

MINUTES

Commission Meeting**June 24, 2003
Newport News, Virginia**

The June 24, 2003 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Russell Garrison)	Members of the Commission
Laura Belle Gordy)	
F. Wayne McLeskey)	
K. Wayne Williams)	
S. Lake Cowart, Jr.)	
Cynthia Jones)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jack Travelstead	Chief, Fisheries Management
Chad Boyce	Fisheries Management Specialist
Roy Insley	Head-Plans and Statistics Dept.
Cory Routh	Coordinator-Saltwater Recreational Fishing Development Fund
Lewis Gillingham	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
Capt. Warner Rhodes	Supervisor, Middle Area
Capt. Ray Jewell	Supervisor, Northern Area
Capt. Randy Widgeon	Supervisor, Eastern Shore Area
Sgt. Ben Major	Assistant Supervisor, Southern Area
MPO Thomas Fitchett	Marine Police Officer
MPO David Drummond	Marine Police Officer

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Bob Grabb	Chief, Habitat Management
Tony Watkinson	Deputy Chief, Habitat Management
Chip Neikirk	Environmental Engineer Sr.
Hank Badger	Environmental Engineer Sr.
Kevin Curling	Environmental Engineer Sr.
Mark Eversole	Environmental Engineer Sr.
Jeff Madden	Environmental Engineer Sr.
Randy Owen	Environmental Engineer Sr.
Jay Woodward	Environmental Engineer Sr.
Benny Stagg	Environmental Engineer Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Tom Barnard

Others present included:

Patty Shortt	Robert Jensen	Don Curry	John B. Dawson
David S. Bailey	Ann Jennings	Louise Boggs	John Boggs
Clifford Schroeder, Jr.		Carter Teague	Cliff Garrett
Steve Whiteway	Kevin Mitchem	C. Gerald Sadler	Geneva L. Putt
Michael C. Rowe	Charles Ingram	Anne Argenzio	Eston Cosby
Mrs. Eston Cosby	Sherry Hamilton	Sherry Ashe	Raymond C. Booth, Jr.
James Clark	Jeff Bliemel	Tyla Matteson	Ron Harris
Scott Hart	Dorothy Murray	Jennifer Tobin	Joe S. Frank
Marty Williams	John Daniel	Jim Ryan	Kieran Murray
Joseh Aanar	Richard H. Hafer	Ben Barlow	Keith Lockwood
Robert Pruhs	Roger Pruhs	Randy Hildebrandt	David Nobles
Phil Perrine	Toby Hanovick	Chris Frye	Kevin Grimsdale
Frank A. Kearney	W. C. Tice	K. W. McNelly	J. F. Hayden
William Lechlin	T. Raffetto	M. Hodges	D. Hayden
Rob Brumbaugh	Jill Bieri	Billy Lett	Reese Bowles
Troy Shields	Zach Bowles	Charles Dryden	John Dryden
Ray Twiford	Joe Kelly	Scott Bloxom	Susan Gaston
Chris Hager	Bob Allen	Steve Holland	Irv Fenton
Tom Powers	James Ross	Machell Rodabaugh	Jay Harrison, Sr.
Sandy Wanner	Amy Firth	Brian Ramaley	Eileen Leinenger
Lee Ann Hartmann	Douglas F. Jenkins, Sr.		Russell Gaskins
Roger Parke	Harry Doernte	Bryan Peck	Jack Stallings
Bob Crisher	Mike Shackelford	Nate Custer	Lawrence Latney
Dana Mise	Mrs. Dana Mise		

and others.

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Commissioner Pruitt called the meeting to order at 9:30 a.m. with all Associate Members present.

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Associate Member Garrison gave the invocation and Commissioner Pruitt led the pledge of allegiance to the flag.

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

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1. APPROVAL OF MINUTES: Associate Member Birkett moved to approve the minutes for the April 22, 2003, May 14, 2003, and May 27, 2003 Commission meetings. Associate Member Williams seconded the motion. The motion carried, 8-0.

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***APPROVAL OF AGENDA: Associate Member Ballard moved to change the agenda and have Item 3. Executive Session follow both items 4 and 5. Associate Member Gordy seconded the motion. The motion carried, 8-0.**

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2. PERMITS:

Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items A through H and his comments are a part of the verbatim record. Page Two items are projects that cost \$50,000 or more, are unopposed, and have a staff recommendation for approval.

There being no questions from the board and no comments from the public, Associate Member Gordy moved for approval as presented of items A through H. Associate Member Birkett seconded the motion. The motion carried, 8-0.

A. CITY OF POQUOSON, #01-1471, requests a modification to their previously issued permit to allow the substitution of two (2) 60-foot long by 30-foot wide concrete boat ramps with a 5-foot wide riprap toe in place of three (3) 35-foot long by 16-foot wide concrete boat ramps and to add a 60-foot long floating dock to the end of the tending piers adjacent to their property situated at Messick Point along Front Cove in Poquoson.

Permit fee.....\$100.00

2B. ARMY CORPS OF ENGINEERS, #03-0595, requests authorization to hydraulically place approximately 25,000 cubic yards of dredged material, per dredge cycle, from the maintenance of the Chincoteague Inner Channel, (a section of the Chincoteague Inlet, Federal Navigation Project) on a previously used overboard site situated northwest of Lewis Creek in Chincoteague Bay in the Town of Chincoteague in Accomack County.

Permit fee.....\$100.00

2C. CITY OF NEWPORT NEWS, #03-0449, requests authorization to maintenance dredge, by either hydraulic or mechanical method, the Leeward Marina entrance channel and marina basin to depths of -8.3 feet mean low water and -7.9 feet mean low water respectively for a total dredge amount of 21,000 cubic yards of subaqueous bottomland at the applicants marina facility situated along the James River in the City of Newport News. All dredged material will be placed in the Craney Island Dredged Material Management Area.

Permit fee.....\$100.00

2D. PRINCE WILLIAM COUNTY, #02-2145, requests authorization to install, by the jack and bore method, a 36-inch diameter steel casing to carry a sanitary sewer transmission line, a 30-inch diameter steel casing to carry a water transmission line, and a 4-inch diameter conduit to contain a telephone line, all to be a minimum three (3) feet beneath a 30-foot wide section of Powells Creek. The applicant also proposes to relocate approximately 400 linear feet of Powells Creek, at the Spriggs Road crossing immediately north of Route 234. The entire project is part of the widening of Spriggs Road in Prince William County.

Permit fee.....\$100.00

2E. THOMPSON'S INC. OF DANVILLE, VA, #03-0259, requests authorization to dredge up to 54,000 cubic yards of sand per year from a 900-foot long by 100-foot wide area of the Dan River to maximum depths of eight (8) feet below ordinary high

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water at a site located upstream of the US Route 58 bridge in Halifax County. Recommend a royalty of \$0.40 per cubic yard for the amount of material dredged, or up to \$21,600.00 per year.

Royalty Fee (54,000 cu. yds. @\$0.40/cu. yd.).....\$21,600.00
Permit fee.....\$100.00

2F. COUNTY OF GOOCHLAND, #03-0380, requests authorization to install a 30-foot long submerged utility crossing and install a 30-inch diameter concrete encased gravity sewer line through a portion of Tuckahoe Creek. Recommend the incorporation of the Commission's standard instream conditions.

Permit fee.....\$100.00

2G. WEANACK LAND LIMITED PARTNERSHIP, #03-0027, requests authorization to modify a previously issued permit authorizing the dredging of 25,000 cubic yards of State-owned subaqueous bottomland from an additional 50-foot by 1,300-foot area adjacent to an existing dredged channel adjacent to the applicants property situated along the James River in Charles City County. Recommend a royalty of \$11,250.00 at a rate of \$0.45 per cubic yard.

Royalty fee (25,000 cu. yds. @ \$0.45/cu. yd.).....\$11,250.00

2H. CARILION HEALTH SYSTEMS, #03-0327, requests authorization to construct a 100-foot long by 15-foot wide pedestrian bridge over the Roanoke River in the City of Roanoke. Staff recommends a royalty of \$1,500.00 for encroachment over 1,500 square feet of State-owned submerged lands at \$1.00 per square foot.

Permit fee.....\$100.00
Encroachment Royalty Fee (1,500 sq. ft. @ \$1.00/sq. foot).....\$1,500.00

Total Fees.....\$1,600.00

4. AMENDMENT OF SECURITY ZONE REGULATION in the area of the Surry Nuclear Power Plant to include the discharge canal (4VAC 20-1060-10, Et. Seq.).

Steve Bowman, Chief-Law Enforcement, gave the presentation and his comments are a part of the verbatim record. He explained that this action was necessary to comply with SB 1186

passed by the General Assembly to establish a restricted area. He asked that the board approve the amended regulation as proposed by staff.

Associate Member Ballard moved to approve the amended Regulation 4VAC 20-1060-10 as presented by staff. Associate Member Williams seconded the motion. The motion carried, 8-0.

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5. REPEAT OFFENDER

Colonel Steve Bowman, Chief-Law Enforcement, was present and gave this presentation. His comments are a part of the verbatim record.

John Thomas Bonnaville, Sr., possession of undersized male crabs; possession of sponge crabs; over 300 pots set; 1994 violation resulting in suspended license; nothing since then; no problem for the marine police officer.

John Thomas Bonnaville, Sr., was present and his comments are a part of the verbatim record. He said that he had paid the fines and that it was hard to make a living with only 300 crab pots.

Associate Member Ballard moved to follow guidelines for 3 offenses and first appearance before the Commission and require a 1-year probation for Mr. Bonnaville. Associate Member Williams seconded the motion. Motion carried, 8-0.

Commissioner Pruitt asked Mr. Bonnaville if he understood that he would lose his license if he come back before the board within the probation period. Mr. Bonnaville responded that he did understand.

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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:

CITY OF NEWPORT NEWS, #93-0902. On behalf of the Regional Raw Water Study Group, the City requests authorization to construct a 75-million gallon per day (mgd) raw

water intake structure in the Mattaponi River at Scotland Landing, and a raw water distribution line under Cohoke Creek in King William County and the Pamunkey River between King William and New Kent Counties, as well as a water discharge structure in Beaverdam Creek, a tributary to Diascund Reservoir in New Kent County, in association with the City's proposed King William Reservoir Project, and,

Item 17. Harry Doernte: Request for amendments to the black sea bass regulation.

The motion was seconded by Associate Member Cowart and carried unanimously, 8-0.

Associate Member Ballard moved for the following:

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

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

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

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

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

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

AYES: Ballard, Birkett, Pruitt, Garrison, Cowart, Williams, Gordy, Jones, and McLeskey.

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried unanimously, 9-0.

**Clerk/Secretary
Virginia Marine Resources Commission**

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Commissioner Pruitt announced that the City of Newport News' request would be heard during the Public Comment period.

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6. MATHEWS COUNTY, #02-2188, requested authorization to install one (1) 280' armor stone breakwater located 100 feet channelward of mean low water, one (1) 100' armor stone breakwater located at mean low water and to place up to 4,300 cubic yards of beach quality fill material as part of the restoration of Festival Beach at the end of Route 643 along the Chesapeake Bay in Mathews County. Both adjacent property owners protested the project.

Kevin Curling, Environmental Engineer-Habitat Management Division, gave the presentation with slides.

Mr. Curling explained that Festival Beach was a public beach access area for Mathews County. The County beach is approximately 1,000 linear feet long and is located along a section of the Chesapeake Bay shoreline between Whites Creek/Rigby Island and the Garden Creek jetties. Access to the beach across the tidal marsh was established many years ago by digging two parallel canals and placing the spoil material on the marsh to raise the elevation up to a height suitable for road construction.

Mr. Curling said that the beach is part of a low barrier beach/dune feature that is migrating westward at about 7 feet/year, although periods of erosion of up to 15 feet/year have been noted since the 1930's. As the beach recedes westward over the existing tidal marsh, areas of the marsh peat surface become exposed at about the mean tide level. In 1985, an experimental breakwater system was installed approximately 100 feet offshore. The remains of that failed system are now visible about 200 feet offshore.

Mr. Curling explained that the Shoreline Studies Program, Department of Physical Sciences at the Virginia Institute of Marine Science prepared a Shoreline Change and Wave Climate Analysis for the County in May, 2001. That study was used to design the proposed breakwater system.

Mr. Curling stated that both adjoining property owners were protesting the project. Ms. Anne Argenzio, the property owner to the North, had several concerns including the impact to her area of the beach and Rigby Island, the impacts to Route 643 for construction access, and general environmental impacts. Mr. and Ms. Thomas and Patricia Shortt, to the South, were concerned with associated costs to the County, questionable success of breakwaters and beach nourishment, impacts to Route 643, and general environmental impacts.

Mr. Curling explained that the Department of Health noted that the proposed project was acceptable. The Department of Environmental Quality indicated that the water quality impacts should be minimal and temporary in nature, and that since the project qualified for a general permit from the Corps of Engineers, an individual or general Virginia Water Protection Permit was not required.

Mr. Curling stated that the Department of Conservation and Recreation noted the presence of the federally threatened Northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) and recommended coordination with the United States Fish and Wildlife Service (USFWS).

Mr. Curling explained that the Virginia Institute of Marine Science stated that while the project would impact 32,880 square feet of subaqueous bottom, 7,300 square feet of intertidal beach, 4,600 square feet of smooth cordgrass (*Spartina alterniflora*), 16,750 square feet of beach and 1,790 square feet of mixed brackish marsh, it would also create an additional 7,100 square feet of intertidal beach, 28,500 square feet of beach, 9,200 square feet of vegetated beach/dune, 983 square feet of brackish mixed wetland community and 7,023 square feet of smooth cordgrass marsh. VIMS stated that the beach nourishment and created wetlands would likely replace most habitat and other functions lost. In their opinion, impacts to the tiger beetle would likely be due to increased use of the beach by the public. VIMS also recommended consideration of time-of-year restrictions for the construction of the project and that dune plantings on 18-inch centers be monitored and replaced over a minimum of three growing seasons. It should be noted that most of the vegetated wetland impacts were associated with improvements to the existing access road, and were authorized under the governmental activity exemption provided in the Code.

Mr. Curling explained that pursuant to Section 28.2-1205 of the Code of Virginia, the Commission was to consider the public and private benefits of the proposed project and exercise its authority consistent with the public trust doctrine to protect and safeguard the public's right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust for the benefit of all citizens.

Mr. Curling said that this project would enhance access to the subaqueous lands of the Commonwealth for the citizens' use and enjoyment. As designed, the breakwaters would protect Festival Beach and directly improve beach access and use. The breakwaters should

not affect Rigby Island but were designed to be part of a headland feature that includes the island. The island effectively protects the beach from the Northeast. By protecting the Festival Beach headland feature, it should become a source of sand for the unprotected beaches in this reach.

Mr. Curling stated that because of the public benefits associated with this project, staff recommended approval with the following conditions:

1. No construction activities between June 1 and September 15;
2. All remains of the experimental breakwater were to be removed;
3. Dune plantings were to be on 18" centers and a monitoring report submitted each year for three years following the first growing season with replants as necessary or required within the three years of monitoring.

There were no questions of staff from the Commission.

Commissioner Pruitt swore in Michael Rowe, a member of the Mathews County Board of Supervisors and his comments are a part of the verbatim record. Mr. Rowe introduced the other members of the County Board of Supervisors, who were present for the hearing. Mr. Rowe said the project was very important to the County and that the area had been under County protection since 1961. He explained that much erosion had occurred in the past and there were few access points to a beach for county residents. He stated that this time they were trying to do it right so that it would work and preserve the beach.

The Commission members did not have any questions for the county representatives. No one else spoke in favor of the project.

Patty Shortt, protestant, was present and her comments are a part of the verbatim record. She said that nature must be protected. She explained that what nature takes back is made a part of the ecological system and the public benefit is the natural sanctuary. She stated that the county did not have the funds to maintain and oversee it and the sheriff's department was too shorthanded to patrol the beach adequately. She further explained that past beach nourishment efforts had failed. She explained that she felt that there were alternative projects, such as the New Point Lighthouse, that would benefit the county more and most likely work. She asked that the Commission to deny this permit application.

Ann Argenzio, protestant, was present and her comments are a part of the verbatim record. She expressed concerns in regards to how the project would affect her adjoining property and wanted to know what kind of fill materials would be used for the beach nourishment.

Don Curry, area property owner, was present and his comments are a part of the verbatim record. He explained that he was not protesting the project, but there was a need to consider

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the impact of the project on the adjoining property owners. He said past efforts by the county had been disastrous. He stated that the VIMS study was outdated and that VIMS' view should be based on current conditions, not 2000 or 2001.

There were no questions by the Commission. No one else was present to comment from the public and Commissioner Pruitt allowed the County representative to offer rebuttal. Michael Rowe stated that the project was designed to save adjacent property and protect it. He said this was not decided on hastily, but was well thought out and considered to be the best for the citizens. He stated that this method had worked in other projects on the bay.

Tom Barnard, representative from the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Commissioner Pruitt asked if the Virginia Institute of Marine Science had revisited the study referred to by Mr. Curry. Mr. Barnard said that the model study is the most updated as can be and still relevant.

Associate Member Williams explained that he was familiar with the area from his days of youth and had faith that the County Board was doing the right thing. He moved to approve the project with staff recommendations. Associate Member Garrison seconded the motion. The motion carried, 8-0.

Permit fee.....\$100.00

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Commissioner Pruitt left the meeting at this point and Associate Member Birkett chaired the hearing.

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7. ESTON COSBY, #02-1773, requested authorization to construct an 18-foot by 26-foot open-sided boathouse at the channelward end of a 130-foot long private pier and to construct a 30-foot long riprap groin and extend a second riprap groin 10 feet to a total length of 40 feet adjacent to his property situated along Mill Creek and the Rappahannock River in Middlesex County. An adjoining property owner was protesting the project.

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

Mr. Niekirk explained that Mr. Cosby's property was located on the northern shore of Mill Creek, near the confluence with the Rappahannock River. Mill Creek is approximately 2 miles downstream of the Norris Bridge in Middlesex County. The pier and boathouse site are located within a cove of Mill Creek. The proposed riprap groin construction is along a more

exposed portion of Mr. Cosby's shoreline, which fronts the Rappahannock River.

Mr. Neikirk said that Mr. Cosby's existing pier is approximately 75 feet long. The area around the existing pier had shoaled as a result of the migration of a sand spit adjacent to the pier. The usefulness of the pier had been compromised due to the shoaling. Mr. Cosby proposed to remove a portion of the existing pier and construct a 75-foot extension to the pier with an 18-foot by 26-foot open-sided boathouse at the channelward end. Since approximately 25 feet of the existing pier was to be removed, the 75 feet of new pier would actually only extend 50 feet channelward of the end of the existing pier. The proposed pier would extend approximately 25 feet channelward of the migrating sand spit.

Mr. Neikirk stated that in addition to providing a protective cover for his boat, Mr. Cosby stated that the open-sided boathouse would provide the necessary protection for a wheelchair lift he plans to install.

Mr. Neikirk said that Mr. Cosby had been confined to a wheelchair since the Korean War.

He said the wheelchair lift he currently used to access his boat had become unreliable. He said the new lift required protection from the elements.

Mr. Neikirk explained that Mr. Cosby had originally proposed to dredge the shoaled area and construct a boathouse adjacent to the existing pier. He had also proposed a bulkhead and jetty to reduce the chance of the sand spit moving back into the dredged area. He abandoned both the dredging and bulkhead/jetty proposals due to concerns expressed by his neighbor and VIMS.

Mr. Neikirk stated that Mr. Joseph Zanga, the adjacent property owner to the west, within the cove, protested the project. He was concerned with the impact the boathouse would have on his view and property value, and believed the pier extension would adversely affect his ability to navigate his sailboat in the vicinity of his own pier. He also believed the project may have an adverse affect on the environment and may increase shoaling within the cove.

Mr. Neikirk said that although VIMS expressed concerns regarding Mr. Cosby's original proposal, they expressed no opposition to the revised plans.

Mr. Neikirk stated that the Department of Environmental Quality had determined that a Virginia Water Protection Permit would not be required. No other state agencies had commented on the proposal.

Mr. Neikirk said that the proposed project did not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk explained that had the adjacent property owner not objected to the open-sided boathouse, it would have qualified for the exemption contained in § 28.2-1203 (A)(5) of the Code. The proposed open-sided design should minimize the visual impacts associated with the structure and the navigational and environmental impacts should not exceed those associated with the existing pier and uncovered boatlift, which are statutorily authorized. The proposed structure also appeared necessary to provide protection for a wheelchair lift Mr. Cosby intended to install. Staff also believes it is unlikely that the proposed groin and groin extension on the Rappahannock shoreline will increase sediment deposition within the cove. In fact, the structures were designed to slow the migration of sand around the point and reduce sedimentation within the cove. Accordingly staff recommended approval of the project.

Associate Member Birkett asked for questions of staff and there were none.

Associate Member Birkett swore in the applicant.

Eston Cosby, applicant, was present and his comments are a part of the verbatim record. He explained that this was very important to him because of his health limitations and he needed this for his future enjoyment. He said he needed adequate depth for mooring his boats. He said he wanted to keep the pier at the same site and the boathouse would shelter his lift equipment, which he needed since his health restricted him to a wheelchair.

Joseph Zanga, adjacent property owner and protestant, was present and his comments are a part of the verbatim record. He explained that his was his retirement property and a lifelong dream. He said that the pier extension and boathouse would obstruct his pier access. In his opinion, there were alternative sites where other piers and boathouses already existed. He requested that the permit application request be modified by relocating of the pier and boathouse to an area more in concert with the surroundings.

Commissioner Pruitt returned to the meeting at this point.

There was no one else present in opposition to the project. The applicant was allowed to provide rebuttal testimony. Mr. Cosby explained that the dock extension shows 75 feet, but actually it is going out 30 feet. He said that the present location means a sheltered dock, sheltered boat, handicap access, shed access, and access to electrical and water facilities.

Associate Member Garrison moved to approve permit application 02-1773. Associate Member Williams seconded the motion. The motion carried, 8-0.

Permit fees.....\$25.00

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8. BLUEWATER POINT HOMEOWNERS ASSOC., INC., #02-2333, requested after-the-fact authorization to retain two (2) uncovered boat lifts and three (3) finger piers and additional authorization to modify seven (7) other finger piers and install six (6) additional uncovered boat lifts at an existing community pier within an unnamed cove off of Indian Creek in Lancaster County.

Jay Woodward, Environmental Engineer-Habitat Management Division, gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward explained that the request had been modified for three (3) finger piers, thereby decreasing the encroachment over state-owned bottomland.

Mr. Woodward stated that Bluewater Point Homeowners Association consisted of eight (8) homes on Indian Creek, approximately two (2) miles downstream of Kilmarnock Wharf in Lancaster County. In 1985, the Association applied for and received a permit to construct a community pier with five 2-foot wide walkways and 15 mooring piles, creating nine (9) wet slips within a cove off of Indian Creek in the development. In 1992, Mr. and Mrs. Albert Cahen applied for and received a permit to construct a 47-foot long pier to access the community pier adjacent to their lot on the cove. The structure did not connect with the community pier and as such, was considered a separate pier, rather than an extension of the community pier.

Mr. Woodward said that on December 5, 2002, staff received an application to retain several improvements that had been made to the existing community pier since its original approval. These included two (2) uncovered boatlifts, two (2) 10-foot long walkways, and a single 5-foot wide by 27 foot long finger pier. The application also requested six (6) additional uncovered boatlifts and modifications to the walkways to make all of them 5-feet wide by 27-feet long, like the unauthorized finger pier. There was to be no increase in the number of slips or in the channelward encroachment beyond the permitted mooring piles associated with the original community pier.

Mr. Woodward explained that upon receipt of the application, staff contacted the applicant and inquired as to who did the unauthorized work and when it was performed. Staff's investigation determined that Mr. Raymond Booth of Booth's Landscaping Company, did the work in 1995. Mr. Booth indicated in his letter of explanation that he spoke with a wetlands official in Lancaster County who told him that a permit was not required provided the alterations were done within the "footprint" of the existing structure. Mr. Booth accepted full responsibility for the violations and asked that the Commission consider the inaccurate information provided to him by the county and his company's clean record in doing shoreline work.

Mr. Woodward said that the Virginia Institute of Marine Science indicated that, while the

cove is relatively shallow and larger boats could generate damaging wakes, any potential damage to adjacent wetland vegetation should be minimal provided the boat owners use proper caution when entering and leaving the cove.

Mr. Woodward stated that the Virginia Department of Health, Division of Shellfish Sanitation indicated that the project was located in an area presently approved for the direct marketing of shellfish and that the proposal should not require a seasonal closure provided the use of the facilities was restricted to the property owners and their bonafide guests and that there was no overnight occupancy aboard the moored boats. The Virginia Department of Health, Division of Waste Engineering indicated that the proposal was acceptable.

Mr. Woodward also explained that the Virginia Department of Environmental Quality was not requiring a Virginia Water Protection permit since the impacts should be minimal and temporary in nature.

Mr. Woodward stated that the project did not require a wetlands permit, as all of the work was channelward of mean low water.

Mr. Woodward stated that no public opposition to the project had been received.

Mr. Woodward said that the unauthorized construction at Bluewater Point Homeowners Association community pier appeared to be a result of the contractor not obtaining the additional necessary prior approval through the standard Joint Permit Application and public interest review process. The work was done in 1995 and since that time it had been made more clear to the localities, local contractors and agents when permits are required for working within state waters and tidal wetlands. Staff had worked with Booth's Landscaping numerous times in the past and had never found a permit violation or discrepancy associated with their work. The unauthorized structures at the pier had not caused a problem to date and the additional lifts and finger piers would not result in additional slips or channelward encroachment within the cove.

Accordingly, staff was recommending approval of the after-the-fact request to retain the two boat lifts, three walkways and one finger pier, with a special condition that the pier continued to be used solely by Association members and their bonafide guests and that there be no overnight occupancy aboard vessels moored at the pier. Staff also recommended a royalty in the amount of \$157.50 for the encroachment over 175 square feet of State-owned subaqueous bottom at \$.90 per square foot (triple the normal rate) for the previously unauthorized structures and an additional royalty in the amount of \$268.50 for the additional encroachment over 895 square feet at \$.30 per square foot. Given the letter of explanation provided by the contractor and his past record with the Commission, staff did not recommend a civil charge be levied for the unauthorized work in this case.

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Commissioner Pruitt asked for any questions of staff. There were none.

Louise Boggs, applicant, was present and her comments are a part of the verbatim record. She explained they just wanted to straighten out the violation. She said they misunderstood and knew that the community pier did not have carte blanche for other construction.

Commissioner Pruitt asked for questions and there were no questions of Ms. Boggs.

Associate Member Gordy moved to approve the request with staff recommendations. Associate Member Birkett seconded the motion. The motion carried, 8-0.

After-the-Fact Encroachment Royalty Fees (175 sq. ft. @ \$0.90/sq. foot).....	\$157.50
Encroachment Royalty Fee (243 sq. ft. @ \$0.30/sq. foot)	\$ 72.90
Permit Fee.....	\$ 25.00
Total Fees.....	\$255.40

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The Commission recessed for lunch at 12:16 p.m. and returned at 1:00 p.m.

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9. ARMY CORPS OF ENGINEERS, #03-0415, requested authorization to hydraulically place up to 90,000 cubic yards of dredged material, per dredge cycle, from the Burtons Bay Federal Navigation Channel in Accomack County on three previously used 23-acre sites in Burtons Bay involving State-owned wetlands and submerged lands. Wetlands and Subaqueous permits are required.

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

Mr. Badger explained that the Burtons Bay Channel was part of the Waterway on the Coast of Virginia (WCV) and required maintenance dredging approximately every four to five years. The channel was last dredged in 1998.

Mr. Badger said that the Commission, at their January, 1998, meeting approved a request to reactivate and extend a previously issued permit for the use of two of the three previously authorized sites, "A" and "B". A third site "C" was not approved since oyster resources were present at that site.

Mr. Badger said that in the fall of 2003, the Corps intends to place approximately 90,000 cubic yards of maintenance dredged material within sites "A" and "B". The elevation of the spoil area will be raised no higher than two feet above mean low water. The Corps has requested that site "C" be reevaluated for use as a placement site for Burtons Bay.

Mr. Badger explained that while the actual dredging of the federal project channel was authorized by statute, the placement of the dredged material in the proposed sites was not exempt and required a permit. The Commission last issued a permit in 1998. That permit expired in 2001.

Mr. Badger said that since a portion of the non-vegetated wetlands involved in this project were State-owned, the Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section 28.2-1306 of the Code of Virginia.

Mr. Badger explained that the Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers, on Wednesday, June 4, 2003, to accept public comments on the project. In attendance were three ACOE representatives and two nearby oyster/clam ground leaseholders. After discussing the disposal sites, the need for the dredging project and possible turbidity carried over nearby oysters and clams possibly resulting in smothering of shellfish, both sides agreed to move site "A" 1,000 feet northeast and not to use site "C" since oyster resources were still present there. No other public comments had been received on this project to date.

Mr. Badger said that the Virginia Institute of Marine Science had indicated that the individual and cumulative adverse environmental impacts resulting from the dredging and disposal would be significant but only for the short time that it took to conduct the dredging and disposal operation. Most studies monitoring the recovery of dredge areas and overboard disposal indicated that recovery by the benthic community would be relatively rapid (12 to 18 months). There are apparently no shellfish beds close enough to the operation to be affected by dredge turbidity and sedimentation. If any shellfish were to be adversely affected, recovery would be in terms of years rather than months.

Mr. Badger stated that the Commission's Fisheries Division indicated the presence of small oysters and shells on placement site "C" and recommended that site not be used. No other State agency had expressed any opposition to the project.

Mr. Badger said that as a result of live oysters being found on site "C" the Corps had requested that the Commission remove site "C" from the proposed request.

Mr. Badger explained that since the proposed sites "A" and "B" had been used in the past and an agreement had been reached between the leaseholders and the Corps, it did not appear that the continued use of the two sites would result in any significant long term impacts.

Therefore, Staff recommended the approval of sites “A” and “B” for this dredging episode only.

Mr. Badger said that staff further recommended that the applicant be required to submit post-dredging bathymetric and cross-sectional surveys, and that the elevation of the dredged material not be allowed to exceed two feet above mean low water.

Commissioner Pruitt asked if there was anyone representing Corp of Engineers present. No one had any comments. There were no questions for the Corps of Engineers by the Commission.

No one else, pro or con, was in attendance at the hearing.

Associate Member Gordy moved to approve the application for a permit as recommended by staff. Associate Member Cowart seconded the motion. The motion carried, 8-0.

Permit fee.....\$100.00

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10. RAPPAHANNOCK PRESERVATION SOCIETY, #93-1526, requested a final extension of their permit to place suitably-sized concrete rubble material and pre-fabricated reef modules at two previously authorized oyster reefs, known as Christ Church Rock in Middlesex County and Steamer Rock in Lancaster County, in the lower Rappahannock River. Recommend approval with an expiration date of June 6, 2004, which extends the permit to the maximum ten-year period allowable. All terms and conditions of the previous permit, as extended and modified, will remain in effect.

Robert Jensen, President of the Rappahannock Preservation Society, was present and his comments are a part of the verbatim record. Mr. Jensen was sworn in. Mr. Jensen explained that the request was for another year as there was lots of work to still be done on the two sites, Steamer Rock and Christ Church Rock. He said he needed to have VIMS perform a study of what shellfish stocks were on these areas and verify his comments as to the abundance of oysters in this area and the success of his project. He explained to get this VIMS study started he needed financial assistance in the amount of \$1,400.00.

Commissioner Pruitt asked if Mr. Jensen if he was requesting \$1,400 from the Commission. Mr. Jensen stated he was asking for state funds. Mr. Pruitt explained that there were no funds available. Mr. Pruitt explained that the Commission would only be deciding on the requested extension of the existing permit.

No one else, pro or con, was present to comment.

Associate Member Garrison moved to approve the permit extension request. Associate Member Birkett seconded the motion. The motion carried, 8-0.

Permit fees not applicable.

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11. PUBLIC COMMENTS

REQUEST BY THE CITY OF NEWPORT NEWS: Request to reconsider the decision of the Commission to deny the King William County Reservoir Project and hold another public hearing. The Commission discussed the petition for a public hearing and the Attorney General's response.

Commissioner Pruitt explained that the City would be given five minutes to talk about the petition; anyone opposed to the hearing would be given five minutes; and then the city would have two minutes for rebuttal.

Commissioner Pruitt swore in the City representatives.

Joe Frank, Newport News City Mayor, was present and his comments are a part of the verbatim record. He explained that the City had come to the May 27th hearing to ask for reconsideration of the Commission's decision to deny the project. He said this was a critically important decision. He said the City was petitioning for a formal hearing. He said they needed to present facts to clarify technology, information, etc. and assure the future through this new water supply. He explained that the Army Corps of Engineers had approved the project and determined that this is the best solution. He said that the State Water Control Board had issued a permit for this project in 1997. He further explained that these efforts had been ongoing for 18 years and \$20,000,000 had been spent to date. He said the buck stops here.

Tate Harrison, Chairman of the Board of Supervisors for James City County, was present and his comments are a part of the verbatim record. He explained that this matter was very important to the regional water supply. He asked that the Commission reconsider its decision.

Wright Hoagman, Vice Mayor for the City of Williamsburg, was present and his comments are a part of the verbatim record. He stated that this was a very important matter and asked that the request for a formal hearing be given consideration.

David Bailey, representing the Mattaponi Indians, was present and his comments are a part of the verbatim record. He explained that the appeal process had already been started in the

Newport News Circuit Court over the Commission's decision. He said to hear it again would be rehashing the same information heard before. He said the hearing was held properly and the Commission should be congratulated for how it was done. He requested that if another public hearing was allowed that the Tribe be afforded full participation.

Debra Murray, representing the Southern Environmental Law Center and the Chesapeake Bay Foundation, was present and her comments are a part of the verbatim record. She explained that letters had been submitted to date requesting that the request for a hearing be rejected. She said that the judicial review had started and needed to be allowed to take its course. The Commission had made a well-reasoned decision and she asked that they stand behind that decision.

Mayor Frank in his rebuttal stated that the General Assembly had allowed for a informal/formal hearing process and the Attorney General's opinion recommended that the public hearing be held. He said that they were requesting a formal public hearing.

Associate Member Ballard moved that within its authority under Title 28.2, Chapter 12 of the Code of Virginia , that the Commission grant the formal hearing on the King William matter provided the city agrees to terms, scope, and nature of such a hearing as will be stipulated by the Commission. He stated that in making this motion he wanted to acknowledge the unique nature of this matter. He explained that the petitioner was a group of regional local governments seeking a permit for a raw water intake structure to provide a source of freshwater for a region of the Commonwealth. He further explained that absent the unique nature of the petitioner and its purpose, he would not make this motion. Furthermore he stipulated that this action, the action contemplated under his motion, was dependent upon the petitioner withdrawing the notice of appeal of the Commission's previous action in this matter. Associate Member McLeskey seconded the motion.

Associate Member Gordy asked if the opposition would have any input in the formal hearing process. Carl Josephson, Assistant Attorney General, explained that allowing the opposition time was within the discretion of the Commission in some fashion and what role and to what extent the opposition may participate in a formal hearing was a matter, which needs to be worked out by the Commission at some point.

Associate Member Ballard explained that the City would have to agree with the terms and conditions set by the Commission and there would need to be another executive session meeting to decide on those terms and conditions.

Commissioner Pruitt called for question. Associate Member Jones responded to the call for question.

Role call:

Ballard - yes	Jones - no	Cowart - no
McLeskey - yes	Gordy - no	Birkett - yes
Williams - no	Garrison - no	

The motion failed, 3 - 5.

Associate Member Garrison then moved that the request by the City of Newport News for a formal hearing be denied. Associate Member Cowart seconded the motion. There were no further comments. Commissioner Pruitt called for question. Associate Member Williams responded to the call for question.

Role Call:

Garrison - yes	Williams - yes	Gordy - yes
Cowart - yes	McLeskey - no	Birkett - no
Ballard - no	Jones - yes	

The motion carried, 5-3.

No one else requested time to address the Commission. The public comment period ended.

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Colonel Steve Bowman read and presented 1st Sargent Dana Mise with his certificate of service for his 31 years with the Commission. Officer Mise's wife and daughter were both in attendance for the presentation.

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12. Public Hearing: Request to establish Regulation 4 VAC 20-1070-10 Et Seq., to provide management requirements for the haul seine fishery, in response to HB2239, which modified the definition of a haul seine.

Jack Travelstead, Chief-Fisheries Management Division, was present and gave the presentation. His comments are a part of the verbatim record.

Mr. Travelstead explained that when the public hearing was advertised, the notice said to

send written responses to the PO Box number, which is no longer a good address for VMRC. He suggested that the Commission go ahead with the public hearing and make a decision at the next meeting to allow more time for written comments.

Mr. Travelstead explained that the General Assembly had changed the Code so that it only defined a haul seine and did not establish anything about the use of the gear. He said the definition as it existed was confusing. He said that there was concern for the damage the haul seines can do to submerged vegetation. He explained that there was a need to define proper use of the gear. He discussed landings data and said the haul seiners usually targeted croaker. He explained that haul seiners caught up to half of the speckled trout quota in 1999 and less in the following years. He said that regulations are needed to protect the submerged vegetation. He said that there are 25-30 active haul seiners.

Mr. Travelstead said that there had been meetings with recreational fishermen, environmental groups, haul seine fishermen and the Finfish Advisory Committee. At these meetings there was discussion on the length of the nets allowed by Code in Section 28.2.-305. He said in the Code it was unlawful to have more than a 1,000 yards of net. He explained that haul seiners did not know this and two licensees have been combining nets, therefore, using more than the 1,000 yards allowed by the code. He explained that there needed to be clarification of this in the Regulation. He explained that in the draft regulation on page 2, it was proposed that it would be unlawful to possess, place or set or encircle and enclose any haul seine that exceeds 1,000 yards and also it was unlawful to tie together and set or fish two or more with a combined length of more than 1,000 yards.

Mr. Travelstead explained that when using the haul seine to trawl was unlawful pursuant to the Code in Section 28.2-314. He said the common practice was to drag the haul seine with the vessel and this was not the intent to the General Assembly. He said in the draft regulation it was proposed that the distance to be pulled be limited to one-half nautical mile. He said that if the net is pulled further than that then it would be considered long haul seining or trawling.

Mr. Travelstead explained that on page 3 it was proposed that the pocket formed by the net be fished 3 hours before high tide and 3 hours after high tide at low tide. He suggested adding a sentence that the times of high tide be established in accordance with the NOAA Tide Table.

Mr. Travelstead said that the reporting requirements proposed would require that the Fisheries Management Division be contacted 24 hours prior to haul seining, reporting the specific location and estimated time the haul seine would be set. He further explained that if there was a conflict in the use of the reported location, the haul seiner be required to report an alternate location immediately.

Mr. Travelstead suggested other options of future restrictions that could be considered by the Commission, such as, limited entry fishery based on harvest or other historical data, the prohibiting of new licenses being sold, and phasing out those fisherman that continue to work in the shallow water areas.

Mr. Travelstead stated that staff recommended that the Commission approve the proposed regulation, 4 VAC 20-1070-10, et seq., "Pertaining to Haul Seines".

Commissioner Pruitt opened the hearing to the public.

David Nobles, CCA Virginia representative, was present and his comments a part of the verbatim record. Mr. Nobles read a statement into the record, which is a part of the verbatim record. The following are highlighted suggestions and proposed restrictions that are supported by the CCA.

1. Haul seine operations need to be moved off of the sensitive grass beds.
2. The closures of SAV areas should include the damaged areas as well as the adjacent underwater grass beds.
3. They have concerns for the 6 hours for working the pocket being a fix it for the problem of scarring and suggest a reference to a specific agency be added to determine the time of high tide.
4. Beach based gear should not be allowed on areas where SAV is present.
5. VIMS should continue to monitor the grass beds for this type of damage to insure that the scars heal and to watch for new scars, which could require further protection action by the VMRC.
6. To prevent pair trawling, the regulation should state that the act of setting out a net can only be done with one vessel until the pocket is set.
7. That upon conviction of pair trawling, all persons on both vessels will face mandatory loss of their right to possess a haul seine license and be brought before the Commission to show cause of why they should not suffer the two year loss of their waterman's card.
8. Support staff's recommendation concerning lengths of nets.
9. Support a regulation that would set the gear length to one fourth of the width of the bay or river in which it is being used. With the maximum length being 1,000 yards pursuant to the Code.
10. To prevent excessive bykill, it is suggested that the gear get moved off of the nursery areas of the SAV beds and that the Commission support the development and deployment of escape panels or other bycatch reduction methods that would allow the smaller fish to escape unharmed.
11. Support the proposal to limit entry into the fishery with a no transfer clause so this gear can be phased out in Virginia.
12. Suggest that such measures be brought back to the Commission at their August meeting for public hearing in September.

Mr. Nobles said that heavy boats cause scarring and damage to the beds. He said that if it can be proved that recreational fishermen caused the damage then they need to be regulated also. He said it is not a commercial versus recreational issue.

Flip Hicks, representative for the haul seiners, was present and his comments are a part of the verbatim record. He said that over 80 % of the catch is consumed by the market. He stated that his clients agreed with the call in, but were concerned with the other regulations. He said that the use of two boats would protect the SAV, because there is no need to anchor on the shore. He said they concurred with the 3 hours before and 3 hours after and it was a good start. He said the SAV regulation needs to start next season or spring. He said the loss of license was a concern because the haul seiner cannot support his family if this occurs. There needs to be further examination of what is proposed before making it a regulation.

Franklin Kellum, Haul Seiner, was present and his comments are a part of the verbatim record. He said the CCA and staff got together to make these regulations and did not include the haul seiners. He suggested tabling the matter until better regulations can be proposed. In response to Associate Member Ballard's question of how many haul seiners, he said there were 8 active haul seiners from Poquoson and Mobjack. He explained that a number of the crew are included in reporting for one card.

Robert Hollowell, Haul Seiner, was present and his comments are a part of the verbatim record. He said he started haul seining 40 years ago with Ballard Oyster Company. He said he disagreed about the tide situation because there are too many changes resulting from weather. He suggested checking into a King's Grant on this side of the bay before any regulations are made. He explained that the pound line buoys were put down by the Corps of Engineers to set the area aside as designated fishing areas. He said this has been on the books for years.

Jill Bieri, underwater grass scientist for the Chesapeake Bay Foundation, was present and her comments are a part of the verbatim record. She said that there is much concern for the SAVS and scarring problem caused by boat propellers. She said the beds are important to the fish and crabs that are harvested. She explained that the Commission needed to establish closed areas. She explained that efforts to date have been made resulting in approximately 85,000 acres being improved with sea grasses and the Chesapeake Bay Agreement goal is 125,000 acres. She stated it should be a priority to protect these grasses.

Lionel Jenkins, Haul Seiner, was present and his comments are a part of the verbatim record. He said that the VMRC staff had held individual group meetings, but failed to have a meeting of all groups together. He suggested that the matter be tabled until this meeting can be held. He explained that an area he had found and started working in did not have any eelgrass and now Dr. Orth had planted with it sea grasses. He said with continued regulations, the

watermen will be run out of business. He also said that they can not work with being limited to one net with 2 boats. He said their props are not scarring the bottom and they need to be allowed enough net to work without interruption.

Steve Powell, Norfolk recreational fishermen, was present and his comments are a part of the verbatim record. He said this is not a commercial versus recreational situation. He explained that boat props are causing the scarring of SAV beds. He said VIMS says that 3' prop are causing the scarring, which is not the size used for recreational fishing. He said there needs to be a measurement system to judge the success of the regulations.

Charles Dryden, Poquoson Haul Seiner, was present and his comments are a part of the verbatim record. He explained that the one-half nautical mile for haul seining would not work. He said that there was a need for a nautical mile in the regulation and he had recommended to Mr. Travelstead that 2 nautical miles be used. He also explained that limiting the number of nets is a problem. He said sometimes nets tear and having another one onboard the vessel saves the watermen from having to stop harvesting because he has a torn net. He estimated that over a year's time, 75 to 80 nets might tear. He said the 6 hours proposal will not work with only 3 hours to work before the low tide and having to wait to finish after the low tide. He said it takes about 4 and one-half hours to get done with putting out the net, fishing the net and loading the catch onboard the vessel. He explained that they usually work at night so they can be out of everyone's way by the morning. He said he did not have a problem with the call in requirement.

Peter Nixon, Lower Chesapeake Bay Watermen's Association and a member of the Finfish Advisory Committee, was present and his comments are a part of the verbatim record. He stated that he did not agree with the CCA. He said the haul seiners do not understand the SAV situation and only listen to what the CCA tells them. He said that the pair trawling is bad in the bay because it is too small of an area. He said as far as the haul seiners doing the prop scarring, he had seen slides by Dr. Orth and there was really no proof as to who was actually causing the scarring. He said that the regulation as proposed would take care of most of the necessary issues or problems. He said that the penalty was unfair when only allowing one chance when all other fisheries were allowed 3 chances. He said that the CCA and others are putting out misinformation to sway public opinion.

Eldridge Cooke, working waterman for 50 plus years, was present and his comments are a part of the verbatim record. He said he had attended the meetings and that the VMRC should not regulate the haul seiners out of business. He said there needed to be more study on what should be regulated and the Commission should not make a hasty decision.

Ken McNelly was present and his comments are a part of the verbatim record. If in fact the photographs show that the scarring is from haul seining and it would be a crime to allow it to continue.

Carl (last name unknown) was present and his comments are a part of the verbatim record. The number one fish caught today by recreational fishermen is the croaker and that is because there are not many flounder around. He said he was concerned about the grasses and with the 2 boats trawling or long haul seining the grasses cannot grow. He said the Commission needed to look at the situation in person. He said that there are no high grasses for the fish.

Kelly Place, Commercial and Recreational Fisherman, was present and his comments are a part of the verbatim record. He said he had been a licensed haul seiner for 11 years. He explained that he was probably more of a active conservationist then anyone else in the room. He said that any boat can do prop scarring. He said that most scarring occurs at random in highly developed areas, which is from Dr. Orth's study. He explained that there are a lot of mischaracterization in the CCA Alert. He said that CBF and Dr. Orth have done a great service by bringing the importance of the SAV to the ecosystem to everyone's attention. He stated that many in the CCA do not understand haul seining. He said the opinions of those who know haul seining is needed. He said the proposed one-half nautical mile shows that there is not a clear understanding of how the gear works. He said at the least .8-mile would have to be permitted. He said the 3 hours for landing before and after is too long, an hour or an hour and one-half would be better.

Douglas Jenkins, Sr., Twin Rivers Watermen Association representative, was present and his comments are a part of the verbatim record. He explained that the proposed regulation is unrealistic and an improper regulation of our resources. He stated that any regulations passed would effect the whole state not just one area. He said he had made a motion at the Finfish Committee to strike some of this proposed regulation that was defeated by one vote. He said he felt he had not explained the situation correctly, which was the reason that his motion was defeated. He said he wanted to correct that today by explaining what he should have at the Finfish meeting. He said in his area one long net is used and needs 4 vessels to work, they cannot be limited to just 2 vessels. He said that haul seining does not hurt the sea grasses, if anything, it helps it. He said it takes 8 to 10 hours to complete a haul seine operation. He said that people think that if they see a net out fishing that all the fish will be caught up. He stated that 90% of fish are caught by the recreational fishermen on the Atlantic Coast. He said the commercial watermen have not hurt the grasses as much as the other user groups.

Kevin Grimsdale, CCA representative from Richmond area, was present and his comments are a part of the verbatim record. He said that at a meeting of this group it was unanimously to support the proposed regulation. He said he was representing more than 600 members. He said if the areas where grasses are damaged are closed, then they will stay out of those areas. He said the Commission needed to protect the resource for everybody.

Charles Amory, Amory Seafood in Hampton, was present and his comments are a part of the verbatim record. He stated that what staff proposed would be workable with some

adjustments. He suggested that the matter be tabled until next month.

Tom Powers, Finfish Advisory Committee member and a CCA representative, was present and his comments are a part of the verbatim record. He said that VIMS says the scarring have been caused by haul seiners. He stated that about a third of the croakers caught are caught by the recreational fishermen. He explained that the reason the General Assembly changed the Code was to allow the VMRC to prepare a fishery management plan that recognizes the appropriate use of the gear, which will minimize the impact on the SAV beds.

Commissioner Pruitt stated that the matter would be continued at the July meeting and then on August 26th the SAV issue would be heard. He suggested that if there was a joint meeting of the Commercial and Recreational groups held, the results should be brought back to the next meeting. He suggested that if the Associate Members had never seen a haul seine operation, they should make arrangements to go out and see it for themselves.

Associate Member Williams stated that he was concerned that people thought the SAV is not a concern of the Commission and he wanted to make sure they know that the Commission is concerned about the SAV.

No motion was made, the matter will be continued at the next meeting.

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Associate Members Gordy and Ballard left the meeting at approximately 4:00 p.m.

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13. Public Hearing: Requested amendment of Regulation 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass", to modify the directed fishery and bycatch fishery harvest quotas.

Associate Members Cowart and Williams were absent from the meeting. Commissioner Pruitt was present and this met the quorum requirement.

Chad Boyce, Fisheries Mangement Specialist, gave the presentation and his comments are a part of the verbatim record. Mr. Boyce stated that staff recommended approval of the amended regulation 4VAC 20-950-10 et seq, "Pertaining to Black Sea Bass", which would adjust the directed and bycatch fishery quotas.

Commissioner Pruitt asked if anyone from the public wanted to make comments. Since there were no comments from anyone, he asked for a motion from the members. **Associate Member Garrison moved to approve the amended regulation as recommended by staff. Associate Member Jones seconded the motion. The motion carried, 4-0. Commissioner**

Pruitt did not vote.

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14. Public Hearing: Request to amend Regulation 4VAC20-910-10 et seq., "Pertaining to Scup", to modify the summer period harvest quota.

Associate Members Cowart and Williams were absent from the meeting. Commissioner Pruitt was present and this met the quorum requirement.

Chad Boyce, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. He explained that this was a modification of the quota and that staff recommended approval of the amended regulation 4VAC 20-910-10 et seq., "Pertaining to Scup".

No one was present either pro or con to comment.

Associate Member Garrison moved to approve the amended regulation as recommended by staff. Associate Member Birkett seconded the motion. The motion carried, 4-0. Commissioner Pruitt did not vote.

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15. Further Consideration of proposed amendments to Regulation 4VAC20-490-10 et seq., "Pertaining to Sharks" to establish new rules for spiny dogfish. A Public Hearing was held in May 2003.

Associate Members Cowart and Williams were absent from the meeting. Commissioner Pruitt was present and this met the quorum requirement.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. He explained that the ASMFC had met in early June and reaffirmed the plan's specifications for the current fishing year of May 1, 2003 through April 30, 2004. He stated that the staff recommended that the Commission approve the amended regulation 4AC 20-490-10 et seq., "Pertaining to Sharks".

No one was present either pro or con to comment.

Associate Member Jones moved to adopt the amended regulation as recommended by staff. Associate Member Garrison seconded the motion. The motion carried, 4-0. Commissioner Pruitt did not vote.

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Commission Meeting

16. Request for Emergency amendment to Regulation 4 VAC20-752-10 Et Seq., to replace an inaccurate longitudinal coordinate associated with the Virginia Blue Crab Sanctuary boundary line.

Jack Travelstead, Chief-Fisheries Management Division, gave the presentation and his comments are a part of the verbatim record. He explained that the matter was being brought to the Commission because of a grammatical error and the Registrar would not accept the correction of the error without action by the Commission. He stated that staff recommended approval of the emergency regulation and to hold the public hearing next month.

Associate Members Cowart and Williams returned to the meeting.

There were no comments from the public.

Associate Member Birkett moved to approve the request for a public hearing next month and staff's recommendation to adopt the emergency regulation. Associate Member Garrison seconded the motion. The motion carried, 4-0-2. Associate Members Cowart and Williams abstained from voting.

* * * * *

17. Harry Doernte: Request for amendments to the black sea bass regulation.

Harry Doente was present and his comments are a part of the verbatim record. He stated that he was concerned that the regulation passed and was rubber-stamped. He said that he was requesting time to look at the matter again and reconsider the actions previously taken. He explained that he suggested a cap on the fishery of 7% or 8 %. He said there was not supposed to be a quota transfer by VMRC. He stated that the permitted boats have not caught the quota and there was a flaw in the IFQ system, because the state would lose the quota. He said that the data used by the VMRC is protected by the Magnuson/Stevenson Act. The reports were confidential and only summary data on fishery harvest could be used by VMRC. He said that VMRC used the data to allocate and not to verify catch history to assure reporting. He also stated that there were inequities in the quota allocation. He said that fishermen who caught a larger volume of fish were not being treated fairly. He explained that back in December he was told there was not time and the Striped Bass hearings, which were heard in both November and December, left no time for the Black Sea Bass hearing to get done by the end of the year.

Commissioner Pruitt asked if the matter should be heard now instead of in November. Mr. Travelstead explained that the board had been told that staff would bring back the issue in the fall with the proposed changes. He said this is the middle of the season. He said some have caught their quota and some have not. He said bringing it back in the fall would enable the

Commission to see what has happened this last year.

Commissioner Pruitt asked for comments and questions. Associate Member Williams asked if staff could look at and reevaluate those that been kicked out of the fishery and bring the issue to the Commission in late summer or early fall, perhaps in October.

Commissioner Pruitt suggested that this matter be put on the FMAC agenda and then be brought back to the entire Commission. No motion was made for this matter.

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18. Recommendations of the Recreational Fishing Advisory Board.

Associate Member Jones stated that she would be abstaining from voting on this matter, because of a conflict of interest.

Jack Travelstead, Chief-Fisheries Management Division, gave the presentation. He explained that there was a request for \$129,000 from the Saltwater Recreational Fishing Development Fund for the Elizabeth River boat landing. He said that the matter had been on hold pending the issuance of habitat permits and on May 19, 2003 the habitat permits were issued by VMRC. He said that staff recommended approval of the \$129,000 expenditure.

There were no comments from the public.

Associate Member Cowart moved to approve the expenditure for the Elizabeth River landing project. Associate Member Birkett seconded the motion. The motion carried, 5-0-1. Associate Member Jones abstained from voting.

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Joe Kelly and Ray Twiford asked to be heard regarding the Black Sea Bass issue. Associate Member Garrison stated that the matter had been turned over to the Finfish Committee. Mr. Twiford indicated that he had 67 letters from individuals who do not approve of the allocation of the quota. Mr. Travelstead said that the Finfish Committee would be meeting the third Tuesday in July and Commissioner Pruitt invited Mr. Kelly and Mr. Twiford to attend that meeting.

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Commission Meeting

**12461
June 24, 2003**

The meeting adjourned at 4:40 p.m. The next regular meeting will be July 22, 2003.

* * * * *

William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary