

MINUTES

DECEMBER 18, 2001
NEWPORT NEWS, VA 23607

The regular Monthly meeting of the Marine Resources Commission was held on December 18, 2001 with the following present:

William A. Pruitt)	Commissioner
Gordon M. Birkett)	
Laura Belle Gordy)	
Henry Lane Hull)	Members of the Commission
F. Wayne McLeskey)	
John W. White)	
Kenneth W. Williams)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Senior Staff Adviser
Stephanie Montgomery CPS		Commission Secretary
Erik Barth		Head-IT
Andy McNeil		Programmer Analyst, Sr.
Bob Craft		Chief-Finance & Administration
Jane McCroskey		Asst. Chief-Finance & Administration
Col. Steve Bowman		Chief-Law Enforcement
Lt. Col. Lewis Jones		Deputy Chief-Law Enforcement
Capt. Randy Widgeon		Eastern Shore Supervisor
Capt. Warner Rhodes		Middle Area Supervisor
1 st Sgt. Dan Eskridge		Northern Area
1 st Sgt. Benjamin Major, II		Southern Area
Lt. John Croft		Special Investigative Unit
Harry Booth		Marine Patrol Officer
Perry Flinchum		Marine Patrol Officer

Virginia Institute of Marine Science:

Dr. Eugene Burreson	Jacques van Montfrans
Tom Barnard	Lyle Varnell

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Jack Travelstead
 Rob O'Reilly
 Dr. James Wesson
 Roy Insley
 Ellen Cosby
 Lewis Gillingham

Chief-Fisheries Management
 Deputy Chief-Fisheries Management
 Marine Scientist Supervisor
 Head-Plans and Statistics
 Fishery Management Specialist
 Fishery Management Specialist

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

Chief-Habitat Management
 Deputy Chief-Habitat Management
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.

Nate Custer
 Michael Hines

WTKR Television
 The Daily Press

others present included:

Ray Bradshaw
 Allyson Reid
 Jim Ewart
 Jeffrey Harrington
 John Pappas
 Elizabeth Pappas
 James Brownley
 Dan Griffin
 Robert Sondej
 Stan Dobson
 Alf Mapp
 Ramona Mapp
 Steven Sadler
 Thomas Wright
 Ellis Bowling
 Frank Lansinger

Jeff Linton
 Kelly Place
 Sam Dawson
 Carlton Priest
 William Marshall
 George Washington
 John Bowden
 Jim Ruhle
 Steve Pruitt
 Jim Marshall
 Russell Gaskin
 Tom Powers
 Roger Parks
 Allen Parks
 Norman Parks
 Tommy Thomas

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R. Warner
 Jack Davis
 Bob Parks
 Alfred Oise
 Dan Oise
 Ronnie McCready
 Charles Parks
 Larry Parks
 Charles Amory

Jim Haydon
 Danny McCulbrett
 Douglas Jenkins
 Jeff Deem
 John Gordon
 Pete Freeman
 Freddie Linton
 Ellen Linton
 Jeff Linton,
 LeRoy Carson and others

Commissioner Pruitt called the December meeting at 9:30 a.m. Associate Members present were: Birkett, Gordy, Hull, McLeskey, White and Williams. Commissioner Pruitt established that there was a quorum, noting that Associate Members Ballard and Cowart were excused from today's meeting. Associate Member Williams gave the Invocation and Associate Member White 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 Hull moved to adopt the Agenda as presented; Associate Member White seconded the motion. The motion carried unanimously, 6-0.

1. APPROVAL OF MINUTES – November 27, 2001 meeting.

Associate Member White moved to approve the Minutes as distributed; Associate Member Hull seconded the motion. The motion carried unanimously, 6-0.

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

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Mr. Grabb briefed the Commission on the following Page Two items for projects over \$50,000.00 with no objections and with staff recommendation for approval.

2A. CITY OF VIRGINIA BEACH, #96-0083, requests a modification to and extension of their previously issued permit to allow for the annual dredging of approximately 4,000 cubic yards of bottom material, on an as-needed basis, to maintain maximum project depths of minus six (-6) feet at mean low water at the *Lynnhaven Boat Ramp and Beach Facility* situated along Crab Creek in Virginia Beach. Recommend approval of the modification and extension of the permit to May 31, 2006. (See reconsideration of **Item 2A.** on Page 11813.)

PERMIT FEE.....N/A Modification

2B. CITY OF SUFFOLK, #00-0893, requests authorization to modify an existing permit to construct a 10-foot by 160-foot pedestrian bridge over the Nansemond River as part of the Constant's Wharf Community Facility.

PERMIT FEE.....N/A Modification

2C. CITY OF ALEXANDRIA, #01-1768, requests authorization to perform maintenance dredging, by the mechanical method, of approximately 12,350 cubic yards of accumulated sediments, to achieve maximum depths of minus six (-6) feet at mean low water at the Founders Park Marina, and minus nine (-9) feet at mean low water at the Torpedo Factory Marina situated along the Potomac River in the City of Alexandria. This authorization is requested pending expiration of the public comment period on Friday, December 21, 2001.

PERMIT FEE.....\$100.00

Associate Member McLeskey inquired as to the dredging proposed by Virginia Beach. Mr. Owen, Environmental Engineer, Sr., reviewed the plan for the Commission. Mr. Steven Pierce Sadler, Engineer III, with the City of Virginia Beach, Public Works-Beach Management, was sworn in by the Commissioner and then attested that the Army Corps of Engineers Disposal Area along Ocean Park Beach would be used for the project. He added that the sand being removed would be pumped onto this beach or onto the nearby sand stockpile. He added that the City of Virginia Beach was working with the Army Corps of Engineers with regard to the placement of the sand pumped in all future dredging projects onto the Ocean Park.

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There being no comments, pro or con, Commissioner Pruitt placed the Page Two items before the Commission. **Associate Member Williams moved to approve the Page Two items as presented. Associate Member McLeskey seconded the motion which carried unanimously, 6-0.**

3. **JOHN F. SLOAN, #01-1589**, requests authorization to dredge approximately 465 cubic yards of subaqueous material to create a 292-foot long by 30-foot wide channel possessing maximum depths of minus six (-6) feet at mean low water adjacent to his property at the mouth of Moran Creek in Lancaster County. The project is protested by the oyster planting ground leaseholder at the site. Continued from the November 27, 2001, meeting.

Mr. Jay Woodward, Environmental Engineer, Sr., noted that this case was continued from the November Commission Meeting and that the applicant was requesting an additional 90-day continuance in order to meet with the oyster ground leaseholder in an effort to work out a compromise in this matter. Mr. Woodward distributed additional correspondence received from the oyster leaseholder, a copy of which was filed with the permanent record of this meeting.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. With no response from those in attendance, the Commissioner placed the case before the Commission. **Associate Member Gordy moved to honor Mr. Sloan's request for a 90-day continuance for Case No. 01-1589. Associate Member Hull seconded the motion; the motion carried unanimously, 6-0.** Commissioner Pruitt noted that this matter would be placed on the Agenda for the March 26, 2002 meeting of the Commission.

4. **APAC-VIRGINIA, INC., #01-0398**, requests after-the-fact authorization to retain a 24-foot wide by 98-foot long temporary equipment dock and 92-foot long riprap revetment which extends approximately six (6) feet channelward of ordinary high water adjacent to their property situated along the James River between Powhatan and Goochland Counties. The applicant also requests additional authorization to modify the previously issued permit to construct two (2) approximately 45-foot long temporary culvert road crossings for equipment access over two (2) locations at Little Tuckahoe Creek in Goochland County and a 25-foot long temporary culvert crossing over Bernard's Creek in Powhatan County.

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Mr. Jeff Madden, Environmental Engineer, Sr., presented the following evaluation with the assistance of photographs and drawings of the proposed project. He noted that APAC-Virginia Inc. was constructing VDOT Route 288, a six-lane divided highway between Route 60 in Chesterfield County and Interstate 64 in Goochland County. On May 22, 2001, the Commission granted the applicant authorization to construct multiple stream crossings and a temporary dock facility adjacent to the south bank of the James River. As a result of unanticipated problems, the applicant elected to construct the dock facility in an alternate configuration than what had been permitted. The as-built, open-pile, timber dock facility is 98 feet long by 24 feet wide and is aligned perpendicular to the shoreline. As a result of bank preparation along the north bank of the James River, the applicant encountered an active erosion problem that required immediate attention. The applicant also installed a 92-foot long riprap revetment that extends six feet beyond ordinary high water which had never been permitted. Mr. Madden stated that the applicant was making a third request for the Commission to consider further modifying the permit to authorize three additional temporary stream crossings which are required for safety and the efficient movement of heavy equipment around the bridge construction sites.

Mr. Madden stated that during the construction phase of the dock facility the applicant noted that, in order to construct the permitted dock, the existing river bank would have had to be cut back excessively to allow trucks to safely and efficiently off-load the roughly 200-foot long bridge beams. The Department of Historic Resources (DHR) also identified a cultural resource in the vicinity of the cut bank and the applicant believed the bank grading would potentially impact the previously unidentified site. In addition, the original design failed to take into account the shallow depth of the water adjacent to the shore-parallel dock configuration that was permitted. In the opinion of the applicant, the as-built configuration was safer and more efficient for the offloading of materials, required significantly less bank grading and avoided the cultural resources noted by (DHR). The temporary dock facility will be removed at the completion of highway construction. The need for the after-the-fact riprap revetment became apparent quite suddenly, after the bank was logged and cleared. Storm water flows from an existing ditch were actively eroding the 12.5-foot high bank. The riprap was installed as an emergency measure to stabilize the bank and to address the erosion and potential impacts to water quality resulting from excessive sediment runoff into the James River.

Mr. Madden stated that the applicant also wished to further modify its permit to authorize the construction and backfilling of a 25-foot long by 36-foot wide temporary culvert crossing of Bernard's Creek, and two (2) approximately 45-foot long by 30-foot wide temporary crossings of Little Tuckahoe Creek. Each of the three crossings are intended

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to increase the safe and efficient passage of vehicles throughout the project site as well as on and off of I-64. Each of the temporary causeways will be removed upon completion of the project and the areas will be returned to pre-construction contours.

Mr. Madden noted that the applicant continues to be very cooperative with Commission staff. Additionally, the applicant's agent brought the after-the-fact matters to the attention of Commission staff.

Mr. Madden reported that staff has notified all of the adjacent property owners of the above-referenced modifications and has not received any protests over the current request. However, the comment period for the after-the-fact portion of the modification will not expire until December 20, 2001. No other agency has voiced opposition to the project.

Mr. Madden noted that staff was concerned over the after-the-fact nature of the construction even though the pier was realigned, apparently as a result of input from DHR. The realignment creates a safer ingress and egress for equipment and the potential negative environmental impacts from the realignment are minimal. Staff understands that while the riprap was not permitted, it was installed to avert a greater potential problem due to bank failure and sediment input into the James River. The additional temporary crossings of Bernard's Creek and Little Tuckahoe Creek should result in a safer and more efficient traffic flow. As a result, staff recommended that the Commission approve the after-the-fact dock facility and the riprap revetment pending expiration of the public comment period. Staff also recommended that the Commission approves the request for the additional temporary road crossings and that the royalty assessment be adjusted to reflect the added encroachment. Mr. Madden added that the Commission might also wish to entertain an appropriate civil charge given the after-the-fact nature of the request in lieu of any further enforcement action.

Associate Member Hull inquired as to what historical resources were found at the site of the project. Mr. James Knox Ewart, President, APAC-Virginia, Inc., Special Projects, was sworn in by Commissioner Pruitt. Mr. Ewart stated that prior to the construction of this project, VDOT had an ongoing archaeological dig directly underneath the footprint of the James River Bridge wherein they discovered prehistoric, pre-Columbian and colonial artifacts. The volume of artifacts resulted in VDOT expanding 150 feet on both sides of the bridge for future digs.

Mr. Ewart noted that this is a PPTA project whereby VDOT carried the work to a certain point and APAC-Virginia, Inc. then continued with the project. He reviewed the permit process, noting that the riprap construction was not incorporated in the permit for the

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project, but rather, was a result of the misalignment of the dock. The requests to modify the project permits will allow APAC-Virginia, Inc. to build bridges and not have to haul material on I-64, avoiding lane closures and safety issues.

Commissioner Pruitt asked if anyone in attendance wished to speak in opposition of the project. With no response from those in attendance, the Commissioner placed the case before the Commission. **Associate Member Hull moved to approve the project based on staff recommendations. Associate Member Gordy seconded the motion; the motion carried unanimously, 6-0.** No civil charge was assessed.

5. **JEFFREY HARRINGTON, #01-0377**, requests authorization to dredge 1,480 cubic yards of subaqueous material to provide maximum depths of minus four (-4) feet at mean low water from a 400-foot by 34-foot area to improve a channel leading into Sturgeon Creek in Middlesex County. The sandy dredged material will be placed along 300 linear feet of the updrift adjacent shoreline as beach nourishment. The project is protested by three nearby property owners.

Mr. Chip Neikirk, Environmental Engineer, Sr., began the project evaluation by stating that the applicant was seeking authorization to dredge 1,480 cubic yards of subaqueous material from a 400-foot long by 34-foot wide area within the west channel of Sturgeon Creek to create maximum depths of minus four and one-half (-4.5) feet at mean low water to improve access to the creek. The material to be dredged was primarily sand and the proposed to place it along a nearby beach on properties belonging to the Estate of Marie Bromley and Tropical Treehouse, Inc., on the west side of the creek as beach nourishment. Both of the properties had recently received authorization to repair and build new groins and a jetty along their shorelines. The project was protested by five property owners. Mr. Neikirk distributed a facsimile submitted by a property owner in support of the project, a copy of which is attached to the permanent record of this meeting.

Mr. Neikirk stated that Sturgeon Creek is located along the southern shore of the Rappahannock River, near Deltaville in Middlesex County. Mean low water depths within the creek range to approximately eight feet. The creek used to have a long spit extending from the west side and across most of the creek mouth. A narrow channel, which appears to have been dredged in the past, has persisted along the east side of the creek mouth since at least the 1950's. Attempts to maintain the spit with bulkheads and groins proved unsuccessful, and much of the spit has eroded. As a result, a new narrow channel has formed near the west side of the creek and three islands exist in the middle of the creek

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mouth. Mr. Neikirk added that the existing channels are both narrow and shallow, with mean low water depths of approximately minus two (-2) feet. Since one must wind around the islands to access the old channel on the east side of the creek, many boats have begun using the newer channel on the west side. He added that the creek is relatively large and development along its shoreline is primarily residential. There are numerous piers and boathouses throughout the creek. Traffic in and out of the creek is significant during the boating season.

The protesting property owners were primarily concerned with the potential for increased shoreline erosion resulting from the additional boats using the new west channel. They also wanted to be assured that the material placed along the adjacent shoreline was properly contained in a manner that would limit its movement back into the channel.

Mr. Neikirk added that staff had spoken with Messrs. Pollard and Wright, and they believe a “no wake zone” in the area closest to the shoreline would minimize the impact associated with the boat wakes. Staff believes a “no wake zone” in the area would become reasonable after the dredging, since the boats using the channel would no longer need to get “on plane” to navigate the shallow channel.

VIMS had reviewed the proposal and anticipated that the impacts associated with the dredging and placement of sand along the beach will be minimal and temporary. The Department of Environmental Quality also believes the impacts associated with the project will be minimal, and they waived their requirement for a Water Protection Permit. The Department of Health and the Department of Conservation and Recreation both stated that the project should not adversely affect their programs. No public or privately leased oyster ground would be affected by the project.

As a matter of historical interest, Mr. Neikirk presented a pictorial review of the creek as it existed in 1937, 1959, 1968, 1978, 1981, 1984 and the present.

In presenting staff's recommendations, he stated that the mouth of Sturgeon Creek was very dynamic. It is generally not advisable to have two channels leading into a creek due to the natural scour action associated with the ebb and flood of the creek which helps to keep the channel open, is reduced. In this case, however, attempts to maintain the spit have proven to be unsuccessful and a second channel has formed naturally. Since both of the existing channels are of a similar depth and the amount of dredging necessary to improve the western channel is less, it is reasonable to attempt to improve the western channel. The channel is also a more direct route for the majority of the boaters residing on the creek.

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Mr. Neikirk added that although the amount of sand to be dredged from the channel was small compared with the amount of sand associated with the numerous shoals at the mouth of the creek, staff believed every effort should be made to stabilize the material placed along the beach as beach nourishment. Staff also agrees that a “no wake zone” should help minimize the potential for erosion associated with boat wakes and would be appropriate once the channel is established. Accordingly, staff recommends approval with the following special conditions:

- A pre-dredging conference and a post-dredging bathymetric survey shall be required as conditions of the permit.
- The groins and jetty previously authorized along the beach, in the vicinity of the disposal area, shall be constructed and inspected prior to any dredging being conducted.
- The Permittee shall be required to seek the establishment of a “no wake zone” on the creek side of the channel upon completion of the dredging.
- A royalty of \$666.00 for the dredging of 1,480 cubic yards of State-owned submerged material at a rate of \$0.45 per cubic yard.
- A royalty of \$250.00 for the encroachment of the sand fill, as beach nourishment, on 5,000 square feet of State-owned submerged land at a rate of \$0.05 per square foot.

Associate Member White confirmed with Mr. Neikirk that there were five protestants of the project. Commissioner Pruitt complimented Mr. Neikirk on the historical presentation. He then swore in Mr. Jeffrey J. Harrington, the applicant for this project. Mr. Harrington stated that 90-95% of the property owners along the creek were in favor of trying to make the channel more navigable. Upon questioning by Commissioner Pruitt with regard to the existence of a formal homeowners’ association, Mr. Harrington stated that currently there were several associations for the subdivisions along the creek. He added that while the property owners would like to form a corporation for the purpose of maintaining the channel, at this point in time, they were trying to obtain all necessary permits first. Commissioner Pruitt asked Mr. Harrington if his group was aware of the process necessary for establishing a “no wake zone” like staff was recommending. Mr. Harrington stated that the group was aware of this and that the need for a “no wake zone” was a major concern of many of the property owners.

