

MINUTES

COMMISSION MEETING

FEBRUARY 25, 2003
NEWPORT NEWS, VIRGINIA

The February 25, 2003 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Russell Garrison)	Members of the Commission
F. Wayne McLeskey)	
K. Wayne Williams)	
Cynthia M. Jones)	
S. Lake Cowart, Jr.)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jane McCroskey	Deputy Chief, Admin-Finance
Jack Travelstead	Chief, Fisheries Management
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Dr. Jim Wesson	Head, Conservation-Replenishment
Ellen Cosby	Fisheries Management Specialist
Roy Insley	Head-Plans and Statistics
Cory Routh	Saltwater Recreational Fishery Development Coordinator
Col. Steve Bowman	Chief, Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
Capt. Warner Rhodes	Supervisor, Middle Area
Capt. Ray Jewell	Supervisor, Northern Area
1 st Sgt. Bruce Ballard	Assist. Supervisor, Eastern Shore Area
Capt. Kenny Oliver	Supervisor, Southern Area
MPO Richard Haynie	Marine Police Office

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MPO Bryan Tittermary

Marine Police Officer

Tony Watkinson
Hank Badger
Kevin Curling
Mark Eversole
Jeff Madden
Chip Neikirk
Randy Owen
Jay Woodward
Benny Stagg

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

Virginia Institute of Marine Science (VIMS):

Thomas Barnard, Jr.
Lyle Varnell
Dr. Roger Mann
Dr. Stan Allen
Mark Luckenbach

Virginia Seafood Council

Mrs. Frances W. Porter

Department of Environmental Quality

Laura McKay
Shep Moon

others present included:

George Janek
Susan Gaston
Melanie Davenport
Russell Gaskins
Mark Camara
Scott Harper
Jeff Deem
Douglas F. Jenkins, Sr.
Linda Crewe
Connie Wright
Robert Belvins
Keith Lockwood
Buddy Watson
Karch S. Havens
William R. Evans

Michael Ewing
Lisa Monroe
Frank Dawson
Ro Parks
Henry Peddle, Jr.
Ri Ag
Jim Ruhle
Steve Wray
J. R. Giers
Amy Mills
Dennis Gordon
Mike Anderson
Jim Snyder
Marsh Zellhoefer
Dana Stillman

Pete Peterson
Bob Jensen
Mike Fritz
Nancy Targett
Allen Underwood
R. J. Cawly
Bill Walsh
Kevin Farley
William T. Belvin
Terry McKinney
Socom Zebal
Dan Bacot, jr.
Alor Grantham-Traywick
Robert Davis
Scott Henry

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Edward Alleyne	Bill Judy	Robert Johnson
Mike Hawdforth	Ricky Scherene	Jim Frese
Julian Cox	Tom Powers	Lee R. Smith
William R. Weber	Ronald Sopko	Richard Harding
Thomas Kellum	J. C. West	John Ridley
Kelly Place	Andy Drewer	Robert T. Drew

and others.

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Commissioner Pruitt called the meeting to order at 9:30 a.m. Associate Member Gordy was absent from the meeting. Associate Member Cowart arrived late to the meeting.

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

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The minutes of the January 28, 2003 Commission meeting were approved as circulated. **Associate Member Williams made the motion, which was seconded by Associate Member Ballard. Motion carried, 6-0 .**

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Tony Watkinson, Acting Chief-Habitat Management, requested two additional items be added to the agenda: Item 2M, Lynnhaven Seafood and Marina and that after Item 7 he explained that a discussion would be necessary to decide if the permit application for the King Williams reservoir will be heard here at the VMRC main office, in Newport News or in King William County.

Associate Member Birkett moved to approve the agenda as amended. Associate Member Williams seconded the motion. Motion carried, 6-0.

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

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Tony Watkinson, Acting Chief-Habitat Management, explained the Page 2 projects, which are \$50,000 or more in total project cost and for which staff recommended approval. Mr. Watkinson explained that on item 2E, U. S. Army Corps of Engineers (ACOE), staff requested that a stipulation which had been suggested by the Virginia Institute of Marine Science that the project be monitored be added, as a condition of the permit and the ACOE had agreed to this addition. He further explained that for item 2J, Norfolk Shipbuilding, the staff recommended that approval be made pending the expiration of the public comment period and with no adverse comments being received. His comments are a part of the verbatim record.

Associate Member Cowart arrived to the meeting at 9:41 a.m.

There were no public comments. After further questions of staff and discussion, Commissioner Pruitt asked for the motion. **Associate Member Garrison moved to approve Page 2 projects, A through M, as presented by staff and with the added conditions to items 2E and 2J requested by staff. The motion was seconded by Associate Member Birkett and carried, 7-0.**

2A. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-2103, requests authorization to modify an existing permit to include the construction of a 792-foot long by 68-foot wide temporary causeway for access during construction of the new West Norfolk bridge in association with the Pinner’s Point Interchange project along the Western Branch of the Elizabeth River in Portsmouth.

Fees not applicable.

2B. VIRGINIA GAS PIPELINE CO., INC., #02-2430, requests authorization to cross McHenry Creek near Chilhowie in Smyth County with a buried, 24-inch diameter natural gas pipeline in association with the expansion of an existing gas pipeline between Saltville and Chilhowie. Recommend all work be done in the dry, with strict adherence to erosion and sediment control measures and a royalty in the amount of \$5.00 be assessed for the encroachment under 5 linear feet of State-owned subaqueous land at a rate of \$1.00 per linear foot.

Encroachment Royalty fee (5 linear feet @1.00/linear foot).....	\$5.00
Permit Fee.....	\$100.00
Total fees.....	\$105.00

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2C. RCV SEAFOOD CORPORATION, #02-2046, requests authorization to improve and construct mooring facilities and shoreline structures for an 18-unit waterfront, residential, condominium development to replace a commercial seafood processing plant located at the confluence of House Cove, Mulberry Creek and the Rappahannock River in Morattico, Lancaster County. The proposal includes maintenance dredging of 1,472 cubic yards of material to regain depths of minus four (-4) feet at mean low water, a 30-foot long by 14-foot wide concrete boat ramp, two (2) new five-foot (5) wide piers (35 feet and 28 feet in length), a 40-foot long by 10-foot wide pier extension, three (3) boat lifts and finger pier replacement to create eight (8) additional slips (18 slips total), 305 linear feet of new rip-rap, 290 linear feet of rip-rap repair, and 100 linear feet of replacement bulkhead. Recommend approval with our dredging conditions to include a pre-dredge conference and post-dredge survey and a dredging time-of-year restriction between April 1 and October 30 to avoid impacts to a nearby crab shedding facility. Also recommend a royalty in the amount of \$512.30 for the encroachment over 665 square feet of State-owned subaqueous bottom at a rate of \$0.50 per square foot (piers), the filling of 142 square feet at \$1.00 per square foot (bulkhead) and the filling of 126 square feet at \$0.30 per square foot (ramp).

Royalty Fee (encroachment on 665 sq. ft. @ \$0.50/sq. foot).....	\$332.50
Royalty Fee (filling 142 sq. ft. @\$1.00/sq. foot).....	\$142.00
Royalty Fee (filling 126 sq. ft. @\$0.30/sq. foot).....	\$37.80
Permit Fee.....	\$100.00
Total Fees.....	\$612.30

2D. U.S. ARMY CORPS OF ENGINEERS, #98-0750, requests authorization to re-activate and extend their permit to place 40,000 cubic yards of sandy dredged material from the Whitings Creek Federal Navigation Project, as beach nourishment, along 3000 linear feet of shoreline, encroaching on 110,000 square feet of State-owned submerged land, immediately east of the Whitings Creek entrance channel in Middlesex County.

Fees not applicable.

2E. U.S. ARMY CORPS OF ENGINEERS, #02-0552, requests authorization to dispose of up to 600,000 cubic yards of material maintenance dredged from the York River Entrance Channel over a five year period, at the Wolf Trap (Alternate) Overboard Placement Area in the Chesapeake Bay, east of Mathews County. Staff recommends approval with a time of year restriction limiting disposal operations to the months of February - May and September - November.

Permit Fee.....	\$100.00
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2F. HENRICO COUNTY DEPARTMENT OF PUBLIC UTILITIES, #02-2308, requests authorization to install a 24-inch water main, by directional drill method, beneath Deep Run, a tributary to the James River in Henrico County.

Permit Fee.....\$100.00

2G. LAMBERTS POINT DOCKS, INC., VMRC #01-2199-10, requests a modification to their previously authorized dredge permit to allow for the additional dredging of 12,475 cubic yards of State-owned subaqueous bottom with maximum projects depths of minus thirty-three feet (-33') at mean low water between piers "L" and "S" adjacent to their property situated along the Elizabeth River in Norfolk.

Fees not applicable.

2H. RICHMOND DEPARTMENT OF PUBLIC UTILITIES, #02-1288, requests authorization to install two (2) miles of 36-inch water transmission main to include an 857-foot crossing of the James River in the City of Richmond and Henrico County. The applicant proposes to install the water transmission main by trench method to include rock blasting within cofferdams, with river access provided by the construction of temporary stone causeways with 60-inch bottomless culvert pipes at 50 feet on center intervals encroaching up to 55% of the way across the James River. Applicant is to remove the temporary causeways and restore the river to pre-construction conditions upon completion of the installation.

Permit Fee..... \$100.00

2I. METRO MACHINE CORPORATION, #02-2433, requests authorization to mechanically dredge approximately 38,500 cubic yards of State-owned subaqueous bottom material to provide maximum project depths of -36 feet at slip #2 and -30 feet at slip #3 with a one (1) foot over-dredge tolerance at their facility situated along the Eastern Branch of the Elizabeth River in the City of Norfolk. Recommend a dredging royalty in the amount of \$13,455.00 for the new dredging of 29,900 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 29,900 cu. yds. @ \$0.45/cu. yd.).....\$13,455.00
Permit Fee.....\$100.00
Total Fees.....\$13,555.00

2J. NORFOLK SHIPBUILDING AND DRYDOCK CORPORATION, #03-0256, requests authorization to enlarge two, existing concrete mooring dolphins measuring 30' by 18.8' to 44' by 28.8' to accommodate a floating dry-dock at their facility situated along the Southern Branch of the Elizabeth River in Norfolk. Recommend approval pending expiration of the public comment period and a royalty of \$1,406.00 for the encroachment over 1,406 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

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Royalty Fee (encroachment on 1,406 sq. ft. @ \$1.00/sq. foot).....	\$1,406.00
Permit Fee.....	\$100.00
Total Fees.....	\$1,506.00

2K. JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC, #03-0012, request authorization to construct a temporary work bridge spanning 606 linear feet of State-owned subaqueous lands (19,290 square feet) and to construct a permanent highway bridge spanning 510 linear feet of State-owned subaqueous lands (22,935 square feet), both structures spanning College Creek, as part of the Route 199 highway widening project in James City County.

Permit Fee.....	\$100.00
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2L. ROUTE 28 CORRIDOR IMPROVEMENTS, LLC, #02-2417, requests authorization to remove an existing bridge and construct a new bridge spanning a 110 foot wide section of Broad Run, on State Route 625, approximately 4000 feet west of Route 28, in Loudoun County. The project also includes the addition of 5 utility lines, formerly attached beneath the old bridge, to be relocated on existing utility poles. The bridge replacement is a part of an overall improvement to the Route 28 Corridor.

Permit Fee.....	\$100.00
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2M. LYNNHAVEN SEAFOOD AND MARINA, VMRC #02-2452, requests authorization to construct and backfill 230 linear feet of replacement bulkheading and to mechanically dredge approximately 400 cubic yards of State-owned subaqueous bottom material to restore depths to minus six feet (-6.0') at mean low water at their existing marina situated along the Lynnhaven River in Virginia Beach. Recommend approval pending expiration of the public comment period, approval by the Virginia Department of Health, an encroachment royalty of \$460.00 for the encroachment of the bulkhead and fill over 460 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot and a dredging royalty of \$180.00 for the dredging of 400 cubic yards of bottom material at a rate of \$0.45 per cubic yard.

Royalty Fee (dredging 400 cu. yds. @ \$0.45/cu. yd.).....	\$180.00
Royalty Fee (encroachment of 460 sq. ft. @\$1.00/sq. foot).....	\$460.00
Permit Fee.....	\$100.00
Total Fees.....	\$740.00

EXECUTIVE SESSION:

Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:

**"Protection of the privacy of individuals in personal matters not related to public business".
The motion was seconded by Associate Member Jones and carried unanimously.**

Associate Member Ballard moved for the following:

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

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

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

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

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

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

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

NAYS: None

ABSENT DURING VOTE: Associate Member Gordy

ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Member Gordy

The motion carried unanimously, 8-0.

Clerk/Secretary
Virginia Marine Resources Commission

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4. YORK RIVER YACHT HAVEN ASSOCIATION, #02-2264, requested authorization to deploy 10,645 oyster aquaculture racks on a 28.39-acre oyster lease immediately east of the Sarah Creek entrance channel along the York River, between Quarter Point and Sarah Creek in Gloucester County. Each rack was designed to measure three (3) feet wide and six and one-half (-6.5) feet long and to extend three (3) feet above the substrate. Each rack, as well as the perimeter of the occupied area, was proposed to be marked. The project was protested by a working waterman.

Chip Neikirk, Acting Deputy Chief-Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the proposed aquaculture site was located east of the Sarah Creek entrance channel in waters ranging from three and one-half (3.5) feet deep to six (6) feet deep at mean low water. He said that there was a bed of submerged aquatic vegetation (SAV) between the aquaculture site and the shoreline to the east, however, there is no SAV within the existing oyster lease. He said that the site was located on the north side of the York River and fairly well protected from north and northeast winds. He said that the substrate was generally firm and sandy.

Mr. Neikirk stated that the York River Yacht Haven had been involved in aquaculture since 2001, when they received a permit from the Commission to construct shellfish upwellers in the new floating docks they are installing at their marina. He said that they are also planning to construct a setting hatchery at the marina. He explained that they are seeking authorization to use a 'rack and bag' grow-out system in the waters above their 28.39 acre oyster lease.

Mr. Neikirk explained that the proposed racks are three (3) feet wide, six and one-half (6.5) feet long and three (3) feet high. He said that the racks are to be constructed of welded angle iron and rebar. He said that each rack was designed to hold 12 polyethylene mesh bags containing 250 oysters each. He stated that each of the racks would, therefore, hold approximately 3,000 oysters. He said that the total capacity of the 10,645 racks is nearly 32 million oysters.

Mr. Neikirk stated that the racks were proposed to be deployed on 10-foot centers, in rows, which would be four (4) racks wide. He explained that there were 30-foot wide access

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channels proposed between the rows. He said that the channels would allow boats to access the racks for maintenance and harvesting. He said that each rack was proposed to be marked with a float similar to a crab pot float. He also said that the corners were proposed to be marked with lighted markers and unlighted markers were proposed to be placed at 200-foot intervals around the perimeter of the lease. He said that the applicant had also expressed a willingness to add or modify any marking in accordance with Coast Guard requirements or recommendations.

Mr. Neikirk explained that the Virginia shellfish aquaculture industry continued to grow. He said that there are, of course, many acres of leased oyster ground which are being used for clam grow-out under nets (authorized by regulation) and the Commission had issued several permits for the commercial grow-out of oysters in floats. He stated that the majority of the aquaculture activity had been located on the bayside and seaside of the Eastern Shore. He stated that staff believed this would be the largest aquaculture grow-out activity on the western shore of the Bay.

Mr. Neikirk stated that this application also differs from other aquaculture operations the Commission had authorized, in that it will utilize an off-bottom 'rack and bag' grow-out system. He said that although the racks would not reach the surface, they were proposed to extend more than one (1) foot off the substrate; and therefore, do not qualify under the on-bottom aquaculture regulation (4VAC 20-335-10 et seq.).

Mr. Neikirk stated that a VMRC subaqueous permit only authorized an encroachment over the bottom, however, this permit would essentially grant nearly exclusive use to the water column. He said that the presence of the structures would exclude or inhibit most other public uses. He stated that if available, this type of activity would more appropriately be authorized under a water column lease. He said that unfortunately, although the General Assembly had passed joint resolutions requesting studies of such leases and staff had even developed draft water column leasing legislation, legislation authorizing a water column leasing procedure had not yet been introduced.

Mr. Neikirk said that all the property owners within 1,000 feet of the site were notified. He said that to date, the only objection received had been from William West, a commercial waterman and property owner along the York River approximately one mile downstream. He said that Mr. West stated the area was a productive crabbing and fishing area and he believed the structures would be a hazard to navigation. He explained that Mr. West suggested re-locating the grow-out area north of the Coleman Bridge near VIMS.

Mr. Neikirk explained that the economic benefits associated with an aquaculture operation of this size were significant. He said that additionally, cultured oysters provide many of the same environmental benefits as wild stocks. He explained that they filter large volumes of water, which could remove excess nutrients, improve local water clarity and possibly enhance

nearby SAV beds. He said that additionally, the structures and the animals themselves would provide substrate and valuable habitat for other species.

Mr. Neikirk said that the Virginia Institute of Marine Science had reviewed the proposal and stated that the individual and cumulative adverse environmental impacts associated with the project would be minimal. He explained that VIMS had added that there was the potential for localized water quality improvements if the project were to be successful. He said that the Health Department and the Department of Conservation and Recreation found the project to be acceptable. He stated that the Department of Environmental Quality had determined that a Virginia Water Protection Permit would not be required. He explained that the U.S. Coast Guard had indicated that they would require a 100-foot buffer around Daybeacon "6", but had no other objections to the project provided it would be properly marked. He stated that no other agencies had commented on the project.

Mr. Neikirk said it was unfortunate that there was not yet a mechanism to allow the leasing of the water column. He explained that staff believed such a lease would benefit both the public and the applicant. He said that in the absence of a water column lease, the only mechanism to review and authorize this aquaculture activity was our subaqueous permit process.

Mr. Neikirk explained that although the project would interfere with the public use of the area, staff recognized the numerous potential economic and environmental benefits associated with the commercial production of nearly 32 million oysters. He said that some types of fishing activities would be excluded due to the presence of the racks, however, fishing and navigating in the access channels would still be possible. He stated that in fact, it is possible that the structures would enhance recreational fishing in the area.

Mr. Neikirk explained that nevertheless, this was a new type of activity and unforeseen impacts and conflicts could arise. He said that accordingly, staff was reluctant to recommend approval of permit, which would authorize the structures to remain in perpetuity. He said that staff believed a review after five years would give the Commission an opportunity to re-evaluate the project and any unforeseen impacts it may cause. He explained that staff's draft water column lease legislation had a similar provision.

Mr. Neikirk said that staff recommended approval of the project with the following conditions:

- The permit and authorization to retain the structures shall be valid for a period of five (5) years. After five (5) years, the Permittee may request the Commission re-evaluate the project and authorize the activity for an additional period of time.
- The Permittee shall submit an annual report of production.

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- Should a water column leasing procedure be developed, the project shall be re-evaluated and if deemed acceptable, converted to a lease upon expiration of the initial five (5) year permit.
- The public shall not be excluded from any areas not physically occupied by the authorized structures.
- The Permittee shall properly maintain all structures and markers and shall remove all structures upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures.
- The structures must be marked and located in accordance with all applicable U.S. Coast Guard requirements. This includes maintaining a 100 foot distance from Sarah Creek Daybeacon "6".

Mr. Neikirk said that staff recommended the assessment of a \$6,183.34 annual royalty for the encroachment of the structures over State-owned submerged land at the rate of \$.005 per square foot.

Dan M. Bacote, President of York River Yacht Haven Associate and applicant, was present and his comments are a part of the verbatim record. He explained that he had gone to California and had done a lot of research before he started this venture. And he explained that the proposed operation would be close to the marina facility.

No one was present at the hearing that was in opposition to the project.

Associate Member Cowart made the motion to approve permit application 02-2264 with the staff's stipulations. Associate Member Birkett seconded the motion. The motion carried 7-0.

Royalty Fee (encroachment on 1,236,668 sq. ft. @\$0.005/sq. foot)...	\$6,183.34 (annually)
Permit Fee.....	\$100.00
Total Fees.....	\$6,283.34

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5. CAROLYN DAY, #02-2242, requested authorization to install approximately 148 linear feet of quarry stone rip-rap revetment in front of an existing timber bulkhead, the toe of which would be aligned eight (8) feet channelward of mean low water adjacent to the applicant's property situated along Dividing Creek in Northumberland County. The project was protested by both of the adjacent property owners.

Jeff Madden, Environmental Engineer, gave the presentation with slides. He explained that all the project was below mean low water and that there were no wetlands involved. His comments are a part of the verbatim record.

Mr. Madden explained that the project was located along the southern shore of Dividing Creek approximately three (3) miles northeast of the town of Kilmarnock. He said that the applicant's property faces north and Dividing Creek is approximately $\frac{1}{4}$ mile wide at the project site. He stated that the existing timber bulkhead was approximately five feet tall and 175 feet long. He said that the return walls were protected from flanking by rip-rap revetment. He explained that at the time of the site visit, staff had observed that the base of the structure had extensive rotting and there were numerous voids, which had allowed backfill to wash out from behind the bulkhead. He said that the applicant wished to install filter cloth and construct a rip-rap revetment along a 148-foot long section of the failing bulkhead. He said that the rip-rap would be stacked four (4) feet high up against the bulkhead and extend eight feet channelward of the base of the rotting wall on a 2:1 slope. He stated that the new revetment would be placed between the two existing sections of rip-rap.

Mr. Madden said that the project was protested by both of the adjacent property owners. He said that Mr. Eugene "Bud" Hudnall, was the downstream property owner immediately east of the project and claimed to be unclear as to the location of the proposed rip-rap and was concerned that the rip-rap might be placed on his property. He said that Mr. David Bailey owned the adjacent property on the west side of Ms. Day and within a tidal cove of Dividing Creek and that he believed that the proposed rip-rap encroaches farther out into Dividing Creek than should be necessary and that the rip-rap could impact the ebb and flow of the tide in the adjacent cove. He further stated that while the agent for the applicant, Ms. Alor Grantham-Traywick had responded to Mr. Bailey indicating where the contractor would place the rip-rap, Mr. Bailey had not withdrawn his objection.

Mr. Madden said that the Virginia Institute of Marine Science (VIMS) had indicated that the individual and cumulative impacts resulting from the proposed revetment would be minimal. He further stated that no other agency had objected to the project.

Mr. Madden said that while the alignment of the proposed rip-rap revetment was not flagged at the time of staff's site visit, it was clear from the drawings that the new rip-rap was to be installed between the existing rip-rap sections, and that the revetment would extend eight feet beyond the existing bulkhead. He said that staff believed this design was consistent with the recommendations contained in the Commission Shoreline Development Best Management Practices (1994) manual and that the project would have a minimal impact on the marine environment. He said that accordingly, staff recommended approval of the project as proposed.

Alor Grantham-Traywick, representative for the applicant, was present and her comments are

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a part of the verbatim record. She said she did not check into the expense for Mrs. Day, but filter cloth is placed on the wall and bottom with a 2 to 1 slope and that VIMS had agreed that this was the best way to repair the structure.

No one was present at the hearing in opposition to the project.

Associate Member Garrison moved to approve the request. Associate Member Williams seconded the motion. The motion carried 7-0.

Permit Fee.....\$100.00

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6. GEORGE WASHINGTON MEMORIAL PARKWAY, #03-0033, requested authorization to install approximately 650 linear feet of rip-rap revetment to stabilize an eroding shoreline, remove an existing deteriorating boat ramp and install a dual lane concrete ramp and tending pier, and construct a replacement travel lift to provide water access for boats in dry storage as part of an overall renovation to the Washington Sailing Marina, situated along the Potomac River in the City of Alexandria. A wetlands permit was required.

Mark Eversole, Environmental Engineer, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Eversole said that the project site was located on Daingerfield Island, immediately South of Reagan National Airport, and East of the George Washington Memorial Parkway, along the Potomac River. He explained that the National Park Service owned the marina, as was a majority of the Potomac Shoreline along the Parkway.

Mr. Eversole said that the applicant's proposal would stabilize a 650-foot long portion of the marina shoreline with a rip-rap revetment. He explained that in addition, the boat ramp and travel lift were proposed as an improvement to better serve the larger boats that currently use the facility.

Mr. Eversole said that the City of Alexandria had not yet adopted the Model Wetlands Ordinance, therefore, the Commission was charged with reviewing the wetlands impacts associated with this project. He said that while a portion of the project extended channelward of the mean low water mark, the subaqueous land associated with this portion of the Potomac was owned by the District of Columbia. He said a VMRC subaqueous permit was not required. He said that the applicant had been in contact with the District to obtain the necessary permits to work in the waters of the District of Columbia.

Mr. Eversole said that the Commission staff held a public hearing on February 21, 2003, in

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the City of Alexandria to accept public comment on this project, and that no objections had been received as a result of the public notice.

Mr. Eversole explained that the Virginia Institute of Marine Science (VIMS) in their Shoreline Permit Report, stated that the proposal, from a marine environmental viewpoint, would result in minimal individual and cumulative impacts. He said that the Department of Environmental Quality had determined that the proposal would not require a Virginia Water Protection (VWP) general or individual permit. He stated that no other agencies had commented on the project.

Mr. Eversole stated that staff recommended approval of the project as proposed, finding that the anticipated public and private benefits of the project exceed any anticipated public and private detriments.

Associate Member Birkett asked if the Commission had any questions of staff. There were none.

Peter Peterson, representative for the applicant, was present. He said he had no comments.

No one was present at the hearing in opposition to the project.

Associate Member Ballard moved to grant the permit. Associate Member Williams seconded the motion. Motion carried, 7-0.

Wetlands Permit Fee.....\$10.00

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7. THE GREEN ASSOCIATION, #00-0629, WILLIAM R. EVANS, #01-1526, KARL F. JORSS, JR., #01-1582, requested after-the-fact authorization to retain unauthorized pier structures which had been added to three (3) separate community piers located adjacent to The Green subdivision along Dead and Bones Cove of Carter Creek in Lancaster County.

Jay Woodward, Environmental Engineer, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Woodward said that the Green was a complex of 24 condominiums in 12-duplex units located on approximately 8.4 acres with approximately 1,500 linear feet of shoreline on Dead and Bones Cove of Carter Creek, just north of the Tides Inn resort in Irvington. He said that on June 15, 2000, VMRC issued a permit to Alexander Jackson, III, then-president of The Green Association, for a 60-foot long, open-pile, community pier with a 22-foot T-head and eight (8) mooring piles to provide four (4) wet slips to serve four (4) units adjacent to unit 6A

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in the subdivision. He explained that on September 28, 2000, a second permit was granted to The Green Association in care of Mr. Jackson for a 60-foot long community pier with four (4) slips adjacent to unit 8B of the subdivision. He said that on December 6, 2001, a permit was granted to Mr. William Evans, owner of unit 8B for a 32-foot extension with four (4) boat lifts to the previously authorized second community pier. He explained that on February 25, 2002, a permit was issued for a third community pier to Mr. Karl Jorss to construct a 184-foot long community pier with two (2) 24-foot finger piers and four (4) associated mooring piles to create four (4) wet slips adjacent to unit 5A in The Green. He stated that on April 10, 2002, the Jorss permit was formally modified to include four (4) boat lifts, as requested by the permittee, through his agent.

Mr. Woodward stated that while individuals in the development own the actual condo units, The Green Association owns the common shoreline and upland areas in the subdivision. He said that Dr. Bob Davis, who serves as the Chairman of the Executive Committee of the Green Association, indicated that all three of the groups who applied for the community piers had legal agreements which grant a perpetual easement over The Green Association common property to the pier owners within the development for access to the piers. He said that while there were different agents for the applications, Mr. Dana Stillman of D & L Construction was the contractor for all of the permitted work at the three (3) piers, as well as the unauthorized modifications under review.

Mr. Woodward explained that during a wetland board meeting in Lancaster County on October 10, 2002, Mr. Pete Ransone, staff to the Board, brought to our attention the discrepancies associated with the community piers within The Green. He explained that when staff inspected the three piers, significant deviations were found from what was granted by the VMRC permits. He explained that specifically, a 62-foot long by 4-foot wide L-head finger pier and three (3) mooring piles had been added to The Green Association pier; two (2) 20-foot long by 6-foot wide finger piers, two (2) 8-foot long triangular finger piers and two (2) mooring piles had been added to the Evans pier, creating two (2) additional slips; and a 36-foot long by 5-foot wide walkway and an 8-foot long by 3.5-foot wide step down had been added to the Jorss pier.

Mr. Woodward said that Sworn Complaints were filed and Notices to Comply were issued to each of the permittees, as well as the contractor responsible for constructing the unauthorized additions. He said response letters received from the permittees indicated that the piers and any requests for changes to the permits were to be accomplished by the contractor, Mr. Dana Stillman. He stated that the letters indicated that Mr. Stillman assured the partnerships that minor modifications to existing piers were matters, which did not require review by regulatory authorities and could be left to his discretion.

Mr. Woodward said that Mr. Dana Stillman of D & L Construction submitted a letter of response, dated October 29, 2002, to the three Notices to Comply letters sent to the

permittees. He said that Mr. Stillman indicated that Mr. Evans stopped him during construction of the permitted extension (#01-1526) to ask for two (2) additional slips at the pier. He said that Mr. Stillman stated that he went to the County office to discuss the proposed changes, noting that there would be no additional channelward encroachment. He explained that Mr. Stillman told the county staff person that he felt that it was a zoning matter which did not require VMRC attention. He explained that despite 22 years of dock building, Mr. Stillman stated that he was not aware that step down areas, short finger piers and ladders needed VMRC approval. He explained that Mr. Stillman also does not appear to understand the difference in permitting requirements for community piers and noncommercial, private, riparian piers. He said that Mr. Stillman indicated that the work was done in July 2002, and provided a cost breakdown of each of the three unauthorized construction jobs, totaling \$8,750.00.

Mr. Woodward said that the Virginia Institute of Marine Science indicated that had the proposals been reviewed prior to construction, the potential impacts would be minimal. He further explained that VIMS had indicated that the additional slips at Evans' pier could have potential impacts.

Mr. Woodward said that the Virginia Department of Health and the Virginia Department of Environmental Quality did not comment on the after-the-fact requests, however, VDH indicated that the original applications were acceptable and DEQ indicated that Virginia Water Protection Permits would not be required.

Mr. Woodward explained that the Lancaster County Wetlands Board had issued permits for the Green Association and Jorss piers since they crossed intertidal wetlands. He said, however, they feel that the additional unauthorized work was outside of their jurisdiction as all of it was constructed channelward of mean low water with no resulting impacts to jurisdictional wetland areas.

Mr. Woodward said that staff had not received any public opposition to the after-the-fact requests.

Mr. Woodward explained that staff believed the unauthorized construction at the Green Association community piers was the result of the contractor, acting on behalf of his clients, not requesting and obtaining the additional authorization necessary for the modifications prior to their construction. He said the additional structures do not extend any further channelward than the originally permitted piers and, with the exception of the Evans pier, no additional slips were created. He stated that, accordingly, staff does not believe there was a navigational or environmental impact associated with any of the unauthorized construction. He said, however, staff believed the contractor should have known that any modification to permitted structures, especially those which result in additional encroachment, requires additional authorization. He said that it appeared that the owners of the piers relied on the

expertise of the contractor and assumed he would obtain the necessary approval, as he did for the original structures, prior to construction. He said that the following recommendations are provided for each permit.

The Green Association, #00-0629: Staff recommends approval of the new construction with the requirement that the three most landward mooring piles be removed to prevent additional mooring and with a royalty in the amount of \$348.00 for the additional 232 square feet of encroachment over State-owned subaqueous bottom at triple the normal rate of \$.50 per square foot. In addition, staff recommends consideration of a one-time civil charge in the amount of \$1,800 against the contractor based on a major degree of deviation from the permit and minimal environmental impact associated with the unauthorized construction.

William R. Evans, #01-1526: Staff recommends approval of the new construction with the requirement that the two most landward slips be vacated and the two new finger piers and two new mooring piles serving the unauthorized slips be removed. Staff also recommends a royalty in the amount of \$360.00 for the additional 240 square feet of encroachment over State-owned subaqueous bottom at triple the normal rate of \$.50 per square foot. In addition, staff recommends consideration of a one-time civil charge in the amount of \$1,800 against the contractor based on a major degree of deviation from the permit and minimal environmental impact associated with the unauthorized construction. Should the Commission determine that the additional two slips are warranted, staff would further recommend a civil charge in the amount of \$600 against the applicant.

Karl F. Jorss, #01-1582: Staff recommends approval of the new construction with a royalty in the amount of \$312.00 for the additional 208 square feet of encroachment over State-owned subaqueous bottom at triple the normal rate of \$.50 per square foot. In addition, staff recommends consideration of a one-time civil charge in the amount of \$1,800 against the contractor based on a major degree of deviation from the permit and minimal environmental impact associated with the unauthorized construction.

The Commission did not have any further questions for staff. Commissioner Pruitt stated that VMRC Counsel suggested that the cases be heard individually.

THE GREEN ASSOCIATION, 00-0629:

Robert E. Davis, Secretary for the Green Association, was present and his comments are a part of the verbatim record. He said that the association had a contractual agreement, which had a hold harmless clause. He explained that in the 14 years he had worked with the Contractor, he had known him to be honest and straightforward in his dealings with the association. He further urged the board to be lenient in its decision concerning the Contractor.

Carl Josephson, Assistant Attorney General and Counsel for VMRC, asked if the Green Association made the application. Mr. Woodward explained that Jackson signed the application and the permit should have been issued to him. He referred to the deed for Creekside, LLC that was Item 5A2 in the meeting books. Mr. Josephson stated that the Green Association did the application and thus the permit was issued to the Green Association.

No one was present at the hearing in opposition to the Green Association project. Commissioner Pruitt asked for a motion from the board. Tony Watkinson, Acting Chief-Habitat Management Division, stated that the contractor was present and wished to address the Commission.

Dana Stillman, President of D & L Construction and Project Contractor, was present and his comments are a part of the verbatim record. He explained that he had not purposely done this work without proper permits. He said he had talked everything over with the County and they said that they would send a representative to assist him at this meeting, but no one had shown up. He said he was more familiar with building private piers versus community piers. He stated that he did not realize there was difference and had not had any previous problems with other contracts. In response to a question by Associate Member Jones as to what could have been done to make it clearer, he stated that if he was more informed with the association situation than with a private pier situation it would have helped and he always tried to be above board in his dealings. He explained that he always goes to the county to discuss the projects he was involved with and they give him the go ahead. Associate Member Ballard reminded Mr. Stillman that the Commission issued the permits not the County.

Associate Member Garrison requested that the Commission delay making a decision until verification had been received from the County on this situation. A discussion followed and Mr. Stillman's statements in this letter were reviewed.

Association Members Cowart and McLeskey both asked if there was any stipulation in the permit regarding changes and modifications. Mr. Woodward said that there was a statement that accompanied the permit. Commissioner Pruitt referred to the permit document and item 13 on that document, which states, "Any encroachment beyond the limits of this permit shall constitute a Class I misdemeanor".

Associate Member Garrison moved to approved the request per staff recommendation for the Green Association (00-0629) after-the-fact permit application. Associate Member Birkett seconded the motion. Motion carried, 7-0.

W. R. EVANS, 01-1526:

W. R. Evans, the applicant was present and his comments are a part of the verbatim record.

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He explained that the dock was located behind his residence and he had to abide by what the Green Association told him. And he further explained that to appease everyone, who would be using this pier, he went for the extension to add equal water access for the boats. He requested that staff show the slide for the pier behind his property.

Associate Member Ballard asked if the 6 slips were worth the \$600 civil charge and Mr. Evans responded that if it was split 6 ways it was easier.

No one in opposition to the Evans' project was present at the hearing.

Dana Stillman, President of D & L Construction and Project Contractor, asked if the Commission was approving the \$1,800 fine for each project. Commissioner Pruitt stated that it was being considered.

Carl Josephson, Assistant Attorney General and Counsel for VMRC, asked Mr. Stillman if he wanted the same testimony on the record for the Evans' case and Mr. Stillman responded, yes.

Associate Member Ballard moved to approve the Evans' project (01-1526) with the 2 additional slips and a royalty fee and civil charge of \$600 agreed to by the applicant. He further stated that the civil charge against the contractor was overkill and moved to reduce the civil charge to \$600 against the contractor in this case. Associate Member Birkett seconded the motion. The motion carried, 6 to 1, Associate Member Garrison voting no.

Royalty Fee (encroachment of 240 sq. ft. @ \$1.50/sq. foot).....	\$360.00
Civil Charge against applicant.....	\$600.00
Civil Charge against contractor.....	\$600.00
Total Fees.....	\$1,560.00

KARL F. JORSS, JR, 01-1582:

The applicant was not present at the hearing. No one was present at the hearing in opposition to the project.

When asked if his previous testimony should be made a part of the Jorss case record, Dan Stillman, President of D & L Construction and Project Contractor, responded yes.

Associate Member Ballard moved to adopt staff's recommendation for the Jorss' after-the-fact permit application (01-1582) with a reduced civil charge against the contractor of \$600. Associate Member McLeskey seconded the motion. The motion carried, 6-1, Associate Member Garrison voting no.

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Royalty Fee (encroachment of 208 sq. feet @ \$1.50/sq. foot).....	\$312.00
Civil Charge against contractor.....	\$600.00
Total Fees.....	\$912.00

Associate Member Ballard moved to reconsider the civil charges for the Green case. Associate Member McLeskey seconded the motion. The motion carried, 7-0. Associate Member Ballard moved to readopt the previous motion made for the Green case with a reduced civil charge of \$600 against the contractor. Associate Member Birkett seconded the motion. The motion carried, 6 to 1, Associate Member Garrison voting no.

Royalty Fee (encroachment of 232 sq. ft. @ \$1.50 sq. foot).....	\$348.00
Civil Charge against the Project Contractor.....	\$600.00
Total Fees.....	\$948.00

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7A. DISCUSSION OF MEETING LOCATION FOR KING WILLIAM COUNTY RESERVOIR PROJECT:

Tony Watkinson, Acting Chief-Habitat Management, explained that this project was another case that had a large number of individuals interested both against and for the project. He explained that members of the General Assembly and the Alliance to Save the Mattaponi River were requesting that the hearing be held in King William County. A large number of e-mails (approx. 1100) had been received regarding this project many of which requested that the hearing be in King William County. He further explained that VMRC had received a letter from the City of Newport News and members of the General Assembly requesting that the hearing be held in Newport News. He said that approximately 30 letters had been received in support of the project and that there were other letters of support received that also requested that the location of meeting be in Newport News.

Associate Member Ballard expressed his concern that it appears that it was public opinion that it was a home court advantage to hold the hearings in the area of the project and in the case of Patrick County it was appropriate since it was 238 miles from Newport News. He further explained that it concerned him that to go elsewhere in this case would set a precedent and result in having to hold meetings elsewhere for other cases. He said that since most of the individuals affected are local to the Newport News area the Commission just needed to find another facility to hold the hearing to provide enough capacity for a large attendance.

When asked by Associate Member Garrison for his opinion, Commissioner Pruitt stated that he agreed with Associate Member Ballard that the hearing should remain in this area and suggested going to Warwick High School to accommodate a large attendance at the hearing.

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Associate Member Birkett stated that the Commission in the past for such issues as crabs met at Warwick High School and that facility would accommodate a large attendance adequately.

Associate Member Birkett moved to take the hearing to Warwick High School. Associate Member Williams seconded the motion. After further discussion about time and the logistics, it was agreed that the hearing would be held on the same day as the regularly scheduled meeting and, if necessary, hear fisheries or appeal issues in the morning then move the hearing to Warwick High School at 2 p.m. for the King William County project. Mr. Watkinson reminded the Commission that staff would have to check with the City of Newport News to see if the Commission could utilize the high school and not interfere with the school's regular schedule. Commissioner Pruitt requested that staff make inquiries and let the board know its findings. Motion carried, 7-0.

After the necessary inquiries were made, Tony Watkinson, Acting Chief-Habitat Management, reported to the Commission that the April 22nd date was during the spring break for schools in Newport News, and therefore, it was not a conflict. He also said that the City had asked that the Commission hearing start no later than 3 p.m. since the City Council had a meeting scheduled at 7 p.m. that evening. Jack Travelstead, Chief-Fisheries Management, stated that he could not say there would not be some fisheries issues. Commissioner Pruitt said that VMRC could hold off on fisheries issues or keep these to a minimum. Carl Josephson, Assistant Attorney General and Counsel for VMRC, stated that any wetlands appeals would have to be heard, as an appeal could not be held up because of the time restraints for the appeal process. **Associate Member Williams suggested that the Commission schedule the April 22, 2003 meeting at Warwick High School at 2 p.m. after hearing other issues here at the VMRC main office at 9:30 or 10:30 a.m. There was a general consensus to agree with Mr. Williams' recommendation and no further motion or vote was necessary.**

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8. PUBLIC COMMENTS: No requests were received from those present at the hearing to make comments or discuss any new business.

Commissioner Pruitt announced and congratulated Associate Member Jones for being named an Outstanding Virginia Scientist for 2002.

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9. PUBLIC HEARING: Request of Virginia Seafood Council to deploy approximately one million triploid Suminoe oysters in Virginia waters.

Associate Members Ballard and Cowart announced that they would like to participate in the

discussion but will abstain from voting with the approval of the Chairman and Counsel.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He explained this proposal revised a previous proposal submitted in the spring of 2002 and had four significant changes from the previous version:

- 1) makes use of genetic triploids rather than chemical triploids,
- 2) reduces the number of participants from 39 to 10,
- 3) lists an economic analysis as the principal goal, and
4. funds the hiring of a Project Manager to oversee all aspects of the project.

Mr. Travelstead to recommended the Commission have Frank Dawson follow his presentation so that Mr. Dawson could brief the Commission on the Ad Hoc meeting findings. Then, he asked that the Commission hear Nancy Targett from the National Academy of Sciences.

Mr. Travelstead went on the explain the issues and staff recommendations, listed below:

PROJECT TERMINATION DATE: The VSC proposal indicates that the test animals will remain in the field for 9 to 18 months. Others reading the proposal have expressed confusion over language indicating that the oysters will remain overboard until they reach market size. Market size, however, is not defined. VIMS, in its review of the proposal, urges a more clear statement on the maximum duration of the project, but does not offer a specific recommendation. The Chesapeake Bay Foundation (CBF) recommends a 24-month term, believing this is sufficient time for the oysters to reach market size and to allow comparisons between low and high salinity sites. The Maryland representative of the Bay Program ad hoc panel recommends a 12 month project duration to greatly reduce the risk of spawning which could lead to an unintentional introduction. A longer term of 12 + months is recommended for low salinity sites.

STAFF RECOMMENDATION: A project termination date is needed to specify a precise time at which all remaining test animals are removed from the water. A termination date can also be used to minimize the risk associated with spawning of animals that reverted to a diploid (reproductive) state or diploid animals that were undetected in the initial deployment. Staff recommends a termination date of April 1, 2005. Assuming test animals are provided to project participants by July 1, 2003, an April 1, 2005 termination date allows for a project duration of 21 months. Animals provided to participants after July 1st would be in the water for less than 21 months.

The April 1, 2005 termination date is recommended because it is sufficient time for the animals to reach market size; it allows comparison between low and high salinity

sites; and, it reduces the risk of spawning by removing animals prior to the second summer spawning season.

It is imperative that all test animals be removed from the water by April 1, 2005, unless the Commission extends that date based upon new information.

PROJECT REPORTING REQUIREMENTS: Both VIMS and CBF recommend semi-annual and final reports detailing the interim and final results of the project. Ad hoc panel members recommend that documentation be provided on the dates of removal of all oysters as well as the sale of these oysters into the market. Others recommend that the reports be submitted to the Chesapeake Bay Program and the National Academy of Sciences for review and use in future decisions.

STAFF RECOMMENDATION: Staff concurs with each of these recommendations and further recommends that each project participant sign a statement indicating their willingness to provide full disclosure of the results of the study.

ASSUMPTION OF FINANCIAL RESPONSIBILITIES: The CBF recommends that each project participant willingly assume full financial responsibility for retrieving any oysters lost through vandalism, storm damage, or equipment malfunctions.

STAFF RECOMMENDATION: Staff concurs with the recommendation. Each project participant should be required to sign a statement accepting financial responsibility.

MONITOR FOR REVERSIONS AND DIPLOIDS: While VIMS makes no specific recommendations on this issue, we note that the VIMS statement of expectations for research on non-native oysters specifically states "oversight should include exercise of due diligence for ploidy assessment (if required)." Members of the ad hoc panel do recommend that each site be tested for reversions and diploids until all oysters are removed from the water. Panel members note that diploids (up to 1000 animals) could be deployed during the study due to the limitations in detecting diploids in the larval batches.

Dr. Stan Allen, VIMS, has advised the VSC that it is not worth monitoring for reversions, noting that the incidence is so low that the sampling would have to be very extensive to find any. Out of a hundred samples, we would be lucky to find one, and it provides little information about the population in general. Dr. Allen believes it is more important to put a limit on the total duration of the project, within the comfort range for data on reversions that is on hand from other experiments--

probably 24 months.

STAFF RECOMMENDATION: Based upon the concerns of the ad hoc panel and further discussions with Dr. Stan Allen, we believe that monitoring for reversions and diploids in the field is necessary. We recommend that at the end of 12 months of field deployment, 200 oysters from each site be tested for ploidy. This sampling is necessary partly to assess the effects the specific environmental factors associated with this study might have on reversions and further to offer a degree of comfort to those concerned about reversions. We too, however, believe that the April 1, 2005 proposed termination date relieves a portion of our concern for reversions.

NAS STUDY RESULTS: Ad hoc panel members note that the results of the National Academy of Sciences study will not be completed until after the VSC test study has been initiated. Panel members suggest that if the NAS study results provide further guidance on how to minimize the risks associated with the VSC study, then the ad hoc panel should reconvene and provide further comments to the Commission.

STAFF RECOMMENDATION: Staff concurs with the recommendations. Each project participant should be aware that the Commission reserves the right to modify, terminate or extend the project based upon new findings, including those of the NAS study.

FURTHER STAFF RECOMMENDATIONS: 1) Mandatory attendance by project participants at a meeting during which all requirements for participation will be outlined, 2) Require a detailed response plan from each participant for storm events, and 3) VMRC to participate in the hiring and oversight of Program Manager.

Frank Dawson, Ad Hoc Panel Representative, was present and his comments are a part of the verbatim record. He explained that there was not a unanimous opinion from the panel. He explained that Virginia, Maryland, and the Chesapeake Bay Commission were in favor, Delaware and Pennsylvania were opposed and the Federal level does not have a consensus. He said the National Academy of Sciences have indicated the following:

- 1) Need for reopener clause if change in situation is significant so can review;
- 2) Need an end date which is most controversial, suggest same date June 1 so the oysters are not in the field for a second summer. Deployment in May is understood;
- 3) Need monitoring documentation for reproduction events;
- 4) Need documentation for movement or transportation and final disposition;
- 5) Need security plans, VMRC needs to identify response time;

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- 6) Need to identify, track, and document different batches; and,
- 7) A major concern is unintentional introduction.

Nancy Targett, National Academy of Sciences Representative, was present and her comments are a part of the verbatim record. Ms. Targett explained that the Academy was on track at this point for June release. She explained that the letter explained the views of the Academy, which are:

- 1) risk exists, not 100% triploids;
- 2) Small percentage we know revert and risk increases with age;
- 3) Small percentage of gonadal maturation produce gametes;
- 4) For the future there is a need for genetic typing to be able to trace when find existence in the bay, by ability to link to test project; and,
- 5) monitoring disease is not required.

Ms. Targett explained that there was concern that this field trial be considered a first introduction. She said amendment measures are important to reduce risk. Also, she said there must be a requirement for scientific data to be included.

Roger Mann, Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. He said in Don Wright's letter there were concerns expressed in regards to dates and market size, but VIMS does support the proposal. He said that in his review of the other comments, the outlined concerns are real. He said there had been concerns expressed that because VIMS was providing the hatchery seed that this could cause bias. He said that this was an important decision the Commission had to make for Virginia as well as the Bay.

Stan Allen, Virginia Institute of Marine Science representative, was present and his comments are a part of the verbatim record. He explained that when diploids less 1/1000 mmm in size, you cannot see their presence. He said that there were no diploids in the hatchery at the time when producing triploids. He explained that haploids were tetraploids matched with diploids. He explained chromosome missegregation. He said that VIMS' recommendation, since reversion was not a major problem, was that monitoring was not necessary. He said that since NAS was asking for more science, VIMS was prepared to spend its own resources for research in this way:

- 1) occurrence of diploids;
- 2) track 3 sites for reversion;
- 3) reproductive cycle for triploids;
- 4) follow up disease incidents, 10 % or more;
- 5) growth rates among farms; and,
- 6) genetic typing parents/progency.

Frances Porter, Virginia Seafood Council representative, was present and her comments are a part of the verbatim record. She explained that the Council was requesting a trial project to restore oysters to the Bay because there had been a continual decline in the native oysters in the Bay since 1990 and the Virginia Oyster Industry was in dire straits. She said that in 1990 the General Assembly had asked VIMS to begin in-water study of non-native species and the gigas trials were found not to be the best. She stated that a highly controlled project was done by VMRC to study whether the *C. ariakensis* are marketable, healthy, could filter the Bay, and would be resistant to disease. She said the 2003 proposal in front of the Commission was to determine what was a marketable size. She made the following comments:

VSC needed advice for how to handle theft.

The issue of the end date--need in the water as long as possible, but not until it poses a hazard.

An end date of 2005 recommended by VMRC staff was acceptable.

Nothing was considered for the James River in paring down, VSC was concerned and seeking advice because they have a grower, if the board concurs with a site.

National Academy of Sciences did not mention any benefits in their letter and only focused on the risks.

NAS letter said that the project could without a project manager, but VSC says there will be a project manager.

Native oysters may have to become an aquaculture effort.

That with all that had been done and all of the monies spent for restoration, it had not improved the oyster stocks nor proven to improve the ecology of the Bay.

VSC was concerned that we will relinquish the market advantage by letting other states get ahead of Virginia.

Must weigh the benefits with the risks and so far no benefits have been addressed by all the studies, only the risks.

Tommy Kellum, Kellum Seafood in Weems, Virginia, was present and his comments are a part of the verbatim record. Mr. Kellum said that we need and want a industry or sustainable resource. He said that so far the ten-fold increase was in the red or deficit. He explained that the Academy of Sciences does not need to discuss the whys or what ifs, they only bring more questions and no benefits. He said we could not afford 20 more years of questions.

Commissioner Pruitt opened the public hearing.

Rob Brumbaugh, Fisheries Scientist from the Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. Mr. Brumbaugh said that CBF supports the VSC proposal because the industry was in dire straits. He said CBF was also glad to see that VIMS was ready to provide funds. He explained that the CBF was dedicated to VMRC and VSC to restore the resource. He was concerned when statements are made that past efforts

and monies have not done anything to improve the stocks or ecology of the Bay. He explained that efforts have done well in both the Elizabeth and Lynnhaven Rivers.

Peter Nixon, representing self and also a member of VSC, was present and his comments are a part of the verbatim record. He said that there was a need to look at the benefits as well as the risks, but he sees everyone only looking at the risks. He asked who would reward us if the oysters do improve. He said he could only see that we would have oysters in the Bay.

Douglas Jenkins, Sr., Twin Rivers Watermen Association, was present and his comments are a part of the verbatim record. He explained that the association does not want to interfere, but the industry needs something done now and not 5 or 10 years from now. He asked how do the public grounds benefit and how do the watermen fit into this plan? He said he went to the board of supervisors to gain support on the suggestion of Jim Wesson. He asked if there were plans to put these oysters on public grounds? Commissioner Pruitt responded that it was not in the plan before the board, but up the road he does not know what will happen. Commissioner Pruitt also told Mr. Jenkins that the association could bring their own proposal to the board. Mr. Jenkins said he was concerned that plan will be locked in and the public won't benefit.

Ernest Bowden, was present and his comments are a part of the verbatim record. He said that this will benefit the watermen down the road, but we must walk before we can run. He stated that the Commission needed to move forward on the VSC proposal so as to take the pressure off other species. He said that down the road his association would address this matter. He also added that, originally, the proposal did include watermen.

Robert Jensen, Rappahannock Preservation Society, was present and his comments are a part of the verbatim record. He said that the private sector and private money will make the difference and the board needs to vote for the proposal.

Allen Underwood, was present and his comments are a part of the verbatim record. He said that the risk assessment is great, but the mortality rate will take care of diploid concerns.

Jan Marshall, Tangier Waterman, was present and his comments are a part of the verbatim record. He said they were concerned that this just made more competition for the watermen and they need assurance that this will help the public areas.

Commissioner Pruitt closed the public hearing and asked for any comments or questions.

Associate Member Ballard stated that he commended CBF for the way that they had looked at this objectively and came up with good suggestions. He further explained that he had seen the process and thought that the back and forth was good. He said it is good to give and take, but it could be frustrating for everyone. He said that from what he saw the process had

worked.

Associate Member Jones stated that all decisions to be made are difficult, but there was a need to give attention to risks and benefits, because the risks can be so great. She said she wanted to see the industry develop and was concerned about keeping tradition. She stated that a bad decision made here today was forever and the Commission needed to proceed cautiously. She said there was no need of a science overlay, but there was a need for research heart. She said that there was a need to gain all the science possible and to maximize the knowledge that can be gained. She explained that she was sure the National Academy of Sciences would provide benefits in their final report.

Associate Member Garrison stated that we did not need for other states to get ahead of us. He said we need Virginia First.

Associate Birkett explained that he had been involved in the industry for a long time and today watermen needed to be diversified, they could not rely on just do one thing. He said that had been following scientific ways for 13 years and was still not any better for it. He said he planned to vote for the proposal.

Associate Member Williams said that he agreed with Mr. Birkett and that the watermen were in favor of a new species to bring the industry back. He said that the watermen want approval for putting these oysters into the wild not into bags.

Commissioner Pruitt asked Mrs. Porter and Mr. Kellum to address the James River situation. Mrs. Porter expressed her concerns that the change in or addition of a site will affect the proposal. Mr. Kellum offered to give up his site in the Rappahannock River, if it would provide a solution.

Mr. Travelstead said that the eleventh site might require the Corps of Engineers to re-review and cause a delay. He said it might work to exchange the site in the Rappahannock for a James River site.

Mr. Watkinson said that he could not predict the Corps of Engineers' review requirements.

Commissioner Pruitt asked for a motion. **Associate Member Williams moved to accept the proposal with staff recommendations and with the change in site location, if it did not cause a problem with the Corps of Engineers. Associate Member Birkett seconded the motion. After further discussion, the motion carried 5-1-2. Associate Members Cowart and Ballard both abstained from voting and Associate Member Jones voted no. Commissioner Pruitt voted yes.**

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Commission Meeting

10. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-380-10 et seq., "Pertaining to Grey Trout," to incorporate the provisions of Amendment 4 to the Interstate Fishery Management Plan (by-catch allowances, gill net seasons, and recreational minimum size and possession limits).

Jack Travelstead, Chief-Fisheries Management, gave the presentation. His comments are a part of the verbatim record. He explained that the FMAC had suggested the 12" and 7-fish limits, that staff agreed with and also the charter boats were in favor. Of the he explained the following recommendations:

- 1) Not directed fishery - establish a by-catch fishery with 300 pound tolerance.
- 2) Trawl fishery - allow 300 pound tolerance for under 12" fish.
- 3) Fishery season - shorten gill net season by 16 days, May 14 - October 20.
- 4) Recreational size and possession limits (no split allowed by ASMFC for the season--single size and single possession limit). FMAC recommended a 12" size limit and 7-fish possession limit and staff agrees as well as the charter boat fishery.

Commissioner Pruitt opened the public hearing.

Kevin Seldon, Charter Boat representative, was present and his comments are a part of the verbatim record. He stated that if the size limit goes up it would eliminate the charter boats from the fishery.

Ernest Bowden, Eastern Shore Watermen Association, was present and his comments are a part of the verbatim record. He said that he supports the staff recommendation 100%.

Jim Ruhl, North Carolina Trawl Boat Operator, was present and his comments are a part of the verbatim record. He said that he commended VMRC to bring this to the ASMFC. He said that the by-catch is related to a targeted fishery and by-catch is not an enforcement issue. He said he agreed with the 300 pound by-catch limit.

Tom Powers, CCA, was present and his comments are a part of the verbatim record. He said that he recommended: 1) 12" size limit, 7-fish limit and 2) 300 pound by-catch limit with up to 3 licenses to a boat.

Commissioner Pruitt closed the public hearing.

Mr. Travelstead explained that the ASMFC allowed for three 300-pound by-catch limits provided there were 900 pounds of another species on board the vessel.

In response to a comment from the audience, Commissioner Pruitt stated that Law Enforcement does not write the rules, ASMFC does. He further commented that VMRC enforced the laws according to statute, the Commissioner does not instruct staff on how to

handle.

Associate Member Garrison moved to accept staff recommendation of 12" size limit and 7-fish catch limit for the recreational fishery and to leave commercial fishery restrictions the same as staff recommended. Associate Member Cowart seconded the motion. The motion carried, 7-0.

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Associate Member Ballard left the meeting early.

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11. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish a new minimum size limit (12 inches) and closed fishing seasons in 2003.

Chad Boyce, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. He said that staff was requesting that the Commission adopt the ASMFC recommendations for: 1) increasing the size limit from 11-1/2" to 12" for the recreational fishery and 2) closed season, September 2 to September 15 and December 1 to December 31. He explained that public comments had been received, 2 supporting, 1 against and 1 recommending a longer closed season.

Commissioner Pruitt opened the public hearing. No one was present either pro or con to comment.

Associate Member Birkett moved to approve staff recommendation for Regulation 4VAC 20-950-10 et seq. Associate Member Cowart seconded the motion. The motion carried 5-0. Associate Member Jones was absent from the room during this portion of the meeting.

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12. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-530-10 et seq., "Pertaining to American Shad," to allow for the transfer of commercial permits for the harvest of American Shad in the Coastal Area.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim. He said that J. C. West had made a request last month for the transfer of a license that an individual had told him he would not be using and staff was directed by the Commission last month to hold a public hearing at the February meeting to consider an

amendment to the regulation to allow for a transfer. He said that this was a fishery faze out mandated by the ASMFC and not sure it should be allow new effort in the fishery. He said that FMAC and staff did not support allowing transfers.

Associate Member Garrison suggested that the hatcheries should be notified of the faze out of the fishery.

Associate Member Williams inquired about the number of licenses issued and what criteria were used to determine eligibility? Mr. Travelstead stated that there were 25 licensees and each had met the eligibility criteria by having 5,000 pounds of catch in any 2 years from 1993 to 2001.

Associate Member Cowart asked how long had the fishery been limited to 27 or less. Mr. Travelstead said just this year. Associate Member Cowart asked if it was not a big fishery in the last two years and Mr. Travelstead responded, yes.

Commissioner Pruitt opened the public hearing.

Rick Scherene, was present and his comments are a part of the verbatim record. He said that no one was going to invest for the 2 years left in the fishery. He stated that this was all he had ever done and he did not get into the fishery. He said the market will collapse in 2 weeks time, there was no big money in it, and if it was opened up it would not make a lot of difference. He said that he needs to be allowed to work.

Sam Swift, Eastern Shore Watermen Association, was present and his comments are a part of the verbatim record. He stated that he would hate to see the fishery opened. He explained that a 150,000 pounds of fish were to be caught and would be caught up in 2 weeks. He stated that he agreed with the staff recommendation.

Tom Powers, CCA, was present and his comments are a part of the verbatim record. He said that if the Commission just open up the fishery the quota would just be caught early and would be closed faster. He said that there was a need to protect the stocks up and down the coast, not just in Virginia.

J. C. West, watermen, was present and his comments are a part of the verbatim record. He said that he was the individual who requested the transfer. He explained that the fishery would be closed up in 2 years, nothing was going to be hurt, and there was a need to keep a by-catch with other catch.

Douglas Jenkins, Sr., Twin River Watermen Association, was present and his comments are a part of the verbatim record. He said the Commission needed to allow for this to happen. He said that the Striped Bass regulation had kicked out fishermen who needed to work. He

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stated that if the individual was not using the permit why not allow for a transfer?

Jim Frese, Chincoteague, was present and his comments are a part of the verbatim record. He said that there are presently 27 permits and if someone does not use theirs it seems common sense that they should be able to transfer the permit. He continued by saying that the transfer would not be adding to the fishery, there would still be 27 permits. He said that they need to be given the opportunity to work.

Jamie Green, was present and his comments are a part of the verbatim record. He asked how many years was the quota over caught. Mr. Travelstead responded that this was the first year.

Ernest Bowden, Eastern Shore Watermen Association, was present and his comments are a part of the verbatim record. He explained that he and Ms. Davenport had worked hard not to allow the fishery to be closed, even going as far as to hire a lawyer at their own expense. He said that if 27 had continued to fish, we might have had a 400,000 pound quota. He explained that this situation had been known for 4 years and that January 1 was the first restriction. No one at the Finfish meeting, who could have commented, did so. He stated that it was a terminal fishery. He commented that the staff recommendation was brought to the Finfish Committee and they agreed. He explained that those individuals that were interested did everything that could be done, but no one else was concerned until the last minute.

Commissioner Pruitt closed the public hearing. He asked for questions and comments and there were none.

Associate Member Garrison moved to accept staff recommendation and not amend Regulation 4VAC 20-530-10 et seq. and not allow transfers. Associate Member Jones seconded the motion. Associate Member Williams stated that a few will get all, and the majority will get none, so therefore he was voting no. Commissioner Pruitt stated that this request for transfer brought back this issue. The motion carried, 4-2. Voting count: 4 yes; 2 no.

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13. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-910-10 et seq., "Pertaining to Scup," to reduce the trip limit in the commercial fishery for the Winter I period.

Chad Boyce, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. He explained that this was a hearing to decide whether to make the emergency regulation, with the amended Winter I commercial scup landing limit of 15,000 pounds per each consecutive seven day landing period passed last month, permanent.

No comments from the public, pro or con. **Associate Member Cowart moved to adopt staff recommendation to adopt Regulation 4VAC 20-910-10 et seq.. Associate Member Birkett seconded the motion. The motion carried, 6-0.**

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14. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish size, possession and seasonal limits for the 2003 recreational fishery.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead stated that he had received a call from Rob O'Reilly who was attending a meeting regarding the summer flounder and now the Commission had only one option to consider and that was a 17-1/2" size limit and a 8-fish catch limit with a closed season from January 1 through March 28.

Associate Member Birkett open the public hearing and asked for any comments.

Jim Frese, Chincoteague, was present and his comments are a part of the verbatim record. He said that he had heard from friends that Maryland was granted 17" and 8-fish limits with no closure other than the closed season. He said the Commission was generous last year and listened to Eastern Shore watermen. He said if cut to 17", God love you.

Bob Hawdforth, was present and his comments are a part of the verbatim record. He said he would like to keep the split, but ASMFC said it cannot allow this, and that he felt VMRC needed to push back. He suggested that the Commission take a close season, but with a larger fish size.

Associate Member Birkett asked for questions. He said that it was a good idea to survey Chincoteague, but still have to take back any changes to ASMFC. He stated that VMRC could make a not change without the ASMFC agreeing.

Associate Member Garrison said that the 17-1/2" restriction was necessary because we had over harvested last year. He explained that Virginia was under a penalty because it had exceeded the quota allotted.

Mr. Travelstead stated that Virginia was the only State over the quota and the agreement was to rectify by regulation to ensure that there was no overage again. He said that the Commission adopted regulation without ASMFC approval last year. He further explained that that left Virginia with a 17-1/2" size limit and 8-fish possession limit. He said other States differ because they came within or under quota.

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Kelly Place, was present and his comments are a part of the verbatim record. He said in 2000 most states were over their quotas, except Virginia, who was under 63% and New Jersey who was under 2%. He said in recent years we have been doing better than other states.

The public hearing was closed.

Associate Member Garrison moved to adopt the amendments to Regulation 4VAC 20-620-10 et seq. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

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15. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-252-10 et eq., "Pertaining to the Taking of Striped Bass " to allocate the quota for the Coastal Area fishery.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. Travelstead stated that he wanted staff comments from last month's meeting incorporated into the record.

No one was present from the public to comment.

Associate Member Birkett moved to approve the staff recommendation and adopt the emergency amendments made to the regulation last month and make them a permanent part of Regulation 20-252-10, et seq. Associate Member Garrison seconded the motion. The motion carried, 5-1.

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16. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to allow the use of patent tongs on Deep Rock.

Dr. James Wesson, Department Head-Conservation and Replenishment, explained that the emergency action was taken last month to open Deep Rock to harvesting by patent tongs only. He explained that there were 30 boats when the season started, but they had reported back that they were not catching much. He said that the Commission needed to make a decision whether to make the emergency amendments a permanent part of the regulation or not. He said that if the Commission does not take any action then the emergency regulation will expire and the area will revert back to dredging only.

Jan Marshall, Tangier Waterman, was present and his comments are a part of the verbatim record. Mr. Marshall said that in the fall the seasons had been set and then just before the

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season starts the Commission changes the area to patent tong. He explained that the oysters are scarce, but can be caught with the dredge. He explained that over on the shore they had lost 50-60% of the oysters. He said that Deep Rock is a stable area and should go back to the way it was.

Associate Member Williams stated that he agreed with Mr. Marshall. He explained that last month Mathews people came up and requested the patent tong change. He asked if hand scraping could be allowed instead of the dredge. Dr. Wesson said the hand scrape was also allowed as it is under the maximum weight restriction.

J. C. West, Waterman, was present and his comments are a part of the verbatim record. He stated that the small dredge would be better, he had tried patent tonging on Deep Rock. He also stated that there is a need to open all of the oyster bottoms so as to reduce the pressure on one area.

Russell Gaskins, Waterman, was present and his comments are a part of the verbatim record. He stated that those in his area did not know anything about the change made.

Commissioner Pruitt stated that if a motion to change were made, he would vote to leave it the same, to break the tie.

Larry Dise, Tangier Waterman, was present and his comments are a part of the verbatim record. He said that a small dredge would twist up easily.

Jack Dise, Tangier Waterman, was present and his comments are a part of the verbatim record. He said that they want to go back to work. He said to let the watermen work with both, but the dredge will be catching the oysters.

Associate Member Cowart stated that if no action was taken then the area will revert back to the dredge. He said he was concerned about what the dredge will do to the bottom. Dr. Wesson said that the problem with the dredge was that the watermen were not culling back onto the rock and the small oysters and shells were being scattered onto bad bottom.

After conferring with VMRC Counsel as to whether there was a need to readopt the original regulation, Commissioner Pruitt stated that when the Emergency Regulation expired the original regulation goes back into effect.

No action was taken; consensus was to allow the regulation to revert back, therefore, allowing for the harvesting of oysters from Deep Rock by dredge.

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17. Consideration of the 2003 Oyster Replenishment Plan and approval of procurement procedures.

Dr. James Wesson, Department Head-Conservation and Replenishment, gave the presentation and his comments are a part of the verbatim record. He said that the plan is to use the house shells, but can only buy all the shells if NOAA grant funding comes through. He said that in order to minimize cost plans are to perform the planting near or around the shucking houses where shells come from. He explained that staff requests approval of the 2003 Oyster Replenishment Plan and the procurement procedures. The entire plan has been included below.

Associate Member Cowart inquired if the funds were restored to the program from last year. Commissioner Pruitt asked Robert D. Craft, Chief-Administration and Finance, to respond to Mr. Cowart's question. Mr. Craft said that general funds were not restored to the Oyster Replenishment Program and the program will have to depend on non-general fund sources for restoration activities.

Associate Member Williams moved to approve the 2003 plan along with the procurement procedure. Associate Member Garrison seconded the motion. Motion carried.

2003 OYSTER REPLENISHMENT PLAN AND PROCUREMENT PROCEDURES

The oyster restoration plan this year is much smaller and much less clear than last year. Most of the State General Funds have been cut due to the budget problems. The federal budget for 2003 has not passed, and a large NOAA grant that will be critical to this year's program has not been approved. If the NOAA grant is not approved or is significantly delayed, there will be difficulties in using all of the house, shucked shells this year. The funding for the Army Corps of Engineers is also uncertain at this point in both amount and time of availability. There are many hurdles to implement Corps funding in the current restoration season. The goal of the program this year will be to use the house shells as efficiently as possible, close to the shucking houses, to minimize costs with a reduced budget. We may or may not use all of the listed procurement methods depending on the availability of funding. We would like you approve the procurement methods to give the program the flexibility to use all available funding sources, if and when they become available.

Commission Meeting**12300
February 25, 2003**

DESCRIPTION - FUNDING SOURCES MATCH REQUIRED AMOUNT

NON-FEDERAL

General Funds (GF) State		\$ 49,500
Indirect Cost Recoveries (ICR) State		\$132,300
Special Oyster Rock Fund (SF) State		\$100,000
Waterway Improvement Fund (WIF) State		\$100,000
Chesapeake Bay License Plate Fund (CBLF)		\$15,000
Governor's State Income CB Fund		\$108,000
Potomac River Fisheries Commission		\$50,000
TOTAL NON-FEDERAL		<u>\$554,800</u>

FEDERAL

National Fish and Wildlife Foundation (NFWF)	\$20,450	\$30,450
Coastal Resource Management Program-Seaside		\$50,000
U. S. Fish and Wildlife Services, UFWS Chincoteague	\$50,000	\$50,000
Westmoreland County, NOAA Community- Based Fund	\$30,000	\$30,000
Westmoreland County, EPA 1002, Completion		\$7,396
TOTAL FEDERAL		<u>\$167,846</u>

*NOAA-Virginia Oyster Reef Heritage Foundation \$776,393

*U. S. Army Corps of Engineers \$500,000

* The status of two funding sources is currently unclear, both in approval in the federal budget and in the timing that the funds will be available for oyster restoration projects.

SEED TRANSFER:

We had a relatively good spatset in a small portion of the Great Wicomico River and in most of the Piankatank River in the summer of 2002. Salinities throughout the Bay are still relatively high, and much caution should be exercised in moving seed to minimize exposure to disease. There are insufficient state funds to move seed to public beds, except for a match requirement for a federal grant in Westmoreland County. We can use seed movement to Nomini Creek as a \$30,000 match for that grant.

Seed transfer from Great Wicomico to Nomini Creek

12,0000 bushels @\$2.50/bushel	\$30,000
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The Potomac River Fisheries Commission also has funding for some seed movement. They would like to buy some seed from Virginia and from Maryland. We have been relatively successful in moving seed oysters from Virginia, far up the Potomac River to Gum Bar near Colonial Beach. The PRFC will pay the watermen to move the seed and will pay to replace shells on the public rocks at a rate of one bushel of shell for each bushel of seed moved to the Potomac. We anticipate that they will move approximately 10,000 bushels of seed from either the Great Wicomico or Piankatank Rivers.

The Corps of Engineers would also like to move seed oysters this spring from the Great Wicomico River to the a newly constructed reefs in Tangier and Pocomoke Sounds. This activity would have to occur in late March or April, and it is unclear whether the funding mechanism can be put in place that quickly. Tentatively, MRC C/R Department will act as the contractor for this activity, and seed may be purchased from either public or private grounds. If all details are completed, up to 40,000 bushels of seed could be moved in that effort. Our regular procurement procedures could cover this activity, with the COE acting as a federal granting source.

There also appears to be adequate seed oysters in the Piankatank River to make some available to private industry as we did in 2000 and 2001. At least 40,000 bushels should be available. Participants will be required to pay tax on all seed harvested and will be responsible for replacing the shells on a bushel of shell for each bushel of seed basis. Participants may either replant the shell under MRC supervision or pay \$1.00 per bushel to have the shells replaced by MRC.

SHELLPLANTING Reef Sanctuary and Harvest Areas:

Chesapeake Bay - Western Shore

Approximately 1,000,000 bushels of house shells are available to plant on the western shore

and 50,000 bushels on the Eastern Shore. If the NOAA-Virginia Oysters Reef Heritage Foundation Grant is available (\$776,000), we will have enough money to use all of these shells. If it does not become available, we will only be able to buy a portion of these shells. We are actively searching for other shell buyers to reduce the uncertainty, but if sufficient funds are not available, we will buy a proportional amount from all shucking houses that would like to sell to the state.

Westmoreland County Oyster Heritage Program:

Nomini River

Barns Point Reef - 10,000 bushels of shell @\$1.10/bushel \$11,000 (EPA,CBLF)

Lower Machodoc River

Peach Orchard Reef - 37,633 bushels of shell @\$1.10/bushel \$41,396 (CBLF, NFWF)

Virginia Oyster Heritage Program -Phase II, Year 2:

We have surveyed sites throughout the Bay and tributaries that need shells on harvest areas. Maps of these areas are attached. We will place shells on as many of these sites as funding allows, at the rates that are noted. Shellplant areas have been chosen based on the best sites that are in need of shell and are at the closest proximity to the shucking houses. If additional funds become available, there are additional sites in all of these areas. Shell costs including planting should average between \$1.00 and \$1.20 per bushel. If we receive more funding than anticipated, and we run out of house shells, we will use an Invitation for Bid or the Request for Proposal process to secure a shell dredging contractor.

Seaside, Eastern Shore:

Several grants are available for Seaside.

Cobb Island - Nature Conservancy

40,000 bushels of dredged shells @ \$1.00/bushel \$20,450 (NFWF)
\$20,450 (GF)

We also have funding to work with Nature Conservancy volunteers to collect eelgrass seeds, harvest the seeds, and plant them in Cobb Bay. Additionally, we have a small amount of funding to have interested watermen to grow Bay scallops for release.

\$7,500 (NFWF)

Commission Meeting

A portion of the available oyster seed in the Piankatank and Great Wicomico Rivers will be made available to the private oyster industry for direct exchange of an equal amount of seed oysters (bushels) for an equal amount of planted oyster shells (bushels). Seed will be offered in 1,000 bushel increments to all interested Virginia participants. Participants may have more than one 1,000 bushel lot. If there is more interest by private industry in seed oysters than there is available, participants will be selected by lottery. Seed will be harvested by watermen and tallied by VMRC personnel. A receipt for seed harvested will be provided to participants and will provide a record of shells that must be replaced. VMRC staff will again tally and direct replanting of shells in the Piankatank and Great Wicomico Rivers in quantities equal to the seed harvest. A portion of the available oyster seed will also be available to the Potomac River Fisheries Commission for the same direct exchange of equal amount of seed oysters (bu.) for an equal amount of planted oyster shells (bu.). Both the Potomac River Fisheries Commission and the private oyster industry participants may also pay for the replanting of shells at a rate of \$1.00 per bushel, in lieu of planting the shells themselves. This money will be deposited into the Special Oyster Replenishment Fund.

The Commission will also set the price for the purchase of house shells. The prices will be approximately \$0.70 per bushel for clam shells and \$0.80 per bushel of oyster shells, but may vary somewhat by type of activity, transportation costs, and geographic area. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2003 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased by the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

The agency anticipates that all other 2003 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resources changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2003 Replenishment Program.

APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

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18. REPEAT OFFENDERS (Note: some of the cases were heard earlier in the meeting to accommodate individuals present at that time.)

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

Bryan H. Dalheim, three charges in 2002 for illegal possession of sponge crabs and misdemeanor larceny of crab pots. Mr. Dalheim said he was found "not guilty" on the misdemeanor. **Associate Member Ballard made a motion based on the Commission policy to put Mr. Dalheim on 12 months probation. Associate Member Birkett seconded the motion. The motion carried.**

Ernest H. Diggs (DOB 9/12/28), 4 charges for possession of sponge crabs and undersized crabs. Mr. Diggs said he went to court on all cases and was guilty. Commissioner Pruitt asked if Mr. Diggs had been before the Commission before now. Colonel Bowman stated that he had not. **Associate Member Williams moved to put Mr. Diggs on 1-year probation. Associate Member Ballard seconded the motion. The motion carried.**

Ernest Hoover Diggs, Jr. (DOB 2/1/47), 3 charges for possession of sponge crabs. Mr. Diggs said that he went to court on 1 charge. He further explained that each time he was inspected by a different Marine Police Officer who culled the crabs differently. Colonel Bowman stated that 3 different officers did each inspection and he explained that Mr. Diggs had come to hearing today on his own, not having been served to appear. **Associate Member Cowart made the motion for Mr. Diggs to be put on 12 months probation. Associate Member Birkett seconded the motion. The motion carried.**

J. H. Giddens, 3 charges for obstructed/no cull ring crab pot, possession of undersized crabs, and no visible numbers on crab pot buoys, 4th appearance before the Commission. Commissioner Pruitt asked Mr. Giddens if he went to court to which he responded that he had not and mailed the payments of the fines. Commissioner Pruitt expressed his concern that this was Mr. Giddens 4th appearance before the Commission and that the Commission must consider taking him off the water. **When asked for a motion, Associate Member Ballard moved to revoke Mr. Giddens license for 1 year. Associate Member Garrison seconded the motion. The motion carried.** Commissioner Pruitt requested that 1st Sargent Ballard explain to Mr. Giddens the appeal process.

Freddie S. Laird, Jr., 5 charges for illegal set/fish crab/peeler pot out of season, possession of undersized crabs, possession of sponge crabs and illegal harvest of crabs after 2 p.m., no problem for the officer, and second appearance before the Commission, first appearance in 1998. Mr. Laird stated the he had no problem before this year and that the board would not see him again. **Associate Member Birkett moved to put Mr. Laird on 12 months probation. Associate Member Garrison seconded the motion. The motion carried.**

Harold G. Pruitt, Jr., 3 charges, obstructed/no cull ring crab pot, possession of undersized oysters, and no visible numbers on crab pot buoys, not before the Commission before and no problem for the officer. **Associate Member Cowart, moved to put Mr. Pruitt on 12 months probation. Associate Member Williams seconded the motion. The motion carried.**

Daniel Yoder, not present, 3 charges, no visible numbers on crab pot buoys, possession of undersized crabs, and possession of undersized peelers. Colonel Bowman recommended that his license be suspended until he appears before the Commission. **Associate Member Cowart made the motion to accept the staff recommendation and suspend Mr. Yoder's license until he appears before the Commission. Associate Member Birkett seconded the motion. The motion carried.**

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The meeting adjourned at 4:47 p.m. The next meeting will be held on Tuesday, March 25, 2003.

William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary