended a change in the existing fishing quotas for striped bass as follows:

- 1 tag per individual recreational fisherman;
- 4 tags per recreational fishing boat;
- 7 tags per charter boat; and
- 20 tags per head boat, totaling 228,500 tags x 7.5 lbs. avg. fish = targeted quota.

Mr. Jenkins also suggested that MPO's carry hand scales, perform bay-wide surveillance weekly during the season, regulate the fishery more fairly between recreational and commercial fishing.

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**Mr. Steve Jones** reported to the Commission that Mega Protein has developed an educational Menhadden Kit and provided kits for each member of the Commission. He noted that Menhadden is currently the most important fish in the bay and ocean.

**Mr. Jan Marshall**, member of the Tangier Watermen's Association, thanked the Commission for the one-month extension given for the rocks in the Rappahannock River. He asked that the Commission allow a two-week trial period during the month of February on the Onancock and Johnson's Rocks. Additionally, Mr. Marshall addressed the violation

penalties for oystermen and requested that the Commission revisit them.

**Mr. Keith Olsten** stated that he has had a crabbing permit for 15 years that was suspended last year. He described personal difficulties in the last year and requested a reinstatement of his permit. Commissioner Pruitt referred Mr. Olsten to Mr. Jack Travelstead, Chief-Fisheries Management.

**Mr. C. J. Lindeman**, Consulting Engineer, representing Colonna Shipyard. The shipyard currently holds permit #01-1327 to dredge Railway No. 2, Railway No. 3 and the Lay-Up Slip. Per DEQ instructions, the material from the dredging is to be off-loaded to the landfill. Mr. Lindeman reported that Railway No. 2 has failed and a determination as to why this failure occurred must be made. Mr. Lindeman requested that the fees for dredging Railway No. 2, Railway No. 3 and the Lay-Up Slip be divided into three separate parts in order to get Railway No. 2 back into operation. At the inquiry of the Commissioner, Ms. West stated that she had discussed this matter with Mr. Lindeman, Mr. Bob Grabb, Chief-Habitat Management, and Mr. Watkinson. Ms. West stated that Mr. Grabb determined the Commission would need to authorize any division of the royalty fees. She distributed proposed language to allow for the request being made by Mr. Lindeman, a copy of which is filed with the permanent record of this meeting.

Associate Member Ballard asked for an explanation of the reasoning behind the request. Mr. Lindeman stated that it was a matter of economizing due to a limited budget for the overall project and the necessary costs to repair Railway Number 2. **Associate Member White moved to grant the increment royalty payments as requested by Colonna Shipyard. Associate Member Cowart seconded the motion and it carried unanimously, 6-0.**

**Mrs. Page Hogge** of Urbanna stated that the oyster season was extended for hand dredging and not for hand tonging. She asked that the Commission consider the hand tongers when considering issues affecting the hand dredgers. Commissioner Pruitt referred this request to Mr. Jack Travelstead, Chief-Fisheries Management, for future matters.

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8. **PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to modify the commercial possession limits for the offshore fishery during the first quarter, 2002.

Mr. Chad Boyce, Fishery Management Specialist, stated that in December the Commission adopted Emergency Regulation 4 VAC 20-620-10 et seq. modifying provisions for the First Quarter and delaying the start of the directed fishery from the first Monday in January to the first Monday in February. Members of the Virginia seafood industry requested a delay in the start of the directed off-shore summer flounder fishery for 2002 and, further, industry

requested a reduction in the 10-day cumulative possession limit from 10,000 pounds to 7,500 pounds.

Mr. Boyce stated that by adopting Emergency Regulation 4 VAC 20-620-10 et. seq., the Commission effectively delayed the start of the directed fishery. In order to achieve a reduction in the possession limit from 10,000 pounds to 7,500 pounds, the Commission needs to modify the current regulation. Mr. Boyce noted that the emergency regulation will expire January 30, 2002, thus, the effective date of the permanent regulation will be January 31, 2002, delaying the start of the 2002 First Quarter fishery to the first Monday in February.

Commissioner Pruitt opened the Public Hearing on this matter. There were no comments from those in attendance and the matter was then placed before the Commission for action. **Associate Member Ballard moved for adoption of the amendments to Emergency Regulation 4 VAC 20-620-10 relating to the opening of the First Quarter Season and the reduction of the trip limit (10,000 pounds to 7,500 pounds); motion seconded by Associate Member Williams. When put to a vote, the motion carried unanimously, 6-0.**

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**9. PUBLIC HEARING:** Proposed amendment to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to modify the commercial possession limit for the first quarter, 2002.

Mr. Boyce stated that last month, the Commission adopted Emergency Regulation 4VAC 20-950-10 et seq., which modified the vessel possession limit to 7,000 pounds for the First Quarter (January through March) quota period for the black sea bass commercial fishery. This modified possession limit was implemented by the Atlantic States Marine Fisheries Commission (ASMFC) in December of 2001 which then required the Commission to adopt an emergency regulation to allow the changes to go into effect January 1, 2002. Since Emergency Regulation 4 VAC-20-950-10 et seq. will expire on January 30, 2002, the effective date for modified regulation 4 VAC-20-950-10 et seq. will be January 31, 2002.

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Mr. Boyce noted 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 possession limits of 7,000 pounds.

Commissioner Pruitt opened the Public Hearing on this matter. There were no comments from those in attendance and the matter was then placed before the Commission for action. **Associate Member Ballard moved for the adoption of Regulation 4 VAC 20-950-10 with the amended commercial possession limits of 7,000 pounds. Associate Member Birkett seconded the motion; motion carried unanimously, 6-0.**

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**10. PUBLIC HEARING:** 2002 blue crab harvest restrictions. Proposed amendments to Regulation 4 VAC 20-270-10 et seq., "Pertaining to Crabbing"; 4 VAC 20-700-10 et seq., "Pertaining to Crab Pots"; and 4 VAC 20-880-10 et seq., "Pertaining to Hard Crab and Peeler Pot License Sales."

Mr. Jack Travelstead, Chief-Fisheries Management, stated that in December the Commission agreed to advertise 14 different proposals to reduce the blue crab harvest in 2002 by 5%. Those 14 proposals were a combination of measures either recommended by staff or were discussed, and in some cases recommended, by the Crab Management Advisory Committee (CMAC.) Mr. Travelstead noted that Option 11, a reduction in the allowable tolerances for undersized crabs was eliminated from the advertisements due to the fact that the tolerances placed on the crab minimum size limit are established in Virginia Code § 28.2-708 and cannot be changed by regulation.

Mr. Travelstead stated that last year the Commission implemented the following measures, totaling a 7.37% reduction in harvest:

|  |              |
|--|--------------|
| Blue Crab Migratory Corridor-Sanctuary     | 1.69%        |
| Wednesday Closures June-August             | 5.17%        |
| Winter Dredge Fishery Trip Limit Reduction | 0.28%        |
| Peeler Pot Reduction to 300 Pots           | <u>0.23%</u> |
| TOTAL                                      | <u>7.37%</u> |

Mr. Travelstead stated that based on discussions with the CMAC and others in the industry, staff is recommending the following:

- 1) Replace the 2001 Wednesday closures from June 6 through August 22 with an eight-hour work day.

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Replacement of the Wednesday closures provides a gain of 0.55%. To achieve the remainder of the proposed 5%, staff also recommends:

- 2) Establishment of a 3 ½" peeler crab minimum size limit, 4 ¼" soft crab minimum size limit, and two 1 ½" cull rings in each peeler pot.

These proposals will result in an additional 4.8% reduction, bringing the 2001-2002 reductions to 12.72%.

Mr. Travelstead stated that the reason for the peeler size limit is primarily because staff

believes it meshes with the concept of the crab sanctuary implemented a year and a half ago. The sanctuary protects the adult crabs, primarily female, migrating down the bay to spawn, and those who have sponges. However, the sanctuary alone is meaningless if the crabbing effort is redirected to other portions of the life cycle. Further protection must be offered to immature female crabs available for harvest, the peeler crabs. Adoption of the two recommendations proposed will apply measures across all of the life cycle.

Mr. Travelstead stated that the following two additional measures are being recommended at this time although a reduction number can be determined:

- 3) Reduce the use of crabbing licenses as an agent by limiting each fisherman to the use of no more than 500 hard crab pots and 300 peeler crab pots in Virginia tidal waters.

The use of agents has moved beyond the Commission's original intent that agents be used in cases where a waterman has become incapacitated and cannot fish his gear. The watermen are procuring licenses for others, for their own use, and in doing so are able to exceed the current pot limits.

- 4) Reduce the recreational harvest of blue crabs by establishing a limit of one bushel of hard crabs and two dozen peeler crabs per boat or vessel.

This measure eliminates the ability of each family member to harvest one bushel of hard crabs and two dozen peeler crabs per boat.

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Mr. Travelstead updated the Commission on landings through November, 2001. The harvest catch for hard crabs during the year 2001 exceeded the catch for 2000. However, the seven-year average was not reached in 2001. The 2001 catch for peeler crabs exceeded the seven-year average, however the numbers were not as high as anticipated. Mr. Travelstead also present statistics comparing the hard crab and peeler crab fisheries for 2001. The peeler crab fisheries continues to grow and thus, the proposed recommendation in this regard.

Associate Member Williams inquired as to how the seven-year average for hard crabs could be reached while instituting the proposed regulations; are the regulations factored into the statistical data? Mr. Travelstead stated that the regulations are not factored in; the data is

presented as fact. He clarified the data by stating that the 2001 harvest was 24% less than the average, yet the regulations enacted accounted for a theoretical 7% reduction. All harvest reductions cannot be accounted for because of the regulations. He added that the reductions in harvest results in a reduction of fishing mortality, allowing the bio-mass to increase. Accordingly, as the bio-mass increases, one can fish less and catch more.

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:

**Ms. Frances Porter**, Virginia Seafood Council, addressed the Commission on the decline of the Virginia blue crab harvest. She stated that the Council discussed the regulations being proposed to the Commission, focusing on the three-year, 15% harvest reduction requested by the State Blue Crab Commission. The Council voted to endorse two new regulations for the 2002 season:

- 1) An 8-hour workday for harvesters; and,
- 2) An either/or position of a 3" minimum size limit on peeler crabs or a 1 ½" cull ring in peeler pots.

**Mr. Johnny Graham**, Executive Vice President, Virginia Seafood Council and President, Graham and Rollins, a seafood processing company, spoke to the Commission on the declining stock of blue crabs, and both the current and proposed regulations for managing the stock. Mr. Graham shared data gathered by Virginia Tech in 1994 on fishery regulations. The survey concluded that regulations not being enforced, or those which cannot be enforced effectively, are meaningless. He stressed that the best way to manage the fishery is to regulate when and where the watermen work. All harvesters would be treated equally with this regulation. Additionally, the tidal affects on the time limit would automatically establish much needed sanctuaries. Mr. Graham commended the Commission on its efforts to manage

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the fishery while noting that the Maryland and Potomac River agencies have instituted regulations to this effect. Associate Member Williams stated that he felt Virginia should make its own decisions on managing the fishery and a brief discussion ensued regarding the harvesting of sponge crabs. Mr. Graham concluded his remarks by cautioning the Commission that when the blue crabs come back, processing houses that have closed during the decline will not come back as quickly.

**Mr. Sammy Taylor**, commercial waterman, addressed the Commission on several issues. He stated that the soft crab season ends around October 15<sup>th</sup> while the peeler pots remain in the water until the last of November. As a result, the pots fill up with small crabs that are left to die. Mr. Taylor urged the Commission to shorten the peeler pot season to October 30<sup>th</sup>.

Citing a personal situation whereby Mr. Taylor is assisting his injured son with his crab pots, Mr. Taylor stated that if the proposed regulation is enacted, he would not be allowed to continue this much-needed assistance. He noted that sufficient information on the extent of agents being used in the soft crab industry is not available at this time, and he asked the Board to postpone the proposed regulation until more information is gathered.

**Mr. Louis Whittaker**, President, Virginia Soft Crab Association, expressed concerns for proposed regulations. With regard to the proposed size limit of crabs, he stated that such regulation would force soft crab harvesters into hard crabbing and bring about an economic detriment to the soft crab industry. Mr. Whittaker stated that he would be in favor of the eight-hour workday for watermen and the 3" peeler regulation so long as the MPO's will work with the watermen and not mishandle their catch. At the request of Associate Member Ballard, Mr. Whittaker commented on the advantages/ disadvantages of cull rings in the peeler pots.

**Mr. Warren Cosby**, President, York River/Croaker Landing Working Watermen's Association, stated that VIMS studied the cull rings in peeler pots in the early 1980's. The study showed that the rings made it easy for predators to come into the pots and destroy the catch. With regard to Mr. Graham's picking house concerns, Mr. Cosby stated that the market is determining the price for picked crabmeat. He also reiterated concerns for losing the Wednesday workday.

**Mr. William Scott**, waterman, addressed the eight-hour day proposed regulation, stating that this time frame is insufficient for a waterman to leave the dock, work his gear and punch back in at the end of the dock. The hours should cover the period of time between the time the waterman pulls his first gear to the time he sets his last gear. Otherwise, a 10-hour day should be allowed.

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**Mr. Douglas Jenkins**, Twin River Watermen's Association, presented a solution to help the resources, the watermen, and with getting the economy going in the industry: close crab season the middle of November; open all Virginia oyster rocks for small power dredging with a six bushel limit. The plan provides a means for the watermen while cleaning the rocks and preserving some of the crabs for spawning. Mr. Jenkins noted that the proposed eight-hour workday would be acceptable so long as one-half hour to and from the work site is permitted.

**Mr. David Hart**, waterman, questioned Mr. Travelstead on the 400 to 300 reduction on peeler pots. Mr. Travelstead stated that this reduction would result in a .02% gain to the fishery. With the peeler pots being 12% of the fishery, Mr. Hart asked why the focus on peelers when the other crab industries total 88%; why the "hit" on the peelers? Members of

the Commission indicated their understanding of Mr. Hart's question.

**Mr. Steve Pruitt**, waterman, stated that with regard to the impending regulations for the crab industry, currently Virginia enforces more regulations than the state of Maryland. Mr. Pruitt added that he supports the comments made by Mr. Whittaker.

**Mr. Jeff Crockett**, President, Tangier Watermen's Association, addressed the Commission as to how best it can protect the waterman. He stated that the watermen simply cannot work the crab pots in an eight-hour day during the Spring and Fall. He also noted that the proposed cull rings and size limits on the crabs would be difficult for watermen to maintain. Mr. Crockett made reference to the deepwater sanctuary, encouraging the Commission to defend the watermen in dealings with the federal government in this regard.

**Mr. Robert Johnson**, waterman, stated that the time spent to and from work does not affect the resource; the eight-hour workday should not include this time in fairness to the watermen. Additionally, a timeframe allowing watermen to get in and out before the crabs suffer from summer heat is requested. In order to fairly enforce the regulation, Mr. Johnson suggested that work times be established and published.

**Mr. Jan Marshall**, member of the Tangier Watermen's Association, stated that some of the proposed regulations, such as the limits on crab size would put his family "*in the poor house.*"

**Mr. Ernest Bowden**, President, Eastern Shore Watermen's Association, addressed the Commission regarding the bills currently before the General Assembly which may well take care of harvest limitations - tagging of crab pots and elimination of sponge crabs. He noted

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that the Association supports the eight-hour workday and will need to know what hours will be set. Mr. Bowden stated that there would be no way the watermen could have 3" peeler crabs on seaside.

**Mr. Craig Callahan** suggested that VIMS perform a study on the affects of peeler pots on the bay. The pots collect many female crabs that never mate and never spawn which could be a major cause for the decline in the resource.

**Mr. Gerald Parks**, Poquoson commercial waterman, commented on the crab, croaker, and rockfish resources in relationship to the proposed regulations before the Commission. Mr. Parks asked if the proposed eight-hour workday would coincide with regulations already in force allowing watermen to work three hours before sunrise until sunset, or would it be something different.

**Mr. George Washington**, President, Virginia Watermen's Association, reported that the Association met and determined that it could only support the proposed eight-hour workday regulation.

**Mr. Whittaker** inquired as to what percentage of the deepwater sanctuary is worth today. Dr. Rom Lipcius of VIMS stated about 1.7%.

Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. Associate Member Williams stated he appreciated the comments made during the hearing. He stated that there is no easy decision to make in this regard. He inquired of Mr. Travelstead as to what percentage of reduction would be experienced should Senate Bill No. 297 regarding sponge crab limitations pass. Mr. Travelstead stated that staff is currently calculating this information, but that it is anticipated to be 10% at a minimum. Associate Member Williams inquired of the VIMS staff if when the sponge crab in a pot comes to the top of the water and the air hits the egg mass, are the eggs no longer fertile? Dr. Lipcius stated that a large portion of the egg masses die, as well as the female crab depending on how long it has been out of the water. The darker egg masses have a lower survival rate.

**Associate Member Williams moved to table the matter until after the General Assembly has acted upon Senate Bill No. 297. The motion was seconded by Associate Member White.** Mr. Kelly Place suggested that if the Commission tables this matter, it would almost insure passage in the General Assembly. If the Commission were to pass a regulation contingent upon withdrawal should the Bill pass in the General Assembly, it might cover all the bases in this matter.

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In order to achieve the 10.2% reduction for the year 2002, **Associate Member Cowart moved for a substitute motion to enact the following:**

- **remove the Wednesday closure;**
- **continue the winter dredge reduction;**
- **continue the peeler pot reduction to 300;**
- **establish an eight-hour workday with staff determining the timeframe;**
- **require a 3" minimum peeler size; and,**
- **reduce recreational harvest to one bushel of hard crabs, two dozen peelers per boat.**

**The motion was seconded by Associate Member Ballard.** Associate Member Cowart also suggested that staff begin discussions on vessel limits and the use of cards in order to enhance an individual's ability to have more pots.

Commissioner Pruitt noted that the Bill on sponge crabs would be discussed with scientists

from Old Dominion University and VIMS. Following that meeting, the Bill's patron will decide whether to drop the Bill, amend it and when to submit it. There is no money attached to the Bill regarding pot tagging. Associate Member Cowart noted that the language of the Bill for pot tagging states that the Agency "shall" require that a system be instituted. Passage of this Bill will mean that VMRC must develop a plan to finance such a process. Associate Member Cowart added that should the sponge crab Bill pass, VMRC would surpass its goal of 10%. He suggested that any motion passed today be contingent upon action taken by the General Assembly. Commissioner Pruitt noted that the Commission manages an industry from which watermen gain their livelihood and must make fair, comprehensive decisions as they affect all of the users in the industry.

**Mr. Tom Powers**, Coastal Conservation Association (CCA) of Virginia, stated that within the VMRC regulations, there is no law that says the Commission cannot rescind any action taken today in this regard. Mr. Travelstead noted that an Emergency Regulation would be required to rescind the action.

Associate Member Hull stated that Mr. Cowart's motion has a great deal of merit, however, he would not recommend taking action today and coming back in a month rescind. He added that he would support Mr. Williams' motion to delay action at this time.

**Associate Member Ballard moved to amend the substitute motion wherein the Commission will commit to achieving at least a 10% reduction in 2002, as mandated by the Bi-State Blue Crab Advisory Committee; part of the reduction will be to substitute the 2001 Wednesday closure for an eight-hour workday in 2002; and the Commission will further discuss the matter in February to determine what additional**

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**measures will be needed to achieve the 10% reduction. The motion to amend the substitute motion was seconded by Mr. Birkett. The amendment to the substitute motion carried, 5-1.**

In taking action on the original substitute motion, Associate Member Cowart noted that his motion contained a number of items not included in the substitute motion. **Associate Member Cowart stated that he is in favor of the amendment to the substitute motion and chose to withdraw the original substitute motion.**

Commissioner Pruitt clarified that the Commission has not adopted a regulation at this time, but has made a commitment to achieve the 10% reduction which will be discussed further at the February Commission Meeting. He noted that the Public Hearing on this matter is closed and there will not be another Public Hearing in February.

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**11. PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-252-10 et seq., “Pertaining to the Taking of Striped Bass” to reduce the high grading of striped bass in the commercial fishery.

Mr. Travelstead reported that the following options were advertised to address and solve the problems of high grading, quota overages, and excess harvests of the striped bass in the ocean:

- 1) establish a 98,000 pound quota for the coastal fishery;
- 2) implement a muti- tagging requirement - two tags for fish greater than or equal to 34” and three tags for fish greater than or equal to 40 “;
- 3) close the coastal fishery south of Cape Charles; and,
- 4) establish a seven-inch maximum gill net requirement in lower Chesapeake Bay.

Mr. Travelstead stated that because this issue was not solved in 2001, the fishery was closed early, December 12th, to avoid an overage of the 1.7 million pound commercial quota. To date, reported harvests of striped bass for 2001 are 1,727,151 pounds, 16,000 pounds or 1.5% over quota. If additional action is not taken for 2002, it is very likely that the fishery would close early due to the continued high grading and panic fishing that occurs with the threat of an early closure.

Mr. Travelstead reported that staff has evaluated the four options and recommends two:

- 1) establish a 98,000-pound quota for coastal waters and implement the muti-tagging requirement as recommended by the Striped Bass Task Force (i.e., two tags  $\geq$  34”; three tags  $\geq$  40”,) or

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- 2) implement the original muti- tagging requirement as recommended by staff (i.e., two tags  $\geq$  28”; three tags  $\geq$  36”.)

Mr. Travelstead presented harvesting data collected for the 1997-2001 seasons. He noted that last year’s harvest in the ocean was over 900,000 pounds out of a 1.7 million pound quota; the 2002 harvest is projected to be one million pounds.

Mr. Travelstead reviewed the economic strategies for the muti- tagging system noting that the 34”-40” double tag, triple tag would likely eliminate most of the harvests above 34”. More than likely the fishermen would fish in the 31”-33” range. With the goal being to get the harvests back to the below the 28” fish, it is important to either establish the 98,000-pound quota in the ocean or move the muti- tagging to lower fish.

Commissioner Pruitt inquired as to how many meetings were held by the Striped Bass Task Force. Mr. Travelstead stated that there was one meeting, chaired by Associate Member

Hull. He noted that the recommendations by the Task Force are options rather than both being necessary.

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:

**Mr. Ernest Bowden** briefly discussed with Mr. Travelstead the math associated with the multi-tagging system. He noted that the multi-tagging system was the only action passed by the Task Force; other options were discussed but not voted upon. He stated that the fishermen are not high grading, but are using larger nets to allow the smaller fish to swim through. Mr. Bowden shared his concern that recreational fishermen are allowed to fish from the ocean and bay without exceeding their quota. He also stated that he felt all tags should be worth eight pounds, for the bay and the ocean.

**Mr. Tom Powers**, Coastal Conservation Association of Virginia (CCA), distributed to the Commission an outline of his presentation, a copy of which is attached to the permanent record of this meeting. Mr. Powers addressed the problems associated with high grading, stating that they are three-fold:

- 1) the issue of protecting the spawning stocks that are needed to continue the fishery as a viable fishery;
- 2) the issue of equity among the different commercial sectors; and,
- 3) the compliance issue.

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Mr. Powers stated that both the economics and regulations of the fishery need to change. On behalf of the CCA, Mr. Powers proposed the following measures for action by the Commission:

- 1) Institute the multi-tagging system as proposed by staff last October and again today. One tag for fish 18"-28"; two tags for fish 28"-36"; and three tags for fish above 36".
2. Close the coastal fishery after 98,000 pounds of migratory fish have been harvested.
3. Institute the multi-tagging system with the staff recommended cutoff numbers of 28" and 36".
4. Concurrent with the closure of the coastal fishery, implement a 36" maximum commercial possession limit within the state of Virginia.
5. In order to avoid waste associated with bycatch of fish larger than 36", implement a seven-inch maximum mesh size throughout Virginia waters once the 98,000-pound coastal harvest limit has been reached and during the times when the coastal migratory stocks are in the bay waters.

Mr. Powers stated that the CCA feels that closing the coastal fishery after the 98,000-pound limit has been reached will lead to a shift in effort from the coastal fishery to the mouth of the bay. Only through a combination of regulatory and economic changes to the fishery will the effort shift back to the resident fish that were the basis of the large commercial quota and low recreational size limits.

Associate Member Hull was excused from the meeting at this time.

**Mr. Chris Ludford**, commercial fisherman, reiterated that the only vote of the Striped Bass Task Force was to send the multi-tag option to the Commission. He stated that fishermen haven't received a fair shake on the dog fish and trout issues which have resulted in increased fishing for the striped bass.

**Mr. Jeff Crockett** stated that the multi-tagging system will cause problems for the fishermen in the bay; a reduction in tags should be enough to maintain the quota as it will force fishermen to fish for smaller fish, using smaller nets. The smaller nets will kill a lot of striped bass who are trapped. By targeting the larger fish over the last few years, the resource has greatly increased.

**Mr. Donnie Thrift**, fisherman, stated his disapproval of the multi-tagging system, as he does not want to use the tags as is being proposed. He suggested that the Commission re-evaluate the actions taken on this issue from the beginning.

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**Mr. Kelly Place**, commercial and recreational fisherman, supported the option suggested by the Striped Bass Task Force, utilizing the multi-tagging system at 34" and 40." He noted that fisherman need an hour or two to tag the fish; if measuring the fish is added to their tasks, a higher mortality rate will result.

**Mr. Douglas Jenkins** stated that the rockfish harvest is not in trouble. He encouraged the Commission to considering requiring the initial allotment of tags; to reduce the number of tags would be very unfair to the fishermen.

**Mr. Eddie Gaskins**, commercial fisherman, stated that his impression was that the multi-tagging system would result in more tags than less. He also stated that he felt that 98,000 pounds of fish from the entire ocean is not many fish.

**Mr. Warren Cosby**, commercial fisherman, stated that the upper river fishermen are catching 22"-24" fish on the average. He stated that it is his understanding that the

\$360,000.00 paid to VMRC for commercial licenses is being taken away for mandatory reporting in 2002; he would like to see an investigation as to why the recreational people aren't doing a mandatory report or being issued tags. He also suggested that \$100,000.00 be set aside for cross training of watermen going into other businesses.

**Mr. Craig Callahan** urged the Commission to enact the multi-tagging system.

**Mr. Danny McCulloch** stated that transferring and selling tags has caused the problem that exists today. Going back to the original allotments for tags, gill nets, and pound nets would solve this problem.

**Mr. Ricky Shearer**, commercial fisherman, stressed to the Commission that this is a serious situation for commercial fishing in the state of Virginia. He asked that the Commission make try regulations in moderation; make decisions thoughtfully so as not to negatively impact the livelihood of the fishermen.

A discussion ensued with regard to the matter being considered by the ASFMC. Mr. Travelstead stated that the ASFMC would meet in mid-February, however, he could not say whether the issue is scheduled for the meeting agenda.

**Mr. Bob Fuelstad**, member of the ASFMC Recreational Advisory Panel, stated that this matter is a major issue with the ASFMC and will be discussed at the February meeting.

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Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. **Associate Member Williams moved to take no action on the proposed amendments to Regulation 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," until the ASFMC notifies the Commission of its ruling in this regard. Associate Member Birkett seconded the motion.** Associate Member Ballard stated that he is unable to support the motion due to the timing of the fishery. **The motion carried, 4-1.**

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**Oyster Harvesting in Pocomoke-Tangier Management Area** - Commissioner Pruitt noted that during the Public Comment portion of the meeting, a request was made for a two-week opening for oyster harvesting on Onancock and Johnson Rocks in the Pocomoke-Tangier Management Area. He asked for an evaluation from Dr. James Wesson, Head-Conservation & Replenishment. Dr. Wesson stated that there is no doubt that there are oysters on the

rocks, but the Agency has been working with the watermen to rotate the harvesting areas in order to always have areas to return to in the future. A large restoration project is scheduled for Pocomoke and Tangier, possibly this spring. Large oysters in the area are needed for spawning, thus, the rotating system should continue. **Associate Member Williams moved to open the Onancock and Johnson Rocks for oyster harvesting for a two-week period. The motion failed due to the lack of a second.**

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**Request to Reinstate Crabbing Permit** – Commissioner Pruitt restated the request received during the Public Comment portion of the meeting from Mr. Keith Olsten for reinstatement of his crabbing permit. Mr. Roy Insley, Head-Plans and Statistics, reported that he had reviewed Mr. Olsten’s license record held since 1989, substantiated the hardship Mr. Olsten described and recommended that Mr. Olsten’s permit be reinstated. **Associate Member White moved to approve the reinstatement of the crab permit for Mr. Keith Olsten; Associate Member Cowart seconded the motion. The motion passed unanimously, 5-0.**

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## **12. REVIEW OF VIMS STANDING POLICY FOR NON-NATIVE OYSTER RESEARCH IN VIRGINIA AND AN UPDATE ON CURRENT RESEARCH WITH CRASSOSTREA ARIAKENSIS.**

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Dr. Stan Allen, VIMS, proposed the “VIMS Standing Policy for Non-Native Oyster Research” as distributed to the Commission. He noted that the purpose for adopting the policy would be two-fold: 1) to create a public document which other states and entities could utilize in working with non-native species; and, 2) VIMS would utilize the document as standard operating policy for initiating experiments only at VIMS that would not necessarily require a public hearing. VIMS would notify the VMRC prior to each experiment and the need for a public hearing would be determined at that point in time. Mr. Travelstead stated that an endorsement from the Commission is being requested so that when VIMS comes forward with experiments, VMRC will know precisely how they are to be conducted. The endorsement would not be in lieu of any approvals required for VIMS experiments.

In the brief absence of the Commissioner, Associate Member White placed the matter before the Commission for consideration. **Associate Member Cowart moved to endorse and file the “VIMS Standing Policy for Non-Native Oyster Research in Virginia,” as standard**

**procedure for VIMS in handling non-native species. Associate Member Birkett seconded the motion; motion carried unanimously, 5-0.**

Dr. Wesson provided initial results on the Virginia Seafood Council's non-native oyster experiments, *Crassostrea ariakensis* Field Trials. The *Crassostrea ariakensis* and the *Crassostrea Virginica* were tested in two experiments at 13 sites with high, medium and low salinity waters. To date, almost all of the *Crassostrea ariakensis* oysters have reached market size at all sites. Most of the oysters have been or are in the process of being marketed; market acceptance has been outstanding. Dr. Wesson noted that there is a resolution before the General Assembly to move forward with triploids and there appears to be a lot of interest and discussion at this time.

At the request of Associate Member Cowart, Dr. Wesson briefed the Commission on the current oyster situation in Maryland. He noted that the Virginia shucking industry depends heavily on the condition of the Maryland resource in order to continue to have bay oysters to mix with the products from other states. The Maryland harvest has decreased much in the same way as Virginia, but there have always been some oysters in Maryland to depend on. Oyster disease incidence and intensity is the highest on record in Maryland; mortalities have been severe and product quality has been poor. These conditions have helped to further the urgency of the non-native oyster issue.

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**13. RECOMMENDATION OF THE RECREATIONAL FISHING ADVISORY BOARD AND COMMERCIAL FISHING ADVISORY BOARD.**

Mr. Cory Routh, Fishery Management Specialist, Sr. presented the recommendations of the Recreational Fishery and Commercial Fishing Advisory Board. He noted that the ASFMC required certain monitoring of elvers by each Atlantic Coast state. VMRC commissioned VIMS to conduct the study. First-year funding was provided entirely by VIMS; the second year was funded by Marine Fishing Improvement Fund. Mr. Routh stated that the study is now in its third year and due to budget constrains, needs emergency funding from both the Marine Fishing Improvement Fund and the Saltwater Recreational Fishing Development Fund.

Mr. Routh reported that the CFAB is recommending funding of this project in the amount of \$11,756.46. The remainder of the funding (approximately \$11,735.54 has been recommended by the RFAB and will come from the Saltwater Recreational Fishing Development Fund. The total project funding would be \$23,492.00. Mr. Routh stated that staff recommends the

expenditures from the two funds in the amounts noted for the elver project.

Commissioner Pruitt requested comments from the public, pro or con. There being none, the matter was placed before the Commission for action. **Associate Member Ballard moved to approve an \$11,756.46 expenditure from the Marine Fishing Improvement Fund, and an \$11,735.54 expenditure from the Saltwater Recreational Fishing Development Fund, totaling \$23,492.00 for “Monitoring Relative Abundance of Young of the Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of the Chesapeake Bay.” Associate Member Williams seconded the motion; the motion carried unanimously, 5-0.**

Mr. Routh also reported that for the last six years, the Virginia Saltwater Fishing Tournament has been funded by the Virginia Saltwater Recreational Fishing Development Fund. Due to the increase in citation-sized fish caught in 2001, the program has met a budget shortfall. Mr. Routh stated that the RFAB and VMRC staff recommends emergency funding in the amount of \$20,000.00 for the Virginia Saltwater Fishing Tournament Program.

Commissioner Pruitt requested comments from the public, pro or con. There being none, the matter was placed before the Commission for action. **Associate Member Ballard moved to approve emergency funding in the amount of \$20,000.00 from the Virginia Saltwater Recreational Fishing Development Fund for the Virginia Saltwater Fishing Tournament Program. Associate Member Birkett seconded the motion; the motion carried unanimously, 5-0.**

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**14. DISCUSSION:** Request for Public Hearing on proposed regulation amendments to increase the commercial minimum size limit for black sea bass and increase the size of sea bass post escape panels.

Commissioner Pruitt requested comments from the public, pro or con. There being none, the matter was placed before the Commission for action. **Associate Member Ballard moved for Public Hearing on proposed regulation amendments to increase the commercial minimum size limit for black sea bass and increase the size of sea bass post escape panels. Associate member Williams seconded the motion; motion carried unanimously, 5-0.**

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**15. DISCUSSION:** Review of results of two-week oyster season in the Rappahannock River.

Dr. Wesson noted that in December the Commission granted a two-week extension on six rocks in the Rappahannock River. Oysters were caught at all sites, but most were caught in the Temples Bay area and in the Corrotoman River. The Oyster Heritage Program for restoration in the Rappahannock River is just beginning and has gathered federal, state and private partners to make a large financial contribution for the effort. At the inquiry of Associate Member Cowart, Dr. Wesson briefly reviewed the cleaning and restoration efforts undertaken with that program. He noted that a very good spatset occurred throughout the program areas in 2001. Therefore, broodstock must be left in the areas to provide any chance of getting a spatset on the shells planted late last year. Extending the season in the requested areas could seriously impact the chance of success that would, in the long run, affect the Agency's ability to obtain funding for similar projects. Dr. Wesson stated that staff feels the three-month regular season and the two-week extension with dredges has been sufficient for this year, and that there should not be any further removal of broodstock oysters from these areas.

Associate Member Williams briefly discussed with Dr. Wesson the locations where oysters had been worked and the current availability of oysters in Temples Bay. He stated that he felt it would not hurt the oysters to give the watermen the month of February for harvesting.

Mr. George Washington stated that 331 bushels of oysters were caught on Hog House during the two-week extension period. Approximately 900 bushels of oysters were harvested from the six rocks extended at the December Commission Meeting. Comments from members of the audience were in agreement with Mr. Washington's reports. He suggested that the

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Commission close the Morratico Bar and extend the harvest on the six previously extended rocks through the month of February.

**Bob Jensen** stated that his reefs have been spawning oysters for the last six years, resulting in watermen making money off the river. He encouraged the Commission to extend the opening of the rocks.

**Associate Member Williams moved to extend the oyster season through the month of February 2002 on Drumming Ground, Temples Bay, Towles Point, and Hog House, while closing Morratica Bar and the Corrotoman. Associate Member Birkett seconded the motion.** Commissioner Pruitt inquired as to the conditions of Drumming Ground. Dr. Wesson stated that the oysters in all of these areas have been concentrated for easy harvest. He noted his concern for the smaller oysters in the areas. Following a further discussion of the rocks in question, **Associate Member Birkett withdrew his second. The motion then failed for the lack of a second.**

**Associate Member Williams moved to extend the opening of the rocks from Smokey Point to the bridge on the southern side of the Rappahannock River for the month of February 2002. The motion was seconded by Associate Member Cowart and was carried, 4-1.**

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Commissioner Pruitt stated that the Commission would hold its next meeting on Tuesday, February 26, 2002.

There being no further business before the Commission, the meeting was adjourned at 5:45 p.m.

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William A. Pruitt, Commissioner

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Stephanie Montgomery CPS, Recording Secretary