Associate Member Williams stated that he would like to see all of the homeowners’ associations come together on this project as the property along the creek was high dollar and he was concerned over the number of protestors of the project at this time. Mr. Harrington stated that he is in favor of the “no wake zone” and will work with the property

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owners as the project progresses.

Commissioner Pruitt asked if anyone in attendance wished to speak in opposition of the project. With no response from those in attendance, the Commissioner placed the case before the Commission. **Associate Member Williams moved to approve the project based on staff recommendations. Associate Member White seconded the motion.** Associate Member Hull stated that with the number of protestors noted, the fees and permit process required for such a project, an association should have been formed before the project was brought before the Commission. **When put to a vote, the motion carried unanimously, 6-0.**

6. **STAN J. DOBSON, #01-0338**, requests authorization to construct a 50-foot long by 28-foot wide private, open-sided, non-commercial boathouse at his existing pier at his property situated along the Western Branch of the Elizabeth River in the City of Portsmouth. The project is protested by an adjacent property owner.

Ms. Traycie West, Environmental Engineer, Sr., presented the evaluation for this project. She stated that the project site was located along the north shore of the Western Branch of the Elizabeth River approximately one mile upstream of the Route 17, Churchland Bridge.

Ms. West stated that there were a variety of other piers and boathouses along this section of the river. The proposed boathouse was designed to serve as a protected mooring for the applicant's 47-foot motor yacht. The structure would be located on the right side of an existing 180-foot long private non-commercial pier. The water depth in the area of the proposed boathouse was approximately 4.5 feet at mean low water.

The project is protested by a number of residents, among them Mr. and Mrs. Alf Mapp, the upstream adjacent property owners. The Mapp's are concerned that the project will obstruct their view of the river. In 1999, Mr. Dobson proposed to construct a 64-foot long by 22-foot wide enclosed boathouse. Mr. and Mrs. Mapp expressed their concerns at that time. After learning of his neighbor's concerns, Mr. Dobson submitted revised drawings depicting a 56-foot long boathouse with partial siding and a canopy on the upstream side of the proposed structure. The Mapp's reviewed those revised drawings and were still concerned that the project would obstruct their river view.

Mr. Dobson's request for a 56-foot long by 22-foot wide boathouse with partial sides was considered by the Commission at its hearing on February 22, 2000. Mr. Alf Mapp and Mr.

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Thomas Wright both spoke in opposition to the project then and presented a petition of opposition signed by 35 freeholders of property in the City of Portsmouth. The Commission voted to deny authorization for the 1,232 square foot boathouse, finding that the public and private detriments outweighed the private benefits. Mr. Dobson appealed the Commission's decision to the Portsmouth Circuit Court. The case was dismissed on June 22, 2000, in response to a motion filed by Assistant Attorney General Carl Josephson.

On November 17, 2000, staff received a new application from Mr. Dobson requesting authorization for a 58-foot long by 45-foot wide boathouse. Although significantly different from that which the Commission had previously denied, staff declined to process the application in light of the fact that the proposed structure was even larger than the structure that was previously denied.

In February, 2001, staff received yet another application for a boathouse at the Dobson residence. Again, the structure was larger than the Commission had previously denied. Staff explained to Mr. Dobson and his agent, Mr. Dan Griffin, that Commission staff would only consider a structure smaller than that which had been previously denied. Mr. Dobson then submitted revised drawings in July, 2001, requesting authorization for a 50-foot long by 22-foot wide private, open-sided, non-commercial boathouse with a six-foot overhang over his existing pier. Mr. Dobson stated that the purpose of the overhang was to provide shade from the sun for the boat. Ms. West then presented slides to illustrate the location of the proposed boathouse on the river.

In accordance with § 28.2-1205(A) of the Code of Virginia, Ms. West stated that the Commission, "*In addition to other factors, shall also consider the public and private benefits of the proposed project and its effect on... other reasonable and permissible uses of state waters and state-owned bottomlands..., marine and fisheries resources..., adjacent or nearby properties...*" The boathouse appears to be appropriately sized to protect Mr. Dobson's 47-foot yacht. In addition, he eliminated the partial sides and replaced those with an overhang that would provide shade. In staff's opinion, the overhang and the low-profile roof should not diminish the quality of the viewshed along the river given the current impact of Mr. Dobson's yacht and the presence of similar structures along this section of shoreline. Given that the impacts to the marine environment appeared to be minimal and Mr. Dobson had attempted to both minimize encroachment over state-owned bottomland and mitigate his neighbor's concerns regarding visual impacts of the project, staff recommended approval of the project.

Commissioner Pruitt noted that there did not appear to be any boathouses quite as large as Mr. Dobson's proposed boathouse along the river at this time. Ms. West stated that while

her aerial photos did not include such structures, there were at least three large structures along the Western Branch. Additionally, she reminded the Commission that they had just recently approved a 900-square foot elevated deck off the Hodges Ferry Bridge.

Mr. Dan Griffin, agent, architect and contractor for Mr. Dobson was sworn in by the Commissioner. He then provided a brief history of his professional involvement in the development of the land along this portion of the Western Branch Elizabeth River, as well as his personal and professional relationship with Mr. Dobson. Mr. Griffin noted that he also lives on the river. He presented photos of Mr. Dobson's pier and other structures located along the river, as well as on Carter's Creek in Lancaster County. He noted that the foliage on the Mapp property currently prohibits a clear view of Mr. Dobson's boat. Associate Member White asked the distance between where Mr. Dobson's boat was moored and Mr. Mapp's residence. Mr. Griffin explained that the Dobson and Mapp properties are located side-by-side.

Mr. Griffin then stated that the sketches included with the application were not representative of the actual structural integrity. The structure would be built to withstand 120 mph winds which was in excess of Code requirements. If approved, Mr. Griffin's firm will develop the final plans, obtain the local building permits and perform the actual construction.

Mr. Griffin added that he was a Certified Residential Appraiser in Virginia. He disputed the concern that the structure would be detrimental to property values in the area. He stated that Mr. Dobson's boathouse would cost in excess of \$30,000.00 and would be assessed by the City of Portsmouth as an improvement to the property. Mr. Griffin stressed that Mr. Dobson primarily wishes to protect his investment and is not seeking to repress anything already along the river.

Associate Member Birkett inquired how many piers were in the project vicinity. Mr. Griffin stated that his company has constructed at least eight piers over the last ten years, and he estimated that there were in excess of 60 piers between the West Norfolk Bridge and Hodges Ferry Bridge. Associate Member Birkett then commented on the possibility of a decrease in property value if all property owners were to erect boathouses on their piers along the river. Mr. Griffin acknowledged that there would be a visual impact, but stated that it was not likely that all landowners would do so.

Associate Member Hull then questioned Mr. Griffin as to whether his principal activity was appraising or building. Mr. Griffin stated that his principal activities were both. He was a Registered Architect, a Class A Architect and a Certified Real Estate Appraiser in

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Virginia, and he actively pursued all three areas as his profession. Associate Member Hull stated that he felt it was a conflict for Mr. Griffin to advise the Commission on the value of the land should the project be approved while, at the same time, it would be to his enhancement to get the job as the contractor.

Mr. Alf Johnson Mapp, Jr., adjacent property owner, was sworn in by the Commissioner. Mr. Mapp began his remarks by stating that since Mr. Griffin had raised the issue of boathouses in Lancaster County, he wanted to rebut that by stating that a precedent had been set in Lancaster County that could be applied to this case. He stated that due to the large number of boathouses constructed along Carter's Creek, a negative impact on the environment resulted and the County no longer permitted the erection of boathouses in the County.

Mr. Mapp then noted that he brought with him a petition containing the signatures of 77 landowners objecting to the proposed project. He presented a letter from Mr. and Mrs. Albert J. Taylor who were unable to attend the meeting, but who also objected to the project. Mr. Mapp stressed to the Commission the concern the petitioners had for the character of life and the environment along waterways in Virginia and other states that was altered once such boathouses were constructed.

Mr. Mapp commented that while Mr. Dobson's boat and dock could be seen clearly from his property, the primary issue was the environment and the impact that the construction of the proposed boathouse would have. The concern of the 77 petitioners was that Mr. Dobson's plans would change the character of the river and that could not be restored. Mr. Mapp implored the Commission to consider the concerns of those who signed the petition rather than that of one property owner. He then submitted the petition to the Commission

Mr. Thomas Judson Wright, III, property owner, was sworn in by the Commissioner. Mr. Wright stated that he was a Registered and Licensed Commercial Waterman, #1925. He stated that his concerns were the environment and the structure's impact on property values. Mr. Wright stressed that if the Commission approved this project, then the door was open to others who wanted to build a boathouse of this size. He presented photos depicting several boathouses along the river, noting that there are more property owners not wishing to build boathouses than those who do. Additionally, Mr. Wright reiterated the fact that Mr. Dobson had submitted a previous request for a similar project and that was denied by the Commission.

Mr. John Pappas, property owner, was sworn in by the Commissioner. Mr. Pappas stated that he was an attorney, but that he was appearing before the Commission as a property

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owner. Mr. Pappas urged the Commission to consider that it had decided on this matter once before, and that the public had an expectation of consistency from the Commission. The Commission had set a precedent in this matter and unless there was a substantive change, there was no need to reverse the earlier decision. In Mr. Pappas' opinion, Mr. Dobson's current application did not represent such a change. Mr. Pappas noted that there was no public benefit for such a project and the private benefit would be to afford shade for one property owner's boat while creating turmoil for 77 others. He also stated his objection to staff's statement that there were a number of similar structures along the river. Most of the existing structures were not of the size being considered by the Commission. Mr. Pappas stated that this was a land use issue and should fall under the Virginia statute governing such usage.

Associate Member Hull then asked each of the property owners how long they had owned their properties: Mr. Griffin – 22 years; Mr. Pappas – 15 years; Mr. Wright – 14 years; Mr. Mapp – 25 years. Commissioner Pruitt swore in Mr. Stanley James Dobson, the applicant, who stated he has owned his property for 11 years.

Mr. Dobson responded to those who had spoken in opposition to his project. He stated that he has tried to be very fair and follow the law. It was only when he appealed the Commission's earlier decision to deny his first application that he learned of the petition. He noted his concern over how the petition signatures were obtained with regard to the application process. Additionally, Mr. Dobson stated that he was a conservationist and a protector of the environment.

Upon further inquiry by Commissioner Pruitt as to Mr. Dobson's appeal of the first application, Mr. Dobson's attorney, Mr. Robert L. Sondej, stated that Mr. Dobson had hired him to file the *Notice of Appeal*. Mr. Sondej was notified by the Attorney General's Office that a procedure was not followed properly and that a *Subpoena in Chancery* would need to be served on the Commissioner for Marine Resources. At that time they decided to withdraw the appeal. The matter has never been heard on its merits by the Circuit Court.

Mr. Dobson reiterated that he had tried to be fair and honest while protecting his property and boat. Associate Member Hull asked Mr. Dobson how close he was to the nearest marina from his home where his boat could be accommodated. Mr. Dobson stated that a house close to a marina is difficult to find. To move his boat to a marina would defeat the purpose of owning the waterfront property that he has.

As a matter of information for the Commission, Associate Member Hull stated that with respect to the information provided by Mr. Griffin, an appraiser is required to have total

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detachment from anything they appraise. In that regard, Associate Member Hull stated that Mr. Griffin's appraisal of the real estate property was vitiated by the fact that he had an interest in the project being accepted and, in his opinion, the Commission could not accept the appraisal portion of his testimony. Associate Member Hull also stated that he was most familiar with Carter's Creek and that he would not want to see the all of the waters of the Commonwealth as crowded with such boathouses. He noted that Lancaster County had outlawed boathouses with their prohibition being upheld in the courts. Associate Member Hull stated that he could not see a public benefit to the construction of the boathouse while there would be a significant private detriment to the neighboring property owners.

Associate Member Gordy then asked how many of the petitioners owned boats such as the one Mr. Dobson owned. Mr. Wright replied that there were no boathouses of this type within a mile either way of the subject property. Mr. Griffin added that between West Norfolk Bridge and the Hodges Ferry Bridge there may be a little less than a dozen boats of this size.

Associate Member McLeskey stated that he, too, owned a boat that did not lend itself to a marina, however, he had concerns as to how the river would look if everyone had a similar boathouse. Without wishing to set a precedent against boathouses, **Associate Member McLeskey moved to deny the application; Associate Member Hull seconded the motion.** Associate Member Hull then added that his second was based on the Commission not establishing a precedent, and on the basis that there was no public benefit while there was significant detriment to the adjacent property owners. Commissioner Pruitt called for further discussion of the motion. With no response from the Commission, **the motion was voted upon and carried unanimously, 6-0.**

Associate Member McLeskey moved for reconsideration of **Item 2A. CITY OF VIRGINIA BEACH, #96-0083** (also see Page 11801.) **The motion was seconded by Associate Member Birkett and carried, 6-0. Associate Member McLeskey then moved to include in the approval of the application that any sand that is removed from the channel by the City of Virginia Beach is to be placed on the beach at Ocean Park. Seconded by Associate Member Birkett, the motion carried unanimously, 6-0.**

7. PUBLIC COMMENTS

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Mr. George Washington addressed the Commission with regard to the Virginia Watermen's Association request to open additional oyster areas on the Rappahannock River, above the Robert O. Norris Bridge. The Association would like to work on: Long Rock, Corrotoman River Area, Temple Bay, Towles Point, Hogge House and Tin Cup. In talking with Mr. Travelstead, it was determined that it may be best to open the rocks for a trial period of two weeks to see if there are any oysters. Mr. Washington noted that if there are oysters on the rocks, they need to be turned over in order to continue oyster cultivation. If after two weeks there are oysters to gather, the watermen would like to continue; otherwise, the rocks would be closed. Mr. Washington asked that the rocks be opened as soon as the Commission would find it practical to do so.

Dr. Wesson noted that with the exception of Long Rock, the requested areas are included in the Hogge House Oyster Heritage Program and are in various states of restoration at this time. The areas have been open since October 1, 2001 for hand tongs, and it would not be advisable to open them for hand scraping. Area surveys indicate that Tin Cup has an insignificant amount of oysters, Hogge House has no oysters; both rocks are scheduled for restoration activities in 2002. Dr. Wesson stated that \$3M of partners' and VMRC monies have been spent on restoration from the mouth of the river to Towles Point. Approximately \$1.5M remain to continue restoration from Towles Point up to Waterview Ridge. Both the partners and VMRC are counting on the oysters that now exist in these areas to populate the areas that have been restored. Dr. Wesson also noted that oyster shell planting did not occur until Maryland completed its restoration, resulting in late planting for Virginia. The areas where money has been invested will need at least another year with the oyster shell plantings in place and as many large oysters in the area as possible to produce spawn.

Associate Member Birkett asked if the staff has performed a survey on Long Rock. Dr. Wesson stated that a survey was performed and the area was found to have a few oysters. The area has been open for hand tonging since October 1, 2001. The rock is very small meaning that hand scraping would be difficult. Associate Member Williams asked if any shell planting has occurred on Hogge House. Dr. Wesson stated it is being readied for this year. Some watermen may be used to collect oysters in the area.

Mr. Douglas Jenkins, Twin River Watermen's Association, stated that a number of the Potomac River watermen are currently dredging on the Rappahannock River. Mr. Jenkins stated that Towles Point and surrounding areas is the hand scraping capital of the world. He added that the watermen having to remove toad eggs before taking the oysters, cleaning the river bottom, cultivating it and working the shells up at no cost to the State is a plus. Mr. Jenkins stressed to the Commission the need to cultivate oyster areas in order to avoid diseased and dying oysters in coming seasons.

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Mr. Charles Amory requested from the Commission a relaxation and extension of the Fluke Season (Summer Flounder) that was scheduled to open in January 2002. He distributed a written request to the Commission, a copy of which is attached to the permanent record of this meeting. Mr. Amory stated that options were sent to all dealers resulting in the consensus that a postponement until February 2002 would be a step in the right direction. He added that a 10% bi-catch on January 7, 2002, the proposed opening day, and a postponement of the main opening until February 4, 2002, would satisfy the majority of packers who agree with the request.

Mr. Gillingham distributed and reviewed the proposed "*Emergency Regulation 4 VAC 20-620-10 Et Seq.*," a copy of which is attached to the permanent record of this meeting. Mr. Gillingham noted that the effective date for the emergency regulation would be January 1, 2002. He noted that North Carolina and New Jersey open in January with New Jersey falling away by the end of January, leaving Virginia to open in February. Commissioner Pruitt asked if the emergency regulation would have an affect on the Atlantic States Marine Fisheries Commission (ASMFC) or the Mid-Atlantic Council. Mr. Gillingham stated that this is not a conservation measure, but rather an issue as to when and how the fish are caught.

Mr. Tom Powers representing the Coastal Conservation Association (CCA) of Virginia spoke before the Commission with regard to the upcoming public hearing on striped bass. Mr. Powers stated that in 2001 a major problem for the striped bass fishery was the excessive harvest of returning striped bass in the southern coastal fishery. Per VMRC staff reports, 555,000 pounds of fish were commercially harvested during the months of February and March. Additionally, the Association is concerned that the measures put forth for public hearing may require ASMFC approval or additional consideration by the Commission. Mr. Powers stated that the CCA Fisheries Management Committee is requesting that the Commission include the following two measures for public hearing options for the commercial striped bass fishery, effective February 1, 2002 and until such time as new commercial regulations are approved by the Commission and, if necessary, ASMFC:

1. Close the commercial striped bass fishery from Cape Charles Light to the North Carolina line in the coastal waters of Virginia.
2. Limit the gill net size to seven inches in the lower Chesapeake Bay.

Mr. Powers added that the Association feels these measures should be enacted in order to

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avoid the excessive harvest of large striped bass that has occurred in the last several years during the months of February and March. The Association is not requesting an emergency regulation at this time, but rather that these options be included in the public hearing announcement slated for January 2002. Commissioner Pruitt noted that Mr. Powers' remarks, a copy of which is attached to the permanent record of this meeting, would be considered under **Item 11. REPORT OF THE VMRC STRIPED BASS TASK FORCE** of today's meeting Agenda.

Mr. Jim Ruhle, addressed the Commission as a North Carolina commercial fisherman and as the North Carolina commercial representative for the Mid-Atlantic Fisheries Management Council. Mr. Ruhle stated that he would like to support Mr. Charles Amory's proposal with regard to summer flounder. He also commended the Commission on adopting North Carolina's trip limit method as it is fair and equitable for all fishermen. Additionally, he noted the importance of the Commission's applications of the 10% bi-catch. Mr. Ruhle noted that the 10% tolerance in trip limits for summer flounder was abused and has since been corrected. He stated, however, that most fishing boats do not have scales asked that the Commission consider an administrative tolerance to assist fishermen in reaching the 7,500-pound limit without being subject to penalties for unintentionally exceeding the limit.

Mr. Ruhle stated that there is a need for management of rebuilt stocks of summer flounder. He stated that in conversation with Mr. Preston Pate of North Carolina, he has learned that if the Commission delays the season, North Carolina will open its season; if the Commission does not delay, North Carolina may not open its season. Mr. Ruhle stressed that by keeping the 10% limit in effect, there will be a steady supply of fresh fish to aid in removing the import market and putting the local fishermen back into the market as it should be.

Mr. Ruhle also stated that the inequities in recreational fishing along the coast, and in Virginia for now, were not considered in the management measures. The shore-based fisherman who defines off-shore fishing by the distance he can cast a 2-3 ounce sinker is eliminated from the Summer Flounder fishery with the 15"-17" fish catch. Mr. Ruhle suggested that the Commission consider a lower bag limit.

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Mr. Roger Parks of Lancaster County questioned Dr. Wesson as to which rocks in the Rappahannock River were checked for oysters; Dr. Wesson stated that all rocks were checked; a few oysters were found. Mr. Parks stated that watermen have been hand scraping Monaskon Bluff for the past three weeks and have caught their limits nearly every day. Mr. Parks stressed to the Commission that the watermen will not make a living if the rocks are not opened as Mr. Washington has previously requested.

8. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-720-10 et seq. to extend the oyster harvest season within the Rappahannock River Hand Scrape Area.

Dr. Wesson stated that most watermen were able to catch their limit in this area during the fall. This is an area that will be restored this coming year and there is a need for some large oysters to spawn in order to have spat on the shells in which the \$1.5M is invested. Watermen will be used to clean some of these oyster rocks in this area in the spring. Dr. Wesson stated that the size of the oysters has declined and it would seem beneficial to stop the season at this three-month period of the season.

Associate Member Williams inquired as to how many watermen hand scraped in October. Dr. Wesson stated that there were a few in October, but more in November as the market improved. Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. Mr. Washington noted that the increase of 10 fold in 10 years would not benefit the watermen as would be needed in the near future. Watermen must have a way to support their families, make their mortgages and pay their taxes. Mr. Ruhle reiterated his support for this proposed extension.

Commissioner Pruitt called for further comments from those in attendance. Hearing none, the matter was placed before the Commission for action.

Associate Member Williams stated that he purchased a Hand Scraping License in order to check the oysters in the Rappahannock River. He checked Monaskon Bluff and noted many blisters that would smother the oysters. He tasted the oysters and found them to be very salty, noting that if they are not picked, "Mother Nature" will take them. **Associate Member Williams moved to approve the amendments to Regulation 4 VAC 20-720-10 et seq. to extend the oyster harvest season within the Rappahannock River Hand Scrape Area. Associate Member McLeskey seconded the motion.** Commissioner Pruitt noted that it is incumbent upon the staff to do what they must do to protect and conserve the oyster areas. At the same time, the Virginia Code does require the Commission to take

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into consideration the socio-economic conditions when regulating the season. Associate Member Hull stated that the potential risk is outweighed by both economic and environmental conditions. **When put to a vote, the motion carried unanimously, 6-0.**

Commissioner Pruitt placed before the Commission Mr. George Washington's request for a trial period of two weeks for the six rocks in the Rappahannock River. Associate Member Birkett noted that this same measure was taken several years ago on Bowlers Rock with regard to hand tonging; the watermen were self-controlled and left the area when they found they could not make a living. **Associate Member Williams moved to open Long Rock, Corrotoman River Area, Temple Bay, Towles Point, Hogge House and Tin Cup for a two-week hand scraping period with the provision that if the rocks are not found to be economically beneficial to the watermen, the watermen will commence working the rocks. The motion was seconded by Associate Member Birkett. The motion carried unanimously, 6-0.** Commissioner Pruitt appointed Colonel Bowman and Mr. Travelstead as contacts for Mr. Washington in this matter.

Commissioner Pruitt placed before the Commission Mr. Charles Amory's request for a postponement of the opening of Fluke Season until late January or February, 2002. **Associate Member Hull noted that Mr. Amory's proposal is a very good conservation measure and he moved to approve the request and the resulting amendments to "Emergency Regulation 4 VAC 20-620-10 et seq." as presented; Associate Member White seconded the motion. When put to a vote, the motion carried unanimously, 6-0.**

- 9. DISCUSSION:** 2002 Blue Crab Regulations; Recommendation of the Bi-State Blue Crab Advisory Committee and VMRC Blue Crab Advisory Committee. Request for Public Hearing.

Mr. Travelstead reviewed harvest statistics of hard and soft crabs between the years of 1994 and 2001, noting that 2001 will probably be the worst of the last seven years. He stated that the fishery continues to change with the soft crab fishery growing and the hard crab fishery declining. The harvesting of blue crabs has declined at nearly the same rate.

Mr. Travelstead apprised the Commission that the VMRC Blue Crab Advisory Committee met on December 17, 2001. He distributed and reviewed statistical and committee action information with regard to the Blue Crab Harvest Reduction Measures, a copy of which is attached to the permanent record of this meeting. Mr. Travelstead asked that the

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Commission hold a Public Hearing in January with regard to the measures proposed by staff and those endorsed by the Committee. He stressed the need to decide and publicize changes to the regulations early in the year in order for those considering licenses to be able to evaluate the affects of the changes. Measures endorsed by the Committee which represent substantial changes to the regulations include:

1. Establish an 8-hour workday.
2. Establish Tuesday closures.
3. Establish a 3" minimum size limit on peeler crabs.
4. Reduce recreational limit to one bushel of hard crabs and two dozen peelers per boat.

Associate Member Gordy noted that the members of the VMRC Blue Crab Advisory Committee recognized the need to take protective measures. **Associate Member Hull moved to advertise the 14 measures presented by staff for a Public Hearing in January, 2002 on the Blue Crab Harvest. The motion was seconded by Associate Member White and carried unanimously, 6-0.**

Mr. Jan Marshall, member of the Tangier Watermen's Association, proposed that the Commission extend the dredging around Tangier and Pocomoke Sound through the month of January. He noted that the watermen are catching their limit early in the day and it appears that the oysters continue to be plentiful in the area. Commissioner Pruitt noted that watermen lose some of their work days due to inclement weather the requested extension through the month of January would help make up the loss of time. **Associate Member Gordy moved to extend the oyster season around the Tangier and Pocomoke Sound through the month of January. Associate Member White seconded the motion; the motion carried unanimously, 6-0.**

10. RECENT FEDERAL AND INTERSTATE MANAGEMENT REQUIREMENTS

Mr. Travelstead stated that this item contains a compilation of issues that the Commission is being asked to consider by the last Mid-Atlantic Fisheries Management Council/ASMFC.

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Summer Flounder (Recreational) - Mr. Travelstead stated that the harvests nearly doubled the catch limits in 2001. Statistics and proposed measures to protect the flounder harvests were distributed and reviewed by Mr. Travelstead, a copy of which is attached to the permanent record of this meeting. Staff recommends that the Commission advertise two Public Hearings on the proposed Recreational Summer Flounder Measures, one on the Eastern Shore and one at the Agency; the hearing before the full Commission to be held in February. Commissioner Pruitt requested that a member of the Commission serve as Chair for the Public Hearing held on the Eastern Shore.

Black Sea Bass (Recreational) – Mr. Travelstead presented and distributed a summary of Recreational Management Measures, by state, for Black sea bass (copy attached to the permanent record of this meeting.) He noted that Virginia elected not to close the season at the same time that most of the states enacted which put Virginia out of compliance with the Fishery Management Plan. The ASMFC will correspond with the Agency with regard to this non-compliance.

Mr. Travelstead reported that a 5% reduction in harvest will be needed for 2002 while conservation equivalencies of Black sea bass will not be allowed and all states must adopt the same recreational measures as follows:

1. 11 ½” minimum size limit.
2. 25 fish possession limit.
3. Season open all year.

Staff recommends that the Commission advertise the measures for public comment in January and take action on the matter in February, 2002.

Black Sea Bass (Commercial) – Mr. Travelstead stated that the ASMFC passed an addendum to the Management Plan lowering the commercial trip limit of Black sea bass from 9,000 pounds to 7,000 pounds, allowing for the fishery to proceed longer into the first quarter, as well as allow for more people to participate in the fishery. This measure is a compliance requirement to be in effect by January 1, 2002. Mr. Travelstead distributed edited copies of *Regulation 4 VAC 20-950-10 et seq.* reflecting proposed changes for the adoption of an emergency regulation, a copy of which is attached to the permanent record of this meeting.

Commissioner Pruitt called for comments on this matter, pro or con, from the members of the audience. Mr. Ruhle asked for clarification of the trip limit proposed. Mr. Travelstead stated that the trip limit will stay at 7,000 pounds until the first quarter quota is caught,

then it will stop.

Associate Member Hull moved for the adoption of *Emergency Regulation 4 VAC 20-950-45 et seq.* as it pertains to the commercial trip limit of Black Sea Bass. Associate Member White seconded the motion; motion carried unanimously, 6-0.

Associate Member White moved to hold Public Hearings as follows: two hearings on the Recreational Summer Flounder Measures, one to be held on the Eastern Shore and one before the full Commission in February; one hearing on the Recreational Black Sea Bass Measures before the full Commission in February. Associate Member Williams seconded the motion; motion carried unanimously, 6-0.

11. REPORT OF THE VMRC STRIPED BASS TASK FORCE

Associate Member Hull stated that all members of the Striped Bass Task Force were present for the December 17, 2001 meeting and actively participated in the meeting proceedings.

Mr. Travelstead stated that the primary issue before the Task Force was to develop a solution for the problem of high grading occurring within the fishery, as well as the large harvest of older Striped bass found in the ocean and the quota overages occurring over the past two years. Mr. Travelstead estimated that the catch for 2001 will be approximately 200,000 pounds over the quota. Although this overage will be noticed by the ASMFC, there will be no penalties due to the fact that Maryland and PRFC are under their quotas.

Mr. Travelstead distributed and reviewed commercial Striped bass harvests information, 1996-2001, a copy of which is attached to the permanent record of this meeting. He noted that the two following motions were brought forward during the meeting of the Task Force:

1. Establish a 98,000 pound quota for the ocean and close ocean fishery when the quota is harvested. Vote 2 to 4, motion failed.
2. Establish a multiple tag program requiring two tags for any striped bass greater than or equal to 34" but less than 40", and three tags for any striped bass greater than or equal to 40" in total length. Vote 5 to 1, motion passed.

Mr. Travelstead recommended that the Commission advertise both measures for Public Hearing in January, as well as the recommendations presented by Mr. Powers of the CCA. He will then present the Commission's actions to the ASFMC as pro-active measures rather than have the ASFMC determine how Virginia should manage this matter.

Associate Member Hull moved to advertise for a January Public Hearing on the recommendations of the Striped Bass Task Force. The motion was seconded by Associate Member White. Associate Member Williams indicated that he would vote against the motion due to the fact that the species is a recovered species. Mr. LeRoy Carson indicated his concern for the number of meetings held by the Commission before taking action on an issue. He also stated that if the problems are coming from the ocean, then perhaps the fix should be to close the over-fishing in the ocean. Commissioner Pruitt explained that the process currently in place, with its number of committee and board meetings, is more beneficial to the large number of people impacted by the issues at hand rather than the issues being addressed by a small number of people as was done in past years. He also addressed the process of opening and closing the fishing seasons with regard to socio-economic and conservation issues the Commission is obligated to consider. **When put to a vote, the motion carried, 5-1.**

There being no further business before the Commission, the meeting was adjourned at 2:48 p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary