

## MINUTES

**Commission Meeting****March 23, 2004  
Newport News, VA**

The meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt )	Commissioner
Chad Ballard )	
Gordon M. Birkett )	
Ernest N. Bowden, Jr. )	
S. Lake Cowart )	Associate Members
Russell Garrison )	
J. T. Holland )	
Cynthia Jones )	
F. Wayne McLeskey )	
Carl Josephson	Assistant Attorney General
Colonel Steve Bowman	Acting Deputy Commissioner
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Jane McCroskey	Chief, Admin/Finance Div.
Jack Travelstead	Chief, Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Jim Wesson	Head, Conservation/Replenishment
Roy Insley	Head, Plans/Statistics Dept.
Chad Boyce	Fisheries Management Specialist, Sr.
Ellen Cosby	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Kelly Lancaster	MR Compliance Coordinator
Tracy Patton	Fisheries Management Specialist
Mike Meier	Head, Artificial Reef Program
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
MPO Mike Dobson	Marine Police Officer
MPO Carl Dize	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.

**Commission Meeting**

**12707  
March 23, 2004**

Jeff Madden  
Jay Woodward  
Benny Stagg  
Tracy West  
Justin Worrell  
Randy Owen

Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
Tom Barnard

Other present included:

Bob Simon  
Fisher Steven  
Gwen Gubelin  
Paul Bickford  
Courtney Smith  
Ralph A. Horne  
Joe Dufresne  
Carolyn Williams  
Bob Pride  
Donna Rae Roeshe  
James Haydon  
Jeff Deem  
Brett Schoeberl  
W. C. Tice  
H. J. Deibler  
Wayne Lewis  
R. Welton  
Roger Parks  
Terry Howard  
Kenneth J. Harding  
David Moon  
Russell Gaskins  
Jim Brazier

Carl Eason  
Charles A. Brown  
Geroge C. McGraw  
Susan Bickford  
Tom Langley  
Thomas W. Beverly  
Paul Geru  
Edward B. Sander  
Susan Gaston  
Laura Belle Gordy  
S. Parker  
Byron Mitchell  
Wayne Collins  
Ray Cawley  
Gerry Ryan  
Z. R. Lewis  
Nathan Pugh  
Robert B. Allen  
Davis Lewis  
Susan Atkinson  
Debbie Moon  
Kevin Like

Wayne Sawyer  
Joe Gubelin  
Bob Croaker  
William L. Toner  
J. T. Twardy  
Rob Kreit  
Raymond Williams  
Jean M. Sander  
Melvin Dudley  
George Garner  
J. Parker  
Carolyn Mitchell  
Charles Hester  
B. Bowen  
Mike Handforth  
Irvon Fenton  
Douglas F. Jenkins  
Bill Culpepper  
Nancy Conklin  
Debbie Shrieves  
Nat Atkinson  
Tom Powers

and others

\* \* \* \* \*

Commissioner Pruitt called the meeting to order at 9:32 a.m. with all Associate Members present.

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

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

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**Approval of Agenda:** Commissioner Pruitt asked if there were any changes to the agenda. There were none. **Associate Member Garrison moved to approve the agenda. Associate Member Holland seconded the motion. The motion carried, 8-0.**

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1. **MINUTES:** Commissioner Pruitt asked for a motion regarding the minutes. There were no changes.

**Associate Member Cowart moved to approve the minutes for the February 24, 2004 Commission meeting. Associate Member Birkett seconded the motion. The motion carried, 8-0.**

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2. **PERMITS:** Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items, A through H, and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unprotected, and staff is recommending approval.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con. There was no one present to comment.

**Associate Member Garrison moved to approve Page Two items, A through H. Associate Member Holland seconded the motion. The motion carried, 8-0.**

**2A. DEPARTMENT OF THE ARMY, #04-0072,** requests authorization to install on an annual basis up to 12 temporary floating causeways that will extend approximately 1,200 feet into the Chesapeake Bay from the Fort Story Base in Virginia Beach.

Permit Fee.....\$100.00

**2B. DON KLIMKIEWICZ, #03-2601,** requests authorization to install a second, uncovered boat lift and construct an 8' x 24' floating dock with access ramp at the channelward end of an existing 136' long private, open-pile pier, resulting in platforms at the pier end totaling 886 square feet, at his property situated along the Eastern Branch of the Lynnhaven River in Virginia Beach. Recommend approval pending expiration of the public comment period.

Permit Fee.....\$25.00

**2C. LAFARGE NORTH AMERICA, #03-2531,** requests authorization to dredge approximately 11,800 cubic yards maintenance material and 9,600 cubic yards of new material from State-owned submerged lands, by clamshell method, to maximum depths of -37 feet below mean low water, and to maintenance dredge on an as-needed basis, at the offloading basin at their facility situated along the Southern Branch of the Elizabeth River in Chesapeake. Staff recommends a royalty of \$0.45 per cubic yard for the portion of the project that represents new dredging.

Royalty Fees (Dredging 9,600 cu. yds. @ \$0.45/cu. yd.).....\$4,320.00  
Permit Fee.....\$ 100.00  
Total Fees.....\$4,420.00

**2D. PAUL BICKFORD, JR., #03-2082,** requests authorization to expand an existing private pier with the addition of 35 square feet of decking and a 5½-foot by 8-foot deck area to square off a flared pier head, an 8-foot by 10-foot deck area and two 6-foot wide finger piers around a proposed boathouse, resulting in platforms at the pier end totaling 872 square feet, adjacent to his property situated along the Hampton River in Hampton.

Permit Fee.....\$25.00

**2E. MARINE RESOURCES COMMISSION, #04-0293.** The Fisheries Management Division requests authorization to construct a 415-acre public artificial fishing reef centered at 37° 37'16" North Latitude, 76° 14' 08" West Longitude in Chesapeake Bay, approximately 1.45 nautical miles north of Windmill Point Light in Lancaster County. The site will consist of suitable rubble, prefabricated concrete units and steel hulled vessels and will provide a minimum clearance of 15 feet at mean low tide.

No Fees applicable.

**2F. CITY OF ROANOKE, #03-2643,** requests authorization to install 85 linear feet of concrete-encased sewer line under the Roanoke River in Roanoke. Staff recommends standard instream construction conditions.

Permit Fee.....\$100.00

**2G. TOWN OF SMITHFIELD, ET AL, #04-0022,** requests authorization to install, by directional method, a 16-inch water line a minimum of ten (10) feet below the creek bottom of Cypress Creek, a tributary to the Pagan River, within the Virginia Department of Transportation's right-of-way along U.S. 10 Bypass in the town of Smithfield, Isle of Wight County.

Permit Fee.....\$100.00

**2H. MICHAEL KIRSCH, ET AL, #03-1836,** requests authorization to dredge 1,848 cubic yards of State-owned submerged lands from a 95-foot long by 120-foot wide boat basin and a 673-foot long by 25-foot wide access channel adjacent to their properties situated along the Western Branch of the Elizabeth River in Portsmouth. Materials will be disposed of at the Craney Island Disposal Facility. Staff recommends a royalty of \$0.45 per cubic yard for the new dredging.

Royalty Fees (Dredging 1,848 cu. yds. @ \$0.45/cu. yd.)....\$831.60  
Permit Fee.....\$100.00  
Total Fees.....\$931.60

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**3. CLOSED 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:**

**Item 4 and Item 7:**

**WAYNE SAWYER, #02-2440.** Commission consideration of Mr. Sawyer's request to construct a 200-foot long pier, a portion of which includes a 16-foot wide by 75-foot long floating dock, adjacent to his property situated along a cove of Linkhorn Bay in Virginia Beach, and Mr. Sawyer's request for Commission consideration of the Commissioner's direction to initiate the process to establish a private pier line in the cove before final action can be taken on the pier request. Several nearby property owners protest the project.

**JOSEPH M. DUFRESNE, #03-2105,** requests authorization to replace an A-frame, enclosed boat house with a 336 square-foot, open-sided flat roof/deck with railings and stairs, resulting in platforms at the pier end totaling 830 square feet, at his property situated along Broad Bay in Virginia Beach.

**The motion was seconded by Associate Member Holland. The motion carried, 8-0.**

**Associate Member Ballard moved for the following:**

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

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

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

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

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

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

**AYES: Ballard, Birkett, Bowden, Cowart, Garrison, Holland, Jones, McLeskey, and Pruitt**

**NAYS: None**

**ABSENT DURING VOTE: None**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: None**

**The motion carried, 9-0.**

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**Recording Secretary  
Virginia Marine Resources Commission**

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- 4. WAYNE SAWYER, #02-2440.** Commission consideration of Mr. Sawyer's request to construct a 200-foot long pier, a portion of which includes a 16-foot wide by 75-foot long floating dock, adjacent to his property situated along a cove of Linkhorn Bay in Virginia Beach, and Mr. Sawyer's request for Commission consideration of the Commissioner's direction to initiate the process to establish a private pier line in the cove before final action can be taken on the pier request. Several nearby property owners protest the project.

Associate Member McLeskey announced that because of a business conflict of interest he would not participate in the meeting and would abstain from voting on any motion. He left the meeting.

Randy Owen, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Owen explained that the project was located at 1045 Bobolink Drive adjacent to a cove off Linkhorn Bay in the Birdneck Point section of Virginia Beach. The shoreline of Linkhorn Bay was intensely developed as residential property and the Bay itself was heavily trafficked by recreational boating. The Cavalier Golf and Yacht Club, a 92-slip marina, was situated approximately 0.2 miles northeast of the applicant's property.

Mr. Owen said that on December 23, 2002, staff received Mr. Sawyer's Joint Permit Application in which he sought authorization to construct a private, non-commercial pier for the purpose of mooring three vessels measuring 65, 32 and 20 feet. The application also included a request for a timber bulkhead and riprap revetment.

Mr. Owen also said that after careful review of the project drawings and a bathymetric survey of the cove, staff concluded that the pier was statutorily authorized by §28.2-1203 (A)(5) of the Code of Virginia. By letter dated February 6, 2003, staff conveyed that to the applicant. Staff also informed the protestors that no VMRC permit was required for the pier.

Mr. Owen stated that the applicant also received approval to construct the pier from the U. S. Army Corps of Engineers on January 27, 2003 as well as conditional authorization from the City of Virginia Beach on October 14, 2003.

Mr. Owen said that in response to concerns raised by several Birdneck Point residents, Commissioner Pruitt, on January 20, 2004, rescinded staff's February 6, 2003 letter advising Mr. Sawyer that no VMRC permit was required for the pier. Commissioner Pruitt indicated that he believed the pier had the potential to adversely impact on the navigational access by other property owners on the cove should they too exercise their common law riparian right to wharf out to navigable water in a similar manner. As a result, the Commissioner directed staff to initiate the process to establish a private pier line for the cove pursuant to the authority contained within §28.2-1204(3) of the Code.

Mr. Owen said that on February 3, 2004, Mr. Carl Eason, counsel to the applicant, took exception to the Commissioner's edict and requested consideration of the matter by the full Commission. Mr. Eason put forth several legal arguments in his letter to the Commissioner. In Mr. Eason's opinion, his client's pier would not impact navigation in the cove and met all of the criteria for statutory authorization contained in the Code. Mr. Eason maintained that the Commissioner, and the Commission, did not have authority or jurisdiction in this matter, and no further authorization was required from the Marine Resources Commission.

Mr. Owen said that by letter dated February 17, 2004, Commissioner Pruitt agreed to place this matter before the full Commission at its March 23, 2004 meeting.

Mr. Owen explained that in keeping with Commissioner Pruitt's recent letter, staff had withheld any action to establish a private pier line in the subject cove pending further direction to proceed, or conversely, a finding that no permit was required for the subject pier. Should the Commission concur with the Commissioner's finding regarding navigation, staff would proceed with the required steps to establish a private pierhead line. If the Commission found that the pier was authorized by statute, however, no further action would be taken and it would seem that Mr. Sawyer could begin construction of his pier.

Mr. Owen said that should a conterminous property owner initiate legal action in a court of chancery to seek a riparian apportionment of the waters in the cove, however, staff would recommend that no action be taken pending that apportionment decree.



Wayne Sawyer and Tom Langley were sworn in as witnesses for the applicant.

Carl Eason, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Eason asked that he be allowed to speak later after the others had a chance to make their comments. Carl Josephson, Assistant Attorney General and Counsel for VMRC, said that the usual procedures established by the Commission should be followed. He further explained that the applicant and/or representative were usually allowed to speak first.

Mr. Eason agreed and began by referring to his letter of February 3<sup>rd</sup>. He wanted the record to clearly show that he did not ask for this hearing. He explained that the NPN letter sent to the applicant was appropriate and in accordance with Section 28.2-1203 (A)(5) and Section 28.2-1204 of the Code, which says that Mr. Sawyer had a right to a pier and bulkhead. He said the staff's review and issuance of the NPN letter were appropriate. He said that 11 months after-the-fact Mr. Sawyer was being told he could not complete his project. The Yacht Club was not an alternative because of the large waiting list. He said the suggestion of alternate dockage was not appropriate and not allowing Mr. Sawyer this pier infringed on his substantial rights. He further explained that Mr. Sawyer was contractually committed to complete this project. He asked the Commission stand behind the staff's decision that the project was exempt by statute and the NPN letter was appropriate.

Tom Langley of Langley and McDonald Engineering in Virginia Beach, representing the applicant, was present and his comments are a part of the verbatim record. Mr. Langley explained that the applicant had riparian rights and that if the shoreline length was projected to a point of navigability, it showed how his pier would be located within the creek. He had slides of the project area showing the highland and creek.

Wayne Sawyer, applicant, was present and his comments are a part of the verbatim record. Mr. Sawyer said that adjacent property owners had suggested that he keep his boat at the Yacht Club. He said he had planned to build a house and the pier and had spent considerable money. He said this process had gone on for 2 years and he wanted closure. He said that he needed 5-1/2 feet of draft for his boat and if the pier were shortened he would not be able to tie his boat up to it. He said that Hart and Klein, both property owners in the area, did not object. He further explained that the pier would be for private use not commercial use.

Commissioner Pruitt asked if anyone was present in opposition?

John Daniel, attorney for the protestants, Mr. and Mrs. Snyder, was present and his comments are a part of the verbatim record. Mr. Daniel agreed that riparian rights were the rights of those who own highland property, which includes the right to build a pier. He explained that the Code gives the staff the right to take action. He stated that all protestors have the rights as well as the public. He said that it was the duty of the

Commission to protect the public's interest and that piers needed to be of reasonable size. He utilized slides in this presentation. He said that in response to Commissioner Pruitt's rescinding of the NPN letter, the Commission must consider what was reasonable including the rights of other, and whether there were other alternatives. He said that it was not the Commission's job to make sure the applicant gets a pier to accommodate his 65 or 100-foot boat. He said that Commissioner Pruitt does have the authority, as well as staff, to make these determinations.

R. J. Nutter, Co-Attorney for the protestants, was present and his comments are a part of the verbatim record. Mr. Nutter stated that in this case all parties are at opposite ends. He explained that Mr. Eason's letter is incorrect and the Supreme Court determination in the past had not agreed with the facts in Mr. Eason's letter. He said that if you could agree with Mr. Eason's arguments, the NPN letter would be a very powerful tool. He said the Commission needed to support the Commissioner's decision. He said that Mr. Eason failed to tell the Commission that 3 boats would be kept at this pier. He stated that riparian rights are not based on the draft of the boat. He said that the slides (same slides used by Mr. Daniel) depicted how other piers could be constructed in this area and the Commissioner could consider this as interfering with navigation. He said if a NPN letter was issued and the pier did interfere with navigation, the Commission could require the pier to be torn down. He said that the NPN letter did not permit all other construction once it is issued, that was not the intent. He asked the Commission to support the Commissioner's decision to retract the NPN letter originally issued. He also stated that the Commissioner was authorized to take such action.

Robert Simon, Waterfront Development, Inc., was sworn-in to testify for the applicant, and his comments are a part of the verbatim record. He explained that he had been involved with other projects in the area and there were no requests for additions.

In rebuttal, Mr. Eason explained that the applicant did the right thing when he made his application, which resulted in the NPN letter being issued by VMRC. He stated that nothing had changed. He said that the applicant had not applied for an apportionment because his shoreline was in excess of 800 feet. He said that the VMRC staff had made a sound decision and the Commission needed to stand behind them. He explained that the applicant needed closure in this case. He said that Mr. Sawyer had started construction of his house and the foundation was in place. He said the neighbors have their piers and boats and Mr. Sawyer did not infringe on others.

After some further discussion, Commissioner Pruitt stated that he had a fair and open policy with staff to allow hearings recommended by them. He said he could vote against the staff recommendation to break a tie. He said he believed Mr. Sawyer deserved a pier, but it was in the public's interest for the matter to be brought before the entire Commission in making a decision. He explained that he recommended the Commission solve this matter, which is something he rarely does.

Associate Member Garrison stated that Mr. Langley's slides helped to clear up any problems he had with this matter. He said that he felt that Mr. Langley was knowledgeable and he had cleared up his concerns.

Associate Member Ballard commended Commissioner Pruitt on his action. He said this was a difficult case with a 200' pier in a body of water 1500' across. He said that boats this size are not unusual in this area, but are unusual to the cove. He said he sympathized with those who do not want this pier.

Associate Member Cowart said that he wanted to reiterate Associate Member Ballard's comments, but establishing pier line limits would avoid these problems. He said he agreed with staff based on the facts at the time and did not agree to changing that decision.

**Associate Member Cowart moved to uphold staff recommendation that the dock be built and finding that it does fall within the limits of the regulation of this Commission to grant the permit. Associate Member Garrison seconded the motion. The motion carried, 7-0-1. Associate Member McLeskey abstained from voting.**

Commissioner Pruitt stated that the Commission did not have a permit before them and the issue was whether or not we want to establish a pier line, which was his recommendation. He asked Carl Josephson, Assistant Attorney General, to address the matter.

Carl Josephson, Assistant Attorney General, explained that it was staff's recommendation to determine whether or not navigation had been affected and if it was, then the Commission needed to determine that a permit was necessary. He further explained that if the Commission decided that navigation was not affected, then what staff decided that no permit was necessary was correct, and the pier could be constructed under the statutory exemption. He said his concern was that the motion was upholding the permit as recommended by staff and a permit was not involved at this point.

**After further discussion, Associate Member Cowart restated his motion. He moved that the Commission agreed with staff's recommendation that no permit was necessary in this case and the Commission upheld that position. Associate Member Garrison seconded the motion.** Commissioner Pruitt asked for any discussion on the motion. Associate Member Garrison stated that Mr. Langley did a very good job of clarifying whatever questions he had about the case. Commissioner Pruitt stated that he had done his job in bringing this matter before the Commission, the protestors had been given a full light of day hearing and he would back up the Commission's decision. **The motion carried, 7-0-1. Associate Member McLeskey abstained from voting.**

No fees applicable.

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5. **VOLVO-PENTA PROPERTIES, INC., #03-2365**, requests authorization to remove 3,379 square feet of fixed, open-pile pier to be replaced with 4,365 square feet of floating pier, and to install nine (9) mooring piles, reducing the existing 26 slips to 15 slips at the applicant's boat testing facility situated along Chuckatuck Creek in the City of Suffolk. Two adjoining property owners protested the project.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are part of the verbatim record.

Mr. Stagg explained that the proposed project was located along Chuckatuck Creek, just downstream of the Route 17, Hazelwood Bridge, in the City of Suffolk.

Mr. Stagg said that the Volvo-Penta facility received considerable pier damage as a result of Hurricane Isabel. The applicant would like to remove the damaged piers and replace them with floating piers in an orientation better suited to the type of vessels projected to be tested in the future. The proposed alignment would not extend as far channelward as the existing structures and would result in a reduction in the number of slips. None of the slips are proposed for private leasing, but would be used to moor vessels waiting testing, during testing, and on an interim basis before being removed from the creek. The immediate area of the proposed piers had been dredged, under authorization of VMRC permit #02-0235. That dredging was completed in 2002. Additionally, the facility installed a new bulkhead to address upland silt infiltration into the creek, under authorization of VMRC permit #98-1685. The applicant indicates that the pier installation would be conducted from the water.

Mr. Stagg said that staff received two identical letters of objection concerning the project from Mr. George C. DeGraw, III, and Mr. George C. DeGraw, IV. Their objections centered around the new pier alignment, which they believed would result in increased requests for dredging, and use of the roadway leading to the facility during construction.

Mr. Stagg explained that staff contacted Mr. George C. DeGraw, IV, by phone concerning his objections and informed him that the upland road issues were outside the jurisdiction of VMRC. Additionally, staff informed Mr. DeGraw, IV that the existing piers could be repaired within the existing footprint pursuant to the Governor's Executive Order #58. Mr. DeGraw, IV noted his continued objection and stated that he was certain Mr. DeGraw, III, would maintain his objections as well.

Mr. Stagg explained that VIMS, in their Shoreline Permit Application Report, stated that the project, from a marine environmental viewpoint, would result in minimal individual and cumulative adverse impacts. The Department of Environmental Quality indicated the project did not require a Virginia Water Protection permit and had issued a letter indicating 401 Certification. The Department of Health found the project acceptable. The

proposal was approved by the City of Suffolk Wetlands Board at their meeting held on December 12, 2003. No other agencies had commented on the proposal.

Mr. Stagg stated that the oyster ground leaseholder was notified of the proposal and had not commented.

Mr. Stagg reiterated that the applicant proposed to reduce the number of slips and to move the alignment of the proposed piers landward of the existing damaged structures. The area was recently dredged and a deteriorated bulkhead repaired. Repair of the bulkhead should help delay the need to re-dredge this area in the future. Since the proposed new floating pier alignment should result in more efficient operations at the facility with less channelward encroachment, staff recommended approval of the request to include a royalty of \$493.00 for the new additional encroachment over 986 square feet of State-owned subaqueous lands at a rate of \$0.50 per square foot.

Associate Member McLeskey returned to the meeting.

Tom Langley of Langley and McDonald Engineering, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Langley stated that the VMRC staff had done a fine job. He said that the boats would be held there only during the testing. He said the work was required as a result of the hurricane.

George DeGraw, IV, protestant, was sworn in and his comments are a part of the verbatim record. He explained that he was also representing his son, who was also protesting the project. He said they had no objections to the applicant or to proposed improvements. He said they were just skeptical about the proposal itself. He said that his notification was late in getting to him because of a bad address and so his protest was received 10 days after the deadline. He said that there were serious problems in the whole area that the Commission needed to address. He said that the public depended on the Commission to look out for their interests. He also expressed concerns over the increased traffic. Commissioner Pruitt stated that the highland issues were not within the Commission's jurisdiction and the General Assembly would have to pass legislation giving them the authority to act on those.

Mr. Langley, in response to Commissioner Pruitt's questions about dredging plans in the future, said that there were no plans or requirements for dredging in the near future.

**Associate Member Garrison moved that the application be approved. Associate Member McLeskey seconded the motion. Associate Member Ballard asked if this included royalties. Associate Member Garrison responded, yes. The motion carried, 8-0.**

Royalty Fee (986 sq. ft. encroachment @\$0.50/sq. ft.).....	\$493.00
Permit Fee.....	\$100.00

Total Fees.....\$593.00

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Bob Grabb, Chief-Habitat Management, stated that there were two items which could be taken care of quickly before going to lunch break. He said that for Item 7, Joseph M. Dufresne, #03-2105, the applicant was requesting a 2-month deferral; and, on Item 9, Charles Brown, #03-1250, the protests had been withdrawn; therefore, the application could be removed from the agenda and handled administratively.

- 7. **JOSEPH M. DUFRESNE, #03-2105**, requests authorization to replace an A-frame, enclosed boat house with a 336 square-foot, open-sided flat roof/deck with railings and stairs, resulting in platforms at the pier end totaling 830 square feet, at his property situated along Broad Bay in Virginia Beach.

**Associate Member Ballard moved to approve the 2-month deferral request for Item 7, Joseph M. Dufresne, #03-2105. Associate Member Birkett seconded the motion. Motion carried, 8-0. The item will be considered by the Commission at its May 25, 2004 meeting.**

No fees applicable at this time, 2-month deferral approved.

- 9. **CHARLES BROWN, #03-1250**, requests after-the-fact authorization to retain a 32-foot long by 18-foot wide private, open-sided boathouse at a previously authorized pier adjacent to property situated along Roberts Creek in Poquoson. The adjacent property owners protested the project.

Not heard by the Commission, protests withdrawn.

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The Commission broke for a thirty-minute lunch at approximately 12:29 p.m. They returned from lunch break at approximately 1:10 p.m.

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Commissioner Pruitt expressed his thanks to Mrs. Laura Belle Gordy and presented her with a certificate for her 6 years of service on the Commission. He said that she was presently serving as the chairperson for the Board of Supervisors.

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6. **JAMES W. WYNE, ET AL, #03-1113**, requests authorization to dredge 748 cubic yards of subaqueous material to create a 600-foot long by 33-foot wide channel with maximum depths of minus six (-6) feet at mean low water into Ewell's Prong of White House Creek in Lancaster County. The sandy material will be removed by clamshell and transported to a previously approved upland site off Route 354 in Bertrand. Two nearby residents protest the project.

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

Mr. Woodward explained that the project was located at the confluence of Ewells Prong and White House Creek, off of the Corrotoman River, just north of Towles Point in Lancaster County. The mouth of Ewell's Prong was approximately 50 feet wide at its narrowest part and depths in the immediate area were currently 6 feet at mean low water and stable due to the high volume of tidal flushing of Ewell's and Millenbeck Prongs. Just inside and outside of the mouth, however, the area shoals to depths of three (3) feet or less. The material, predominantly sand, would be removed by clamshell and loaded into trucks at Mr. Wyne's adjacent upland property and then transported to an upland disposal site located less than two miles away. The disposal site had been used in the past for dredged material placement.

Mr. Woodward said that Mr. Ralph Horne, Secretary/Treasurer of the White House Creek Dredging Project Committee was the co-applicant and represented 39 property owners in the area that formally support the project. Mr. Horne conducted a survey of 67 property owners in the summer of 2002, resulting in 37 favorable responses. There were four individuals opposed to the project and 26 surveys were not returned. Staff was in receipt of 26 signed survey forms by supporters that described the type of vessel(s) they owned, the draft, problems they've encountered and other comments. Staff also received two formal letters of opposition to the project.

Mr. Woodward explained that Mr. Fredric McGhee and Mr. E. J. Kelly submitted a protest letter indicating that they own the property across the mouth of Ewell's Prong, not Mr. Wyne as reflected in the application. They also questioned the need for the project, as they had seen large boats navigating the area without any trouble. They further questioned the installation of a "No Wake" sign on their property without their permission. That sign has now been removed. Mr. James Winger also submitted a letter of opposition, indicating that he had never had a problem with navigation in the area in the 13 years he had been a part-time resident in the area. He was concerned that the dredging could lead to future shoaling, requiring periodic maintenance dredging and reduce the value of his property.

Mr. Woodward stated that the Virginia Institute of Marine Science indicated that the buffer between the dredge cut and the adjacent wetland vegetation was suitable and that

the adjacent shoreline appeared suitable for offloading and transfer of dredged material, provided vegetated wetlands were avoided during the transfer process.

Mr. Woodward explained that VIMS indicated that there were beds of SAV in the area that should be avoided and that any indirect impacts to SAV were likely to be minor given the size of the channel and the sandy nature of the material to be removed.

Mr. Woodward said that the Department of Environmental Quality was waiving their requirement for a Virginia Water Protection Permit (VWPP) and the Department of Game and Inland Fisheries recommended a time-of-year restriction from February 15 through June 30 to protect anadromous fish species during the spawning period.

Mr. Woodward stated that the oyster planting ground leaseholder whose ground would be directly impacted initially objected to the project, but had since withdrawn his protest.

Mr. Woodward said that the local wetlands board approved the project at their July 10, 2003 public hearing.

Mr. Woodward explained staff review of the connecting depths, the dimensions of the channel, the buffer between the dredge cut and adjacent wetlands vegetation, and the disposal area. In his opinion, the project met the general and specific criteria set forth in the Subaqueous Guidelines and Shoreline Development BMP manual. The material to be removed was predominantly sand, which should minimize any significant sediment resuspension during dredging.

Mr. Woodward said that the surveys and letters of support received indicated that the channel needed to be deepened to avoid future groundings and damage to vessels. As with many dredging projects, periodic maintenance may be needed but staff does not believe there would be any additional environmental impacts resulting from additional future dredging, if necessary, provided the size of the channel does not change.

Accordingly, staff recommended approval of the project as proposed with the following special conditions:

1. The proposed channel must be staked and a pre-dredge conference held on site to discuss the permit conditions, and confirm that SAV will not be directly impacted. The meeting shall include the Permittee, the contractor and VMRC staff, and will occur immediately prior to the commencement of any dredge operations;
2. A post-dredge bathymetric survey shall be provided within 30 days of completion of dredging;



- 3. A silt fence shall be installed landward of any vegetated wetlands at the offloading site to minimize wetland impacts during the transfer process.

In addition, staff recommended a royalty in the amount of \$336.60 be assessed for the removal of 748 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard.

James Wyne, applicant, was present but did not comment. No one was present in opposition to the project.

**Associate Member Ballard moved to approve staff recommendation with the staff's special conditions. Associate Member Garrison seconded the motion. The motion carried, 8-0.**

Royalty Fee (Dredging 748 cu. yds. @ \$0.45/cu. yd.).....	\$336.60
Permit Fee.....	\$100.00
Total Fees.....	\$436.60

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Item 7: 2-month deferral approved earlier in the meeting.

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- 8. **BAY BRIDGE ENTERPRISES, #04-0286**, requests after-the-fact authorization to retain 200 linear feet of bulkhead adjacent to property situated along the Southern Branch of the Elizabeth River in Chesapeake and to dredge 1,407 cubic yards of material.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that Bay Bridge Enterprises was located on the Southern Branch of the Elizabeth River, south of Money Point near the mouth of Milldam Creek in Chesapeake. This site was formerly the location of Jacobson Metals Company.

Ms West said that the proposal consisted of dredging a 180-foot long by 43-foot wide basin to maximum depths of -20 feet below mean low water adjacent to their facility and after-the-fact authorization for the installation of 200 linear feet of bulkhead.

Ms. West stated that Jacobson Metal Company was the subject of a Restoration Directive by the Regulatory Branch of the Corps (33 CFR Part 326). In a letter to Mr. Mario Mazza, dated October 26, 2001, the Army Corps of Engineers directed the clean up and restoration of three areas. The bulkhead along the Southern Branch of the Elizabeth

River was discussed under item number 1. It should be noted that the Corps specifically stated in their letter that Jacobson Metal Company should “accomplish the work... as soon as you obtain local permits to do so.” In spite of this language, the bulkhead was installed without valid permits from VMRC.

Ms. West said that Jacobson Metal Company had applied for permits on three different occasions since 1994. A bulkhead alignment similar to the existing after-the-fact bulkhead was previously authorized in two sections under two different permits (VMRC #94-0291 and #96-1768). Those permits expired May 31, 2000, and March 31, 2000, respectively. The bulkhead, however, was never installed. A new application was submitted in November 2000 and later withdrawn in January 2001 by both the wetlands board and VMRC, by virtue of the fact that Jacobson Metal Company had gone out of business.

Ms. West said that Mr. Mario Mazza, owner of Bay Bridge Enterprises, took possession of the property in the fall of 2001 and began discussions with the Army Corps of Engineers regarding his responsibilities under the Restoration Directive and initiated the repairs outlined in an October 26, 2001, letter to him from the Army Corps of Engineers.

Ms. West explained that in August 2003, staff received a call reporting the unauthorized bulkhead construction and dredging project at Bay Bridge Enterprises, which was located on the former Jacobson Metal property. On August 28, 2003, staff, along with representatives of the Department of Environmental Quality and the Chesapeake Wetlands Board, conducted an inspection of the site. Staff found that 200 feet of steel sheet-pile bulkhead had been installed along the waterfront and in a portion of a man-made slip area on the property. There was no obvious evidence of dredging activities, however, the property owner had removed scrap metal debris from a vegetated wetland area in Milldam Creek as part of the Restoration Directive.

Ms. West stated that VIMS reviewed the after-the-fact bulkhead and the proposed dredging and found both to be minimal in nature. The Chesapeake Wetlands Board heard the application on February 18, 2004. The Board approved the application as proposed and levied a \$500.00 civil charge.

Ms. West said that there were no oyster ground leases affected by the proposal and no state agencies had commented on the project.

Ms. West said that staff had no concerns with the proposed dredging. The scope of the dredge proposal appeared to be consistent with the needs of this industrial facility. Staff recommended a royalty in the amount of \$0.45 per cubic yard for the portion of the project proposal that represented new dredging.

Ms. West said that given that permits had been previously issued by this agency for construction of a bulkhead in a similar alignment at this facility, staff would have most

likely recommended approval of the bulkhead as proposed had an application been submitted prior to the bulkhead installation.

Ms. West said that given that Mr. Mazza was proceeding with the project under the cover of a Restoration Directive, it was conceivable that he may not have realized that authorizations from other regulatory authorities were required. However, the October 26, 2001, letter from the Army Corps of Engineers outlining actions to be taken by the property owner under the Restoration Directive clearly and specifically indicated that Mr. Mazza should obtain the appropriate local permits.

Ms. West stated that as such, if approved, the Commission might want to consider an appropriate civil charge for the installation of 200 linear feet of bulkhead based on a minimal environmental impact and a moderate degree of deviation or non-compliance according to our matrix.

Robert Simon, Waterfront Development Consultant, was present representing the applicant and his comments are a part of the verbatim record. Mr. Simon said that the VMRC staff had been very helpful. He said that the applicant thought he had all required permits. He explained that the drawings and directive by the Corps of Engineers said to go ahead with the clean up and repair. He said it was in the directive for dredging of the slip as a part of the clean up. He said that the bulkhead was in alignment with other bulkheads in the area for continuance. He said that in defense of the applicant there would be 1,400 square feet of wetlands cleaned up as directed by the Corps of Engineers. He said that the applicant was just trying to be a good steward and was confused about not having a permit for the bulkhead. He said that he was not consulted prior to the work being done.

No one else, pro or con, was present.

**Associate Member Garrison moved to accept staff recommendations with no civil charge being assessed. Associate Member Cowart seconded the motion. The motion carried, 8-0.**

Royal Fee (Dredging 1,407 cu. yds. @ \$0.45/cu. yd.).....	\$633.15
Permit Fee.....	\$100.00
Total Fees.....	\$733.15

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(Item 9: Removed from agenda - protests withdrawn.)

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**10. PUBLIC COMMENTS:** There were no requests to address the Commission.

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**11. Haul Seine/SAV Interactions:** Review of the 2002/2003 database and report from Dr. Bob Orth, VIMS.

Dr. Bob Orth, representing the Virginia Institute of Marine Science, gave a presentation with slides as was requested by the Commission for the February meeting, but was a month late. His comments are a part of the verbatim record. He said that they only analyzed in detail the scars in two locations, the Browns Bay and Poquoson Flats area and there are seven other sites. He said that they want to continue to monitor for possible changes and further damage. He said that if scarring did increase there should be some regulatory action taken at that time.

Roy Insley, Head-Plans and Statistics, was present and his comments are a part of the verbatim record. At the request of Jack Travelstead, he had worked with Dr. Orth in their study and had met and gone out with the haul seiners on numerous times. He said the haul seiners have been extremely cooperative. He said that they tell him they have the most to lose in this situation, they did not want to destroy the grassbeds, and wanted to work with everybody. He said they stated they wanted to be able to continue to fish and they have the most to lose by losing the grassbed areas. He said most of the haul seiners are adjusting their procedures in hauling on the grassbeds and modifying their gear. He said in Dr. Orth's presentation there had been improvements regarding the scarring of the grassbeds. He said there was not as much recovery time needed as was originally thought. He said that the haul seiners contend that they were willing to take responsibility for a percentage of the scarring, but they did not feel like they are 100% responsible for this scarring. He explained that staff and Dr. Orth have concluded that at this point, after assessment of the problem, that further regulation was not needed, but it was staff's recommendation to continue with the study by Dr. Orth. He said the monitoring of the haul seine interaction with the SAV on an annual basis should continue. He said if it was seen that more destruction had occurred, or the SAV and the beds were being impacted by the haul seining propeller wash then the matter would come back to the Commission and adjustments would be made then to protect the beds. He gave the Commission a handout from the CCA and said that Mr. Powers wanted to address the Commission. He also had two other handouts, from the Chesapeake Bay Foundation and the VIMS' budget proposal for continuing the study. He explained that staff recommended that this study be continued at \$20,553 per year. He said that it was recommended that one-half be taken from the Commercial License Funds and one-half be taken from the Recreational License Funds.

Commissioner Pruitt asked the Commission what it wanted to do about this matter.

Associate Member Ballard said that they were just being given a briefing and he did not think any action was necessary.

Associate Member Bowden said that he felt the Commission should take the suggestion of staff and continue the study. He said that the changes in the regulation made already should be given some time to work or not. He said that it was only necessary to monitor for the present time.

Associate Member Garrison said he agreed with Associate Member Bowden that the Commission needed to continue this study and see what happens and come back later and review it again.

No action was necessary at this time.

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**12. Public Hearing:** Proposed amendments to Regulation 4VAC20-950-10 et seq. (black sea bass) and Regulation 4VAC20-910-10 et seq. (scup).

Associate Member Birkett acted as chairman, while Commissioner Pruitt was absent from the meeting.

Chad Boyce, Fisheries Management Specialist, Sr., gave the presentation and his comments are a part of the verbatim record. Mr. Boyce said there were two issues and two regulations. He said that the quota for scup had been amended and changed to 7,911 pounds summer quota and that the MAFMC closed season for the black sea bass approved for federal waters was September 8 through September 21 and December 1 through December 31 and staff recommended that the state waters have the same closed season. He explained that a date in the preamble of the black sea bass regulation had administratively been changed from October 28, 2004 date to October 28, 2003 date. He said that staff recommended adoption of the proposed amendments to Regulation 4VAC 20-950-10 (black sea bass) and 4VAC 20-910-10 (scup).

No questions for staff.

No one from the public commented on this issue.

**Associate Member Cowart moved to adopt the staff recommendations amending the regulation pertaining to scup (4VAC 20-910-10) and to adopt the Black Sea Bass (4VAC 20-950-10) regulation as amended and to reflect the 2003 date instead of the 2004 date. Associate Member Garrison seconded the motion. The motion carried, 5-0-1. Associate Member Jones abstained from voting as she was absent from the meeting room during the discussion. Associate Member Bowden was absent from the meeting room.**

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Commissioner Pruitt returned to the meeting.

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- 13. Public Hearing:** Proposed amendments to Regulation 4VAC20-620-10 et seq. to establish recreational summer flounder harvest restrictions for 2004.

Rob O'Reilly, Deputy Chief-Fisheries Management, gave the presentation with slides of numerous tables analyzing data and options. Mr. O'Reilly reviewed the options that were advertised by notice, which were as follows:

<b>Option</b>	<b>Min.Size Limit (in.)</b>	<b>Possession Limit (no. fish)</b>	<b>Closed Summer Season</b>	<b>Landings Data Used</b>
1)	17	8	None	2003
2)	17 ½	8	None	2002-2003
3)	17	8	None	2003
4)	17	8	None	2002-2003
5)	16 ½	8	Any 4 days, July 19-25	2003
6)	16 ½	8	July 24 -August 15	2002-2003

Mr. O'Reilly stated the staff recommended 17" minimum size, a 6-fish bag limit, and no summer closure. He explained that it was estimated there would be 2.6% less landings than the target with the staff recommendations. His comments are a part of the verbatim record.

Commissioner Pruitt opened the public hearing. He requested that all speakers keep to the current issues and to try to be brief in their presentations.

Jeff Deem, a member of FMAC, was present and his comments are a part of the verbatim record. He said that he agreed with the 16-1/2" minimum size; 5-fish limit; and 8-day closure, which would satisfy the most people and spread the burden equally.

Melvin Dudley of the Northampton Anglers Club was present and his comments are a part of the verbatim record. Mr. Dudley said that they had taken a poll of the membership and they were in favor of the larger fish and no closed season. He encouraged the staff to use a broader database, say 4 or 5 years, and this would eliminate the peaks and valleys in the data.

Bob Pride, MAFMC representative from Newport News, was present and his comments are a part of the verbatim record. Mr. Pride explained that changing the regulation now would just mess up our track record. He said that he was concerned that there would be an overage in catch and the quota would be lost for the next year. He said that he suggested the Commission maintain the limits at 17-1/2 inches and 8-fish limit.

Bryon Mitchell, representing himself and his wife both of Chesapeake, was present and his comments are a part of the verbatim record. He recommended that the Commission maintain the same regulations, 17-1/2 and 8-fish.

Richard Welton, representing Lighthouse Tackle, was present and his comments are a part of the verbatim record. He said they recommended that the Commission keep the regulation the same. He also said that he did not recommend a closed season.

Douglas Jenkins, representing the recreational fishermen, was present and his comments are a part of the verbatim record. He said that they agreed with Jeff Deem to share the fishery, which is not being done now. He said that the Northern States control the striped bass fishery and now it seems the Lower Bay and Hampton Roads area controls the summer flounder fishery. He said because of the 17 and 17-1/2 size limit, the Northern Neck area did not have a summer flounder fishery. He said that his area was a part of Virginia and should be considered when a decision is being made.

Jessica Parker was present and her comments are a part of the verbatim record. She said the fishing industry on the Eastern Shore had been hit hardest economically by past regulations and the Commission needed to make a decision that was fair and equal for all. She said that everyone needed to share the burden. She said that she supported the 16-1/2 inch size limit.

Randy Lewis of Wachapreague was present and his comments are a part of the verbatim record. He said that he supported Jeff Dean's recommendation 100 percent. He suggested the 16-1/2" size limit and preferably 5-fish limit with as few days as possible for a closed season.

Susie Parker, who had been in the Charter Boat business in Wachapreague for 29 years, was present and her comments are a part of the verbatim record. She said that the Town of Accomack's fishing industry had been hit hard in the past. She said the burden has got to be shared. She said that she supported the 16-1/2 inch; 5-fish; and 8-day closure. She said that nobody knows what is going to happen next year. She said that last year we were a quarter of a million under our quota and that was when it was 17-1/2. She said that we need to be willing to risk an overage so as not to gamble on another quarter of a million of the quota being lost.

Jim Deibler of the Virginia Charter Boat Association was present and his comments are part of the verbatim record. He said he supported no closed season and the lowest possible size limit. He said the biggest problem is the closure. He said we would basically like the smallest possible size limit and no closure. He said that if needed to take a cut in limits that was fine as long as it was a reasonable cut.

Donna Roeske of Captain Bob's Marina in Chincoteague was present and her comments are a part of the verbatim record. She said the burden should be shared by the whole

state. She said in Chincoteague there was no other fishery to fall back on. She said that because of the trawlers, there are no larger fish allowed to migrate to the waters of Chincoteague. She said that they need the Commission's help. She said she supported the 16-1/2 inches size limit. She said that with the Commission's help they could at least stay in business.

Mike Handforth of the Chincoteague Charter Boat Association was present and his comments are part of the verbatim record. He said they supported the 16-/12 inch size limit, 5-fish limit, and 8-day closure in July. He said the State needed to go back to ASMFC and get a split season. He said the bayside and seaside want different things. He said that his customers took home 1/8 of one legal size fish per person every trip last year, that was how bad fishing was and a lot of the fishermen would not be back.

Terry Howard representing the Chincoteague Mayor and Town Council was present, and his comments are a part of the verbatim record. He gave the Commission copies of a letter with a Resolution for the Town of Chincoteague. He said that they supported the 16-1/2" size limit, 5-fish limit per person per day, and the 8-day closure in July.

Dr. Robert Allen of the Peninsula Saltwater Fishing Association representing members from Newport News, Hampton, Williamsburg, York County, and Gloucester County was present and his comments are a part of the verbatim record. He said that the 2003 data do not truly reflect the average flounder fishing year in Virginia. He said 2003 was an aberration. He said that most fishermen in his club believe that many of the proposals would allow Virginia to far exceed their quota in 2004 and create conditions that would drastically and unfavorably affect regulations required in 2005 in order for Virginia to be in compliance again. He said they supported the 2003 regulations remaining in effect for 2004. He said that changing regulations annually was economically harmful to the important recreational fishing industry. He said that they were opposed to any mid-season closure during 2004.

Laura B. Gordy, representing the Accomack County Board of Supervisors, was present and her comments are a part of the verbatim record. She read the County's Resolution into the record, which requested that the Commission adopt the 16-1/2 inch size limit, 5-fish limit per day, and the mid-season closure from July 23<sup>rd</sup> to July 30<sup>th</sup>. She said that Wachapreague had been greatly affected by past regulations and tourism was nothing like it use to be there. She further explained that Chincoteague's tourism had also been affected, but there were other activities in the area to compensate as the area was larger. She asked that their resolution be considered when making a decision.

Jerry Ryan, representing the Chincoteague Chamber of Commerce, was present and his comments are a part of the verbatim record. He read into record a written statement on behalf of the Chamber of Commerce, which recommended that the Commission approve the 16-1/2 inch size limit, 5-fish limit, and 8-day closure. He asked that they consider this recommendation when making their decision.



Jim Haydon, Recreational Fisherman, was present and his comments are a part of the verbatim record. Mr. Haydon circulated written information for the Commission's review. He said that he supported the 17-inch size limit.

Commissioner Pruitt closed the public hearing and recessed the meeting for five minutes. They returned from the short recess at approximately 3:46 p.m.

Commissioner Pruitt reconvened the hearing. He said that there had been some very good presentations from those who spoke. He said that he waited until he had heard all the comments before he made his mind up. He asked for discussion from the Commission.

Associate Member Bowden stated that he wanted to be fair and provide equal opportunity and a 17 or 17-1/2 inch size does not do this. He explained that it did not matter what the stocks were; that sizes vary from area to area and some areas only see the small size fish. He said the major economy on the Eastern Shore was seafood businesses and agriculture. He said that it was all a Mom and Pop industry and they could not stand anymore. He said he agreed with Mr. Jenkins that the 17-1/2 inch size had eliminated the river system fishery. He said there are 3 main fish found on the Eastern Shore and that is grey trout, which are gone; sea bass, which is heavily regulated; and flounder. He said if the pain was shared, it would help everybody. **At this point, Associate Member Bowden moved to accept FMAC recommendations for 16-1/2 inch size limit; 5-fish limit; and an 8-day closure. Commissioner Pruitt called for a second three times and the motion failed for lack of a second.**

Associate Member Garrison stated that he had talked with lots of people and had lots of calls. He explained that those he spoke with (90%) did not want a closure. He said that 2003 was not a good year with the bad weather and hurricane event. He said that it was really bad for fishing when you have 14 rainy weekends. He said it was a bad year.

Associate Member Birkett explained that there were two sides to every issue. He said there needed to be a balance. He said you could not always be right, but you could be careful. He said it would be taking a terrible risk for next year. He said next year could mean 18" size with a 3-fish catch limit and he didn't know if people in the fishery could live with that. He said it would be better to go to the conservative side and find a happy median to satisfy the most factions.

Associate Member Jones said that flounder was a popular subject for her. She said that 2003 had been an abnormal year. She said to consider only 2003 data was uncomfortable. She said in 2002 salinity was high and there was the 100-year drought in the Bay. She said both years were odd ones. She said that she would urge ASMFC to surplus the use production models to make assessments for making decisions. She said that there needed to be a change in their stock assessment method.

Jack Travelstead, Chief, Fisheries Management, stated that the entire stock assessment method had been debated and taken to the scientific committee. He stated there was not enough information to change the stock assessment method. He explained that the ASMFC was very disappointed.

Commissioner Pruitt asked if they considered social-economic conditions as required by the Magnuson Act to which Mr. O'Reilly responded that MAFMC did consider them, but ASMFC did not have to do that.

Commissioner Pruitt asked for a motion. **Associate Member Garrison moved to establish a 17-inch minimum size limit; an 8-fish limit; and no summer closure for the 2004 season. Associate Member Holland seconded the motion. Associate Member Birkett suggested that the motion be amended to 6-fish with the 17" size limit to keep from going over quota. Associate Members Garrison and Holland agreed to the change. The motion carried, 6-2. Associate Members Bowden and Cowart, both, voted no.**

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At the request of Commissioner Pruitt, Lewis Jones, Deputy Chief-Law Enforcement, introduced a new Law Enforcement employee, Chris Ward who is assigned to Gloucester County. He said that he was with the Gloucester sheriff's department. Commissioner Pruitt said that he was knowledgeable of the water in addition to his other qualification.

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- 14. Blue Crab:** Discussion and request for public hearing on regulatory amendments to extend the license sales moratorium, to modify the crab dredge limited entry program, adjust sponge crab restrictions and other issues.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He said staff recommended that the moratorium on the sale of crabbing licenses be continued since it would expire in May of this year. He said that was necessary to keep the caps on effort that are a part of the 15% reduction that was implemented for the past two years. He said the second item that staff requests is that the crab dredge fishery regulation be modified because we have met the goals. He said there has been reduction of the number of vessels in the dredge fishery below the 225-cap, which was a long-term goal. He said it took 10 years to get there. He said that since the number was below the 225, there was an opportunity to allow a few vessels to get back into the fishery. He said the regulation needed to be modified to allow for some type of lottery. He said that it should be proposed to eliminate the requirement that a vessel dredge at least one-day each year to maintain eligibility. He said there was no longer a need to purchase the license annually to maintain eligibility. He explained that those presently in the fishery would continue to be eligible unless they transfer their license to

someone else. He discussed the following items reviewed by the Crab Management Advisory Committee (CMAC):

- 1) A request to allow for providing male crabs with food during the main peeler season, in order to extend the longevity of the male crabs was not endorsed by the CMAC.
- 2) A request to allow peeler fishermen to take up to a bushel of hard crabs on Sunday, for baiting the peeler pots was endorsed by the CMAC (an amendment of Regulation 4 VAC 20-270-10 et seq. would be required).
- 3) A request for extending the 8-hour day to a 9-hour day in April and May (as described in Regulation 4 VAC 20-270-10 et seq.) and substituting a week closure in November, in order to maintain the 15% reduction-in-harvest plan, was sent to staff to assess the feasibility of this substitution.
- 4) A request to establish more restrictive guidelines for allowing agents was acknowledged as a complicated issue by CMAC and one needing further discussion.
- 5) A request to modify the criteria for allowing transfers of crabbing licenses, especially the requirement involving the sale of a boat, was discussed but a decision by the CMAC was postponed, until further discussion had taken place.
- 6) A request to eliminate the requirement to return dark-colored sponge crabs to the waters (as described by Regulation 4 VAC 20-370-10 et seq.) and substitute a 1-week ban (July 5 through 11 was recommended) on taking or possessing sponge crabs was endorsed by the CMAC. The basis for this proposal centers on anecdotal information that many of the harvested dark-colored sponge crabs returned to waters suffer mortality. As Maryland prohibits the possession of sponge crabs after July 4, a committee member suggested that starting the 1-week prohibition in Virginia on July 5 would achieve stability in the Bay markets. Staff indicated that it would contact Dr. Lipcius to obtain his advice on this proposal.
- 7) A proposal to exempt recreational crabbers who hold a 5-pot license from the Sunday prohibition against crab potting was not endorsed by the CMAC.

Mr. Travelstead stated that the recommendation was to advertise for public hearing staff's recommendations and items 2, 3, and 6 endorsed by CMAC. He distributed a copy of Dr. Lipcius' report to the Commission.

Tom Powers, CCA representative, was present and his comments are a part of the verbatim record. He explained that the 5-pot license item was rejected because of the concerns that people were stealing crabs out of the commercial harvesters pots and that

was the only reason for the rejection. He said that was why he felt it needed to be added to the public hearing items.

**Associate Member Cowart moved to advertise staff recommendations and 2, 3, 6, and 7 of the items discussed by the CMAC for public hearing in April. Associate Member Birkett seconded the motion. The motion carried, 7-0. Associate Member McLeskey did not vote as he was absent from the meeting during the discussion.**

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**15. Discussion:** Exemptions for limited entry programs.

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He explained that the Commission had requested that the FMAC look at this matter. He said that they endorsed the concept of exemptions being allowed. He said they suggested that it be structured similar to the crab dredge committee review board.

Associate Member Garrison suggested that it be limited to one time a year.

Tom Powers, CCA representative, was present and his comments are a part of the verbatim record. He suggested that this be applied to fisheries with a limited quota, not to open fisheries.

Associate Member Bowden expressed his concern that it would not work with all fisheries, such as the ITQ for striped bass. He said to allow an exemption after everyone had been given their share, would take away from everybody already in the fishery. He said it would be counterproductive and borderline illegal.

Associate Member Cowart said that for the ocean fishery there might need to be some consideration given if there is an increase in the quota, perhaps some of the people on the waiting list could be considered for this additional quota rather than distributing it to those individuals currently in the fishery.

Associate Member Bowden said in the past we have given some of the quota increase to the ones in the fishery and some to new individuals and he would like to see what we would do in the case of an increase. He said that from the looks of things we are not doing too well on increases.

**Commissioner Pruitt instructed staff to take the matter back to FMAC for more fine-tuning.**

No action was taken.

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**16. Black Drum:** Requests for limited entry fishery permits.

Tracy Patton, Fisheries Management Specialist, gave the presentation and her comments are a part of the verbatim record. Ms. Patton explained that there was limited entry and a commercial harvest quota of 120,000 pounds. She said that the quota had not been exceeded since 1994 and was very close last year when 93% of the quota was harvested. She explained that the whole purpose of limited entry was to prevent overcapitalization and to improve economic benefits to those in the fishery. She said that the three criteria are as follows:

1. The applicant shall be a registered commercial fisherman and shall have held a black drum permit in at least one year from 1988 to 1993.
2. The applicant shall have documented catch of black drum in at least one year for which a black drum permit was held from 1988 to 1993.
3. The applicant shall have reported, in accordance with this regulation, any black drum fishery activity in 1992 and 1993, if a black drum permit was held in those years.

She said that several fishermen that previously held permits in 1993 failed to meet the criteria and were denied their request to renew their permits in 1994. She said that in 1993 there were 114 permitted fishermen and only 62 people were eligible to receive black drum permits in 1994. She said there are currently 67 permitted fishermen, an average of 35 have been active in the fishery each year.

She said that there were three exception requests for the black drum fishery. She said they were:

David Thornes	CRL#442503-5147	Cape Charles, VA
Keith Like	CRL#523495-4004	Cape Charles, VA
James Stalgaitis	CRL#127593-2209	Cape Charles, VA

She explained that David Thornes and Keith Like failed to meet all three criteria, but James Stalgaitis did meet the first criteria as required by regulation. She said that in previous years the Commission had denied similar requests, therefore, staff recommended denying these exception requests. She said only Keith Like was present at the meeting.

Associate Member Bowden stated that weekly reporting was a burden on the fishermen and staff alike. He said catching one drum meant you had to start the weekly reporting. He said that he did not feel that way, but some people did. He suggested that this be sent back to the FMAC to look into further. He said that he was really surprised that 93% was

caught and he was a big part of it since he had such a good year. He further suggested the Commission have FMAC come up with some criteria for a limited amount of effort increase from individuals who do not currently have a permit. Commissioner Pruitt asked if he meant that no action be taken on the three exception requests. Associate Member Bowden said he did not feel that the Commission could take action. He explained that he believed Mr. Like had a legitimate reason, but not the other two. He said he thought that FMAC needed to look at it first. He said he recommended not doing anything today, but to refer it back to FMAC to develop criteria to let new people into the fishery.

Associate Member Jones stated that this was one fishery that did not need regulating and she had never said that about any other fishery. She said the fish caught were very old and this was not shown to be an overfished species. She said that she endorsed Associate Member Bowden's recommendation.

**Commissioner Pruitt said that this matter would be sent back to FMAC.**

**Commissioner Pruitt requested Associate Member Bowden to restate his recommendation. Associate Member Bowden said he recommended taking the whole idea of a limited entry fishery back to the FMAC to look at the weekly reporting and to consider a way to allow new people into the fishery on a limited basis.**

Ms. Patton went on to explain the transfer requests. She said that there were 5 people that had applied for the transfer:

Betty Stevens	CRL#3928203-5176	Birdsnest, VA
Larry Taylor	CRL#212293-2984	Westover, MD
William Davenport	CRL#037293-0334	Whitestone, VA
Ellsworth Smith, Jr.	CRL#827193364	Birdsnest, VA
Willie Smullin	CRL#9931930719	Bloxom, VA

She explained that the Commission had approved similar requests in the past on a one in and one out basis, therefore, staff recommended approval of the 5 transfer requests.

**Associate Member Ballard moved to accept the staff recommendation on the 5 transfer requests. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

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Bob Grabb, Chief, Habitat management, introduced Justin Worrell as a new employee who started in September. He explained that he was hired to replace Mark Eversole.

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**Jack Travelstead, Chief-Fisheries Management said that back on Item 11, Haul Seine/SAV Interactions, they needed approval of the proposed \$20,553 budget for continuing the interaction study.** He said it would be split equally between the Recreational license and Commercial license funds.

**Associate Member Garrison moved to approve the funding of the study. Associate Member Birkett seconded the motion. The motion carried, 8-0.**

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**Late renewals for the Commercial Fishermen Registration Card:**

Commissioner Pruitt explained that always a few come in late and they have to go through the application process in order to get their cards back. He said that he wanted to send this matter to the Finfish Management Advisory Committee to look into the development of criteria or grace periods for late renewals of the Commercial Fisherman Registration Card.

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There was no further business, the meeting adjourned at approximately 4:47 p.m. The next meeting will be held Tuesday, April 27, 2004.

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William A. Pruitt, Commissioner

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Katherine Leonard, Recording Secretary