

MINUTES

APRIL 24, 2001
NEWPORT NEWS, VIRGINIA 23607

The regular monthly meeting of the Marine Resources Commission was held on April 24, 2001 with the following present:

William A. Pruitt)	Commissioner
C. Chadwick Ballard)	
Gordon M. Birkett)	
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		Sr. Staff Adviser
Andy McNeil		Sr. Programmer
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance & Administration
Debbie Brooks		Executive Secretary
Steven Bowman		Chief-Law Enforcement
Lewis Jones		Deputy Chief-Law Enforcement
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Randy Widgeon		Eastern Shore Supervisor
Ray Jewell		Northern Area Supervisor
Jimmy Davis		Marine Patrol Officer
James Vanlandingham		Marine Patrol Officer

VIRGINIA INSTITUTE OF MARINE SCIENCE STAFF

Dr. Eugene Burreson
Lyle Varnell
Tom Barnard

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Rom Lipcius

Jack Travelstead
Rob O'Reilly
Roy Insley
Lewis Gillingham
Ellen Cosby
Chad Boyce
Cory Routh

Chief-Fisheries Management
Deputy Chief-Fisheries Management
Head-Plans and Statistics
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist
Fisheries Management Specialist

Dr. Jim Wesson

Head-Conservation and Replenishment

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

Chief-Habitat Management
Deputy Chief-Habitat Management
Environmental Engineer
Environmental Engineer

Gerry Showalter

Head-Engineering & Surveying

others present:

James Brawley
Jan Eversen
Durk Krone
Pete Burkholder
Karl Kohler
Chris Ludford
Betty Grey Waring
Jane Tyler
Sherry Hamilton
Douglas F. Jenkins, Sr.
Evelyn Ryland
Evelyn A. Ryland

Jim Hayden
Chuck Joyner
Youssef Khalil
Alan R. Kemp, Jr.
Nellie Hayse
R. Edmond Bourdon, Jr.
Craig Jones
Chris Frye
Larry S. Chowning
John Ryland
Walter Ryland
Dale Taylor

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C. D. Hancock
Nate Custer
Tom Powers
Russ Baxter
Leroy Turner
Jim Deibler

C. Robert Johnson
Rick Stilwagen
Sonja Barisle
Ronnie Jett
Frances Porter
Peter Nixon

and others.

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Commissioner Pruitt opened the April meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Hull, Gordy, McLeskey, White and Williams. Mr. Pruitt indicated that Associate Member Cowart should be arriving around 1:00 p.m. Mr. Showalter gave the invocation and Associate Member White led the Pledge of Allegiance to the Flag. Mr. Pruitt established that there was a quorum.

1. APPROVAL OF MINUTES

Associate Member Hull moved to approved the Minutes as distributed. Motion was seconded by Associate Member White. Motion carried unanimously.

**** APPROVAL OF AGENDA**

Bob Grabb, Chief-Habitat Management, requested that Item 2D, APAC-Virginia, #01-0398, be removed from the page two items because a protest had been received and it no longer met the criteria for a page two item. Mr. Grabb also added item 2N, regarding the U. S. Army, #00-0234 at Fort Monroe.

Associate Member Hull moved to approved the agenda as amended. Associate Member White seconded the motion. Motion carried unanimously.

2. PERMITS (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief-Habitat Management, briefed the Commission on the location and description the 13 page two items.

2A. U. S. ARMY CORPS OF ENGINEERS, #00-1670, requests authorization to hydraulically place, over a ten-year period, approximately fifty thousand (50,000) cubic yards of sandy dredged material resulting from the routine maintenance dredging of the Winter Harbor Federal Project Channel, along approximately four thousand five hundred (4,500) linear feet of shoreline and State-owned subaqueous bottomland along the Chesapeake Bay in Mathews County to the north of the project channel. Recommend approval for an initial five year period only.

Permit fee.....\$100.00

2B. RIVERMONT DEVELOPMENT, #96-0791, requests authorization to reactivate and extend a previously issued permit to install a culverted road crossing involving the

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installation of twelve (12) precast bottomless culverts within Johnson Creek adjacent to their property in Chesterfield County.

Permit fee not applicable

2C. FORT EUSTIS DIRECTORATE OF PUBLIC WORKS, #01-0344, requests authorization to construct 33 breakwater/sill structures impacting 48,734 square feet of State-owned subaqueous bottomland, and to fill approximately 53,307 square feet of State-owned subaqueous land, as part of a proposed vegetated wetlands creation project adjacent to Ft. Eustis in the James River in the City of Newport News. Recommend approval with the following permit conditions: that filter cloth be placed under all breakwater/sill structures; that any fill material be pre-approved as to proper grain size; and that if any dredged material is used that it not contain any heavy metals or other toxic materials.

Permit fee.....\$100.00

2D. APAC-VIRGINIA, #01-0398, requests authorization to construct a 4-lane and 6-lane divided highway from the VDOT Route 288/60 (Midlothian Turnpike) interchange in Chesterfield County north to the Route 288/interchange with Interstate 64 in Goochland County which will cross Bernard's Creek, the James River, Broad Branch, Tuckahoe Creek and Little Tuckahoe Creek with temporary construction access. Recommend a time of your restriction for all construction within the James River between April 15 and June 30 for the protection of anadromous spawning fish. Recommend standard instream conditions and the assessment of an annual encroachment royalty of \$2,256.20 at a rate of \$0.05 per square foot.

Item removed from agenda due to protest.

2E. LEE COUNTY PUBLIC SERVICE AUTHORITY, #01-0390, requests authorization to install a submerged water line beneath the North Fork Clinch River at one location, Lovelady Creek at three locations, and nine unnamed tributaries of the North Fork Clinch River to provide potable water to the Jasper community of Lee County. Recommend approval with our standard instream permit conditions.

Permit fee..... \$ 100.00

2F. PF NET, #01-0296, requests authorization to install by directional bore method a submerged, eighteen-inch diameter steel casing beneath the Elizabeth River parallel to and approximately 150 feet upstream of the Mid-Town Tunnel to facilitate the installation of fiber optic telecommunication lines between Portsmouth and Norfolk.

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Recommend a royalty of \$190.00 for the encroachment beneath 190 linear feet of State-owned subaqueous land at a rate of \$1.00 per linear foot.

Royalty for encroachment beneath 190 ln. ft. of State- owned subaqueous land @ \$1.00 per ln. ft.....	\$190.00
Permit fee.....	<u>100.00</u>
Total	\$ 290.00

2G. CITY OF NORFOLK, #01-0173, requests authorization to modify the existing Nauticus pier situated along the Elizabeth River to facilitate the mooring of visiting cruise ships and naval vessels. Improvements include a 51.5 foot extension of the pier's north end, additional timber, foam and rubber fenders, two (2) additional concrete mooring dolphins, 265 linear feet of subaqueous steel sheetpile bulkheading and a widening of the existing pier approach by 40 feet to support ship logistics.

Permit fee..... \$ 100.00

2H. MARINE RESOURCES COMMISSION, #01-0174. The Fisheries Management Division request authorization to construct 3 subtidal oyster reef sanctuaries within Public Ground No. 7 in Tangier Sound approximately 4 miles northeast of Tangier Island with the center of the reef locations being (7R-1) 37° 52' 36" North Latitude, 75° 55' 49" West Longitude; (7R-2) 37° 52' 08" North Latitude, 75° 55' 24" West Longitude; and (7R-3) 37° 51' 27 ' North Latitude, 75° 55' 38" West Longitude. The Oyster reefs will be constructed with oyster and clam shell inside a 250-foot diameter circle to heights of 6 feet to 8 feet off the bottom and marked in accordance with all applicable U. S. Coast Guard requirements.

Permit fee not applicable

2I. MARINE RESOURCES COMMISSION, #01-0175. The Fisheries Management Division request authorization to construct 3 subtidal oyster reef sanctuaries within Public Ground No. 13 in Pocomoke Sound, approximately 4 miles southwest of the Town of Saxis, with the center of the reef locations being (13R-1) 37° 54' 25" North Latitude, 75° 47' 42" West Longitude; (13R-2) 37° 54' 06" North Latitude, 75° 48' 17" West Longitude; and (13R-3) 37° 53' 49" North Latitude, 75° 47' 16" West Longitude. The Oyster reefs will be constructed with oyster and clam shell inside a 250-foot diameter circle to heights of 6 feet to 8 feet off the bottom and marked in accordance with all applicable U. S. Coast Guard requirements.

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Permit fee not applicable

- 2J. MARINE RESOURCES COMMISSION, #01-0176.** The Fisheries Management Division request authorization to construct 2 subtidal oyster reef sanctuaries within Public Grounds No. 5 and No. 6 in Tangier Sound, approximately 2 miles northwest of Great Fox Island in Accomack County, with the center of the reef locations being (5R-1) 37° 54' 25" North Latitude, 75° 56' 20" West Longitude and (6R-1) 37° 54' 11" North Latitude, 75° 55' 52" West Longitude. The Oyster reefs will be constructed with oyster and clam shell inside a 250-foot diameter circle to heights of 6 feet to 8 feet off the bottom and marked in accordance with all applicable U. S. Coast Guard requirements.

Permit fee not applicable

- 2K. TOWN OF CAPE CHARLES, #01-0050,** requests authorization to install four (4) offshore stone breakwaters totaling 785 linear feet, 290 linear feet of stone armor protection adjacent to an existing 290-foot long stormwater outfall, and 45,000 cubic yards of beach quality sand nourishment (from an upland source) along the Public Beach in the Town of Cape Charles.

Permit fee..... \$ 100.00

- 2L. KINDER MORGAN BULK TERMINALS, INC. #01-0256,** has requested authorization to maintenance dredge, by clamshell method, on an as-needed basis, a maximum of 75,000 cubic yards of State-owned submerged materials per dredge cycle to provide maximum depths of minus fifty two (-52) feet below mean low water on the southeastern side and minus forty-five (-45) feet below mean low water on the northwestern side of Pier IX at their facility situated along the James River in the City of Newport News. All materials will be transported to Craney Island for disposal.

Permit fee.....\$100.00

- 2M. CITY OF PORTSMOUTH, #01-0481,** requests authorization to replace the existing deteriorated concrete ferry dock and adjacent timber dock with two new aluminum floating dock and timber mooring dolphins adjacent to property situated along the Elizabeth River in Portsmouth. Staff recommends approval of the project pending expiration of the public comment period on April 27, 2001.

Permit fee..... \$ 100.00

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2N. UNITED STATES ARMY, #00-234, requests authorization to install 920 linear feet of timber wave screen, construct 90 linear feet of vinyl bulkhead, install a new fuel pier, and six (6) T-head floating piers with associated finger piers and mooring pilings to create an additional 144 new wetslips and 10 slips for rental boats at the Fort Monroe Marina situated along Hampton Roads in Hampton.

Permit fee.....\$100.00

Associate Member White moved to approved the 13 page two items. Associate Member Birkett seconded the motion. Motion carried unanimously.

3. EXECUTIVE SESSION (if necessary). Not necessary.

4. MICHAEL PICKARD, #00-1548. Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form a permit to construct and backfill 158 linear feet of timber bulkheading at property situated along Buchanan Creek in Virginia Beach.

5. THOMAS METCALF, #00-1545. Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form a permit to construct and backfill 77 linear feet of timber bulkheading at property situated along Buchanan Creek in Virginia Beach.

Bob Grabb, Chief-Habitat Management, indicated that Items 4 and 5 were appeals of the Virginia Beach Wetlands Board decisions for two adjacent property owners, Michael Pickard and Thomas Metcalf. Mr. Grabb stated also staff had received requests for continuance from both appellants until the May meeting. He also stated that the City had no objection to the continuance.

Commissioner Pruitt placed the matter before the Commission. Associate Member Gordy moved to approved the continuance of Items 4 and 5. Motion was seconded by Associate Member Hull. Motion carried unanimously.

6. SHORE VENTURES ASSOC., LLC, #00-1559, requests authorization to construct an 8-slip condominium facility at property situated along Crab Creek in Virginia Beach. The project is protested by an adjacent property owner. Continued from the

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March 20, 2001, Commission meeting.

Randy Owen, Environmental Engineer, briefed the Commission on the location and description of the proposed project. He also presented a NOAA chart that showed depths in the Creek. Comments are a part of the verbatim record. Mr. Owen said the proposed slips would be used for eight condominium duplexes and each unit on the lot would have a slip on the pier for a total 8. A Crab Creek Homeowners Association would be established, and the Association would be responsible for the maintenance, repair, and upkeep of the mooring facility. Mr. Owen said the project met the City's 25-foot setback requirement from the City's municipal channel, and it included a 69-foot access pier and a 92-foot long "L"-head marginal wharf, four finger piers of 15 feet each for the eight wetslips and nine associated mooring pilles. The depth at MLW for the facility ranged from a half of a foot to up to two and half feet where the stern of the vessels would be moored. Mr. Owen also indicated that there were no oyster leases in the Creek and the area was condemned for the direct marketing of shellfish.

Mr. Owen said the protestant and the adjacent property owner, John Madden, was concerned that the project might interfere with the loading and launching of boats at the proposed municipal boat ramp and his own plans for pier access. In addition, the protestant also had concerns about the inadequate depths that existed on-site, the need for a potential sewage pump-out facility, and the possible rental of slips at the proposed facility.

Mr. Owen said that DEQ did not require a permit and the Corps of Engineers had issued a Regional Permit 19. The Health Department had granted an exemption to their regulations for sanitary facilities for marinas and boat moorings, on the condition that only property owners within 1,000 feet of the shore end of the piers, or their bonafide guests, were permitted to use the pier, and that boats with installed toilets or with an overboard discharge or sewage holding tanks were prohibited from using the facility except in emergency. The exemption also stated that the owners would allow the dumping of portable toilets into their sanitary facilities. The Virginia Beach Planning Department issued its waterfront construction permit in November 2000. The City Council issued a Conditional Use Permit in October of last year and an encroachment agreement to pave the street for the project. The Condition Use Permit was conditioned such that commercial use of the dock was prohibited, and that dock use would be exclusively for the owners, occupants and invited guests of lots 7-10, the dock could not exceed 8 slips, no buildings, boathouses, boat launches or additional parking were permitted, no vessels larger than 26 feet in length were permitted to use the pier, and the dock was subject to all other applicable federal, state and local rules and regulations.

Mr. Owen then summarized the project. He said the Subaqueous Guidelines clearly stated that "for community piers and marina facilities which were appurtenances to residential developments, the number of slips at the facility would not necessarily be predicated by the number of units on the property." Mr. Owen indicated that staff maintained that the eight

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condominium units proposed on Lots 7 - 10, none of which were waterfront, represented interior non-riparian lots, with no inherent right to construct piers and slips for access. He said, however, that staff did recognize that several duplexes currently existed along the western shoreline of Crab Creek, with either a permitted community dock or the rights to such. Therefore, it seemed reasonable to allow the duplex sited on Lot 7 two slips for access, which would be consistent with the neighboring waterfront properties along the western shoreline. In addition, there was a nearby municipal boat ramp that would provide access to the water. As such, there should not be any significant hardship on any potential homeowners of the interior lots. Mr. Owen stated that staff could not support additional slips for the remaining non-riparian lots given the subject waterway's narrow width and anticipated high volume of boat traffic associate with the municipal ramp. Accordingly, in light of the VIMS comments and in consideration of the Commission's Subaqueous Guidelines, staff recommended approval of a single pier structure allowing no more than two slips. Staff also recommended a royalty be assessed for any encroachment permitted at \$0.50 per square foot.

Associate Member Ballard asked what the plans were for lots 1-5. Mr. Owen responded that those lots were not owned by the applicant. They were adjacent properties. A discussion followed regarding the proposed pier. Comments are a part of the verbatim record.

Edward Bourdon, Jr., attorney for the applicant, addressed the Commission. Mr. Bourdon presented aerials that showed the specific lots that Mr. Ballard inquired about. He then presented letters of support from the community. He also presented pictures that showed the proposed pier and its relationship to the pier on the south side, the existing channel, the facility to be constructed by the City of Virginia Beach, and the distances from the proposed slips to the edge of the channel. Mr. Bourdon said he recommended to his client that they establish one condominium association, which would encompass all five of the lots. That association would be comprised of the eight residential units, and each would possess a limited common element appurtenant to the unit with the boat slip.

Mr. Bourdon said the issue he was most concerned about was the characterization of this facility as commercial. He said that Code Section 28.2-1203 clearly provided an exception for placement of private piers for non-commercial purposes by owners of the riparian lands and the waters opposite those lands. Mr. Bourdon reemphasized that the slips could not be bought or sold, rented, or further assigned and could not be used for any commercial purpose. The slips could only be used by private craft owned by the resident in that unit.

Associate Member McLeskey asked if the applicant was going to abandon the property lines on this parcel of land? Mr. Bourdon responded that the intention would be to form one condominium association under one declaration that would encompass all five lots. They would all be under a condominium regime. Mr. McLeskey asked who owned the lots the condominiums were located on? Mr. Bourdon responded that the Condominium Association

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owned the lots. A discussion followed about the proffers to and other conditions imposed by City Council. Comments are a part of the verbatim record.

Carl Josephson requested clarification of a letter in the Commission's package from Mr. Megge to Mr. Owen dated October 2000 regarding a riparian apportionment approved by the City. Mr. Bourdon responded that he had no knowledge of any riparian apportionment.

John Cristopher Ludford addressed the Commission. He said the recreational and commercial fishermen that he talked with supported staff's recommendation. He said because of the uncertainty of the impact on the proposed project, he felt it was too early to approve a project like this one. Mr. Ludford also indicated that he was concerned about the safety and environment and the user impact that the ramp might cause because no one knew what the ramp would be like. He also mentioned that staff's recommendation that the one lot be allowed two slips would reflect a historic precedent. In addition, he thought the commercial aspect regarding the non-leasing to non-owners and visitors agreement would be difficult to enforce.

James Hayden, a recreational fishermen, addressed the Commission. He said his interest in the proposed project was from a user's point of view. Mr. Hayden said he was concerned about how far the pier would stick out into the waterway. He said it was deceiving and he felt that the ramp would cause a problem in the area. Other comments are a part of the verbatim record.

Mr. Bourdon addressed the Commission in rebuttal. He gave comments in response to Mr. Ludford's concerns regarding the neighboring civic leagues. He also addressed Mr. Hayden's concerns about the possibility of congestion by this facility. Other comments are a part of the verbatim record.

Commissioner Pruitt asked if the condominium units were sold, did the slip go with the unit. Mr. Bourdon responded that it was a limited common element appurtenant to the unit and that maintenance was shared by everyone.

Commissioner Pruitt placed the matter before the Commission.

Associate Member McLeskey said when he first received the application, he was concerned that there would not be enough room for the proposed project. He said it was not a prime vegetated piece of property, and none of the authorizing agencies had objected to proposal. He then moved that the permit for the Shore Ventures Association, LLC #00-1559 be approved with the stipulation contained within the City's Conditional Use Permit, which precludes commercial use of the facility, be put to record if otherwise made enforceable in the Condominium Association, and that royalty of \$0.50 per square foot be assessed for all permitted encroachments. Motion seconded by Associate Member Birkett.

Associate Member Ballard said he was leaning towards supporting the motion, but he had a

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couple of concerns regarding the condominium owner's riparian rights. He also provided comments about the wetlands and the density of the residentially developed areas in the Cheasapeake Bay area. He did not see an environmental impact from having eight extra boats sitting in the water. He also did not see a navigational issue.

Associate Member Hull commented that he felt the proposed project would be establishing a precedent with this motion and he thought more similar proposals would come back as a result of an approval of this project. Therefore, he felt he could not support the motion.

Associate Member Williams commented that he knew staff had recommended two slips, but after listening to everything that was said today and looking at the water depths, he was wondering how the boatowners would be able to get their boats in the slips on low tide. He said he was looking at the safety and environmental issue.

Mr. Owen commented that staff also had questions about the soundings. He said the first set of soundings that came in were not based on a standard datum, and staff had the soundings recalculated. He said the depth ranged from 6 inches at the head of the boat slip to a depth from 2 to 2 1/2 feet where the stern of the vessel would sit. Mr. Owen said he agreed that in some of the areas the water depths were inadequate for the 8 slips. A discussion followed regarding the setting of a precedence and the number of slips sought. Comments are a part of the verbatim record.

Commissioner Pruitt commented that a lot of the boat traffic would be holding at the proposed community pier while they were waiting.

Mr. Pruitt called for the vote. Motion to approve carried 5 to 2 with assistant Commissioners Hull and Williams in the minority.

Encroachment over 580 sq. ft of State-owned bottom @			
\$0.50 per sq. ft.....		\$	290.00
Permit fee.....			<u>100.00</u>
	\$		390.00
			Tot

7. **RIVERVIEW FARM ASSOCIATES, LLC, #01-0022**, requests authorization to construct 350 linear feet of timber bulkhead located landward of mean high water, and 840 linear feet of marginal wharf, to accommodate mooring space for 16 boats. The project is associated with restaurant and condominium redevelopment along the James River in the City of Richmond. Requires both a Subaqueous and Wetlands permit.

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Mark Eversole, Environmental Engineer, briefed the Commission and presented slides on the location and description of the proposed project. Comments are a part of the verbatim record. Mr. Eversole indicated that the proposed project consisted of 840 linear feet of open pile marginal wharf to be constructed along the entire waterfront of the property, 350 feet of that would be attached to a newly constructed bulkhead located along the western side of the property. The remaining 490 foot section was proposed to be a freestanding open-pile structure. The structure would be 10 feet wide for a total encroachment of 8,400 sq. feet. The wharf would create 16 mooring spaces for use by the condominium owners and transient boat traffic patronizing a restaurant which is part of the planned redevelopment of the site.

Mr. Eversole said since the City of Richmond had not yet adopted the Model Wetlands Ordinance; the Commission was charged with reviewing both the wetlands and subaqueous impacts associated with this project. A public hearing was held on April 10, 2001, at the Richmond City Hall building to accept public comments on this project. The hearing was attended by the applicant. No other individuals were present. He said staff had not received any protest as a result of the advertisement in the *Richmond Times-Dispatch*. Mr. Eversole said the Virginia Department of Health approved the plan for sanitary facilities and had no objection to the permit. VIMS estimated that there was a total of 2000 square feet of tidal wetlands that would be impacted, and a subaqueous impact of 6000 square feet. However, the individual and cumulative impacts would be minimal. No other agency had objected to the project.

Mr. Eversole summarized the proposed project. He said consideration must be given to the affect of the proposed project upon: other reasonable and permissible uses of State waters and State-owned bottom lands; marine and fisheries resources, wetlands, adjacent or nearby properties; anticipated public and private benefits; and water quality standards. Also, the water dependency of the project and alternatives for reducing any anticipated adverse impacts must be considered. Mr. Eversole said it appeared that the design of the marginal wharf, as an open-pile structure, maximized the desired use of the applicant while minimizing the impacts on marine life, wetlands, and water quality. The wharf's parallel design to the shoreline rather than extending channelward as a community pier minimized the pier encroachment in the waterway. Therefore, staff recommended approval of the wetlands and subaqueous portion of the project. Staff also recommended a royalty be assessed at \$ 0.50 per square foot for all encroachment over State-owned subaqueous bottom.

Commissioner Pruitt asked if both the permits could be voted on at the same time. Staff responded yes.

Associate Member White asked if there were any businesses on this parcel of land? Mr. Eversole responded that this was the old TARMAC concrete plant site. Mr. White was

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familiar with the project.

Alan Camp, Jr., the project manager and representing the applicant, addressed the Commission. He said this was a reclamation project of a very large concrete plant site. He said the last building had been removed and the bank had been stabilized. He said the main objective of the pier line was to allow pedestrian access down to the waterfront as a continuation and extension of the City's walkway system along the canal route.

Associate Member Hull asked why the applicant was not bulkheading the whole length of walkway. Mr. Camp responded that the section being bulkheaded was the same as when the concrete plant was in operation. There was a very large concrete ramp platform with large cranes that unloaded from from boats, as well as railroad cars that came in underneath the structure.

There being no opposition, Commissioner Pruitt placed the matter before the Commission.

Associate Member Hull moved for approval of the project with a royalty of \$0.50 per square foot for all encroachment over State-owned subaqueous bottom. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Encroachment for 6000 sq. ft. of State-owned subaqueous bottom @ \$0.50 per sq. ft.....	\$ 3000.00
Permit fees.....	<u>110.00</u>
Total	\$3110.00

8. **W. T. HICKS, JR., #01-0067**, requests authorization to allow the U. S. Department of the Army to remove and replace an existing deteriorated concrete boatramp to include dredging of up to 50 cubic yards of State-owned subaqueous material adjacent to Fort A. P. Hill's leased boat landing along the Rappahannock River in Caroline County. Requires both a Subaqueous and Wetlands permit.

Ben Stagg, Environmental Engineer, briefed the Commission and presented slides of the location and gave a description of the proposed project. Comments are a part of the verbatim record. Mr. Hicks said that Caroline County had not adopted the model wetlands ordinance, therefore, the Commission was charged with reviewing both the wetlands and subaqueous impacts of the project.

Mr. Stagg said although the area was marked as a military reservation, it was actually owned by Mr. Hicks. Mr. Stagg leases the property on a long term to Fort A. P. Hill. They in turn used the boat ramp for training exercises. The ramp is also used by the local bass fishing

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organization. Mr. Stagg indicated that the existing ramp had deteriorated to the point that it was blocked at the landward end to prevent its use. He said to return the ramp to a useable condition, the U. S. Army, through its lease agreement with Mr. Hicks, agreed to replace and extend the existing ramp. The proposed ramp would be extended approximately ten feet beyond the existing channelward end, a cofferdam would be placed around the proposed work area, and up to 50 cubic yards of subaqueous material would be dredged to facilitate ramp installation. All the dredged material would be transported by truck to an upland disposal site on Fort A. P. Hill.

Mr. Stagg also indicated that during his site visit, staff determined that there was a second temporary ramp adjacent to the existing deteriorated permanent ramp. That ramp was installed by the Army without proper authorization. However, staff indicated that since a Joint Permit Application had been submitted and was being processed for the current proposal, staff informed the Army that no enforcement action would be taken to compel removal of the temporary ramp, pending the Commission's action on this request.

Mr. Stagg said that the Virginia Institute of Marine Science indicated that the individual and cumulative adverse impacts resulting from this proposal would be minimal. The Department of Historic Resources and the Department of Game and Inland Fisheries indicated that the proposal was acceptable. No other agencies had commented. He said a public hearing was held in Caroline County on April 18, 2001, to accept public comments on the project. In attendance at the meeting was a representative from Fort A. P. Hill, and Mr. Hicks. No other individuals were present. The advertisement was for both wetlands and subaqueous permits.

In summary, Mr. Stagg said based upon the minimal amount of disturbance anticipated at the site, staff recommended approval of the project with the following special conditions:

- (a) The instream construction activities authorized should be accomplished within cofferdams constructed of non-erodible materials;
- (b) The cofferdams and all excess material must be removed to an approved upland area upon completion of construction;
- (c) The construction should be performed during low-flow conditions to the greatest extent possible;
- (d) All areas of State-owned bottom and adjacent lands disturbed by this operation shall be restored to their original contours and natural conditions within 30 days from the date of completion of the authorized work;
- (e) The Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992) should be followed throughout construction;
- (f) Removal of the temporary ramp must be completed within 30 days of the completion of the permanent ramp repair and extension.

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In addition, staff recommended a royalty assessment in the amount of \$22.50 for the dredging of 50 cubic yards of State-owned subaqueous material at \$0.45 cubic yard and \$168.00 for the encroachment over 560 square feet of State-owned subaqueous bottom at a rate of \$0.30 per square foot.

Associate Member Ballard said he was concerned that the U. S. Army installed the temporary ramp without proper authority, and requested an explanation for their actions. Mr. Stagg responded that he did not get a very good answer from the Army, but the Army was very willing to remove it as a part of the proposed project. A brief discussion followed.

Carl Josephson commented that it was an unauthorized structure and they were required to comply with the State law. However, the question was in dealing with the Federal government almost as a subcontractor and their amenability to civil penalties and the language in a particular statute was something that would have to be researched.

Associate Member Ballard stated that he found it disappointing that a federal environmental regulatory agency would build an unauthorized structure.

There being no opposition, Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard said the project clearly met the standards of the Wetlands Act. Mr. Ballard said in terms of the Wetlands Act, the anticipated public and private benefits exceeded the public and private detriments, and then moved for the approval of the Wetlands and Subaqueous permits, along with the special conditions as outlined by staff. Also, the approval of the royalties enumerated by staff. Associate Member Hull seconded the Motion. Motion carried unanimously.

Encroachment of 500 sq. ft	
State-owned land @ \$0.30 sq. ft.....	\$168.00
50 cu. yds. A \$0.45 per cu. yd.....	22.50
Permit fee.....	<u>100.00</u>
Total	\$290.50

9. **KARL E. KOHLER, #00-2216**, requests authorization to retain two community piers in their as-built condition and retain three unauthorized slips which had been constructed at the piers adjacent to the Coves at Wilton Creek development in Middlesex County. Two of the unauthorized slips are used for sewage pump-out from boats and the third slip is unassigned and reserved for additional sewage pump-out or guests. The two piers were constructed in different configurations and extend further channelward than had been authorized under VMRC #87-0258. No new construction is proposed.

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Chip Neikirk, Environmental Engineer, briefed the Commission on the location and description of the project. Comments are a part of the verbatim record. Mr. Neikirk said Mr. Kohler was the original developer, but had since sold his interest in the development. The piers are currently owned by Heron Cove Villas Condominium Association (northern pier) and Abbitt Management (southern pier). Mr. Neikirk noted that there were several discrepancies between the permit drawings and the constructed piers. Specifically, the southern pier is 32 feet longer than that authorized and contains 20 slips rather than 18. Also, the access walkway for the southern pier had been constructed in a different location and the entire pier is further channelward than that depicted in the permit drawings. While the total length of the northern pier is shorter than that permitted, it has an additional slip, with a different configuration and slip arrangement. Mr. Neikirk then presented drawings of the northern and southern piers. Comments are a part of the verbatim record.

Mr. Neikirk indicated that Mr. Kohler had accepted responsibility for the permit violations and agreed that the piers were not built in strict conformance with the permit. Mr. Kohler said the additional slips provided a pumpout area on each of the piers and a guest slip on the southern pier. He further stated that the pier modifications were to make more efficient use of the facility and to reach suitable water depths. Mr. Kohler also indicated that the additional slips had not been assigned to any individuals. He also apologized for any inconvenience that his actions had caused. In accordance with staff's request, he submitted the application to retain the structures. The Board of Directors of the Villas at Wilton Creek Condominium Association, owners of the northern pier, fully endorsed the application. Abbitt Management, owners of the southern pier, were notified of the application, but had not commented. No protests were received during staff's review of the application. The Virginia Institute of Marine Science stated that given the age of the pier, they did not believe the environmental impacts associated with the three additional slips were significant. The Health Department has indicated that the project was in compliance with the regulations for sanitary facilities. The project does not encroach on any public or privately leased oyster ground and it does not appear that the project has had any adverse affect on navigation.

Mr. Neikirk said staff concluded that since the environmental impacts associated with the construction of the project appeared minimal and the applicant had been very cooperative and anxious to resolve this matter, staff recommended approval of the project with the assessment of triple permit fees as provided for in Section 28.2-1206 (D) of the Virginia Code. Staff also indicated that given the time which had elapsed since the original construction of the project, the change in ownership, and the fact that the construction preceded the enactment of the current civil charge and the civil penalty legislation contained in the Code, they were not certain if a civil charge was appropriate in this case. However, if the Commission determined that a civil charge was appropriate, staff recommended an assessment consistent with a finding of minimal environmental impact and a minor to moderate degree of deviation would be

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appropriate. Staff also recommended that since the project was after-the-fact, the Commission's motion should include a provision that all fees and charges be paid within 90 days.

Carl Kohler, applicant and former partner in the Coves at Wilton Creek development, addressed the Commission. Mr. Kohler gave his comments concerning the 126-acre development he built some years ago. He said the piers were part of the condominium development built in 1988. Comments are a part of the verbatim record. He said there was no intent on his part and he thought he was building the piers in the spirit of the permit (49 slips, 31 at the northern end; 18 southern end). Mr. Kohler said he was also informed that in the future they would probably be required to have pumpout facilities and he just included those facilities in the beginning.

There being no comments, pro or con, Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard moved to grant the permits and the after-the-fact permit for the project with triple permit fees assessed. Mr. Ballard said he was uncomfortable with assessing a civil charge because it had been 12 years and at that time assessing civil charges were not a provision of the Code. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Triple permit fees.....\$75.00

- 10. GIRL SCOUT COUNCIL OF THE COLONIAL COAST, #99-1713, requests after-the-fact authorization to retain a 50-foot long by 8-foot wide pedestrian bridge and an 8-foot long by 6-foot wide canoe launch adjacent to their property situated along Bells Mill Creek in Chesapeake.

Traycie West, Environmental Engineer, briefed the Commission and presented slides of the location and description of the project. Comments are a part of the verbatim record. Ms. West said that volunteers from various organizations assisted the Girl Scout Council of the Colonial Coast in construction of the open-pile walkway, bridge, and canoe launch on their property situated behind the Council Building. Ms. West indicated that the purpose of the walkway and bridge was to assist The Girl Scout Council's staff in wildlife and wetland educational efforts for the Girl Scouts and other groups. The walkway is also opened to the community.

Ms. West indicated that the Girl Scout Council did submit an application for construction of the walkway and canoe launch on September 10, 1999. She said the Commission then sent a

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letter dated October 12, 1999 requesting additional information from the Council's agent, Mr. Pete Burkheimer. Staff also forwarded the necessary information pertaining to the public notice to the *Virginian Pilot*. Ms. West said a response to their October letter was never received. Consequently, staff sent a followup letter stating that the application would be inactivated on January 30, 2001 unless a response was received. Mr. Burkheimer contacted staff and stated that the structure was in place.

A meeting was then held between Ms. West, Mr. Burkheimer, and the applicant on January 17, 2001. At that time, staff issued a Sworn Complaint and Notice to Comply. Mr. Burkheimer responded by letter and explained that he misunderstood the correspondence he had received from the Chesapeake Wetlands Board staff regarding requirements for permits. He thought that since the local Wetlands Board, the Army Corps of Engineers and the Coast Guard had indicated that no permits were required, he did not realize authorization was necessary from any other agency. Mr. Burkheimer did acknowledge that it was his responsibility on behalf of the Council to obtain the necessary approvals. He further indicated that construction of the walkway and bridge began soon after the application was submitted in September 1999. Mr. Burkheimer also stated that during the Fall of 1999, the affects of hurricanes Floyd and Irene threatened the bridge during construction and he was anxious to secure the structure during the storms and perhaps overlooked staff's letter.

Ms. West said that this project represents minimal environmental impact and it was not a hazard to navigation. There were no protests and the walkway and bridge was a benefit to the community. Therefore, staff recommended after-the-fact approval of the bridge and the canoe launch. She said the Commission may want to consider an appropriate civil charge in lieu of any further enforcement actions. Ms. West further indicated that it was clear, the responsibility in this situation rests with Mr. Burkheimer, as the agent, and not the Girl Scout Council.

Walter P. Burkheimer, representing the Girl Scout Council of Colonial Coast, addressed the Commission. Mrs. Nellie Hayes, the Executive Director, and Jan Tyler, the Facilities Manager were also present. Mr. Burkheimer gave comments regarding the Girl Scout goals and service. Comments are a part of the verbatim record.

Associate Member Ballard asked Mr. Burkheimer if he volunteered his service for this project? Mr. Burkheimer responded yes.

Associate Member Gordy asked if the Girl Scouts built the bridge along with Mr. Burkheimer's help. Mr. Burkheimer responded that there were many Girl Scout Adult volunteer leaders. He said the work was too heavy to be suitable for the young ladies. He said most of the work was done by volunteers from the USS Navy and other civic groups.

There being no other comments, pro or con, Mr. Pruitt placed the matter before the

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Commission.

Associate Member Gordy moved for approval of the project. Motion carried unanimously.

Permit fee.....\$100.00

11. Resolution for J. William Ryland.

Associate Member Hull moved to adopt the following Resolution for Mr. J. William Ryland for his faithful service to the Commonwealth of Virginia for more than twenty-two years as Chief of the Law Enforcement Division. Motion was seconded by Associate Member White. Motion carried unanimously.

Mrs. J. William Ryland, along with her two sons were presented the resolution. Mrs. Ryland commented that she thought it was wonderful to recognize her husband for the service he gave.

RESOLUTION

Whereas, the late J. William Ryland of Urbanna, Middlesex County, Virginia, faithfully served the citizens of the Commonwealth of Virginia for over twenty-two years in his capacity as Chief of the Law Enforcement Division of the Commission of Fisheries, later the Virginia Marine Resources Commission, and

Whereas, the late Gentleman throughout the course of his career, exemplified the highest standards of public service in his complete professionalism, steadfast devotion to duty, and impeccable integrity, and

Whereas, the late Gentleman exhibited the finest ideals of courtesy and kindness in his dealings with all whom he met, and

Whereas, the late Gentleman epitomized in his personality and character the embodiment of the traditional significance of the term "Gentleman", and

Whereas, the Late Gentleman's passing on September 1, 2000 has been a source of profound sorrow to all those with whom he worked form July 1, 1950 to July 31, 1972, as Chief of the Law Enforcement Division, and who knew him in other capacities, and

Whereas, the Virginia Marine Resources Commission adjourned in his memory on September 26, 2000,

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BE IT RESOLVED that, the Virginia Marine Resources Commission expresses its sympathy and condolences to Mrs. J. William Ryland and her family in their time of bereavement.

William A. Pruitt, Commissioner

Commissioner Pruitt gave complimentary comments to Mrs. Ryland. Comments are a part of the verbatim record.

The Commission recessed for lunch.

12. PUBLIC HEARING: Consideration of proposed regulation establishing the 2001 summer period commercial scup landing quota.

Chad Boyce, Fisheries Management Specialist, briefed the Commission on the proposed summer quota for commercial scup of 2,774, which is a change from last year's 2,149 pounds. Mr. Boyce said staff recommended adoption of Regulation 4 VAC 20-910-10 et. seq. with the amended summer commercial scup quota of 2,774 pounds.

Commissioner Pruitt opened the public hearing. There being no comments from the public, Mr. Pruitt placed the matter before the Commission. Associate Member Ballard moved to adopt Regulation 4 VAC 20-910-10 et. seq., with the amended summer commercial scup quota of 2,774 pounds. Associate Member Birkett seconded the motion. Motion carried unanimously.

13. PUBLIC HEARING: Consideration of proposed regulation establishing the 2001 bluefish commercial landing quota.

Lewis Gillingham, Fisheries Management Specialist, briefed the Commission on the bluefish landings quota. Comments are a part of the verbatim record. Mr. Gillingham said the bluefish quota was a compliance issue set by ASMFC. He said Virginia's share of the coastwide commercial catch was approximately 12 per cent. Mr. Gillingham said that with the change in stock status this year, Virginia's quota would be modified from 913,788 to 1,138,412 pounds.

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Mr. Gillingham mentioned that because of Virginia's reference point landings were so high and the bluefish stocks were currently lower, the quota was not being reached since it was instituted. He said staff recommended adoption of the new quota. Mr. Gillingham indicated that no public comments had been received on this issue.

Commissioner Pruitt opened the public hearing. There being no comments, pro or con, Mr. Pruitt placed the matter before the Commission for action.

Associate Member Ballard moved to adopt the relevant regulation establishing the annual bluefish quota of 1,113,412 pounds. Motion was seconded by Associate Member McLeskey. Motion carried unanimously.

14. DISCUSSION: Request for public hearing to extend the blue crab license moratorium through 2001.

Roy Insley, Head-Plans and Statistics, briefed the Commission on the moratorium that was put in place in May 1999 and would expire May 26, 2001. He said the purpose of the moratorium was to cap effort and to prevent further capitalization in the industry. He said staff recommended that the Commission advertise the present regulation whereby the sale of licenses for crab pots, peeler pots and crab scrape, crab trap, ordinary trot line, patent trot line, and dip net were under the moratorium. He said staff felt they should continue with the moratorium with the harvest reductions being considered at five percent. Mr. Insley said that the Commission should also advertise for the moratorium to continue until May 2004. He said this was a slight deviation from an annual basis but because the Bi-State Blue Crab Advisory Committee had requested a 15 percent harvest reduction over a three-year period, staff did not feel it would be appropriate to address the moratorium every year.

Associate Member Gordy moved to go to public hearing on the moratorium for sale of the crab licenses. Motion was seconded by Associate Member Hull. Motion carried unanimously.

15. RECOMMENDATIONS of the Commercial Fishing Advisory Board.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the following two funding recommendations from the Fishery Advisory Board as follows:

1) A telephone survey of harvest and effort in the 2001 Virginia Recreational Blue Crab Fishery; VMRC; \$10,750.00

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2) Assessment of Sea Turtle Population; VIMS, \$10,750.00.

Mr. O'Reilly said there was \$21,534.59 left for project allocation and both of the projects would be funded equally.

Mr. O'Reilly also indicated that the National Marine Fishery Service was looking for a way to provide matching funds to bring the sea turtle project up to its full funding. He said Dr. Musick would be taking aerial surveys inshore. This survey was done in the past and was discontinued, but it was important now because of the turtle strandings in North Carolina and Virginia.

Mr. O'Reilly said the telephone survey was part of a Baywide effort this year. He said there had never been a Baywide survey on the Recreational Blue Crab effort or harvest. Mr. O'Reilly also mentioned that Maryland had their own project based on license dollars that they collected. The Chesapeake Bay stock assessment was being asked to fund a joint project between Old Dominion University and Maryland. He said this survey would give an approximate blue crab harvest associated effort. Mr. O'Reilly said staff recommended funding of the two projects.

Commissioner Pruitt received no comments from the public, and placed the matter before the Commission. Mr. Williams asked if the projects could be voted on separately. Mr. responded yes.

Associate Member Ballard moved to fund the telephone survey project. Associate Member Cowart seconded the motion. Motion carried unanimously.

Associate Member Williams moved to not fund item 2, regarding the sea turtle. Associate Member Gordy seconded the motion for discussion purposes.

Mr. Williams said he had received a lot of watermen comments regarding using their recreational license funds for the sea turtle study and they did not want their money wasted on this project.

Mr. O'Reilly indicated that he did not think that the full scope of the matter was clearly understood. He said at the Commission's last meeting they promulgated regulations for the gill net fishery that were specific to the sea turtle stranding problem regarding capping the amount of gill net and the size of mesh that could be used during the month of June. Mr. O'Reilly explained that this process was considered as the first tier of the sea turtle stranding project. He said Dr. Musick would make "overflights" to get some understanding of the abundance, the density, or the standing stock of the sea turtle as they make the flights. Mr.

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O'Reilly also stated that watermen had mentioned in their meetings that more turtle strandings could mean a greater abundance of turtles. This survey would offer the opportunity to find out the abundance of the sea turtles.

Dr. Burreson was agreeable with Mr. O'Reilly's comments regarding the sea turtle survey and VIMS was trying to get more data on the standing stock of the sea turtles.

Associate Member McLeskey asked what the boundaries were for the "overflights." Mr. O'Reilly responded that the boundaries were within the Virginia waters (the Bay areas and the coastal areas).

Commissioner Pruitt placed the matter before the Commission for the vote. The Motion failed. Mr. Pruitt opened the floor for another motion.

Associate Member Hull moved to fund the project. Motion was seconded by Associate Member White. Motion carried 6 to 2.

16. BLUE CRAB: Adoption of 2001 regulations.

Commissioner Pruitt suggested that this item be moved to later in the agenda. The commission was agreeable.

17. BLACK SEA BASS: ASMFC required adjustments to commercial trip limits. Request for emergency regulation.

Rob O'Reilly, Deputy-Chief Fisheries Management, briefed the Commission on the request for an emergency regulation regarding the adjustments to the Black Sea Bass Commercial Fishery trip limits, and the advertisement for a public hearing for next month. He said this action stemmed from an Atlantic States Marine Fisheries Commission's (ASMFC) requirement. He said the proposed regulation attempted to spread out the harvest quota more evenly and to more user groups. Mr. O'Reilly said that the Black Sea Bass Management Board had established possession limits for the 2001 commercial black sea bass fishery by quarters of 9,000, 1,500, 1,000 and 2,000 pounds for the first, second, third, and fourth quarters, respectively. On April 3, the Board established a new trigger limit of 40 percent for the last three quarters of the fishery, which means that once the quota has reached the 40 percent trigger mark, a new possession limit would be carried out until the entire coastwide quota was reached. Mr. O'Reilly said ASMFC had allowed VMRC two options: 1) 150 pound per day possession limit once the 40 percent trigger was realized; or 2) 1,000 pound harvest for a weekly period once the trigger had been reached, with a limit of up to four trips per week.

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Mr. O'Reilly also indicated that an IVR system would be set up for recording the landings. He then recommended adoption of the Emergency Regulation. He said all coastal states appear to be able to implement the regulation no later than May 1.

There being no comments, pro or con, from the public, Commissioner Pruitt placed the matter before the Commission. Associate Member White moved to adopt Regulation 4 VAC 20-950-10 et. seq. The motion was seconded by Associate Member Cowart. Motion carried unanimously.

18. DISCUSSION: Request for public hearing to consider amendments to Regulation 4 VAC 20-620-10 et. seq., pertaining to ASMFC requirements for 2001.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the requirement set by ASMFC for Virginia to achieve a four percent reduction for recreational summer flounder landings for 2001. Mr. O'Reilly said that in January of this year two quotas were adopted: 1) the National Marine Fishery Service adopted a 17.91 million pounds total commercial and recreational harvest for the EEZ in Federal waters; 2) ASMFC adopted a 20.5 million pound quota for all of State waters. A special meeting of ASMFC that was held on April 3, 2001, resulted in a lower TAL for State waters to the level initially adopted by MAFMC to 17.91 million pound quota. Mr. O'Reilly said the adoption of the new measure would have no effect on the Virginia commercial fishery.

Mr. O'Reilly indicated that VMRC had submitted the following proposed management options to achieve the 4 percent reduction in the recreational fishery: 1) establish a closed season for July 24 through August 7, 2001; 2) establish a closed season from July 19 through August 1, 2001; 3) establish closed seasons from July 28 through August 1, 2001 and from September 18 through December 31, 2001. Mr. O'Reilly mentioned that reducing size and bag limits would give them very little credit unless the changes were very severe. Therefore, staff was requesting that the closed season measures be advertised for public hearing next month.

A discussion followed regarding Virginia getting its fair share compared to the other states. Comments are a part of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Williams moved to advertise for a public hearing. Motion seconded by Associate Member Gordy. Motion carried unanimously.

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Tracy Patton, Fisheries Management Specialist, briefed the Commission on Mr. John J. Vigliotta request for an exception into the black drum fishery. Ms. Patton said Mr. Vigliotta had failed to meet the limited entry criteria and that the Commission had denied similar requests in the past based on the limited entry provisions. Therefore, staff recommended denial of Mr. Vigliotta's request based his failure to meet the required criteria of the regulation.

Mr. Vigliotta was not present.

Commissioner Pruitt placed the matter before the Commission.

Associate Member Ballard commented that he did not see that the Commission had any choice based on the evidence presented, but to deny Mr. Vigliotta's request for a black drum permit. Motion was seconded by Associate Member White. Motion carried unanimously.

16. Commission returned to the Blue Crab issue: Adoption of 2001 regulations.

Rob O'Reilly, Deputy Chief-Fisheries Management, passed out letters that had been received since the last Commission meeting and handouts. He briefed the Commission on the work session held on April 10, 2001, at the Virginia Institute of Marine Science (VIMS). The work session was attended by VIMS scientists, VMRC staff, Commission members and some members of the public. Mr. O'Reilly explained that the emphasis of the session was to go over the nine options that came before the Commission on March 20, 2001. He said the work session addressed all nine options, but spent little time on the reduction in the hard crab pot fishery.

Mr. O'Reilly said that all the options were discussed in detail, especially the options for day of the week closures, season closures, dredge season, (closing part of the dredge season and reducing the barrel limits), and the sanctuaries were also discussed. A discussion was also held regarding the opening of the 2 5/16 cull ring in the main stem of the Bay and the Sounds and only result in a 1 1/2 per cent savings.

Mr. O'Reilly then explained the changes made regarding management options for achieving the 5 percent reduction in the blue crab harvest for 2001. He then presented a chart that summarized all the management options: Hours per day limit, day of week closure (crab pot and peeler pot), day of week closure (crab pot), bushel limit (crab pot), seasonal closure (crab pot), seasonal closure (winter dredge) barrel limit and recreational limit. Mr. O'Reilly also

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talked about the Chesapeake Bay Stock Assessment Committee Technical Group's meeting last week at the VIMS. At that meeting, they updated all the fishery independent information, the baywide survey, the trawl survey from VIMS and Maryland, and peeler pot survey in Calvert's Cliff. Mr. O'Reilly also mentioned information regarding the update of the status of the stock for the blue crab.

Commissioner Pruitt asked what was the latest progress from Maryland. Mr. O'Reilly said according to a VMRC staff member, a planner in Maryland and the Administrative and Executive Legislative Review Committee turned down the idea of having emergency regulations. As a result, it may be mid-July before Maryland had any regulations. A discussion followed.

Associate Member Cowart asked if the agency received credit for the reduction in crab peeler pots from 400 to 300 and if it was calculated in any of the management options? Mr. O'Reilly responded that credit was received but it had not been calculated in any of numbers presented today. However, since the peeler fishery accounts for 10 percent of the total harvest, the overall reduction would not change significantly.

Associate Member Hull commented that he would like see all the issues regarding the blue crab fishery be ready for public hearing no later than October this year so that all the watermen would know what the ground rules were by January 1, 2002. He also mentioned that he would like to see all the crab issues reviewed such as, walkways into the sanctuary explored, the time closure, the closed days, closing of the season, number of pots, bushel and barrel limits should be on the table for next year's season.

Associate Member Cowart commented that he had talked with gentleman that was 86 years old and he was still crabbing 100 pots, but could not make a living with them. The gentleman said he had seen a reduction in the harvest for the past five years. He said that the peeler pots should be cut and to start the season on May 1. He also made the following suggestions: cushion crabs should not be caught for a year; implement an 8- hour work day and start day break; crab dredging should be cut the last two months of the season; and open the rockfish season.

Associate Member Birkett commented that it was the gear that takes the crabs, it was not the crabber or the watermen. He said the amount of time and the amount of time that gear stayed in the water controled the taking of crabs. He also felt that to establish an 8-hour day time limit on the industry would be devastating to people that had bought gear and license. He said the only two options available that would mean anything would be limiting the season or to shorten the number pots or gear in the water.

Associate Member White moved for a day of the week closure involving crab and peeler pots

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on Wednesdays from 6/6 to 8/22, 2001. Motion was seconded by Associate Member Williams. Motion carried 6 to 2.

Mr. O'Reilly indicated that with that motion there could possibly be a 5.70 reduction for those fisheries and a 5.17 percent reduction overall and it would be a little more because that figure did not include the 5.39 percent for the gear and peeler reductions.

Associate Member Hull then requested that a motion be made to get staff to bring the regulations before the Commission to be discussed, a public hearing held, and regulations be adopted at the December meeting. Motion was seconded by Associate Member White.

Commissioner Pruitt commented that they would continue with the Blue Crab Committee and Associate Member Cowart would continue to chair the meeting.

Associate Member Hull amended the motion to request that staff notify persons requesting renewal of their licenses in early December that a decision would not be made by the Commission before the December Meeting. Associate Member White was agreeable to the amendment.

A brief discussion followed regarding a final decision being made in December. Associate Member Ballard asked if the fishery dependent data would be available by the December Commission Meeting. Mr. O'Reilly responded that the data through September would be available. He said the independent data would not be available until March. Mr. Lipcius commented that some of the spawning stock index data would be available in October. However, Mr. O'Reilly indicated that the harvest data could be predicted in December. A discussion following.

Commissioner Pruitt called for the vote. The motion carried unanimously.

Associate Member Ballard commented that the motion just adopted would achieve a reduction, but it was targeted at only two parts of the blue crab fishery (crab pot and the peeler pot). He questioned if the other segments of the crab fishery should be participating in the reduction.

Commissioner Pruitt also commented that the day off regulation that passed today would still allow watermen to work in other fisheries such as the crab scrape. He also commented that the Commission expected some action from Maryland and the Potomac River fisheries.

Mr. O'Reilly commented that with the General Assembly legislation in July 1, the Commission would be enabled to pass harvest limits on the unlicensed segment of the recreational fishery. A discussion followed regarding the regulations.

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For the Record: Associate Member White moved that Regulation 4 VAC 20-270-10 et. seq., it shall be unlawful for any person using crab pot or peeler pots to engage in any commercial crabbing activities, including the placing, setting, moving, baiting or fishing of crab pots or peeler pots during any Wednesday from June 6 to August 22, for a total of 12 Wednesdays. Associate Member Williams seconded the motion. Motion carried 6 to 2.

Associate Member Cowart commented that he would like to include in the motion the winter crab dredge fishery and reduce the 20 barrel limit to 17 barrels for an overall reduction of .28 percent, the licensed recreational fishery, one bushel of hard crabs per day and two dozen peeler crabs per day. Motion seconded by Associate Member Hull. Motion carried 7 to 1.

Associate Member Cowart moved to approve Regulation 4 VAC 670-25, it shall be unlawful for any person licensed to use recreational crab pots, recreational crab trap, or recreational ordinary crab trot line as described in 4 VAC 20-670-20 to take or possess more than one bushel of hard crabs and two dozen peelers in any one day for personal use. Motion seconded by Associate Member Hull. Motion carried 7 to 1.

Associate Member Cowart moved to approve regulation 4 VAC 20-40-20, during the lawful crab dredge no one boat shall take, or catch more than 17 barrels of crabs in any one day. Each barrel should be a regular crab barrel not more than level full. Motion seconded by Associate Member Hull. Motion carried 7 to 1.

20. PUBLIC COMMENTS.

Jim Diebler, representing the Virginia Charter Boat Association, thanked the Commission on behalf of the Virginia Charter Boat Association for the decision made on the Black Sea Bass issue. Mr. Diebler said that the Association had met on the guide license issue the Commission requested them look into, and it was decided to place the matter in a committee, try to get a package together, let the membership vote on it, and bring the results back to the Commission.

Mr. Diebler also mentioned the target ship off the Island of Tangier that had gone underneath the water and could possibly tear up a boat or someone could get hurt. He said he had gone to legislators (federal and state) and the Commission and it seemed that no one was concerned about somebody getting hurt running across that target ship.

Mr. Josephson asked if they had talked to the Navy about marking the boat. Mr. Diebler responded that he had talked to legislators and they, in turn, talked to the Navy and they were going to get back with him, but he has not heard from them. Mr. Josephson asked if he had

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talked to the Corps of Engineers about removing it. Mr. Diebler said he had not talked to the Corps of Engineers. Mr. Diebler also mentioned that there were platforms that marked area, but some of them were gone and the Navy never replaced them. The Coast Guard said the target ship was marked on the chart.

Commissioner Pruitt said he would talk to staff about the situation.

Associate Member Hull said he had talked to Mr. Diebler on several occasions in the past. He said there was a good opportunity to get something done with Virginia's Senator Warner, as Chairman of the Armed Services Committee, and a letter should be written to him requesting an explanation of the situation.

Associate Member McLeskey asked in an emergency situation, what authority would be necessary to put private markers out indicating that it was a wreck there. Mr. Grabb said the State could place the markers, incur the cost of the installation and maintenance, and the potential liability.

Associate Member Hull moved that the Commissioner write a letter to Senator Warner to alert him to the situation regarding the target ship and request assistance to have it removed. Motion was seconded by Associate Member Gordy. Motion carried unanimously.

Associate Member McLeskey asked what role would the Commission play in the removal of the boat? Mr. Grabb said he was not familiar with the Captain that had control over the area. He said it was the Commonwealth's bottom and he thought VMRC could go to the Navy. If the target ship was no longer being used, and it is a hazard, he thought VMRC could direct the Navy to basically undertake removal or repair.

Commissioner Pruitt suggested that the Navy be contacted before a letter should be written to Senator Warner.

Dale Taylor addressed the Commission. He said the Commission exempted the peeler scrape in obtaining the reduction. He said he did not think that was fair to the people that peeler scrape because they would have to cut their peeler pots out on Wednesday and many soft crabs would be ate up by the fish and eels and the resource had not be saved. He then asked if they could take the matter to the General Assembly to put in a Bill. Mr. Pruitt responded yes, but for immediate action he could go through the General District Court.

Rob O'Reilly responded that back in February when they had the discussion on the measures, staff informed the Commission that they looked at the landings and there was a table that broke out the gear harvest over the three-year period. The scrape was a minor component, it was one percent or less and because the peeler pound (traps) were also in that situation, the

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reductions were based on the major gears.

Carl Josephson commented that although this was not tackled as a specific gear this year, as Mr. Hull indicated earlier, a reduction of another 5 per cent next year, and another 5 per cent the year after that, it was going to get harder and harder to get those numbers and he thought the peeler scrape, although it may be a minor number this year, but when they start to look for more difficult reductions in the future, it would be on the table for consideration.

Robert Johnson, a commercial fisherman and a waterman for 26 years requested that the Commission take into consideration Mr. Hull's comments about doing something early and definite. He also gave comments about the full and part time crabbers. Comments are a part of the verbatim record.

Douglas Jenkins, Twin Rivers Association, addressed the Commission. He gave comments regarding everyone in the Bay being measured with the same yard stick. He said there was a part of the Bay where the crabbers fished with the large cull ring closed. He said he had heard reports that 27 to 30 percent of legal crabs escape through the large cull ring. Mr. Jenkins also mentioned that peeler potters needed to fish everyday so that the crabs were not eaten or would get hard in the pots. He said the best thing to do would be to close part of the season.

Page Hogge, Vice-president of the Soft Crab Association from Urbanna addressed the Commission. She thanked the Commission for their work done on the blue crab issues. However, she said she was disappointed that they were not given the 100 pot credit. She also was disappointed that they will have to close on Wednesdays because they were going to lose crabs, and some consideration should be given to them for that effort. Ms. Hogge stated that they were only 10 per cent of the whole industry and they were being penalized the same as the hard crab potters.

The meeting was adjourned at 3:20 p.m.

William A. Pruitt, Commissioner

LaVerne Lewis, Commission Secretary