

MINUTES

FEBRUARY 26, 2002
NEWPORT NEWS, VA 23607

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

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
S. Lake Cowart, Jr.)	
Laura Belle Gordy)	Members of the Commission
Henry Lane Hull)	
F. Wayne McLeskey)	
John W. White)	
Kenneth W. Williams)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Senior Staff Adviser
Stephanie Montgomery CPS		Recording Secretary
Bob Craft		Chief-Finance & Administration
Jane McCroskey		Deputy 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
Capt. Kenny Oliver		Southern Area
Bryan K. Tittermary		Marine Patrol Officer
David R. Drummond		Marine Patrol Officer

Virginia Institute of Marine Science:

Britt Anderson	Dr. Rom Lipcius
Tom Barnard	Patrice Richards
Ratana Chuenpagdee	Jacques van Montfrans
Lindy Dingerson	Lyle Varnell

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

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

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

Deputy Chief-Habitat Management
 Head-Engineering/Surveying
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 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
 Michael Hines
 Don Lancaster

Gazette Journal
 The Daily Press
 The Daily Press/1490 Radio

others present included:

Paul Galloway
 Paul Burnette
 Robert Isheyson
 David Lumgair
 Garland Sterling
 Tom Langley
 Joseph Green
 Robert Bodine
 Pat Grez
 Howard Lockett
 Esther Lockett
 John Bell
 Pat Marconi
 Joan Baumbach
 Kathleen Benson
 Devlin Barrett

Deborah Hill
 Charles Lee
 Scott Burroughs
 Jeffrey Bliemel
 Chuck Joyner
 W. A. Eskin, Jr.
 Buddy Watson
 George Washington
 Capt. Bob Jensen
 Bill Tice
 Frank Kearney
 Roger Parks
 Russell Gaskin
 Don Lancaster
 Douglas Jenkins
 Wanda Thornton

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Terry Howard
 Joe Palmer
 Jim Frese
 Susan Parker
 Sam Parker
 Roger Amick
 Lee Toth
 Craig Paige
 Donnie Brady
 Don Trotta
 Christine Snook
 Mark Snook
 Sandra Spencer
 Donna Roeske
 Everett Lewis
 Elton Reed
 Al Miller
 Irvin Fenton
 Dave Carpenter
 Nelson Ortiz
 Mike Handforth
 Ben Raugh
 John Davis
 Frank Williams
 Earl Blanton
 Craig Page
 Tim Gownley
 Milton Hudgins
 Jeff Deem

Robert Allen
 William Reynolds
 Marc Grollman
 Chandler Hogg
 Bill Reynolds
 Wayne Plageman
 Bryan Killian
 Melvin Burns
 Warren Brooks
 Harry Johnson, Jr.
 Harry Johnson, Sr.
 Joe Pauls
 Tom Powers
 Jim Deibler
 Wayne Register
 Bob Hutchison
 Tom Mitchell
 Ray Schield
 Mike Beatties
 Zach Marston
 Jeffrey Crockett
 Kelly Place
 Louis Whittaker
 Frances Porter
 Chuck Macine
 Michael Burkett
 Preston Lane
 Robie Marsh
 Brett Schoeberl and others.

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

Gerry Showalter, Head-Engineering/Surveying, gave the Invocation and Carl Josephson, Counsel to the Commission, 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 Gordy moved to approve the Agenda as distributed. Associate Member Hull seconded the motion and the motion carried unanimously, 8-0.

1. APPROVAL OF MINUTES – January 22, 2002 meeting.

Associate Member White moved to approve the Minutes as distributed; Associate Member Cowart seconded the motion. The motion carried, 6-0. Associate Members Gordy and McLeskey noted their abstentions due to their absences from all and part of the January 22, 2002 meeting, respectively.

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

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

2A. MARINE RESOURCES COMMISSION, #01-2181. Fisheries Management Division requests authorization to construct a subtidal oyster reef sanctuary measuring 860-feet long by 50 feet wide, with a maximum height of six feet off the bottom, constructed of oyster and clam shell, centered near 37°38'50" North Latitude and 76°31'30" West Longitude, approximately 1,750 feet offshore, near Towles Point in the Rappahannock River on Public Ground No. 1, Lancaster County. The reef is proposed to be marked in accordance with the U. S. Coast Guard requirements.

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

2B. MARINE RESOURCES COMMISSION, #01-2194. The Fisheries Management Division requests authorization to construct two intertidal oyster reef sanctuaries, each measuring 200-feet long by 30-feet wide, with maximum heights of six feet off the bottom, constructed of oyster and clam shell, centered near 38°01'43" North Latitude and 76°33'24" West Longitude, south of Allen Point on Public Ground 14; and 38°02'39" North Latitude and 76°33'16" West Longitude, east of Crow Bar on Public Ground 11. Both reefs will be located in the Yeocomico River in Westmoreland County and are proposed to be marked in accordance with U.S. Coast Guard requirements.

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

2C. MARINE RESOURCES COMMISSION, #01-2205. The Fisheries Management Division requests authorization to construct three intertidal oyster reef sanctuaries comprised entirely of oyster and clam shell extending no more than five feet above the bottom in the Lynnhaven River watershed in Virginia Beach. One reef is centered at 36°53'33" North Latitude, 76°01'09" West Longitude, northwest of the First Landing State Park boat ramp in Broad Bay. The second reef is centered at 36°54'35" North Latitude, 76°02'22" West Longitude, inshore of channel marker G7 in Long Creek. The third reef is centered at 36°53'33" North Latitude, 76°01'09" West Longitude, at Great Neck Point in the Lynnhaven River in Virginia Beach. All three reefs are proposed to be marked in accordance with the U.S. Coast Guard requirements.

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

2D. MARINE RESOURCES COMMISSION, #01-2183. The Fisheries Management Division requests authorization to construct three subtidal oyster reef sanctuaries comprised entirely of oyster and clamshell extending six feet above the bottom on Public Oyster Ground off the northern Middlesex County shoreline. One reef is centered at 37°44'21" North Latitude and 76°35'56" West Longitude, in water with a depth of approximately minus ten (-10) feet at mean low water, approximately 5000 feet east/southeast of Punchbowl Point and is proposed to be triangular with sides measuring 258 feet, 343 feet and 338 feet. A second reef is centered at 37°41'58" North Latitude and 76°34'50" West Longitude, in water with a depth of approximately minus ten (-10) feet at mean low water, approximately 4300 feet east of Weeks Creek and is proposed to be 500 feet long and 50 feet wide. The third reef is centered at 37°40'31" North Latitude and 76°34'05" West Longitude, in water with a depth of approximately minus thirteen (-13) feet at mean low water, approximately 3,500 feet east/northeast of Long Point, at the mouth of LaGrange Creek and is proposed to be triangular with sides measuring 261 feet, 303 feet and 316 feet. All three reefs are proposed to be marked in accordance with the U.S. Coast Guard requirements.

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

2E. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-0899, requests a modification and extension of their existing permit to transplant submerged aquatic vegetation (SAV) to two sites in the lower Potomac River as part of a mitigation effort in association with the Woodrow Wilson Bridge replacement project in the City of Alexandria. Specifically, VDOT is requesting to plant an additional 5,000 shoots of eelgrass (*Zostera marina*) and 10,000 shoots of widgeon grass (*Ruppia maritima*), all from land-based nursery stock, to the previously authorized sites in the Judith Sound and the Coan River (Kingscote Creek) in Northumberland County. Recommend approval, pending expiration of the public notice, for an additional two years provided there will be no removal of wild stock plants from any naturally occurring SAV beds in the Commonwealth and that the project will continue to be conducted in accordance with the Commission’s SAV Transplantation Guidelines.

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

2F. U. S. ARMY CORPS OF ENGINEERS, #01-1614, requests authorization to install an approximately 485-foot long by 45-foot wide, continuous height riprap jetty which will extend approximately 400 feet channelward of mean low water at the mouth of the Coan River and authorization for placement of approximately 6,000 cubic yards of sandy dredge material on to Public Ground #78 in conjunction with the dredging of the Coan River federal navigation channel in Northumberland County. The overboard, subsurface discharge and placement of the dredged material is intended to convert historically unproductive substrate into hard bottom suitable for utilization by the Commission's oyster replenishment program.

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

2G. CITY OF POQUOSON, #01-1471, requests authorization to dredge 30,300 cubic yards of State-owned submerged lands, install a 280-foot long by 10-foot wide open-pile community pier with a 253-foot long by 8-foot wide T-head, associated finger piers and a 35-foot long by 16-foot wide concrete boat ramps with tending piers adjacent to their property situated at Messick Point along Front Cove. All dredge material is to be placed in a confined upland disposal site.

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

2H. DOMINION TELECOMMUNICATION, #01-2214, requests authorization to install, by the directional bore method, eight 1½-inch diameter conduits for fiber optic cables, a minimum of six feet beneath a 300-foot wide portion of Four Mile Run, at Four Mile Run Park in Arlington County and the City of Alexandria.

PERMIT FEE..... \$ 100.00
ROYALTIES.....\$ 2,400.00

2I. CITY OF NORFOLK, #00-0894, requests authorization to construct a 120-foot long by 90-foot wide replacement bridge across Wayne Creek at Tidewater Drive and relocate existing utilities to a point approximately ten feet upstream of the new bridge.

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

Associate Member Hull noted the location cited in Item 2F., Line 3 should read “*the mouth of the Coan River.*”

Commissioner Pruitt asked for comments, pro or con, on the proposed Page Two items. There being no comments from the public, Commissioner Pruitt placed the items before the Commission. **Associate Member Gordy moved to approve the items as recommended by staff. Associate Member Cowart seconded the motion.** Associate Member Williams noted that he is not against all of the Page Two items, but does not support 2A. and 2D. **By a Roll Call Vote attached to the permanent record of the meeting, the motion carried unanimously, 8-0.**

Lt. Colonel Lewis Jones, Deputy Chief-Law Enforcement, introduced newly-hired Marine Patrol Officers, Tim Litz, assigned to the Southern Area, and Matt Hargis, assigned to the Middle Area. Commissioner Pruitt welcomed the officers to the Agency.

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 the matters of Mills vs. VMRC and the Estate of Rabey vs. VMRC, and probable

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enforcement litigation efforts by the Office of the Attorney General against Roger

McKinley for alleged violation of the provisions of Title 28.2 of the Code of Virginia. The motion was seconded by Associate Member Birkett and carried unanimously, 8-0.

Upon the Board's return from Executive Session, **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. With the exception that the case of the City of Virginia Beach vs. VMRC was also discussed.

Associate Member Williams seconded the motion. The Recording Secretary held a Roll Call vote:

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

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried unanimously, 9-0.

Recording Secretary
Virginia Marine Resources Commission

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Associate Member Ballard moved that the Commission authorize the Commissioner to make all decisions on behalf of the Commission in connection with the enforcement

efforts in any necessary litigation by the Office of the Attorney General against Roger McKinley for current alleged violations of Title 28.2 of the Code of Virginia. Associate Member Cowart seconded the motion; motion carried unanimously, 8-0.

- 3. BAYMARK CONSTRUCTION CORP., #93-0149,** request authorization to modify the marina portion of their existing permit. The modification is to realign the piers and boat slips for a more efficient marina layout and to construct six open-sided and six closed-sided shelters on their piers, adjacent to their property along Kings Creek in the Town of Cape Charles.

Associate Member Ballard stated that the record of the Commission is replete with protests that he has lodged against the project in the past. He stated that he would not participate in today's deliberations for the proposed project. Mr. Ballard reminded the Associate Members that he is aware of the procedure to file a protest and noted that there is no protest from him against the project.

Mr. Hank Badger, Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. He stated that Baymark's marina is located on the south side of Kings Creek. The area has been used by commercial watermen, recreational power boats and small sail boats for seventy or more years. The original marina consisted of three piers with three closed-sided structures and a total of 68 wet slips.

Mr. Badger noted that at the June 1995 Commission meeting, the owners received authorization to dredge the marina and navigational channel leading into Kings Creek, construct one new pier and extend the three existing piers for a total of 224 wet slips. Last fall, in preparation for the dredging of the channel and marina all piers, pilings and structures were removed. The dredging was completed as permitted in early January 2002.

In November of 2001, staff received a request to modify their existing permit. Specifically, this modification requested the following changes:

- An increase change in the number of piers from four to six to accommodate larger boats. Five of the proposed piers will be floating and one pier will be fixed.
- Six, 20-foot by 20-foot covered, closed-sided structures on the T-head of the fixed pier. A variety of uses have been identified for each of the structures, including:
 - 1- Harbor master and fuel control system.
 - 1- Vessel pump out system, safety supplies.
 - 1- Restroom facilities.

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- 2- Shelters for cruise boat and sight seeing boat passengers.
- 1- Electrical and communication systems.

- Five, 14-foot by 14-foot covered, open-sided structures, located near the landward end of the floating piers and one 42-foot by 14-foot covered, open sided structure located near the entrance to the pier area. The open-sided buildings are proposed to house electrical transformers, electrical panels, communication panels, fire protection equipment, water supply pumps, trash receptacles and shelter from the elements.

No increase in the permitted number of boat slips or expansion of the existing dredge area is requested.

Mr. Badger stated that in response to an inquiry from staff concerning the intended use and need of the structures, Baymark's agent, Mr. Tom Langley stated that these structures would be a major part of creating the overall feeling of a high quality, first class marina. They would be the first aspect viewed by any patron approaching the facility by land or water, and are a critical architectural feature. The modified marina layout is focused toward the large boat market. Over 50% of the proposed slips are 50-foot or greater.

Mr. Badger reported that no protests have been received. The Virginia Institute of Marine Science (VIMS) stated the proposed slip arrangement would not result in any additional adverse impact than is already permitted. The project does encroach on two oyster ground leases, however, the leaseholders have not objected to the project. The Virginia Health Department has stated that the applicant has submitted an approved plan for sanitary facilities and no longer has any objection to the issuance of this permit.

In summary, Mr. Badger stated that when reviewing proposals to build over State-owned submerged lands the Commission's Subaqueous Guidelines direct staff to consider, among other things, the water dependency and the necessity for the proposed structure. Furthermore, when considering authorization for such structures for private use, §28.2-1205 of the Code of Virginia stipulates that: *"In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to §1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."*

Mr. Badger noted that although the revised project is unopposed and the environmental impacts associated with it may be minimal, staff believes the number and cumulative size of the building structures exceed what is necessary to house the water dependent elements of the marina. Staff believes it would be more appropriate for the applicant to construct the

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restroom facilities and the closed-sided shelters for cruise and sight seeing boat passengers on the upland. Also, staff believes the applicant could combine the harbor master, safety supplies and any other water dependent fuel, pump out, electrical and communication systems into two 20-foot by 20-foot closed-sided structures. Therefore, staff recommends

approval of the modification for the piers, the six open-sided shelters and two of the six 20-foot by 20-foot closed-sided structures (for the harbor master, safety supplies and other control systems). All previous permit conditions will remain in effect. Should the Commission elect to approve the modification, we recommend that an annual revised royalty in the amount of \$0.05 per square foot be assessed for any encroachment over State-owned subaqueous land.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. Associate Member Williams inquired as to whether there would be an increase in the number of boat slips. Mr. Badger stated that 224 boat slips are authorized and the proposed plan is for a total of 199 boat slips. The “footprint” is larger than originally planned as it is anticipated that boats as large as 70’ in length will use the slips. Associate Member Cowart asked if the facilities were to be located at the end of the dock, have arrangements been made to safely remove the waste materials and fuels? Mr. Badger stated that a fuel plan is currently in effect from the original permit. He stated that he is not aware of any formal plan for the sewage removal, however, the Health Department did not seem to have an issue with the restrooms being located at the end of the dock.

Mr. Tom Langley, Langley & McDonald Engineers, spoke on behalf of the developer. He primarily addressed the six structures planned for the end of the sixth pier, noting that it would be a first-class facility for the present and the future. As an example of the developer’s structures, Mr. Langley exhibited photographs of the redevelopment of Long Bay Point, a marina project completed by the developer in Virginia Beach. Mr. Langley assured the Commission that the concerns for sewage removal have been addressed and approved by the Health Department.

Commissioner Pruitt noted there were no members from the audience wishing to speak against the project. Associate Member White stated that Cape Charles is in the process of being rebuilt and the proposed project would be a revitalization to the rebuilding of the town.

With no further comments from the public, Commissioner Pruitt placed the matter before the Commission. **Associate Member White moved to approve the request for modification of the marina portion of the existing permit currently held by Baymark Construction Corporation. Upon approval, a royalty is to be paid in the amount of \$0.05 per square foot for the assessment of any encroachment over State-owned subaqueous land. Associate Member McLeskey seconded the motion.** Mr. McLeskey added that he has seen the developer’s work performed in Virginia Beach and felt assured this project would bear

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the same quality of work. Commissioner Pruitt concurred with Mr. McLeskey’s remarks. Associate Member Gordy raised her concern for the possible precedent being set by the Commission in approving restrooms over the water. A discussion ensued and it was determined that the Commission would be permitting restroom facilities that were once located on the same site. Additionally, Commissioner Pruitt inquired of Mr. Langley if all

necessary Health Department permits were in hand for the project. Mr. Langley stated that he has the permits. He noted that the sewage system will be a vacuum line, and the fuel system will be a double wall fuel line. **When put to a vote, the motion carried unanimously, 7-0.** Associate Member Ballard abstained from the vote as noted above.

- 4. CHESAPEAKE BAY BRIDGE AND TUNNEL DISTRICT, #98-0901.** Commission consideration of revised permit drawings to place armor rock adjacent to existing trestle bents, tunnel islands and bridge piers on an as-needed basis to abate scour erosion caused by tidal currents adjacent to the Bay Bridge Tunnel.

Mr. Randy Owen, Environmental Engineer Sr., provided an overview of the project and showed drawings and photos using a computer generated presentation. He stated that the permitted project area involves the entire 17.4 mile long crossing of the Lower Chesapeake Bay between Virginia Beach and Northampton County. The original bridge-tunnel facility was constructed in the early 1960's and the second crossing was completed in 1998.

Prior to this request, the District received authorization in 1989 and in 1990 for two smaller armor rock projects on their A and C trestles, respectively. In 1991, a permit for the current scope of work was originally authorized by the Commission (#91-0375.) Mr. Owen noted that at that time, the District had not identified a specific project, rather sought authorization of a blanket permit that allowed them to pursue scour abatement projects on an as-needed basis. The permit was approved contingent upon the District providing specific plans and drawings for Commission review and approval prior to any construction activities taking place.

Mr. Owen stated that permit #91-0375 was modified in 1994 to allow for the testing of an artificial sea grass mat designed to abate tidal scouring. The permit expired on June 30, 1996, however, without any specific plans for rock fill treatment being submitted for Commission review.

In July 1998, the project was reauthorized by the Commission (#98-0894.) On September 26, 2001, staff received revised drawings that identified three areas that propose rock fill treatments. Specifically, the District seeks authorization to construct a total of 2,700 linear feet of rock dikes and approximately 1,975 linear feet of riprap scour blanket to abate localized tidal scouring. The riprap dikes will be constructed along the east and west sides of

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the trestle with VDOT Class I and II stone. The dikes will have a five-foot wide crest, 3:1 outer side slopes and 1.5:1 inner side slopes. The riprap blankets will be three feet in thickness with a 25-foot wide crest and 1.5:1 side slopes.

Mr. Owen noted that the first area is located along Trestle C, beginning 825 feet north of the 4th Island. Approximately 1,425 linear feet of rock dikes is proposed between bents CNB 11

and CNB 30. An additional 1,350 linear feet of riprap scour blanket is proposed between bents CNB 30 and CNB 48.

A second rock dike is proposed immediately south of the North Channel Bridge, between bents CNB 284 and CNB 301 (1,275 linear feet). An additional 225 linear feet of riprap scour blanket is proposed between bents CNB 281 and CNB 284.

Lastly, approximately 400 linear feet of riprap scour blanket is proposed at bent DSB 1, north of the North Channel Bridge.

Mr. Owen stated that although two previous permits have been authorized by the Commission, the scope of the current proposal and design is quite different than that depicted in the earlier projects. He added that the District has recently provided bathymetric data to staff and VIMS that demonstrates evidence of significant tidal scouring along Trestle C. At some bents, the Bay bottom has scoured below the acceptable scour depth of the bents, as determined by the applicant's engineers. The applicant, therefore, wishes to proceed immediately with the current project.

Mr. Owen reported that VIMS has provided preliminary comments based upon an initial review by their Physical and Fisheries Sciences Departments. VIMS did not raise objections, however, since the need for additional rock fill treatments are as yet undetermined, and their cumulative impacts unknown; they recommend that the current proposal be limited to the minimum design necessary to abate scour and safeguard the existing structure.

VIMS hopes to conduct a bottom survey of the entire bridge-tunnel facility and complete their project review by mid-March. They state that this survey will serve as a baseline from which to judge the present and future scour abatement projects.

In making the staff recommendation, Mr. Owen stated that the District has stated that the current design is considered to be the minimum necessary to safeguard the existing facility. Accordingly, given the urgency of the current project, staff recommends approval of the project as submitted. Staff also recommends a post-construction monitoring program, conducted immediately after construction and one year post-construction, which shall include a detailed analysis of the rock structures and adjacent bathymetry which should be included as a permit condition. These results would need to be submitted for Commission review prior to pursuing future scour abatement projects.

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In the brief absence of Commissioner Pruitt, Associate Member White asked if anyone in attendance wished to speak to this matter, pro or con. With no comments being offered, Mr. White placed the matter before the Commission. **Associate Member Ballard moved to grant the permits requested by the Chesapeake Bay Bridge Tunnel and District as outlined by the staff. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

5. **B & E SEAFOOD, #2001-038.** Application for 75 acres of Oyster Planting Ground on Nandua Creek, west of Curratuck Creek in Accomack County. The project is protested by adjacent and nearby property owners.
6. **THOMAS E. RASMUSSEN, #2001-041.** Application for 75 acres of Oyster Planting Ground on Nandua Creek, near the mouth Curratuck Creek in Accomack County. The project is protested by adjacent and nearby property owners.

Gerry Showalter, Head-Engineering/Surveying, stated that since Items 5. and 6. are adjacent and involve similar issues, they will be presented at the same time. Both are located along the south shore of Nandua Creek and both leases may be used to grow aquaculture clams. He provided an overview with drawings and photos using a computer-generated presentation.

Mr. Showalter stated that with the protest from Dallas D. Swan, Jr., president of Hungers Creek Enterprises, Inc., the landowner who has the adjacent subdivision, and surmising that the purchasers of the lots may want to build piers in the shallow water in front of the respective lots and also would object to near-shore clam beds, it is his opinion that the lease lines could be moved offshore and still accommodate both interests. In a telephone conversation this week with Mr. Swan, Mr. Showalter stated that he made this suggestion to Mr. Swan who then indicated that he would be satisfied if the projects were surveyed offshore as proposed.

Mr. Showalter stated that other protests are general protests against aquaculture uses. He added that objections have been raised with regard to clam beds harming SAV and fishing. Such objections seem to leave false impressions, when in fact many think the clam beds help. Mr. Showalter stated that objections being raised that the nets will obstruct navigation may have some merit, but may be overcome by staying offshore.

The Commission reviewed drawings and photos depicting the site being approximately 100-yards offshore. The Members discussed with staff the width and depth of water being affected, as well as the mean low water line. Associate Member Gordy suggested that the project be deferred until such time as a study can be made of the actual mean low water line.

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Mr. Badger explained that staff surveys an area to establish about where the low water mark is. They then back off from that point in order to protect a property owner's riparian and high land rights. Mr. Showalter stated that the suggested line for the project is approximately 100-yards off the mean low water line.

Mr. Showalter stated that staff is recommending that both leases be granted as suggested, but that lessees be warned that the area must be kept free of discarded nets, stakes or equipment, and landowners be encouraged to recognize the benefits shellfish provide and that they share the natural resources. Associate Member White asked if any protestors have abated with the

“give and take” that has occurred with the project. Mr. Showalter stated that approximately one-half dozen protestors have withdrawn their protests. He briefly reviewed the letters of protest and support for the projects as distributed to the Commission.

With regard to the two applications, Commissioner Pruitt asked if anyone in attendance wished to speak to the matter, pro or con. Commissioner Pruitt swore in those wishing to address the Commission in 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. Joseph Green, President of Cedar View Beach Association, asked for a clarification of the applications being considered at today’s meeting. Commissioner Pruitt stated that only application #2001-038 and #2001-041 are being considered; hearings will be held in the future regarding other such applications. Mr. Green read into the record the Association’s letter of protest, dated September 14, 2001, a copy of which is filed with the meeting’s permanent record. Commissioner Pruitt noted that the letter had been previously distributed to the members of the Commission for review in this matter. Mr. Green concluded his presentation with a summary in regard to the detrimental affects of nitrogen from the oysters that would result should the projects be approved.

Associate Member Ballard disputed Mr. Green’s comments regarding shellfish farming and oyster culture, in particular. He stated that the Virginia General Assembly has passed a number of Resolutions encouraging these activities and asked that the Commission consider Mr. Green’s lack of knowledge in this subject when considering Mr. Green’s other comments.

Ms. Kathleen Benson addressed the Commission on behalf of Robert F. Gaskill, property owner. Mr. Gaskill’s primary concern is for open lines of communication between the VMRC and property owners affected by such projects. Ms. Benson read Mr. Gaskill’s letter dated September 21, 2001 and February 23, 2002, copies of which are a part of the permanent record of this meeting.

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Mr. Devlin Barrett addressed the Commission on behalf of the property owners of Lattimer’s Beach. He noted that additional requests for such oyster ground planting will be coming before the Commission in the near future. The residents of the Lattimer Beach area are concerned that a precedent may be set in issuing such permits in places that are inhabited, resulting in problems and friction for and with property owners that, otherwise, could be avoided.

Mr. David Lumgair, property owner, spoke in opposition to the proposed projects. He stressed the need for the Commission to evaluate and consider the area at one time rather than act on singular projects as they are requested.

Mr. Garland Sterling, Jr., property owner, noted that projects affecting his property would come to the Commission in the future. He asked if there are plans to survey the area in the near future. Commissioner Pruitt stated that nothing is planned at this time.

Mr. Wesley B. Bowen, Jr., owner of B & E Seafood and also speaking on behalf of Thomas Rasmussen, addressed the Commission in favor of the projects. He stated that he is requesting the proposed project come as far as 100' off the shoreline. He noted that he respected the feelings of the property owners and stressed his willingness to work with the community in this regard.

Commissioner Pruitt asked Mr. Green if staff's extension of the project boundaries would have an affect on the Association's opposition to the project. Mr. Green stated that the Association's basic position is to see the area zoned strictly recreational.

Associate Member Gordy asked the protestors to these projects to stand; Commissioner Pruitt thanked the residents for attending the meeting. He noted that the Commission has complied with the law in advertising for the public hearing.

Associate Member McLeskey asked if there was anyone present whose property is immediately in front of the proposed projects. **Mr. Howard Luckett**, property owner, stated that his property would have a side view of the proposed oyster beds. Mr. Badger stated that the upland directly facing the project is owned by Mr. Dallas Swan.

With no further comments from the public, Commissioner Pruitt placed the matter before the Commission. In noting the withdrawal of Mr. Swan's objection to the projects, **Associate Member Cowart moved to grant the applications of B & E Seafood, #2001-038, and Thomas E. Rasmussen, #2001-041, as they have been compromised. Associate Member Hull seconded the motion.** Associate Member Gordy noted her support of the motion in light of the removal of objection by Mr. Swan. **When put to a vote, the motion carried unanimously, 8-0.**

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Commissioner Pruitt stated that for those who are interested in the forthcoming requests for oyster planting grounds, there will be another hearing; the public will have another chance to speak, write letters and attend the meeting. Mr. Showalter noted that there was one statement repeated in a number of the letters received, "*all subsequent applications...*" He stated that each application will be treated individually and not just "all subsequent applications" that come in. Commissioner Pruitt stressed that the public needs to note their appeal on each request being advertised. He asked Mr. Showalter when the applications would be heard. Mr. Showalter stated that he felt it would be in the timeframe of May or June for those that have been protested – one request west of Cedar View, one request north of Cedar View, and a couple requests further up the creek. Commissioner Pruitt asked if there were any more requests pending for up the Bay. Mr. Showalter stated that there is one on the point, across

the creek. Commissioner Pruitt reiterated that the audience will have another chance to protest these additional requests, as they must be taken individually to determine their impact.

The Commission recessed for lunch at 11:45 a.m. Commissioner Pruitt reconvened the meeting at 12:40 p.m.

7. PUBLIC COMMENTS

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

Mr. Douglas Jenkins, Twin River Watermen's Association, thanked the Commission for voting to open the lower part of the Rappahannock River for hand scraping of oysters. He also addressed the Commission with regard to recreational striped bass fishing limitations and requested this matter be placed on the agenda for the upcoming meeting of the Finfish Management Advisory Committee.

Mr. George Washington, Virginia Watermen's Association, reported that the Virginia General Assembly approved a three-year research period on the *aria* oyster to certify that the oyster would not be a threat to the Chesapeake Bay. Mr. Washington also noted the disappointment of the watermen who missed the morning session's discussion and vote on the proposed oyster reef projects. Commissioner Pruitt briefly reviewed the process for categorizing, advertising and hearing agenda items.

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Mr. Warren Cosby, President, York River/Croaker Landing Working Watermen's Association, asked the Commission not to endorse the shad restoration project further, citing problems with the shad being eaten by Mississippi Catfish in the James River.

Mr. Dale Taylor, Virginia Watermen's Association, stated that he and other watermen were upset in missing the discussions on the Page Two Items of the meeting Agenda. He noted his opposition to the oyster reef sanctuaries proposed in those items.

Mr. John Register, member of the Clam Management Advisory Committee, asked for permission to harvest and relay the clams prior to the forthcoming dredging of the Newport News channel. Associate Member Williams stated that this matter was discussed at the recent Clam Advisory Committee meeting and the consensus was that the watermen should

have the opportunity to retrieve the clams prior to the dredging process.

Mr. Roy Insley, Head-Plans and Statistics, stated that the Clam Management Advisory Committee would like to replant the clams at the York Spit Reef. Funding is available for this project, however, the York River site has not been designated as a broodstock area. In order to utilize the funds and perform the project ahead of the scheduled March 15, 2002 dredging, the Commission must approve an Emergency Regulation designating the York Spit Reef as a clam broodstock area. At the request of the Commission, Mr. Insley called upon Mr. Chad Boyce, Fishery Management Specialist, to present the Emergency Regulation request to the Commission.

Emergency Regulation 4 VAC 20-560-10 et seq., “Pertaining to the York River, Poquoson River, Back River, and Newport News Shellfish Management Areas and the James River Broodstock Management Areas.” Mr. Boyce stated that the hard clam (*Mercenaria mercenaria*) is one of the most important commercial species harvested in Virginia’s Bay waters. Annually, since 1987, dockside values have varied from four to six million dollars, with over a million pounds landed each year. In addition to the economic value, hard clams have become the primary filter feeder within the Chesapeake Bay due to the decline in oyster resources. Filter feeding organisms help to clarify the water through their biological processes, removing particulate matter and potentially toxic materials, providing for a healthy marine environment.

The VMRC, in order to help enhance and propagate hard clam stocks, and in turn the hard clam fishery, initiated the Hard Clam Broodstock Program; a pilot site at Lower Brown Shoals in the James River was created in April 1995. Coordinating with biological scientists and computer modelers from VIMS and individuals within the hard clam fishery, VMRC staff selects protected sites to place large numbers of clams in order to increase reproductive potential.

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Mr. Boyce noted that spawning occurs in hard clams when environmental cues trigger males to release sperm as females are releasing eggs. An increase in the probability of successful fertilization, and thus, settlement of new clams can be achieved by increasing the densities of spawning clams within a given area.

This permitted site allows for secured bottom, protected from commercial fishing activities, to be utilized as a hard clam broodstock sanctuary as well. This site was selected after biological modeling from VIMS was completed and input from the Clam Management Advisory Committee was gathered, in order to define the most optimal area for the broodstock sanctuary; all biological modeling information received indicated that the area of Mobjack Bay, as well as areas south of York Spit Reef would be ideal for clam larval dispersion.

Mr. Boyce reported that the Hard Clam Advisory Committee met on February 20, 2002 and discussed the various aspects of the proposed broodstock area, the committee and associated watermen provided input in order to create an effective sanctuary. The Committee unanimously approved the motion to make the York Spit Reef a broodstock management area. Thus, staff recommends to establish York Spit Reef Broodstock Management Area, as defined in draft Emergency Regulation 4 VAC 20-560-10 et seq.

Commissioner Pruitt asked if anyone in attendance wished to speak to the matter, pro or con. There being no comments from the public, Commissioner Pruitt placed the matter before the Commission for consideration. **Associate Member Hull moved for the adoption of Emergency Regulation 4 VAC 20-560-10 et seq., "Pertaining to the York River, Poquoson River, Back River, and Newport News Shellfish Management Areas and the James River Broodstock Management Areas."** **Associate Member Gordy seconded the motion; motion approved unanimously, 8-0.**

Approval of 2002 York Spit Reef Broodstock Management Area Procurement Procedures - Mr. Boyce stated that the Commission is required to approve the procurement procedures for obtaining the services of harvesters to participate in the York Spit Reef Broodstock Management Area. The authority to approve this procurement is found in Section 28.2-550 of the Code of Virginia.

Mr. Boyce stated that the staff proposes to procure the services of watermen to harvest hard clams from the Hampton Roads Shellfish Relay Area and plant them at the York Spit Reef Broodstock Management Area under VMRC supervision. The program dates are March 11 through April 12.

Mr. Boyce noted that in order to help enhance and propagate hard clam stocks, and in turn, the hard clam fishery VMRC initiated the Hard Clam Broodstock Program in 1995. Coordinating with scientists and computer modelers from VIMS and individuals within the

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hard clam fishery, VMRC staff selected protected sites to place large numbers of clams in order to increase reproductive potential. The York Spit Reef site was selected due to its potential for larval disbursement within the Mobjack Bay/Lower York River area, the protected status of the area from commercial patent tong gear, and the presence of material on the bottom which provides protection from natural predators. Modeling indicated that the entire Mobjack Bay/Lower York River area would be positively impacted by a broodstock sanctuary. A high density of spawning clams in this area will increase the probability of successful fertilization. Therefore, staff recommends approval of the procurement procedure.

Commissioner Pruitt asked if anyone in attendance wished to speak to the matter, pro or con. There being no comments from the public, Commissioner Pruitt placed the matter before the Commission for action. Associate Member Ballard inquired as whether the procurement has been specified. Mr. Boyce stated that all clams would be harvested, regardless of size, at a

price of \$0.15 per clam. In response to Associate Member Hull's inquiry, he stated that funds are available through the original \$75,000.00 allocation for the Broodstock Program to purchase broodstock clams for the York Spit area.

Associate Member Hull moved for the approval of the 2002 York Spit Reef Broodstock Management Area Procurement Procedures. Associate Member Cowart seconded the motion; motion was approved unanimously, 8-0.

Louis Whittaker, President of Virginia Soft Crab Association (VSCA) addressed the Commission with regard to the recent regulation for the watermen's eight-hour workday. The VSCA would like to see a starting time set for 5:00 a.m., at least through the month of August. The Association requests some tolerance on the three-inch peeler crab minimum. Mr. Whittaker suggested using the same measuring method as is used for hard crabs.

Mr. Craig Page – Requested that the recreational and commercial fishermen fish for the striped bass at separate times of the year.

8. ROBERT JENSEN: Rappahannock Preservation Society preliminary plan for native oyster recovery.

Mr. Jensen briefly reviewed and distributed the 2001 Annual Report for the Rappahannock Preservation Society, a copy of which is retained with the permanent record of this meeting. Commissioner Pruitt requested questions/comments from those in attendance. There being none, Mr. Jensen was thanked for his presentation.

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9. DISCUSSION: 2002 Oyster Replenishment Program

Dr. Wesson stated that the oyster restoration plan this year is quite large. Funds have come from many different sources, and many have specific requirements for the nature of the expenditure. He stated that some funding sources are still not entirely clear at this point, but the best estimates have been provided to the Commission. Dr. Wesson noted that the project areas will remain the same if funding levels change, procurement methods will be the same as described, but actual dollar amounts from several sources could go up or down. He added that the funding sources at the beginning were provided to give credit to all of the partners in the oyster restoration effort. The 2002 Oyster Replenishment Program is as follows:

FUNDING SOURCES

NON-FEDERAL

Amount

In-Kind Value

State:

General Funds (GF)	\$ 697,000	
General Funds - Private Lease Grant	42,500	
Indirect Cost Recoveries (ICR)	100,000	

NON-FEDERAL**Grants:**

Westmoreland County (WC)	5,500	
Norfolk Rotary Club (Elizabeth River; NRC))	45,000	
Chesapeake Bay License Plate Fund (CBLF)	<u>920,000</u>	

Chesapeake Bay Foundation, Port Kinsale

Foundation and Private Individual Oyster Donations

193,396 oysters @\$0.25/oyster

\$ 48,349

SUBTOTAL NON-FEDERAL FUNDS:	\$ 910,000	\$ 48,349
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OTHER NON-FEDERAL OYSTER RESTORATION PROJECTS

City of Virginia Beach (VB) - Lynnhaven River	\$ 108,000	
Virginia Port Authority - Elizabeth River	<u>100,000</u>	

SUBTOTAL OTHER NON-FEDERAL:	\$ 208,000	
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NOAA Community Based - Nature Conservancy Cobb Island Bay	\$ 22,500	
DEQ - Coastal Resource Management - Oyster Heritage Program (Rappahannock; CRM, OHP)	490,000	
NOAA- Oyster Reef Heritage Foundation	777,615	
EPA - Chesapeake Bay Program - Westmoreland County Oyster Heritage Program	<u>64,823</u>	

SUBTOTAL FEDERAL FUNDS:	\$ 1,354,938	
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OTHER FEDERALLY FUNDED OYSTER RESTORATION PROJECTS

National Fish and Wildlife Foundation – Lynnhaven	\$ 25,000	
National Fish and Wildlife Foundation U. S. Fish		

And Wildlife Service – Chincoteague	50,000
U. S. Army Corps of Engineers - Tangier/Pocomoke (COETP)	<u>2,200,000</u>
SUBTOTAL OF OTHER FEDERAL FUNDS	\$ 2,275,000
GRAND TOTAL	\$ 4,705,438

SEED TRANSFER:

Salinities are currently so high that the movement of seed would be extremely risky. Spat set was very poor in 2001 in both the Great Wicomico and Piankatank, so there is no seed to move from those rivers. Seed oysters are available in the James River, but there is currently no public ground in Virginia with salinities low enough for any chance of survival. Our program, therefore, will not move any seed this year. The Potomac River Commission would like to move 5,000 to 10,000 bushels of James River seed to a bar near the Rt. 301 bridge where the salinity is currently around 10 ppt. They intend to do this in April, while the season is open, and will use local watermen and transporters to move the seed.

SHELLPLANTING Reef Sanctuary and Harvest Areas:

Chesapeake Bay - Western Shore

Westmoreland County Oyster Heritage Program

The Board of Supervisors of Westmoreland County initiated an effort to stimulate oyster restoration within their county. They began this effort with an initial contribution of \$5,500

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and have modeled a program after the Oyster Heritage Program in the Rappahannock. They are seeking to partner with state, federal, and private entities. To date, grants have been received from the Chesapeake Bay Program and the Chesapeake Bay Restoration Fund. Three small reefs will be completed this year:

Nomini River

Barns Point Reef - 35,000 bushels of oyster shells @ \$1.10/bushel	\$38,500 (EPA)
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Yeocomico River

Crow Bar Reef - 35,000 bushels of oyster shells @ \$1.10/bushel	\$26,323 (EPA) \$5,177 (GF)
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Allen Point Reef - 35,000 bushels of oyster shells @ \$0.90/bushel	\$9,349 (GF) \$20,000 (CBRF) \$2,251 (WC)
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Poles, Signs, Buoys	\$3,349 (WC)
	\$1,151 (GF)

The Port Kinsale Foundation will coordinate oyster gardening and donations to put on these reefs.

Chesapeake Bay

Blackberry Hangs - Harvest Area

30,000 bushels of oyster shells @ \$0.90/bushel	\$27,000 (GF)
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Deep Rock - Harvest Area

99,287 bushels of oyster shells @\$1.35/bushel	\$134,037 (GF)
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138,125 bushels of clam shells @\$0.80/bushel	\$110,500 (GF)
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Virginia Oyster Heritage Program - Phase II

Phase I was completed in 2001, with a total of nine sanctuary reefs constructed and 305 acres of harvest areas restored. The Department of Environmental Quality (Virginia Coastal Program) was VMRC's biggest state partner in this activity, but we had help from many state, federal, and private partners also.

VMRC is continuing this effort as Phase II and moving further up the Rappahannock River. Four more sanctuary reefs will be completed along with at least 130 acres of restored harvest areas. Several funding sources will be used for this project and several types of shell.

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Harvest Areas

138,125 bushels of clam shell @\$0.80/bushel	\$40,500 (GF)
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207,000 bushels of house oyster shells @\$0.90/bushel	\$60,000 (ICR)
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864,017 bushels of dredged shells @\$0.90/bushel	\$200,000 (CRM)
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	\$577,615 (NOAA)
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Sanctuary Reefs

150,000 bushels of house oyster shells for 2 reefs @	
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\$1.35/bushel	\$175,000 (CRM)
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	\$27,500 (GF)
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200,000 bushels of dredged shells for 2 reefs @	
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\$1.00/bushel	\$200,000 (NOAA)
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Watermen will be hired to remove the live oysters from most of these areas prior to shell planting. These oysters will be moved to safe areas that will not be planted.

70,000 bushels @\$1.00/bushel	\$30,000 (CRM) \$40,000 (ICR)
Piankatank River	
25,000 bushels of house shells @\$1.10/bushel	\$27,500 (GF)
Langley AFB - Back River Reef - Vitreous China Test	\$20,000 (GF)

The City of Hampton has been working with volunteers and the Waste Management Landfill to collect old toilets and sinks. They have broken and crushed this material into shell-size pieces. VMRC will continue with its tests on alternative materials as reef building cultch by placing this material on the Back River reef. The most VMRC would hope to collect would be 1,000 cubic yards that would be equivalent to about 15,500 bushels of shell.

Elizabeth River

Sanctuary Reef in the Southern Branch of the Elizabeth River

33,333 bushels @\$1.35/bushel \$45,000 (NRC)

The Virginia Port Authority (VPA) will also be building a reef near the entrance to the Southern Branch of the Elizabeth River and VMRC will be assisting them with this project, but will not be handling the money directly.

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\$100,000(VPA)

The City of Virginia Beach - Lynnhaven River

The City of Virginia Beach has also started a Lynnhaven River Oyster Heritage Program, and has built a partnership base to rebuild oyster populations there. Their City Council has a "My 2 Cents" program, where they give two cents per capita for oyster restoration. They have also contributed \$50,000 to an oyster fund and have collected some mitigation funds for several projects. VMRC has identified a series of reef sites and harvest areas within that river system. Virginia Beach has also received a National Fish and Wildlife Foundation grant for the project and plans to complete two-to-three small reefs and several harvest areas in the current year.

97,758 bushels of house shells @\$1.65/bushel \$25,000 (NFWF)
\$25,000 (GF)
\$108,000 (VB)

Tangier-Pocomoke Sound

The Army Corps of Engineers (COE) received a significant amount of funding for oyster

restoration in 2001. These funds went to Maryland and Virginia COE Districts. VMRC has been working to finish a Project Cooperative Agreement for more than a year, and is still not finished. Pending an agreement of Virginia matching requirements, VMRC will move forward with this project in 2002. The fund amount is not entirely clear, but VMRC is prepared with eight sanctuary reef sites and more than 150 acres of harvest area locations in Tangier and Pocomoke. They will use dredged shells to complete this project. VMRC will conduct the field work, if and when the project moves forward; however, construction funds do not pass through our agency. Staff believes that VMRC's match will be satisfied by the intrinsic value of the shells.

Estimated 2,000,000 bushels of shells \$2,200,000 (COE)

Seaside, Eastern Shore

Oyster - Cobb Island Bay

VMRC has a grant with the NOAA-Community Based Program to build reefs and restore eelgrass in a project with the Nature Conservancy. Part of these shells will be placed adjacent to Nature Conservancy property on Cobb Island and a portion will be placed on public grounds in Cobb Bay.

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40,000 bushels of dredged shells @\$1.00/bushel \$20,000
(NOAA)

\$20,000 (GF)

VMRC will also be working with Nature Conservancy
Volunteers to collect eelgrass seeds and plant these in
Cobb Island Bay in the fall. \$2,250
(NOAA)

Quinby - Wachapreague

30,000 bushels of conch shells @\$1.50/bushel \$30,000
(CRM)

\$15,000 (GF)

Chincoteague

VMRC has a National Fish and Wildlife Foundation, U. S. Fish and Wildlife Service project to conduct near the Assateague Wildlife Refuge. Half of these shells will be placed on Refuge property, and half will go in other nearby rocks in the Chincoteague Area.

44,444 bushels of conch shells @\$2.25/bushel (NFWF)	\$50,000
	\$50,000 (GF)

PRIVATE OYSTER GROUND LEASE ASSISTANCE GRANTS:

Approximately \$42,500 is again available for a matching grant program for private industry efforts to restore oyster reefs in areas close to the Commission reef building efforts. A letter was sent with the lease rent statements describing this program, along with an application form. Responses were due by October 15, 2001.

This program worked very well in 2000 and 2001. Thirty -six projects have been completed on private leases throughout the State, with a great deal of interest in this opportunity again this year. VMRC is in the process of finishing the reviews. Contracts will be prepared for all approved grantees and payments will be made after verification of completion of work.

Associate Member Cowart inquired as to which areas of the Rappahannock would be cleaned and prepared for the planting of oyster shells and the condition of the area bottom. Dr. Wesson stated that the northern part of Waterview down to the Wicks area – west of Urbanna to the Waterview Ridge; the bottoms are fairly scarce and what is left will be cleaned. Any live oysters that are removed are taken to other areas to increase the harvest. Mr. Cowart

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asked if a number of boats would work the bottom. Dr. Wesson stated that the three large boats left in Virginia would do the work.

Associate Member Williams stated that the area contained a lot of small oysters and asked if it would be more feasible to leave the oysters in place for another year of harvesting. Dr. Wesson stated that there were not that many oysters, perhaps 40 oysters to the bushel. He added that of the approximate 700 acres in the area, approximately 100 acres would be cleaned and replanted. Mr. Williams noted his concern for delegating funds to this portion of the project knowing that oysters are already there.

Commissioner Pruitt asked if anyone in attendance wished to comment on the proposed 2002 Oyster Replenishment Program, pro or con. **Mr. George Washington** asked where the oysters would be relocated. Dr. Wesson stated that the oysters being moved would remain in the Rappahannock River, immediately adjacent to the Waterview Ridge area.

There being no further comments, Commissioner Pruitt placed the proposed 2002 Oyster Replenishment Program before the Commission for action. **Associate Member Ballard moved to approve the 2002 Oyster Replenishment Program, as presented by staff. Associate Member Birkett seconded the motion. When put to a vote, the motion passed, 8-0.** Associate Member Williams noted his only objection is to the work planned for Waterview Ridge.

Dr. Wesson stated the need for the Commission to approve the following Procurement Plan for the 2002 Oyster Replenishment Program:

\$42,500 (GF)

APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2002 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures and, therefore, must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia. This section of the Code states, in part, that:

“The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorized other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment... which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection

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methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.”

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the turning and cleaning and dredging of public oyster bottoms, the Commission will set a per hour or per day rate to be paid. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices will be approximately \$0.70 per bushel for clam shells and \$0.80 per bushel of oyster shells, but may vary somewhat by type of activity, transportation costs, and geographic area. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2002 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state would be purchased by the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

The agency anticipates that all other 2002 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public

Procurement Act.

Grant Award Procedure: The Oyster Replenishment Program will administer a Private Lease Assistance Grant program. All private leaseholders were notified of this assistance by letter.

Applications were accepted until October 15, 2001. Applications will be reviewed and ranked, and contracts prepared for successful grantors. Payment will be made after verification of completion of the work.

If the conditions of the oyster resources changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2002 Replenishment Program.

Commissioner Pruitt requested comments from the public on the Procurement Plan for the 2002 Oyster Replenishment Plan, pro or con. There being none, the matter was placed before the Commission for action. **Associate member Ballard moved to approve the Procurement Plan for the 2002 Oyster Replenishment Plan; Associate Member Hull seconded the motion. The motion was approved, 8-0.**

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10. 2002 AMERICAN SHAD RESTORATION PROJECT: Request approval for procurement of services.

Mr. Robert O'Reilly, Deputy Chief-Fisheries Management, stated that annually, the Commission is asked to approve the procurement procedures for obtaining the services of watermen to participate in the American Shad Restoration Program. The authority to approve such procurement is found in Section 11-35G of the Code of Virginia.

Mr. O'Reilly presented the proposed program as follows:

PROJECT DESCRIPTION: A total of nine individuals will be selected as permitted project participants, and one individual will be selected as project alternate. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries Project Coordinator. The need for participation by alternates in the project will be determined by the Virginia Department of Game and Inland Fisheries Project Coordinator.

For fishing days during the March 11 through mid-May, 2002 period, permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each

respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 8 at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

EVALUATION CRITERIA:

1. You must have participated in one or more of the 1992 through 2001 American Shad Restoration Projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.

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3. You must be available to fish for shad during most of the days between mid-March and mid-May.
4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

Any person interested in participating in this project should send a written response describing his or her ability to meet the above criteria. In the response, include the name of the boat to be used and a current daytime telephone number where you can be reached.

Written responses must be received by the main office of the Commission by 5:00 P.M., March 7, 2002 and should be sent to:

Jack G. Travelstead Chief, VMRC Fisheries Management Division,
Virginia Marine Resources Commission
2600 Washington Avenue, 3rd Floor
Newport News, VA 23607

In the brief absence of the Commissioner, Associate Member White requested comments from the public, pro or con. Associate Member Ballard asked Mr. O'Reilly to comment on the Mississippi catfish issue. Mr. O'Reilly suggested that this problem be brought forward for discussion at an upcoming Finfish Management Advisory Committee meeting. He added that the program is an in-state program with multiple partners participating: Department of

Game and Inland Fisheries, VMRC, U. S. Fish and Wildlife and VIMS. A meeting of these partners will be held in the spring and the issue could be discussed at that time as well.

Mr. Kelly Place, commercial and recreational fisherman, stated that a graduate student at the Virginia Commonwealth University's Fish Lab has published a paper on the study of the stomach contents of catfish of all types. The paper will document the issue facing the shad in Virginia waters.

Mr. George Washington, stated that the problem with the shad population is the dams. He noted that large catches can be made on the James, Rappahannock and Occoquan Rivers. He stated that impediments for fish swimming up the rivers needs to be addressed.

With no further comments offered, the matter was placed before the Commission for action. **Associate Member White moved to approve the Procurement Process for the American Shad Restoration Program, 1135-G, as proposed. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

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11. CONTINUED DISCUSSION: Proposed amendments to Regulation 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass" to reduce the ocean harvest of striped bass in the commercial fishery. A Public Hearing was held in January.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that last month the Commission delayed a final decision on the proposed regulations pending a potential review by the Atlantic States Marine Fisheries Commission's (ASMFC) Striped Bass Management Board. The Management Board met in Washington, D.C. on Thursday, February 21, 2002. "Virginia issues" were discussed during that meeting and were referred to the ASMFC's Technical Committee. This committee will meet between now and sometime in May. Mr. Travelstead stated that it is his belief that the Management Board will no longer allow Virginia to combine the ocean and Bay quotas on striped bass. The conditions under which this arrangement was made have changed and now result in large catches of large, older striped bass. Mr. Travelstead stated that Virginia may adopt regulations at this time without being out of compliance with the Plan. However, it is possible that upon a review of such regulations, the Management Board will recommend changes. Thus, Mr. Travelstead recommended that the Commission take no action until the ASMFC brings forth its recommendations following its May meeting.

Mr. Travelstead stated that in the short period of the time that the striped bass fishery has been open, the quotas are well on their way to being met. To implement new tagging rules would disadvantage some fishermen while advantaging others. Again, he recommended that the Commission not take action this far into the season.

Commissioner Pruitt requested comments from the public, pro or con. The following individuals presented their concerns to the Commission and are recorded verbatim as part of the permanent record of this meeting:

Mr. Tom Powers, Coastal Conservation Association (CCA) of Virginia, addressed the Commission on behalf of the recreational fishermen. He stated the Association's disappointment in the Commission not taking action last month, stating that the upriver fishermen take the largest hits with the regulations currently in place. Additional reductions in harvesting would surely reduce their catch by 50%.

Mr. Ernie Bowden, addressed the Commission on behalf of the commercial fisherman. He stated that the Commission should not make changes mid-stream in the season and requested that it table its decision until the ASMFC recommendations are received.

Mr. Travelstead stated the National Marine Fisheries released the number for recreational harvesting striped bass of Virginia, in the Bay, at 1.86 million pounds for year 2001. This figure is approximately 160,000 pounds over quota. VMRC does not monitor the daily quota as they do on the commercial fishing due to the fact that the numbers are estimated by a

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survey that is taken every two months. Additionally, the majority of the catch is taken in November and December with the results published in February which makes it difficult to act on closing a fishery down. However, the fishery is constantly monitored and the Commission may be asked to take measures for slowing the fishery down during the season.

Associate Member Ballard asked if the fishery quota is exceeded in one season, does the Management Plan reduce the quota for the following season? Mr. Travelstead noted that the Bay is looked at as a whole, and if Maryland, Virginia and the Potomac River quotas are exceeded, the overages are taken off the following year's quotas.

There being no further discussion, the matter was placed before the Commission for action. **Associate Member Williams moved to table the recommendation to reduce the ocean harvest of striped bass in the commercial fishery until after the ASMFC report is received. Associate Member Hull seconded the motion; motion carried unanimously, 8-0.**

12. DISCUSSION: Proposed amendment to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to modify the commercial possession limit for the second, third and fourth quarters, 2002. Request for Public Hearing.

Mr. Chad Boyce, Fishery Management Specialist, reported that the ASMFC's Black Sea Bass Management Board met in Washington, D.C. on February 21, 2002. At that time, the board considered Addendum VI to the Black Sea Bass Fishery Management Plan.

Mr. Boyce stated that black sea bass commercial limits for the second, third and fourth quarters have been adjusted, as well as trip limits and trigger percentages. The proposed updated possession limits are as follows:

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

Mr. Boyce stated that amendments to the possession limits are being proposed in order to allow the fishery to proceed throughout the majority of the quota period without eliminating certain user groups.

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Commissioner Pruitt requested comments from the public, pro or con. There being none, the matter was placed before the Commission for action.

Associate Member Gordy moved to grant the staff's request for a Public Hearing on the proposed amendment to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to modify the commercial possession limit for the second, third and fourth quarters, 2002. Associate Member Cowart seconded the motion; motion carried unanimously, 8-0. Commissioner Pruitt noted that the Public Hearing would be in March.

13. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to: a) increase the commercial minimum size limit for black sea bass and increase the size of sea bass pot escape panels; and b) increase the recreational minimum size limit for black sea bass and repeal the closed recreational season.

Mr. Chad Boyce, Fishery Management Specialist, stated that in December of 2001, the ASMFC met to discuss proposed rules for the 2002 black sea bass commercial fishery. These new rules will implement measures to protect recent strong year classes of black sea bass. The measures include:

- 1) an increase in the commercial minimum size limit from 10 inches to 11 inches;
- 2) an increase of the black sea bass pot and trap escape panels:

<u>Current escape panel sizes</u>	<u>Proposed escape panel sizes</u>
2 inches circular	2 3/8 inches circular
1.5 inches square	2 inches square
1 1/8 by 5 3/4 inches rectangular	1 3/8 by 5 3/4 inches rectangular

These gear modifications are to be consistent with the commercial minimum size fish of 11 inches.

Mr. Boyce reported that the ASMFC has also proposed new rules for the black sea bass recreational fishery. These new rules will implement measures to reduce the recreational harvest of black sea bass by 5 percent to remain within the target fishing mortality rate, and to comply with the ASMFC Interstate Fishery Management Plan for Black Sea Bass. These measures include:

- 1) an increase in the recreational minimum size limit from 11 inches to 11 ½ inches;

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- 2) repeal the closed recreational harvest season (March 1 through April 9, and July 15 through August 14).

A copy of draft regulation 4 VAC 20-950-10 et seq. is attached and provides the proposed changes as follows:

- 1) increases in the recreational and commercial minimum size limits (page 1, Section 30);
- 2) increases in the sea bass pot and trap escape panels (page 2, Section 40); and,
- 3) a repeal of the closed recreational season (page 4, Section 45 of the draft regulation).

Mr. Boyce stated that it should be noted that the majority of Virginia's black sea bass commercial landings come from the Exclusive Economic Zone or federal waters (3-200 miles). There are minor landings of black sea bass that occur inside Virginia waters (0-3 miles), and most are landed by commercial hook and line fishermen. The majority of the pot and trap fishermen are fishing in federal waters. The measures described above, for the commercial fishery, must be implemented to maintain compliance with the ASMFC Interstate Management Plan for Black Sea Bass.

The purpose of the proposed regulation changes for the recreational fishery is to reduce the recreational harvest of black sea bass by five percent to remain within the target fishing mortality rate, and to comply with the ASMFC Interstate Management Plan for Black Sea Bass.

Mr. Boyce stated that staff has received a letter and an e-mail in favor of repealing the closed season for the recreational fishery for black sea bass. Therefore, staff recommends adopting the proposed changes to Regulation 4 VAC-20-950-10 et seq., as presented.

Commissioner Pruitt opened the Public Hearing on this matter. There being no comments from the public, Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action.

Associate Member Ballard moved to adopt the proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to: a) increase the commercial minimum size limit for black sea bass and increase the size of sea bass pot escape panels; and b) increase the recreational minimum size limit for black sea bass and repeal the closed recreational season. Associate Member McLeskey seconded the motion; motion carried unanimously, 8-0.

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14. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish the recreational fishery management measures for 2002. One Public Hearing was held on the Eastern Shore on January 29, 2002.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that at the December 2001 meeting staff briefed the Commission on the ASMFC requirement for Virginia to achieve a 43.8% reduction from 2001 recreational summer flounder landings in 2002. The Commission directed staff to advertise for two public hearings, and one hearing was held on the Eastern Shore on January 29, 2002.

Mr. Travelstead presented and reviewed statistical data with regard to the Atlantic Coastal states 2001 landings and the state-specific 2002 reductions (%) required to achieve the 2002 target landings. He also presented data on the performance of Atlantic Coastal states in 2001, relative to the 2001 target landings (numbers of fish), noting that Virginia achieved the highest overage on the coast, as 2001 landings (exclusive of November and December landings) were 96.7% greater than the 2001 target landings of 664,000 fish. A fair portion of this overage can be attributed to an influx of out-of-state fishing trips, as Virginia's minimum size limit of 15 ½ inches in 2001 was an enticement to fishermen from Maryland and Delaware where minimum size limits were 17 and 17 ½ inches, respectively. Another factor in the Virginia overage was the increased abundance of summer flounder in the 15 ½-inch and greater sizes, in comparison to previous years.

Mr. Travelstead provided information on management measures implemented for recreational summer flounder fisheries in 2000 and 2001 by Atlantic Coast states. He noted that although 1999 was a time when Virginia was required to implement a strict management regime (a 16-inch minimum size limit and winter and an 8-day summer closed seasons), the

2000 and especially 2001 requirements were relatively modest in comparison to most other Atlantic coast states.

Mr. Travelstead reported that earlier this month, the ASMFC Scup, Black Sea Bass and Summer Flounder Technical Committee reviewed Virginia options for achieving a 43.8% reduction in summer flounder landings of 2001. In advance of that meeting, staff prepared a number of options, which considered all possible means for achieving the specified ASMFC requirement, including options that considered an increase in the 2001 minimum size limit of 15 ½ inches to 16 ½, 17 and even 17 ½ inches, on a statewide basis (same measure for ocean and Bay). In general, the 17 ½-inch, 8 fish option on a statewide basis required no closed summer season (in 2001 the closed summer season was July 24 through August 7). Mostly all other options based on less than a 17 ½-inch minimum size limit required an extension of the summer closed season of 2001 in 2002.

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Additionally, Mr. Travelstead stated that staff prepared reduction plans that partitioned the 43.8% reduction, according to area (Chesapeake Bay and its tributaries vs. ocean) and mode of fishing (Party/Charter vs. Shore and Private/Rental Boat). Splitting the statewide data into components (area or mode) required using a specific reduction-in-landings table for each component. For example, utilizing a minimum size and possession limit of 16 ½ inches and eight fish achieves a very different reduction for the ocean and Bay fisheries. A significant problem arose with splitting statewide data into its mode components, as the Party/Charter mode shows no change in reduction % for any minimum size limit and possession limit combination, until that possession limit is one fish. This problem occurs because there are too few data in the Party/Charter mode. There is only a minor benefit associated with reducing the possession limit below eight fish, unless the possession limit were to be three or two fish.

Mr. Travelstead stated that the ASMFC Technical Committee unanimously rejected the Virginia reduction options that were based on partitioning the statewide data into its mode components. The Committee also determined that Virginia's reduction options hinging on implementing different management measures for the ocean and Bay fisheries might be technically correct and achieve conservation equivalency. However, the Committee said it would advise the ASMFC Scup, Black Sea Bass and Summer Flounder Management Board that these area-specific options will lead to effort transfer, from either within state or out of state, and create law enforcement problems. The Management Board met on February 21, 2002 during which time, the Technical Committee unanimously approved all the Virginia reduction options based on statewide, universal management measures.

Mr. Travelstead reported that at the January 29, 2002 Public Hearing on the Eastern Shore, all but a few public comments supported minor to no changes from the 2001 season. Those in the charter industry supported maintenance of the 15 ½" size limit in 2002, and many speakers testified that a higher size limit would further damage this industry. In 1999 charter

boat captains from Wachapreague were adamantly opposed to the 16-inch minimum size limit, but offered no alternatives. The alternative is that more than a 43.8% reduction would need to be achieved by the other modes of the fishery (shore, private/rental boat components). The problem with this alternative is that the ASMFC Technical Committee did not support a mode-specific basis for reducing landings, and the ASMFC Management Board will likely follow the advice of its Technical Committee. Mr. Travelstead added that at the Eastern Shore Public Hearing, some participants proposed a 16-inch minimum size limit, and a few stated they could support the 17", eight-fish limits, only as a last resort.

Mr. Travelstead stated that staff also met with the Wachapreague charter captains two weeks ago. At that meeting, the charter group decided they could try to manage with a 16" minimum size and five-fish possession limit for the ocean fishery. This means that the Bay would need to compensate for any reduction not achieved by the ocean. Unlike the options which are mode-specific that were rejected by the ASMFC Technical Committee, this option

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is an area-specific one, and the ASMFC Technical Committee indicated it was technically feasible. Mr. Travelstead stated that since the meeting at Wachapreague, some of the charter group members have decided they would prefer that the minimum size limit remain at 15 ½ inches, but they do support reducing from an eight- to a five-fish limit.

Mr. Travelstead reviewed the following options for consideration, following the meetings with industry and ASMFC Technical Committee findings:

- Option 1) A statewide minimum size limit of 17 inches, with an eight-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 9, 2002.
- Option 2) A statewide minimum size limit of 17 ½ inches, with an eight-fish possession limit and closed season from January 1 through March 28.
- Option 3) Ocean: A minimum size limit of 16 inches, with an five-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 5, 2002 **AND** Bay: a minimum size limit of 17 inches, with an eight-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 15, 2002.
- Option 4) Ocean: A minimum size limit of 15 1/2 inches, with an five-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 5, 2002 **AND** Bay: a minimum size limit of 17 inches, with an eight-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 16, 2002.

Mr. Travelstead noted to the Commission that should ASMFC approve area-specific management options for Virginia, there is considerable risk that such a management regime

could result in even harsher reduction requirements in 2003. Based on 2001 data, most of the effort transfer was placed in the Bay. However, the Bay and ocean were managed by the same minimum size limits in 2001. Should the ocean fishery be managed by a size limit and season closure that is different than in the Bay, it is expected that effort transfer to the ocean (whether from out-of-state or from traditional Virginia Bay fishermen) will occur. For example, Maryland has established a 17", eight-fish limits, with a July 25 through August 11 season closure.

Mr. Travelstead reported that staff has received a large number of letters and e-mails and many postcards, regarding this issue. The Peninsula Saltwater Sport Fishermen's Association (PSSFA) and its 500 members have written in support of the 17 ½ inch, eight fish, and no summer closure option. The organization's second choice is 17 inches, eight fish, and a short summertime closure. In addition to their letter the PSSFA surveyed hundreds of anglers both

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inside and outside of their association. The survey of 262 anglers indicates 121 anglers prefer the 17 ½ inch and no summer closure option, 119 anglers prefer the 17 inch and a shore summer closure option, and 22 prefer a smaller size limit with a longer closure or lower possession limit.

VMRC received 160 post cards from people on the Eastern Shore supporting an option which separates the coastal areas from Chesapeake Bay and its tributaries. The option uses a 16 inch size and varying lengths of season closures, but most importantly, falls well short of meeting the required statewide reduction of 43.8 percent. The agency also received 48 emails supporting a slightly different option which also fails to meet the required reductions. Lastly, 24 letters and emails were received supporting a variety of options.

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. Tom Mitchell, Lighthouse Bait & Tackle, spoke in support of Option 1.

Mr. Donald Trotta, Northampton County Anglers Club, spoke in support of Option 1.

Mr. Mark Roman, Salt Ponds Marina, spoke in support of Option 1.

Ms. Chris Snook, Chris' Bait & Tackle, spoke in support of Options 1. and 2.

Mr. Ben Rowell, Rowell Bait & Tackle, spoke in support of Option 1.

Mr. Doug Jenkins spoke in support of Option 4.

Mr. Donnie Brady, Bailey's Tackle Shop, spoke in support of Options 1. and 2.

Mr. Randy Lewis, Jr., Island House Restaurant and Captain Zedd's Bait and Tackle Shop, spoke in support of Options 3. and 4.

Mr. Mike Handforth, Chincoteague Charter Boat Association, spoke in support of Options 3. and 4.

Mr. Robert Allen, representing Mr. Vance Hopkins, Vice-President of Green Top Sporting Goods Corporation, read Mr. Hopkins' letter in support of Option 1.

Mr. Bill Tyce spoke in support of Option 1.

Mr. Bill Reynolds, Northampton County Anglers Club, spoke in support of Option 2.

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Mr. Jim Dyerly, Virginia Charter Boat Association, spoke in support of Options 1. and 2.

Ms. Susan Parker, representing the town of Wachapreague, spoke in support of Option 4.

Mr. Robbie Morrison, Eastern Shore Chamber of Commerce, spoke in support of Option 4.

Mr. Milton Hudgins, Peninsula Salt Water Sport Fishing Association, spoke in support of Option 1.

Mr. Harry Johnson, Wallace's Bait & Tackle Shop, spoke in support of Option 1.

Mr. Brett Schoeberl spoke in support of Option 4.

Ms. Donna Roeske, Captain Bob's Marina, spoke in support of Options 3. and 4.

Mr. Chandler Hogge spoke in support of Option 1.

Mr. Dale Taylor spoke in support of Option 3.

Ms. Wanda Thornton, Accomack County Board of Supervisors, spoke in support of Option 4.

Mr. Terry Howard, Chincoteague Town Council, spoke in support of Option 4.

Mr. Jim Frese, Chincoteague Town Council, suggested a compromise between Options 1. and 4.

Mr. Ernie Bowden, spoke in support of Options 3. and 4.

Commissioner Pruitt closed the Public Hearing and referred the matter to the Commission for discussion and action.

Associate Member Hull asked Colonel Steve Bowman, Chief of Law Enforcement, to address all of the options with regard to law enforcement. Colonel Bowman noted that passing a regulation for the split season would require a clear understanding of the seasons with regard to what body of water. The law must be as specific as possible, with the fewest gray areas as possible in order to be enforceable.

Mr. Travelstead stated that statements made by a number of the speakers concerning the Eastern Shore catching 6% of last year's catch is correct. However, the Eastern Shore percentages vary widely from year-to-year, largely depending on where the fish are.

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Associate Member Gordy noted that even though the ocean side and sea side caught 33% in 1999, the remaining portion of 100% was caught on the Bay side. The 2001 season had a dramatic difference in 6% caught on the ocean side and sea side with 94% on the Bay side. She noted that the Bay side bait and tackle shop owners did not say they could not survive if the 17- or 17 ½-inch flounder regulation was enforced while some shop owners on the sea side stated they could not survive.

Associate Member Cowart inquired as to the minimum catch size in 1999 as opposed to 2000, 2001. Mr. Travelstead stated that the minimum size in 1999 was 16" for the entire state; 15 ½" for the next two years. The reduction cannot be blamed on size, but rather than where the fish happen to show up. Commissioner Pruitt inquired as to how much credit was given by the ASMFC for January thru March 28th. Mr. Travelstead stated that it is very little because of the reduction in fishing during that time. There will be no credit this year as the fishery has been closed for several years during that time frame.

Commissioner Pruitt asked if a combination of options is possible. Mr. Travelstead stated that combinations are only possible if VMRC obtains permission from the ASMFC. The ASMFC will meet in May 2002 and options could be referred at that time. The ASMFC will most likely refer such proposals to its Technical Committee for review. Approval/disapproval may not be received from the ASMFC until as late as August.

Associate Member Birkett inquired as to should the ASMFC disapprove a new option in August; does the Commission have the ability to revert back to an approved option or issue an emergency regulation, if needed? Mr. Travelstead stated that both actions would be allowed. He cautioned the Commission that the ASMFC is currently drafting a document to initiate a system for imposing penalties on states that don't abide by the rules. Therefore, should the Commission adopt a provision that VMRC later finds does not meet the ASMFC standard, then the ASMFC may view Virginia as having an advantageous regulation in place for so many months while other states have not. Such a determination could lead to penalties.

Associate Member Ballard asked if the Commission adopts one of the four options today, is

there a mechanism in place to “fast track” a fifth option? Mr. Travelstead stated that the Commission could adopt one of the four options today and then attempt to proceed with having a different option approved by the ASMFC as soon as possible.

Associate Member Gordy moved to approve Option 1 for the Bay side and Option 4 for the sea side, effective immediately, while being presented to the ASMFC for approval. Associate Member White seconded the motion. Associate Member Ballard noted that this motion may be out of compliance with the ASMFC and could result in a closing of the recreational flounder fisheries. A discussion ensued with regard to the motion being out of compliance, as well as compliant options that would most benefit the localities affected. Mr.

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Robert Allen stated that the recreational anglers in the Bay would endorse a seven-day, minimal closure season in order to help the Eastern Shore maintain their fishery.

Following the discussion, **Associate Member Gordy withdrew her motion; Associate Member White withdrew his second. Associate Member Gordy moved for approval of Option 4, modified as follows: Ocean - a minimum size limit of 15 1/2 inches, with a five-fish possession limit and closed seasons from January 1 through March 28, 2002 and July 22 through August 5, 2002; AND Bay - a minimum size limit of 17 1/2 inches, with an eight-fish possession limit and closed seasons January 1 through March 28, 2002 and July 22 through July 28, 2002. Associate Member White seconded the motion.** Associate Member Ballard stated that he agreed with the motion but noted that in passing the motion, the Commission is immediately out of compliance with the ASMFC. He urged the Members to adopt one of the four options endorsed by the ASMFC and then ask staff to seek approval for the modified option as soon as possible. Associate Member Birkett noted that the modified option meets the 43.8% reduction required by the ASMFC, therefore, the motion is not technically out of compliance. Associate Member Hull noted that if the motion is adopted, the Commission would achieve some benefit for the fishermen as the season would be well-along before a response from the ASMFC would be received. Meanwhile, the motion is not technically out of compliance. **When put to a vote, the motion carried, 7-1.**

15. ESTABLISHMENT OF 2002 BLUE CRAB HARVEST RESTRICTIONS, with proposed amendments to Regulation 4 VAC 20-270-10 et seq., “Pertaining to Crabbing;” 4 VAC 20-700-10 et seq., “Pertaining to Crab Pots;” and 4 VAC 20-880-10 et seq., “Pertaining to Hard Crab and Peeler Pot License Sales.” A Public Hearing was held in January.

Commissioner Pruitt stated that in January the Commission delayed the final decision on 2002 blue crab regulations, by motion made by Associate Member Cowart.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that Mr. Cowart’s motion expressed the intent of the Commission to consider the eight-hour workday and a minimum

size on peeler crabs at today's meeting. The Commission's action was delayed due to the pending outcome of General Assembly hearings on SB 297, "Protection for Certain Female Crabs; Penalty". SB 297 prohibits the possession and sale of any female sponge crab. Mr. Travelstead stated that on Monday, February 11, 2002, following a presentation to the Senate Agriculture, Conservation and Natural Resources Committee, Senator Chichester requested that SB 297 be carried forward to the 2003 Session of the General Assembly. In agreeing to carry-over SB 297, Senator Chichester requested that the VMRC consider two additional crab protection measures for the 2002 season:

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1. An expansion of the Spawning Sanctuary-Corridor in the main stem of Chesapeake Bay from the 35-foot depth contour boundary to the 30-foot depth contour boundary; and,
2. A one-week ban on the possession of all sponge crabs in mid to late July.

Mr. Travelstead distributed a map outlining the existing Spawning Sanctuary-Corridor and the proposed extensions, a copy of which is filed with the permanent record of this meeting. He stated that the expansion adds about 200 square miles to the existing 600⁺ square mile closed area. More importantly, the enlarged sanctuary would protect up to 70-75 percent of Virginia's female crab population during the spawning period (June 1 – September 15). The percentage reduction in harvest from an expansion of the sanctuary currently is being calculated by VIMS. Mr. Travelstead added that a one-week ban on the harvest and possession of sponge crabs from July 15 – July 21 would result in a harvest reduction of 0.75 percent. The reduction is not as high as anticipated, because it is based on a limited portion of the entire season's harvest, and not all areas of the Bay have as prolific a sponge crab concentration as the lower Bay area. In addition, this reduction is measured against the harvest of all crabs (female, male and mixed market categories) during the July 15-21 reference period (1997-99). Additionally, a recoupment penalty of 20% is applied to all reductions associated with the bi-state process (e.g. a reduction of 10% in pounds achieves a net reduction of 8%).

Mr. Travelstead stated that as an alternative to the one-week ban on sponge crabs, industry has suggested a daily catch limit on female crabs during the summer months as an equivalent measure. Staff calculates that an 11-bushel daily limit on female crabs from June 1 – August 31 has the equivalent conservation effect as a one-week ban on sponge crabs.

Associate Member Birkett moved to advertise for a Public Hearing on the requested additional crab protection measures for the 2002 season; Associate Member White seconded the motion. The motion carried, unanimously, 8-0.

Mr. Travelstead reiterated the need for the Commission to act on the eight-hour workday and the minimum size for peeler crabs. He added that staff has supported the 3 ½-inch minimum size peeler crabs.

Having held the Public Hearing in January, Commissioner Pruitt invited brief comments from a few speakers in the audience, and which are recorded verbatim as part of the permanent record of this meeting:

Mr. Jeffrey Crockett, Tangier Waterman's Association, stated that the watermen tend to be in agreement with the eight-hour workday and the three-inch minimum peeler crab. He also expressed his displeasure in one state trying to influence another state's regulatory process.

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Mr. Joe Palmer addressed the Commission with regard to the eight-hour workday for part-time watermen, suggesting that they work in the afternoon only.

Mr. Dale Taylor spoke in favor of the three-inch peeler crab.

Commissioner Pruitt placed the matter before the Commission for discussion and action.

Associate Member Cowart moved for the following regulations:

Commercial Fishery:

- eliminate the Wednesday closure;
- continue to adopt the Bay-wide sanctuary;
- continue with the 17 barrel limit on the winter dredge fishery;
- continue the 300 peeler pot limit;
- establish an eight-hour workday to begin one hour before sunrise - 5:00 a.m. in the months of May, June, July, and August, 6:00 a.m. in the months of April, September, October and November;
- allow crabbers to set pots already on board a boat at the end of an eight-hour period during the period starting immediately following that eight-hour period and ending one hour after that eight-hour period;
- adopt a three-inch peeler crab minimum size with a tolerance count of 10 undersized crabs per U. S. standard bushel.

Recreational Fishery:

- one bushel per boat, per day; and
- two dozen peelers per boat, per day.

The Commissioner shall have the authority to rescind the eight-hour workday and declare a state of emergency in order to allow those in the crab industry time to remove their pots from the water in the case of impending weather conditions which may destroy the pots.

Associate Member Hull seconded the motion. Colonel Steven Bowman, Chief-Law Enforcement, stated that in order for the regulation to be lawful, a time of day, by month, should be specified in the regulation. A discussion ensued regarding the workday start time,

the count tolerance for peeler crabs, and the time allotted for moving pots. Mr. Travelstead noted that in regard to the time allotted for moving pots, the drafted language for Regulation 4 VAC 20-270-10 et seq. is the same as the Maryland regulations due to the fact that credit calculation on the percent reduction for an eight-hour workday is based on Maryland data. **When put to a vote, the motion carried, 7-1.**

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Associate Member Williams was excused from the meeting at this point.

16. REPEAT OFFENDER – ARNOLD RAY EVANS

Lt. John Croft, Special Investigative Unit for Marine Patrol, stated that in the fall of 1999, VMRC, along with the U. S. Fish and Wildlife Service, initiated an undercover operation for the purpose of identifying individuals who are pre-disposed in violating the laws and regulations of the VMRC. A special agent posing as an out-of-state seafood buyer was utilized in the matter of Mr. Arnold Ray Evans who is licensed as a commercial fisherman and currently holds a striped bass permit. Lt. Croft outlined Mr. Evans' actions and offenses which led to this hearing before the Commission as a repeat offender.

Lt. Croft stated that in March 1999, Mr. Evans willingly represented himself as "a renegade" in the striped bass business to an undercover agent posing as the owner of a seafood business. Mr. Evans admitted to catching, failing to tag and giving away small striped bass he had harvested. On four separate occasions, Mr. Evans sold numerous pounds of untagged striped bass to special agents in Virginia and Maryland. All transactions were taped and the fish were photographed as evidence. Mr. Evans was arrested on April 10, 1999 following the fourth illegal sale of untagged striped bass. Subsequently, Mr. Evans was convicted in Federal Court on felony violations involving the interstate transportation sale of untagged striped bass. Records indicate that Mr. Evans was charged with the following state violations by the Marine Patrol uniform division:

- Count 1 - Failure to Return Striped Bass Tags;
- Count 2 - Possession of Striped Bass/Oversized;
- Count 3 - No Striped Bass Permit in Possession; and,
- Count 4 - Possess/Sell Untagged Striped Bass.

Mr. Jon C. Poulson, counsel for Mr. Evans, interjected that the federal violation is immaterial to the Commission's authority and jurisdiction under the cited statute. He also noted that the VMRC guidelines indicate that the Commission may only consider offenses as far back as six years; Mr. Evans does not have any state or local convictions from 1995 forward. Colonel Bowman stated that the statute provides for violations, not convictions, noting that this is an administrative matter in which the individual can be brought before the Commission based on violations.

Mr. Poulson referenced Section 28.2-232 of the Virginia Code and the VMRC guidelines, noting that Mr. Evans was convicted under the Lacey Act, a federal statute; Mr. Evans has served his term for the conviction. Mr. Evans' violations of the Virginia Code are the only matters to be considered by the Commission at this time. Mr. Poulson noted that Mr. Evans has never been before the Commission for any disciplinary matter and proceeded to iterate Mr.

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Evans' defenses for the state violations. He noted that at the time Mr. Evans was convicted of the federal violations, the state violations were considered and resulted in incarceration for Mr. Evans rather than probation.

At the request of the Commissioner, Counselor Josephson offered an opinion as to whether or not the Commission should consider the federal convictions in this matter. He noted that in order to bring into play the application of the Lacey Act in this matter, there has to be an underlying violation of state law. Virginia law was violated in connection with the striped bass activities that led to the federal charge of violation of the Lacey Act. Counselor Josephson stated that the Commission should consider the conduct that underlies the charge for the federal violations. Because Mr. Evans was convicted of a federal offense which necessarily included a violation of state law, the Commission may also consider the federal violations.

Commissioner Pruitt stated that the Commission's responsibility is to act upon the revocation of Mr. Evans' licenses. Stating that he felt the possession of a waterman's card is an honor and a privilege, he referred the matter to the Commission for action.

Associate Member Gordy moved that Arnold Ray Evans be placed on probation for the maximum period of two years; Associate Member Birkett seconded the motion. Associate Member Ballard noted that he is unable to support the motion, stating that he felt Mr. Evans was trying to take more than his share by selling untagged striped bass, a resource of interest to both commercial and recreational watermen. Associate Member Gordy suggested that Mr. Ray has learned his lesson and warrants a second chance. Associate Member Hull stated that he felt the offense is graver than what would bear probation. **When put to a vote, the motion failed, 2-5.**

Associate Member Ballard moved that the Commission revoke and prohibit any re-issuance or renewal of any licenses for Arnold Ray Evans for a period of one year; Associate Member Hull seconded the motion. The motion carried 5-2

**** DATE OF NEXT COMMISSION MEETING: MARCH 26, 2002**

Commissioner Pruitt stated that the Commission would hold its next meeting on Tuesday, March 26, 2002. He then requested that the June 25, 2002 meeting be moved up to June 18,

2002 due to a scheduled General Assembly Staff Retreat. The Commission concurred with the Commissioner's request.

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**** ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 5:25 p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary