

MINUTES

APRIL 23, 2002
NEWPORT NEWS, VA 23607

The regular Monthly meeting of the Marine Resources Commission was held on April 23, 2002 with the following present:

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

Virginia Institute of Marine Science:

Tom Barnard	Dr. Rom Lipcius
Eugene Burreson	Jacques van Montfrans
	Lyle Varnell

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

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

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

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

Sherry Hamilton
 Scott Harper
 Michael Hines
 Kara Urbanski

Gloucester-Mathews Gazette Journal
 Virginian Pilot
 The Daily Press
 The Daily Press

others present included:

George Brooks
 Edward Cockrell
 Jeff Harris
 Brenda Hayes
 Mary Ewell
 Kemper Kibler
 Randolph Herrmann
 Catherine Hazelwood
 Arthur McDonald
 Jackie Taylor
 Marelyn Lowell
 Joe Armstrong
 Charles Gabel
 Sarah Beeler
 James Riggins

Jim Hayden
 George Washington
 Capt. Bob Jensen
 Edward Hogge
 Billy Belvin
 David Owens
 Gordon Smith
 Kelly Place
 William Stockhauser
 Ted Hinson
 Tom Langley
 Dario D'Angelo
 Robert Taylor
 Susan Gaston
 Linda Riggins, and others.

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Commissioner Pruitt called the April 23, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams. Commissioner Pruitt established that there was a quorum present.

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

**** APPROVAL OF AGENDA**

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

1. APPROVAL OF MINUTES – March 26, 2002.

Associate Member Williams moved to approve the Minutes of the March 26, 2002 Commission Meeting as distributed. Associate Member Birkett seconded the motion; the motion carried unanimously, 8-0.

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

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

- 2A. BAYMARK CONSTRUCTION CORPORATION, #93-0149,** requests authorization to modify their existing permit to dredge by clamshell method a portion of the navigational channel leading into Kings Creek in Northampton County. Specifically, this modification would extend the existing permitted dredged channel southwest approximately 360 linear feet to connect with Cherrystone Channel. Recommend a royalty in the amount of \$1,020.00 for the new dredging of 1,700 cubic yards at a rate of \$0.60 per cubic yard. All other conditions of their permit will remain unchanged.

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

2B. FAIRFAX COUNTY PARK AUTHORITY, #01-1297-20, requests authorization to install five (5) low profile, concrete stream crossings totaling approximately 220 linear feet across Holmes Run in association with the construction of the Holmes Run Stream Valley Trail in Fairfax County.

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

2C. METRO MACHINE CORPORATION, #02-0173-15, requests authorization to relocate an existing 495 linear foot pier, install a 31-inch diameter mooring cell, a mooring platform, two (2) trestles, an electrical equipment platform, 350 linear feet of replacement bulkhead no greater than two (2) feet in front of the existing bulkhead, two (2) 24-inch spud piles, two (2) proposed breasting dolphins and dredge 191,800 cubic yards of State-owned subaqueous bottom to achieve maximum depths of -50 feet below mean low water within the dry dock and -37 feet within the channel adjacent to their property situated at the confluence of the Southern and Eastern Branches of the Elizabeth River in the City of Norfolk. Recommend a royalty in the amount of \$86,310.00 for the new dredging of 191,800 cubic yards at a rate of \$0.45 per cubic yard.

PERMIT FEE.....\$100.00
 ROYALTIES.....\$87,710.00

2D. GIANT CEMENT VIRGINIA, INCORPORATED, #01-2228-15, requests authorization to maintenance dredge, by clamshell method, 8,000 cubic yards of State-owned subaqueous bottom in a 950-foot long by 200-foot wide area to maximum depths of -38 feet below mean low water adjacent to their property situated along Paradise Creek in the Cities of Portsmouth and Chesapeake.

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

2E. LAMBERT'S POINT DOCKS, INCORPORATED, #01-2199-15, requests authorization to dredge, by clamshell method, 15,067 cubic yards of maintenance and 1,333 cubic yards of new State-owned subaqueous bottom in a 1,300-foot long by 306-foot wide slip and channel between piers "L" and "S" to maximum depths of -36 feet below mean water adjacent to their property situated along the Elizabeth River in the City of Norfolk. Recommend a royalty of \$599.85 for the new dredging of 1,333 cubic yards at a rate of \$0.45 per cubic yard.

PERMIT FEE.....	\$100.00
ROYALTIES.....	\$599.85

2F. NORFOLK YACHT AND COUNTRY CLUB # 01-1042, requests authorization to reconfigure the existing marina by constructing two (2) fixed piers, three (3) floating piers, one (1) floating pier/breakwater, four (4) floating sailboat storage piers, and installing 34 uncovered open-sided boatlifts adjacent to their property situated along the Lafayette River in the City of Norfolk. Recommend approval provided the western main pier would not be constructed until July 1, 2002 at which time 0.39 acres of Norfolk Public Ground Number 6, is removed pursuant to Acts of Assembly-Chapter 427(House Bill 1293) passed during the 2002 session of the Assembly.

PERMIT FEE.....	\$100.00
ROYALTIES.....	\$13,734.50

Commissioner Pruitt asked for comments from the audience, pro or con, on the proposed Page Two items. There being no comments offered, Commissioner Pruitt placed the items before the Commission for consideration.

Associate Member Hull moved for approval of the Page 2 Items – (2B.) Fairfax County Park Authority, (2C.) Metro Machine Corporation, (2D.) Giant Cement Virginia, Incorporated and (2F.) Norfolk Yacht and Country Club - as recommended by staff. Associate Member Cowart seconded the motion; the motion passed unanimously, 8-0.

Associate Member Hull moved for approval of the Page 2 Items – (2A.) Baymark Construction Corporation and (2F.) Lambert’s Point Docks, Incorporated - as recommended by staff. Associate Member White seconded the motion. The motion passed 7-0 with Associate Member Ballard abstaining from the vote.

3. ROBERT W. TAYLOR, #02-0022-21, requests authorization to construct a second private, non-commercial, open-pier extending 190 feet channelward of mean low water and 32' by 16' open-sided boathouse adjacent to his property situated along the York River in King and Queen County. The project is protested by an adjoining property owner.

Mr. Kevin Curling, Environmental Engineer, Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. Mr. Curling stated Mr. Taylor's residence is located in lower King and Queen County on the York River. His property contains two distinct shorelines. One shoreline fronts the York River while the

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other shoreline is located along an unnamed tidal creek. The inlet to the creek also passes

through Mr. Taylor's property. Mr. Taylor has an existing wharf located along the tidal creek which is authorized by statute. Since Mr. Taylor is proposing to build a second pier on his property, a permit is required.

Mr. Curling noted that there is an active sand delta where the tidal creek enters the York River. Because of the activity of the delta, the inlet to the creek has shoaled in to the point of being unnavigable, therefore making Mr. Taylor's existing wharf unusable at this time. Mr. Taylor has stated that the present configuration of the delta was established during the storms of February, 1998. The proposed pier will be built over and across this delta.

Based on the application drawings which located mean low water approximately 50 feet from mean high water, Mr. Curling noted that staff has determined that the pier would extend 190 feet onto State-owned submerged land. However, from observations that Mr. Taylor obtained during low tide on February 24, 2002 and a staff site visit on March 5, 2002, it was determined that only about 40 feet of the pier would extend beyond low water as it existed on these dates. Since the tides that occurred during the first week of March, 2002 were extreme low spring tides, an exact location of mean low water has not been determined, however, it is apparent that its location varies with the sand movement of the delta.

Mr. Curling reported that VIMS has determined that the creek forms the bars and that the inlet has almost completely silted closed. They note the fetch and weather conditions will have more impact on the sand bar and beach than the applicant's pier. They also indicate that since the creek is only navigable at extremely high tides, the applicant would have to dredge the creek to be able to use his existing pier.

Mr. Curling stated that the project is protested by Mr. and Mrs. Robert Hayes, adjacent property owners located along the York River. The Hayes are concerned that the proposed pier will increase the shoaling at the inlet and eventually close off the creek. They contend that the proposed pier will increase the shoaling around their pier. Furthermore, they question the need and use for the total length and size of the structure.

Mr. Curling stated that in granting statutory authority for private piers to riparian land owners, the Legislature recognized the riparian right of the land owner to access the water, and if the associated riparian area allowed, the right to reach navigable waters. Also, the Commission's Subaqueous Guidelines recognizes the preference of open-pile piers over solid fill structures or dredging to access navigable waters.

Mr. Curling noted that at the present time, Mr. Taylor does not have access to navigable waters from his current wharf. For Mr. Taylor to make his existing wharf useable, dredging would be required. If dredging were proposed, the inlet channel and shoreline would likely need to be protected with jetties which would disrupt the littoral sand movement along the

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shoreline. While the pilings of the pier may affect the tidal hydraulics and the sand movement near the pier, it still allows the inlet and delta to change according to the existing

environmental conditions. By allowing the natural processes to continue, it is possible that the creek will again become navigable.

Mr. Curling stated that by proposing an open-pile pier, Mr. Taylor has minimized the impacts associated with reaching the navigable waters of the York River. Also, if Mr. Taylor did not have the existing wharf located on the creek, this proposed pier would meet the statutory authority for private piers located within the apparent riparian area of the landowner and no authorization would be required from the Commission. The open-sided boathouse would also meet the statutory authority if it was not protested by the adjacent property owners. Mr. Curling stated that staff recommends approval of the project as proposed.

Commissioner Pruitt asked for questions from the Commission. Associate Member White inquired as to the distance between Mr. Hayes' dock and Mr. Taylor's proposed pier. Mr. Curling stated that the distance is 140 feet.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. **Mr. Robert William Taylor**, the applicant, was sworn in by the Commissioner and addressed the Commission as to the existing conditions of the creek, its navigation hazards and his need for the proposed pier. Mr. Taylor's remarks are recorded verbatim as part of the permanent record of this meeting.

Mrs. Brenda H. Hayes, adjacent property owner, was sworn in by the Commissioner and spoke in opposition of the project. She stressed to the Commission that the creek is navigable during high tide; her primary concerns are that the new pier would contribute to additional shoaling in the creek and would block her river view. Mrs. Hayes' remarks are recorded verbatim as part of the permanent record of this meeting.

In response to Mrs. Hayes' comments, **Mr. Taylor** noted that the creek is navigable only during high tide which averages four hours a day. At the inquiry of the Commissioner, Mr. Taylor stated that he would be installing a lift and canopy on the dock.

With no further comments offered, the matter was placed before the Commission for action. **Associate Member Gordy moved to approve the project request of Robert W. Taylor, Application #02-0022-21. Associate Member White seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

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4. **JEFF HARRIS, #00-0138-15**, requests authorization to construct a 31-foot long by 16-foot wide private, non-commercial, open-pile boathouse with a 4-foot by 16-foot elevated deck adjacent to his property situated along the Poquoson River in York

County. The project is protested by an adjacent property owner.

Ms. Traycie West, Environmental Engineer Sr., stated that Dr. Harris currently has a 300-foot long by 5-foot wide private pier at his property situated along the Poquoson River in York County. He proposes to add a 31-foot long by 16-foot wide open sided boathouse at the end of the existing pier.

Ms. West stated that the Commission considered a similar request by Dr. Harris in June, 2000, at which time he sought authorization for a 40-foot long by 16-foot wide open-sided boathouse. The project was protested by Mr. Randolph Hermann and Dr. and Mrs. George Brooks, the adjacent property owners. The Commission directed the applicant and the protestants to attempt to reach a compromise and the decision was postponed. Following the Commission meeting, Dr. Harris withdrew his request for authorization for the boathouse and proceeded to construct his private pier, which is authorized by statute under §28.2-1203 of the Code of Virginia.

In January 2002, Dr. Harris re-submitted his request for authorization to construct an open-sided boathouse, however, the size of the structure has been reduced from the original proposal by 80 square feet. Staff notified the adjacent property owners, and a nearby resident, Mr. Ewell, who had expressed concern during the processing of the earlier request.

Ms. West noted that the project is again protested by Dr. and Mrs. George Brooks, as they are concerned about their view of the creek. She stated that additional letters were received from Mr. Hermann and Mr. Shepard.

In summary, Ms. West stated that the proposed open-pile design should minimize the visual impacts associated with the structure. The proposed deck, railing, and associated stairs, however, would increase the visual obstruction associated with the structure. Additionally, the deck is not a water-dependent use and activities proposed for the elevated deck could easily be accommodated on the pier head or, preferably, on the adjacent upland. Ms. West stated that in light of the objections to the structure, staff recommends approval of a 35-foot long by 16-foot wide open-sided boathouse, but without an elevated deck portion.

In the brief absence of the Commissioner, Associate Member White asked for questions from the Commission. Counselor Josephson inquired whether the proposed construction is within the fingerprint of the existing pier. Ms. West stated that it is.

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Associate Member White asked if anyone in attendance wished to speak to this matter, pro or con. **Dr. Jeffrey E. Harris**, the applicant, was sworn in by the Commissioner and addressed the Commission as to his decision to request the pier project at this time. He noted that the proposed structure will change the view for the neighboring property owners, however, Dr.

Harris stated that he did not believe the project would result in a reduction of property values. Dr. Harris' remarks are recorded verbatim as part of the permanent record of this meeting.

Dr. George W. Brooks, adjacent property owner, was sworn in by the Commissioner and spoke in opposition of the project. Dr. Brooks stated that approval of the proposed project would result in reduced property values, as well as negatively affect the river's environment. He presented slides to illustrate his view of the river which he stated would be greatly impaired by the proposed project. Dr. Brooks' remarks are recorded verbatim as part of the permanent record of this meeting.

Mr. Randolph Herrmann, adjacent property owner, was sworn in by the Commissioner and spoke in opposition of the project. Mr. Herrmann reiterated the impact of waterfront construction on the property values of those initiating the construction and on those of adjoining property owners. He requested that the Commission formulate a policy to consider property value impact as a valid reason for banning the erection of super structures on all non-commercial piers. Mr. Herrmann's remarks are recorded verbatim as part of the permanent record of this meeting.

Mrs. Mary Steed Ewell, nearby property owner, was sworn in by the Commissioner and spoke in opposition of the project. Mrs. Ewell asked that the Commission consider the fact that erection of the roof is not necessary to the operation of the proposed boatlift. Mrs. Ewell's remarks are recorded verbatim as part of the permanent record of this meeting.

In response to the comments made in opposition to the proposed project, **Dr. Harris** noted that Dr. Brooks' pier is located on his property line and may be in violation of the ten-foot restriction. Additionally, Dr. Harris noted that Dr. Brooks is hitting golf balls into the Poquoson River on a regular basis, possibly causing contamination of the river.

There being no further comments in this regard, Commissioner Pruitt placed the matter before the Commission for action. Associate Member Gordy inquired as to whether Dr. Harris experienced a recent increase in property taxes. Dr. Harris stated that a reassessment of the property was made after building his pier, resulting in a property tax increase. Associate Member Ballard asked if construction of the boathouse would require additional pilings in the river. Dr. Harris stated that he did not think additional pilings would be used. Ms. West stated that the contractor has indicated that everything needed for the boathouse is currently in place.

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Associate Member Birkett inquired if the request totals 35-feet in length of coverage for the boathouse. Dr. Harris stated that it does. Associate Member Gordy inquired as to how long a neighboring double boathouse with decking has been in existence. Ms. West stated that she processed the permit for the structure and, therefore, it was not more than five years old because she started working with the Commission five years ago. Associate Member Birkett asked Dr. Harris if he has purchased a boat for the structure; he stated that he has purchased a

used 18-foot boat. He added that he may purchase another boat within the 25-foot range at some point in the future.

Associate Member Hull asked Dr. Brooks to clarify the location of his pier. Dr. Brooks stated that the pier is located in a cove and that Dr. Harris may be confused as to riparian rights and property line restrictions in referring to a violation with the location of his pier.

Associate Member Ballard stated that in the case of Jeff Harris, Application #00-0138-15, the Commission, having considered the materials and documents included in the Agenda packet, staff briefings and recommendations presented at this hearing, the evidence presented at this hearing on behalf of the applicant and protestants, the comments of any other State agencies in this matter and those that are specifically identified in the Code of Virginia, §28.2-1205, for the Commission's consideration when to determine whether to grant or deny any permit for the use of State-owned bottomlands, and taking into account the Subaqueous Guidelines of March 1986, he finds that the use of the application is reasonable; that the basis of the protests seems to revolve around water quality which he does not believe is an issue as any pilings needed for the boathouse are already in the water; and that the protestants main objection to the view is the pier itself. **Associate Member Ballard moved for approval of the application for the boathouse made by Jeff Harris, Application #00-0138-15, and in light of the Subaqueous Guidelines, denial of the request for the deck because of its non-water dependent use; Associate Member Birkett seconded the motion.** Associate Member Hull noted that he would not support the motion and that he stood on his record of June 27, 2000 in that the requested project is an intrusive incursion into the neighbor's properties and their views of the river. Associate Member Cowart stated that he concurred with Dr. Hull and noted that on June 27, 2000, the parties were encouraged to work their problems out which they have not. **With a vote by show of hands, the motion carried, 5-3.**

5. **RED RIVER COAL COMPANY, INCORPORATED, #02-0399**, requests authorization to construct a 30-foot x 40-foot clear span bridge across the Powell River to provide vehicular access to a proposed mining operation in the Dorchester community of Wise County. The project is protested by a nearby property owner.

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Mr. Randy Owen, Environmental Engineer Sr., stated that the project is located approximately 2.7 miles north of Norton, off State Route 610 (SR 610) near the Dorchester community of Wise County. This portion of Wise County has been heavily impacted by previous strip mining activity.

Mr. Owen stated that the purpose of the project is to provide the applicant trucking access from SR 610, across the headwaters of the Powell River, to its proposed deep mine identified

as Clintwood Seam. Surface access to the mine would be accomplished by constructing mine portals (openings) through an existing high wall located adjacent to the subject waterway.

Mr. Owen added that the Red River Coal Company, Incorporated has applied to the Virginia Division of Mined Land Reclamation for its necessary mining permit.

In presenting the issues surrounding the project, Mr. Owen stated that the project is protested by Mr. and Mrs. Bill D. Stidham, who live approximately 1,000 feet downstream of the proposed bridge along SR 610. VMRC has received two protest letters from the Stidhams which indicated that the project would lead to increased noise and dust levels associated with the proposed trucking activities. They requested that the applicant relocate the bridge further upstream, away from their residence, to alleviate their concerns.

Mr. Owen stated that on April 1, 2002, staff advised the protestants in writing that impacts to their property associated with trucking activities along SR 610 fell outside the jurisdiction of the VMRC. In their second letter, however, the Stidhams reiterated their previous objections but failed to identify any concerns which pertain to impacts on State-owned subaqueous land.

Nevertheless, staff questioned the applicant about the possibility of relocating the bridge further away from the Stidhams' property. Their agent, D. R. Allen & Associates, P.C., indicated that the only alternate access off SR 610 would be via an old jeep trail. This would require approximately 10,000 linear feet of additional roadway construction, which greatly increased the project cost.

Mr. Owen noted that the Department of Game and Inland Fisheries indicated that the clear span bridge design is their preferred method for vehicular stream crossings and, accordingly, have no objections to the project since no instream impacts are anticipated. The Department of Environmental Quality reports that a Virginia Water Protection Permit will not be required because minimal impacts to water quality are expected. No other State agency has expressed opposition to the project.

Mr. Owen stated that given the minimal amount of instream impacts anticipated, staff recommends approval of the project as proposed with strict adherence to an erosion and sediment control plan which follows the Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992).

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The Commissioner asked if anyone in attendance wished to speak to this matter, pro or con. **Ms. Heather Noel McDonald**, Environmental Scientist for D. R. Allen & Associates, P.C. was sworn in by the Commissioner and noted for the record that she is available for questions regarding the proposed bridge.

Commissioner Pruitt noted that there was no one present in opposition of the project. There being no further comments in this regard, the Commissioner placed the matter before the Commission for action.

Associate Member Williams moved to approve the project request of the Red River Coal Company, Incorporated, Application #02-0399, in accordance with staff's recommendations. Associate Member Gordy seconded the motion. When put to a vote, the motion carried unanimously, 8-0.

6. **E. D. COCKRELL, SR., #00-0997-13**, requests after-the-fact authorization to retain two (2) 24-foot long by 3½-foot wide extensions to an existing 24-foot long community-use timber tending pier adjacent to his property situated along a cove of the Great Wicomico River in Northumberland County.

Mr. Jeff Madden, Environmental Engineer Sr., reported that the applicant's property is located in a cove of the Great Wicomico River approximately three (3) miles south of the town of Burgess in the vicinity of the VDOT Route 200 bridge crossing at Glebe Point. Mr. Cockrell maintains a ramp and pier facility within the cove where boats are moored for four (4) adjacent rental properties, and other adjacent upland lots owned by his family. The applicant allows his tenants and his family to launch boats at his ramp and to moor boats at the pier. No services beyond launching and mooring vessels are provided at the facility.

Mr. Madden stated that Mr. Cockrell was aware that the boat ramp was beginning to shoal in. In an attempt to address the problem Mr. Cockrell contracted Middle Bay Construction to submit a Joint Permit Application requesting that he be allowed to extend the two (2) tending piers to 48 feet thereby enabling vessels to achieve adequate depth at the launch site. Mr. Madden stated that on July 6, 2000, staff conducted a routine site visit with the applicant and noted that the two extensions had already been constructed. According to the contractor/agent they were operating under the assumption that the proposed extension was for a private pier. The contractor and applicant believed that Commission staff would eventually route a letter stating that no permit was required. Since the contractor apparently had a space in his construction schedule he went ahead and built the extensions.

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Mr. Madden stated that based upon review of a previously issued permit (VMRC #85-0912), for construction at the site, staff determined that the unauthorized extensions were intended for a community structure and would not qualify under the statutory authorization for private piers contained in the State Code. Mr. Madden reported that the U.S. Army Corps of Engineers has indicated that the project meets the qualifications for Regional permit Number 17 and does not need an individual permit; VIMS has stated that the impact to the marine environment resulting from the additional construction would be minimal.

In summary, Mr. Madden stated that while staff is concerned that an experienced contractor

undertook the construction of the extensions in the absence of a permit, the additional footage of piers only results in a minimal impact on the marine environment. Accordingly, staff recommends approval of the project. In addition, the Commission may wish to consider an appropriate civil charge.

The Commissioner asked if anyone in attendance wished to speak to this matter, pro or con. **Mr. Edward Cockrell**, applicant, was sworn in by the Commissioner. He noted that he hired someone to obtain the permit and a contractor to build the dock. Through the permit process, there was confusion as to whether the project would be a private or commercial dock. Associate Member Birkett inquired as to whether Mr. Cockrell charges a ramp fee. He stated that a lot of people use his ramp, but he does not charge a fee. He stated that he considers the ramp to be private.

There being no further comments in this regard, Commissioner Pruitt placed the matter before the Commission for action.

Associate Member Hull moved to approve the project request of E. D. Cockrell, Sr., Application #00-0997-13, for an after-the-fact permit. Associate Member Birkett seconded the motion. When put to a vote, the motion carried, 7-0. Associate Member Cowart abstained from the vote.

7. **STRATFORD HARBOUR POA, INCORPORATED, #01-1603-20**, requests after-the-fact authorization to retain a boatlift installed within a wet slip at an existing community pier situated along Currioman Bay in Westmoreland County.

Mr. Mark Eversole, Environmental Engineer Sr., provided an overview of the project showing drawings and photos using a computer-generated presentation. He stated that Stratford Harbour is a waterfront community, located along the Potomac River and Currioman Bay, approximately 5 miles north of the Town of Montross. A community pier was constructed in the 70's as part of the development. In 1998, a permit was issued by VMRC to renovate the facility by adding wet slips to the pier and a boat ramp.

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Mr. Eversole reported that a Joint Permit Application (JPA) was received September 5, 2001, from the Stratford Harbour POA, requesting after the fact authorization to retain an unauthorized boat lift recently constructed. The after-the-fact application was submitted at the direction of the Westmoreland County Land Use Office. VMRC staff met with representatives of the Property Owners Management Co. and the President of the Property Owners Association, on September 21, 2001, to visit the site and discuss the options available to rectify the situation.

Mr. Eversole noted that a Sworn Complaint and Notice to Comply were issued directing the Association to remove the unauthorized pilings and boat lift within 30 days, or request that

VMRC continue with the processing of the Joint Permit Application, to retain the as-built boatlift. By letter dated October 12, 2001, the Association requested that the application to retain the boatlift be processed.

Mr. Eversole stated that the Westmoreland County Wetlands Board conducted a public hearing on the after-the-fact application, in keeping with their policy of hearing all commercial applications. The Board approved the boatlift, by a vote of 3-0 with one abstention, on December 17, 2001.

Adjacent property owners were contacted and an advertisement was placed in the "Westmoreland News," a paper having general circulation in the project area. No objection was received from the public.

Mr. Eversole noted that the Virginia Department of Health had originally recommended denial of the project, based on inadequacies discovered during their annual inspection of marinas and boat moorings. In response, the Association submitted an approved plan for sanitary facilities, resulting in Health Department approval of the project, dated February 6, 2002. The Department of Conservation and Recreation does not object to the project. VIMS states that the individual and cumulative adverse impacts will be minimal.

Mr. Eversole stated that based on past permits obtained by the Stratford Harbour Property Owners Association, for development of the community facility, it is clear that the Association was aware that certain construction activities require authorization from the Commission. The Association was, however, also aware of the many private, riparian piers, some with boat lifts, that line the shore of the Potomac River in the Stratford Harbour Subdivision.

The decision by the Association Board to allow the construction of the lift, seems to have been based on the premise that the community pier was a private facility, therefore needing no permit for a boat lift. While the Commission's Subaqueous Guidelines consider community piers to be commercial in nature, the Association viewed the community pier as private, not commercial.

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Mr. Eversole added that based on the minor environmental impacts resulting from this project, staff recommends that the after-the-fact request be approved. Should the Commission feel that a civil charge is warranted, in lieu of further enforcement action, staff would recommend a charge based on findings of minimal environmental impact, as well as a minor degree of non-compliance.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con.

Mr. Dario D'Angelo, Past-President of the Stratford Harbour Property Owners' Association, was sworn in by the Commissioner. He noted that he was President of the POA during which time the confusion in this matter occurred. He stated his appreciation to Mr. Eversole for the correctness of his report to the Commission.

Following the aforementioned comments, Commissioner Pruitt placed the matter before the Commission for action. Associate Member Birkett recalled a similar case before the Commission in the recent past. In view of that fact and in an effort to be consistent in its rulings, **Associate Member Birkett moved to approve the request of Stratford Harbour POA, Incorporated, Application # 01-1603-20, for an after-the-fact permit to impose a civil charge of \$600.00. Associate Member Williams seconded the motion; motion carried unanimously, 8-0.**

The Commission recessed for lunch at 11:15 a.m. In the brief absence of Commissioner Pruitt, Associate Member White reconvened the meeting at 12:45 p.m.

8. PUBLIC COMMENTS

In the temporary absence of Commissioner Pruitt, Associate Member White opened the floor for public comments. The following individual presented his concerns to the Commission and is recorded verbatim as part of the permanent record of this meeting:

Mr. Billie Belvin requested an extension of the Oyster Season in the James River. Dr. James Wesson, Head-Conservation & Replenishment, stated that there is a clause in Regulation 720 that allows the Commission to extend the James River Season as late as June 30, if deemed appropriate. Dr. Wesson noted that there are very few boats working in the river at this time and there does not appear to be a problem with such an extension.

There being no further comments, Associate Member White closed the Public Comment portion of the meeting.

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9. SPECIAL PRESENTATIONS

Colonel Steven Bowman, Chief, Law Enforcement, presented a Certificate of Distinguished Service to M.P.O. A. Lawrence Ayers for 20 years of service and who is retiring May 1, 2002. Colonel Bowman also presented a Public Service Award issued by the Commandant of the United States Coast Guard to M.P.O. Allen D. Marshall. This award was presented for M.P.O. Marshall's heroic service in rescuing a stranded, hypothermic hunter.

10. DISCUSSION: Adjustment of the summer period (May 1 – October 31) commercial scup quota, from 2,774 pounds to 4,987 pounds. Request for May 2002

Public Hearing.

Mr. Chad Boyce, Fisheries Management Specialist, stated that a recent adjustment to the commercial scup quota made by the ASMFC would increase the summer quota to 4,987 pounds in Virginia. To maintain compliance with the ASMFC Scup Management Plan, staff recommends a Public Hearing be held in May to consider adoption of Regulation 4VAC 20-910-10 et seq., with the amended summer commercial scup quota as 4,987 pounds.

In the absence of Commissioner Pruitt, Associate Member White called for comments from those in attendance, pro or con. Hearing none, Mr. White referred the matter to the Commission for action. **Associate Member Cowart moved for a Public Hearing to be held on May 28, 2002 for discussion of the ASMFC Scup Management Plan as presented by staff. The motion was seconded by Associate Member Gordy and carried unanimously, 8-0.**

- 11. PUBLIC HEARING:** Consideration of a proposed one-month extension of the allowance for small-mesh (to two inches) drift gill nets to be fished in upriver areas.

Mr. Rob O'Reilly, Deputy Chief-Fisheries Management, stated that the request is for an extension of the current exemption to the 2 7/8-inch minimum gill net mesh size requirement contained in Regulation 4 VAC 20-430-10 et seq. The proposed extension would continue the exemption for the month of May.

Mr. O'Reilly noted that this item is a request of several upriver watermen who wish to extend the time period that they may fish with small mesh, as small as two inches. Currently, Regulation 4 VAC 20-430-10 et seq., provides for an exemption to the minimum mesh requirement of 2 7/8 inches, stretched, to allow for this small mesh from February 1 through April 30. The group has asked for an extension through the end of May.

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Mr. O'Reilly reported that this request for an extension was made during the February FMAC meeting and was unanimously approved by the Committee. Mr. O'Reilly distributed copies of correspondence received from the Coastal Conservation Association – Virginia (CCA), a copy of which is filed with the permanent record of this meeting. He noted that the CCA - Virginia is against the extension of the exemption, listing several reasons:

1. The ASMFC statistics indicate that the Atlantic stocks of river herring are depressed;
2. Small mesh in the spawning reaches is not a good idea; there is concern for shifting the bi-catch mortality from one size to the other, especially concerning striped bass; and,
3. The decrease in forage fish with river herring being a forage fish, as well as a marketable commodity.

Mr. O'Reilly noted that staff agrees the Atlantic coast stocks of river herring are depressed.

He noted the information contained in Table 1., Harvests of River Herring, and Table 2., Drift Gill Net Harvests of River Herring, as previously distributed. He briefly reviewed with the Commission the proposed amendments to the Regulation, stating that staff does recommend adoption of the amendments.

Mr. O'Reilly noted that an additional amendment to Regulation 4 VAC 20-430-50 would occur in the opening sentence for Section 50 to include the marking requirements as follows: "*During the period February 15 through May 31 inclusive,...*" Staff also recommends this change.

For clarification purposes, Associate Member Ballard noted that the amendments to the Regulation are for one additional month, to the end of May 2002. Mr. O'Reilly concurred with Mr. Ballard's statement.

In the absence of Commissioner Pruitt, Associate Member White opened the Public Hearing on this matter. There being no comments offered, Mr. White closed the Public Hearing and referred the matter to the Commission for discussion and action. **Associate Member Williams moved for approval of the amendments to Regulation 4 VAC 20-430-10 et seq. for the one-month extension of the allowance for small-mesh (to 2 inches) drift gill nets to be fished in upriver areas. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

12. **PUBLIC HEARING:** Consideration of an expansion of the 661-square mile Virginia Bay-wide Blue Crab Spawning Sanctuary and consideration of short-term prohibitions on the harvest of sponge crabs.

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Mr. Jack Travelstead, Chief-Fisheries Management, stated that at the direction of the Commission, staff has re-advertised for Public Hearing on the proposals to expand the Virginia Blue Crab Sanctuary and to establish a one-week ban on the harvest of sponge crabs. He stated that each of the proposals contains an alternative, which were also advertised.

Mr. Travelstead noted that an expansion of the deepwater sanctuary in the Chesapeake Bay was advertised last month; the Advisory Committee and the public have seen the maps with regard to Option 1. However, the charts for Option 2, expansion of the deepwater sanctuary into shallow areas, portions of which would be closed year-round, have not been publicized to the public; this Option was presented to the Advisory Committee last week. Mr. Travelstead stated that in discussions with the Agency's legal counsel, it is clear that Option 2 should be more adequately noticed to the public. Therefore, if the Commission determines that Option 2 is the best choice, then it is strongly suggested that another Public Hearing be

advertised for May 28, 2002, following notice of Option 2 to the public.

With regard to the sponge crabs, Mr. Travelstead briefly reviewed the Options being presented to the Commission for consideration. The sponge crab proposal was presented to the Advisory Committee which opined that adoption of additional sanctuaries is sufficient protection for the stock and no additional ban on sponge crabs is needed. Mr. Travelstead stated that staff disagrees with the Committee's recommendation and, based on comments made at the Advisory Committee, it appears that Option 1 is preferable. Staff also notes that the one-week ban, Option 1, will have minimal affect on the industry, but potentially could have significant benefits to the resource. Additionally, staff supports Option 1 because it moves the fishery over the 15% reduction in harvest that it has been trying to achieve for the past two years.

Mr. Travelstead noted that should the Commission adopt the shallow water sanctuary and the one-week ban on sponge crab possession, it will achieve an approximate 15 ³/₄ percent reduction in harvest, which is one-year ahead of the goal.

Associate member Ballard inquired as to whether Maryland has adopted measures; are their regulations in force to achieve the 15%? Mr. Travelstead stated that Maryland has adopted a 3 ¹/₂" minimum on the peeler crab, a 5 ¹/₄" minimum on the hard crab, and has prohibited the possession of sponge crabs in their state.

Dr. Rom Lipcius, VIMS, gave a slide presentation that was also presented to the Advisory Committee. The presentation discussed the protection/enhancement of the spawning stock by providing information on the spawning stock status, the spawning sanctuary already implemented, and the management and enhancement of the shallow water extensions.

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Following Dr. Lipcius' presentation, 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. James Riggins, fisherman, expressed his concern and opposition for the shallow water extensions of the sanctuaries. His principal concern was that the proposed Goodwin Island sanctuary would displace a fair number of local crabbers.

Linda Riggins, speaking on behalf of the watermen, registered opposition to any and all proposed amendments to the existing regulations for harvesting crabs in local waters near Goodwin Island.

There being no further comments offered by the public, Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action. Dr. Lipcius noted that the proposed amendments are not prohibitive to fishing activities within

the areas. Noting the Advisory Committee's vote in favor of Option 2 on the sanctuaries issue, **Associate Member Cowart moved to go to a Public Hearing in May on the proposed Options for expansion of the 661-square mile Virginia Bay-wide Blue Crab Spawning Sanctuary, to include a fifth management enhancement area (New Point Comfort), as well as the four management enhancement areas reviewed at this meeting, and to consider short-term prohibitions on the harvest of sponge crabs. Associate Member Hull seconded the motion; motion carried, 7-1.**

13. REQUEST FOR EXTENSION OF JAMES RIVER OYSTER SEASON.

Associate Member Cowart noted that the James River Oyster Season has been extended in the past, and that there are few boats working in the area at this time. He noted that the industry would not suffer, and the watermen would benefit should such an extension occur through the month of June.

Associate Member Cowart moved to extend the Oyster Season in the James River through June 30, 2002. Associate Member White seconded the motion; the motion carried unanimously, 8-0.

14. ADDITIONAL PUBLIC COMMENTS

Commissioner Pruitt allowed for additional comments from **Mr. Kelly Place** who was not present for the earlier portion of the meeting and whose comments are recorded verbatim as

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part of the permanent record of this meeting. Mr. Place requested that a discussion of the various options/proposals on the striped bass issue be placed on the Commission's May meeting agenda. Mr. Travelstead noted that this issue is slated for the May Agenda.

Commissioner Pruitt noted that the ASMFC would be meeting at the Newport News Omni Hotel during the week of April 29, 2002. Those Associate Members wishing to attend any of the sessions should contact Mr. Travelstead for a schedule. Mr. Travelstead stated that both the black sea bass and the summer flounder are two issues scheduled to be discussed.

**** DATE OF NEXT COMMISSION MEETING: MAY 28, 2002**

Commissioner Pruitt stated that the Commission would hold its next meeting on Tuesday, May 28, 2002.

**** ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 2:25 p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary