

**MINUTES**

**AUGUST 27, 2002**  
**NEWPORT NEWS, VA 23607**

The regular Monthly meeting of the Marine Resources Commission was held on August 27, 2002 with the following present:

William A. Pruitt )	Commissioner
Chadwick Ballard, Jr. )	
Gordon M. Birkett )	
S. Lake Cowart, Jr. )	
Russell Garrison )	
Laura Belle Gordy )	Members of the Commission
Cynthia M. Jones )	
F. Wayne McLeskey )	
Kenneth W. Williams )	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
Robert Craft	Chief-Administration and Finance
Andy McNeil	Programmer Analyst Sr.
Col. Steve Bowman	Chief-Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief-Law Enforcement
Capt. M. Ray Jewell	Northern Area Supervisor
Capt. Warner Rhodes	Middle Area Supervisor
Capt. Kenny Oliver	Southern Area Supervisor
1 <sup>st</sup> Sgt. Bruce Ballard	Eastern Shore Area
M.P.O. Trevor Johnson	Marine Police Officer
M.P.O. Perry Flinchum	Marine Police Officer
Virginia Institute of Marine Science:	
Thomas Barnard, Jr.	Dr. Eugene Bureson
Lyle Varnell	
Rob O'Reilly	Deputy Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics
Dr. James Wesson	Head-Conservation & Replenishment
Cory Routh	Fisheries Management Specialist

**COMMISSION MEETING****AUGUST 27, 2002**

Robert Grabb  
 Tony Watkinson  
 Gerry Showalter  
 Hank Badger  
 Chad Boyce  
 Kevin Curling  
 Mark Eversole  
 Jeff Madden  
 Chip Neikirk  
 Randy Owen  
 Ben Stagg  
 Traycie West  
 Jay Woodward

Chief-Habitat Management  
 Deputy Chief-Habitat Management  
 Head-Engineering/Surveying  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.

## others present included:

Lillian Newton  
 Marion Barker  
 William France  
 Myrtle Lee France  
 Cindy Brigman  
 Scott Massidda  
 Patti Scholl  
 Michael Knight  
 Robert McDermott  
 Claudia McDermott  
 Tommy Pearson  
 Steven Tallent  
 Sandra Canepa  
 Betty Dietz  
 Charles Dietz  
 Martin Schara  
 Ron Phillips  
 Mary Lowe  
 Michael Phillips  
 Bill Mizelle  
 Frank Fletcher  
 Andrea Williams  
 Bob Bierly  
 John Williams  
 Michael Atkinson  
 Joseph Meade

Luttrell Tadlock  
 Wellington Shirley  
 Alfred Gaskins  
 Wolfgang Grimm  
 Wayne Taylor  
 Scott Henry  
 Craig Polubinski  
 Charles Davis  
 Barbara Davis  
 Terry Getchoff  
 Tom Szelest  
 Chris Turner  
 Carol Roy  
 Rob Roy  
 Evelyn Burcher  
 Gordon Burcher  
 Douglas Jenkins  
 George Washington  
 Mike McGee  
 Nelson McGee  
 Roger Parks  
 Tom Powers  
 Thomas Kelley  
 Russell Gaskins  
 Walter Johnson  
 Robert Johnson

**COMMISSION MEETING****AUGUST 27, 2002**

Commissioner Pruitt called the August 27, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Garrison, Gordy, McLeskey, and Williams.

Rev. Gerry Showalter gave the Invocation and Commissioner Pruitt led the Pledge of Allegiance. Commissioner Pruitt swore in the staff and those representatives of the Virginia Institute of Marine Science (VIMS) who were expected to testify at the meeting.

\*\*\*\*\*

**\*\* APPROVAL OF AGENDA**

Commissioner Pruitt called for changes/deletions to the proposed Agenda. Robert Grabb, Chief-Habitat Management, stated that Item 2H. U.S. Army Corps of Engineers, #92-1051, had been added to the Agenda. **Associate Member Gordy moved for approval of the Agenda as amended. Associate Member Birkett seconded the motion; motion carried, 6-0.** Associate Members Cowart and Jones were not present for the vote.

\*\*\*\*\*

**1. APPROVAL OF MINUTES – July 23, 2002**

**Associate Member Williams moved to approve the Minutes of the July 23, 2002 Commission Meeting as distributed. Associate Member Gordy seconded the motion; motion carried, 6-0.** Associate Members Cowart and Jones were not present for the vote.

\*\*\*\*\*

With the arrival of Associate Member Jones, Commissioner Pruitt welcomed Associate Members Cynthia M. Jones and Russell Garrison to the Commission Board. He noted that the new members were appointed by Governor Mark Warner and will serve concurrently with the Governor's term.

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

Mr. Robert Grabb, Chief-Habitat Management, briefed the Commission on the following Page Two items:

**2A. CHESAPEAKE BAY BRIDGE AND TUNNEL DISTRICT, #98-0901**, requests a permit modification to place additional armor rock adjacent to trestle bents ASB 201.5 - ASB 203.5 and CSB 245 - CSB 246.5 to abate scour erosion caused by tidal currents adjacent to the Bay Bridge Tunnel. Recommend approval contingent on the District conducting a post-construction monitoring program, initiated immediately after construction and one year post-construction, which shall include a detailed analysis of the rock structures and adjacent bathymetry.

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

**2B. ST SERVICES, #02-1278**, requests authorization to construct and backfill 230 linear feet of steel, sheet pile bulk heading at their property situated along the North Landing River in Virginia Beach. Recommend a royalty in the amount of \$920.00 for the encroachment of the bulkhead and fill over 460 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

PERMIT FEE.....\$100.00  
ROYALTIES.....\$920.00

**2C. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, #02-1026**, requests authorization to install approximately 5,203 linear feet of submerged, electrical data cable from the existing NOAA test "laboratory" on the Chesapeake Bay Bridge Tunnel fishing pier to a location identified as 36° 58' 3.3" North Latitude, 76° 06' 52.32" West Longitude, immediately south of the Thimble Shoals Channel, hence to a point identified as 36° 58' 9.42" North Latitude, 76° 07' 18.36" West Longitude, hence to its origin to facilitate testing of bottom-mounted oceanographic instrumentation and current measurement in the Thimble Shoals Channel in the Chesapeake Bay.

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

**2D. SHORE LAND TRUST, LTD., #02-1101**, requests authorization to join an existing pier and a partly constructed pier together by constructing a 180-foot long by 8-foot wide walkway, creating 20 community boat slips, for the property owners at the Seaview Subdivision situated along Folly Creek in Accomack County. Recommend a royalty in the amount of \$1,581.00 for the encroachment over 5,270 square feet of State-owned subaqueous land at a rate of \$0.30 per square foot.

PERMIT FEE.....\$100.00  
ROYALTIES.....\$1,581.00

**2E. PURDUE FARMS, INC., #02-1313**, requests authorization to install a 16-foot long by 16-foot wide support platform for new offloading equipment and a mooring dolphin adjacent to their property situated along their Southern Branch of the Elizabeth River in the City of Norfolk.

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

**2F. METRO MACHINE CORP., #02-0173**, requests authorization to modify an existing permit to allow the installation of 260 linear feet of bulkhead, a 120-foot long by 120-foot wide open-pile crane platform and extend a pier 85 linear feet adjacent to their property situated at the confluence of the Southern Branch and Eastern Branches of the Elizabeth River in the City of Norfolk.

PERMIT FEE.....\$100.00  
ROYALTIES.....\$2,480.00

**2G. DEPARTMENT OF THE NAVY, #98-2191**, requests reactivation and extension of their previously expired permit to replace 4,200 linear feet of an existing timber bulkhead with steel sheet pile bulk heading a maximum of two (2) feet channelward of the existing bulkhead adjacent to the Naval Air Station situated along Willoughby Bay in the City of Norfolk. The project scope has been reduced from the originally authorized length of 5,900 linear feet of bulkhead.

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

**2.H. U.S. ARMY CORPS OF ENGINEERS, #92-1051**, requests a modification of a portion of the time of year restriction (March 15 through September 30) of their existing permit, to allow overboard placement of dredge material beginning on September 22, 2002, for year 2002 only, in conjunction with proposed dredging of portions of Tribell Shoal in the James River near Hog Island and Skiff Creek in the Counties of Isle of Wight, James City and Surry.

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

Commissioner Pruitt asked for comments from the audience, pro or con, on the proposed Page Two items. There being no comments offered, Commissioner Pruitt placed the items before the Commission for consideration.

**COMMISSION MEETING**

**AUGUST 27, 2002**

**Associate Member Gordy moved for approval of the Page 2 Items -- (2A.) Chesapeake**

**Bay Bridge and Tunnel District, #98-0901, (2B.) ST Services, #02-1278, (2C.) National Oceanic and Atmospheric Administration, #02-1026, (2D.) Shore Land Trust, Ltd., #02-1101, (2E.) Purdue Farms, Inc., #02-1313, (2F.) Metro Machine Corporation, #02-0173, (2G.) Department of the Navy, #98-2191, and (2H.) U.S. Army Corps of Engineers, #92-1051 -- as recommended by staff. Associate Member Williams seconded the motion; motion carried, 7-0.** Associate Member Cowart was not present for the vote.

\*\*\*\*\*

Commissioner Pruitt departed from the Agenda for the purpose of recognizing Mr. Robert Grabb, Chief-Habitat Management, for his six months of active duty with the United States Coast Guard Reserves. The Commission and audience members welcomed Mr. Grabb on his return from Guantanamo Bay, Cuba.

\*\*\*\*\*

3. **THE MT. HOLLY STEAMBOAT INN, #02-0668**, requests authorization to construct a commercial pier with a 30-foot by 10-foot T-head, eight (8) finger piers and two (2) mooring piles to create a maximum of 11 wetslips and extending 130 feet channelward of mean high water, adjacent to their property situated along Nomini Creek in Westmoreland County. The pier will be used by the patrons of the Steamboat Inn. The project is protested by nearby property owners.

Mr. Mark Eversole, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the Mount Holly Steamboat Inn is located on Nomini Creek, immediately downstream of the Route 202 bridge crossing, approximately three miles east of the Town of Montross. The Inn reportedly dates back to the early 1800's and currently operates as a Bed & Breakfast and restaurant. Mr. Eversole stated that in an effort to provide boaters an opportunity to dock, and either dine or lodge at the Inn, the owners had applied to construct a facility for the temporary mooring of up to 11 boats.

Mr. Eversole reported that an application for a private pier for use by patrons of the Inn was submitted. The applicants and their agent were notified that a pier of this nature was considered commercial, and that additional information would be required in order to thoroughly evaluate the proposal. The information requested included submission of "Appendix C" of the Joint Permit Application, which addresses commercial piers. Additionally, any revisions to the original drawings resulting from the information required by that appendix were requested. Upon review of the requested information, the application was deemed to be complete. The revised drawings and appendix were forwarded to VIMS, and the Army Corps of Engineers, as well as the local Wetlands Board.

**COMMISSION MEETING**

**AUGUST 27, 2002**

Mr. Eversole stated that a public hearing to consider the application was held by the Westmoreland County Wetlands Board. Favorable comments, as well as questions and

concerns, were heard. Following the hearing and discussion, the Board unanimously approved the application. Mr. Eversole noted that as part of the VMRC review process, the adjacent property owners were notified and a public notice was sent to the *Westmoreland News*.

Mr. Eversole noted that due to an apparent misunderstanding by the agent or applicant regarding the necessity for a VMRC permit, the applicants mobilized their contractor who then brought the building materials to the site. The applicants attempted to obtain the local building permit, only to be told that the State permit was still pending. The applicant contacted VMRC staff to discuss the situation and determine what steps could be taken to issue the permit. Following several phone conversations with the applicant, as well as discussions within the Agency, it was determined that due to circumstances unique to this application, a conditional permit would be issued prior to the expiration of the public comment period. However, it would contain a special condition that should any opposition be registered within the 15-day comment period, the authorization to construct and retain the pier would be suspended until such time as the VMRC was able to consider the merits of the project. A total of (6) six letters of protest were received and, in accordance with the conditions of the permit, authorization was suspended and all work stopped on the construction of the pier.

Mr. Eversole stated that opposition to the pier could be summarized into two general categories. The primary concern being a "use" issue, centering on a potential increase in boat traffic on Nomini Creek, both from private and potentially larger commercial tour boats. Questions were raised concerning the effect of increased boat traffic on bank erosion, water quality, and privately leased oyster grounds scattered throughout Nomini Creek. Mr. Eversole stated that a second concern appeared to revolve around the future use of the pier. The classification, "commercial" pier versus "private" pier, had also led some residents to question whether the pier might ultimately become a marina facility. Mr. Eversole added that the second main category of opposition was a procedural issue, involving the Commission's decision to issue a permit prior to expiration of the public comment period. This, in conjunction with the uncertainty of the "commercial" status of the pier, seemed to have generated within the Nomini Creek Community a sense of mistrust or misuse of the process routinely followed by those submitting Joint Permit Applications.

Mr. Eversole added that the VIMS report stated that the adverse impacts resulting from this activity would be minimal provided that permanent mooring was not permitted, and that the use of the structure was otherwise properly managed. The Departments of Health, both Wastewater Engineering and Shellfish Sanitation, as well as the Department of Conservation and Recreation, all found the project acceptable.

## **COMMISSION MEETING**

**AUGUST 27, 2002**

In summary, Mr. Eversole stated that when reviewing proposals to build over State-owned submerged lands, the Commission's Subaqueous Guidelines directed staff to consider, among other things, the water dependency and the necessity for the proposed structure. Furthermore,

§28.2-1205 of the Code of Virginia stipulates that, *"In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to §1-10, in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."*

Mr. Eversole noted that had there been no opposition to the proposal, staff would have, and in fact did, administratively issue a permit to construct the commercial pier at the Mt. Holly Inn. He stated that should the Commission vote to approve the project, staff recommended that the Commission consider language to be included in the permit which prohibited the provision of electrical and water hookups, sanitary pump out facilities, or the sale of fuel products. This might serve to alleviate some of the protestants' concerns that the pier would become a marina. Mr. Eversole added that the Commission might also wish to consider prohibiting overnight mooring unless the boat owners were bona fide registered guests at the Inn. In addition, the Commission might consider limiting or breaking down the number of slips that could be used as transient slips as opposed to those with lodging at the Inn.

Commissioner Pruitt called for questions from the Commission. In response to Associate Member Ballard's inquiry, Mr. Eversole stated that currently there were six guest rooms at the Inn, eight slips at the pier that provided for a maximum of 11 boats, and the restaurant dining room held 50-60 guests. There being no further questions, the Commissioner swore in those individuals wishing to speak in support of and/or opposition to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Cindy Brigman**, applicant and co-owner, reiterated the misunderstanding regarding the necessity for a VMRC permit. She noted the support for the project, and stated that a meeting was held with the protestants. The primary concern over the possibility of the pier becoming a marina remained the outstanding issue in this matter. Ms. Brigman stressed that the owners of Mt. Holly Inn were anxious to work with the Commission to resolve the matter and move forward. Ms. Brigman noted that the Inn contained of five guest rooms and the restaurant sat 40.

**Capt. Tommy Pearson**, co-owner, noted the history of the property which included a pier to accommodate steamboats. He stated that the main goal for constructing the new pier would be to provide access to the Inn for local boaters. There were no plans for tour boats at this time, however, boats with fishing parties would be encouraged to stop at the Inn. All boats utilizing the Inn would be asked to abide by a voluntary "no wake zone" policy for the creek.

## COMMISSION MEETING

**AUGUST 27, 2002**

Commissioner Pruitt called upon the Commission for questions of the applicants. Associate Member Ballard requested the applicants' reactions to the restrictions suggested by VMRC staff. Capt. Pearson and Ms. Brigman indicated their acceptance of the suggested



restrictions. Ms. Brigman noted that the Health Department had recommended a dumping station be utilized.

Associate Member Garrison questioned whether there were police powers in place to ensure that users of the pier are bona fide guests of the Inn. Ms. Brigman noted that there was a system in place to determine which boats belonged at the pier for overnight purposes.

Speaking in support of the project, **Steven Tallent** stated that the owners of the Inn had taken what was an “eyesore” in the community and transformed it into a beautiful place for locals and travelers. The restored Inn was a true asset for the community.

**Robert McDermott**, a nearby property owner, stated that he and other boat owners residing on the west side of Nomini Creek supported the projected pier. He requested that electrical power be considered.

Commissioner Pruitt called for comments in opposition to the application. **Myrtle Lee France** distributed a packet of information documenting the restrictions desired by the protestants of the project, a copy of which was filed with the permanent record of this meeting. Mrs. France emphasized their concerns for protection of the environment and the local watermen in the area of Nomini Creek. Associate Member Ballard inquired as to the depth of the creek during both low and high tides. Ms. France stated that when speaking at the Wetlands Board hearing, Capt. Pearson reported a depth of six feet during high tide.

**William France**, nearby property owner, questioned whether the proposed project would be in the best interest of the oyster restoration program that was currently in progress. He suggested that an environmental assessment be made. Mr. France also noted his concern for possible endangerment to the watermen’s way of life.

**Marion Barker**, nearby property owner, expressed her appreciation for the business goals of the Inn. She urged the Commission to reach a compromise that would satisfy all parties concerned, as well as the needs of the environment. Ms. Barker also read a letter written by Ms. Wanda Atkins, property owner, which relayed her concerns for the project. (A copy of this letter is filed with the permanent record of the meeting.)

**Douglas Jenkins**, President, Twin Rivers Watermen’s Association, expressed concern for the shedding operations in the Nomini Creek. Associate Member Ballard inquired of Mr. Jenkins as to the depths in the creek. Mr. Jenkins stated that high tide was over three feet and would easily float a large boat. Associate Member Garrison asked whether high tide was as high as six feet; Mr. Jenkins stated that was a good number. He also stressed that it would

## COMMISSION MEETING

**AUGUST 27, 2002**

be very difficult for the owners of the Inn to control the wake created by the boaters.

**Cindy Brigman** restated that there were no plans for a pump station of any kind. She added that the owners of the Inn were willing to compromise in order to move forward with the

project. Ms. Brigman noted that the Inn's restaurant seated 40 guests. **Capt. Tommy Pearson** stated that the owners had a substantial business investment in the Inn and had no plans to sell. He added that he operated a very large cruise boat to Tangier Island that ran by 50 soft shell crab operations; there was no disruption of the crab operations. Associate Member Birkett inquired of Capt. Pearson the depth of the water at the end of the pier. Capt. Pearson stated that the depth was three feet; the boat slips would be located in less than five feet of water. Mr. Birkett inquired as to the depth of the creek going out into the channel; Capt. Pearson stated that it was about five feet. Associate Member Garrison asked if there were any tour boats currently running on the creek; Capt. Pearson stated that there were not. The largest fishing boats have been 40 feet or less.

The Commissioner placed the matter before the Commission for consideration and action.

**Associate Member Ballard moved to approve the application of The Mt. Holly Steamboat Inn, #02-0668, with the following special conditions:**

- 1) **The permit prohibits the provision for electrical and water services for vessels moored at the pier; this condition is not to be construed as limited lighting on the pier.**
- 2) **No sanitary pump-out facilities.**
- 3) **No facilities for the sale of fuel products.**
- 4) **No vessel over 45 feet long shall be moored at the pier at any time.**
- 5) **Only vessels registered by guests at the Inn are to be moored at the pier overnight.**

**Associate Member Garrison seconded the motion. When put to a vote, the motion carried unanimously, 6-1.** Associate Member Cowart was not present for the vote.

\*\*\*\*\*

4. **MARY P. LOWE, #02-1106**, requests authorization to install an open-pile elevated deck that will encroach upon a Coastal Primary Sand Dune at her property situated along the Chesapeake Bay in the City of Hampton. A Beaches and Dunes permit is required. The project is protested by adjacent property owner.

Ms. Traycie West, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. She stated that the Lowe property was located along the Chesapeake Bay, in the Malo Beach section of Hampton. Ms. Lowe wished to construct a single-family home on a currently undeveloped lot on North First Street. The lot was the only undeveloped lot in this block and one of approximately six undeveloped lots remaining on the eastern (or waterfront) side of the street

**COMMISSION MEETING**

**AUGUST 27, 2002**

between 756 N. First Street and its northern terminus. Ms. West stated that Ms. Lowe's neighbor to the north, Mr. Horace Pratt, received authorization to construct a similar structure at the August 2001 Commission meeting.

Ms. West reported that Ms. Lowe's lot was at the northern end of a coastal primary sand dune system that extended south towards Buckroe Beach. In order to minimize dune encroachment, Ms. Lowe requested, and was granted, a roadside setback variance from the City of Hampton, which reduced the roadside zoning setback from 39 feet to 24 feet. Even with the setback variance, however, the eight pilings necessary to support Ms. Lowe's deck would encroach 12 feet into the jurisdictional dune area.

Ms. West noted that the City of Hampton had not yet adopted the Model Coastal Primary Sand Dunes and Beaches Ordinance. As a result, the Commission was charged with implementation of the ordinance in that locality.

A public hearing held on the proposal was attended by Ms. Lowe, her husband, Mr. Ronald Phillips, and her builder, Mr. Marty Schara, three neighbors, Ms. Canepa and Mr. & Mrs. Dietz. Ms. West stated that each neighbor expressed concerns regarding consistency between the encroachment authorized for Mr. Pratt's home and Ms. Lowe's proposal. As proposed, the deck would extend two feet beyond what was authorized for Mr. Pratt. During the hearing, Mr. Schara stated that while he designed the deck to extend further into the dune than Mr. Pratt's deck, due to the non-linear elevation contours of the dune backface, the pilings were placed along the same contour lines as Mr. Pratt's current structure.

Ms. West reported that VIMS stated that the proposal warranted careful consideration and recommended that the second story deck be supported by a cantilevered system rather than by pilings placed within the dune area. VIMS also recommended that all disturbed areas be replanted in the fall with American beach grass. Ms. West noted that, following Mr. Pratt's example, Ms. Lowe had attempted to minimize her project impacts to the dune by seeking and obtaining a setback variance from the City of Hampton.

In summary, Ms. West stated that according to the Commission's Coastal Primary Sand/Dune/ Beach Guidelines, the placement of an open-pile supported structure within a portion of the jurisdictional backface of the dune was considered to be the least deleterious to the functions of the dune so long as significant amounts of materials were not excavated. She stated that staff believed any impacts to the backface of the dune could be almost completely eliminated by either utilizing a cantilevered support for the deck or allowing the minimum number of piles needed to support the deck.

Ms. West stated that staff recommended approval of the project with the following modifications:

#### **COMMISSION MEETING**

**AUGUST 27, 2002**

- 1) Any pilings necessary to support the second story deck must be aligned no further seaward than Mr. Pratt's current pilings.
- 2) Any additional deck area desired by the applicant could be authorized provided it is supported by a cantilevered design and provided further that the deck extend no further

than that authorized for Mr. Pratt to the north.

Ms. West added that in accordance with the VIMS recommendations, any disturbed areas should be stabilized by the planting of appropriate sand dune grasses in the fall.

Commissioner Pruitt called for questions from the Commission. Associate Member Jones inquired as to the stability of the sand dunes on the property. Ms. West noted that the dunes were very large due to the fact that there had not been a structure on the property for many years. She added that the dunes were reasonably stable and well vegetated. There being no further questions, the Commissioner swore in those individuals wishing to speak in support of and/or opposition to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Marty Schara**, builder, addressed the Commission on behalf of the applicant. He reviewed the plans for the structure with regard to staff's recommendation for second story deck pilings and a cantilever design for the additional deck area. Mr. Schara opined that the cantilever design would not be feasible for the deck considering the weather risks associated with the property location. Associate Member Ballard requested from Ms. West a clarification of the recommended placement for the pilings. A brief discussion ensued with regard to the contour lines and bracing for the structure pilings.

Commissioner Pruitt called for comments in opposition to the application. **Ms. Sandra Canepa**, property owner, asked that the Commission reach the same decision as it reached with Lot 9 a year ago. She also noted her concern for damage to the dunes and vegetation which served as buffers to protect the homes along the waterfront.

**Ms. Betty Dietz**, property owner, concurred with the remarks made by Ms. Canepa.

**Mr. Ronald Phillips**, co-applicant, reviewed the proposed difference in contour lines with those that exist on adjacent properties.

At the inquiries of Associate Members Ballard and Jones, Mr. Thomas Barnard, VIMS, reviewed the positioning and nature of the property dunes. He noted that placing pilings on a contour line is dependent upon the elevation and position of the dune. He stated that VIMS was recommending the minimal encroachment into the dune due to the natural changes that will occur with the dune over time. Mr. Barnard also reviewed the support that the dune provided to the property and the beach overall.

## COMMISSION MEETING

AUGUST 27, 2002

Associate Member Cowart arrived for the meeting at this point. Associate Member Williams stated that he felt placing the pilings on the contour line of the dune would appear to make the structure more secure. Associate Member McLeskey noted that pilings can help accumulate sand on the beach. Mr. Barnard stated that it was possible for sand to build up under certain conditions.

There being no further discussion, the Commissioner then placed the matter before the Commission for consideration and action. **Associate Member McLeskey moved to approve the application of Mary P. Lowe, #02-1106, with the following conditions:**

- 1) **The applicant adhere to the agreed modification of placing the pilings no farther seaward than 11 feet, six inches.**
- 2) **There be no cantilever requirement.**
- 3) **The applicant be requested to install a sand fence parallel to the pilings.**
- 4) **The applicant re-spread any areas destroyed due to construction.**

**Associate Member Williams seconded the motion.** Associate Member Garrison inquired as to whether a special material should be required in building the sand fence. **When put to a vote, the motion carried, 7-0.** Associate Member Cowart abstained from the vote.

\*\*\*\*\*

5. **SAM BROWN, #02-1041.** Commission review of the July 18, 2002, decision of the Accomack County Wetlands Board to approve an after-the fact application for filling 650 square feet of vegetated wetlands, 38 square feet of non-vegetated wetlands, and the use of asphalt as fill material along Hunting Creek in the Hopkins area of Accomack County.

Mr. Hank Badger, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Mr. Brown's property is located near the Town of Hopkins along Hunting Creek. The property is mostly vegetated wetlands except for a dirt road that runs through the marsh to a small landing area where Mr. Brown keeps his boat and operates a crab shedding business.

Mr. Badger reported that Mr. Brown was notified, by letter, from Mr. David Fluhart, Director of the Accomack County Department of Building, Planning and Zoning, of a violation of the Accomack County Wetlands Ordinance. Mr. Fluhart directed that all asphalt-based fill material be removed and requested the submission of an after-the-fact Joint Permit Application for the remaining fill material as well as any additional impacts to wetlands.

In a follow-up letter, Mr. Fluhart again asked Mr. Brown to submit a Joint Permit Application and to contact his office within 15 days to discuss the project. Failure to do so would result in the matter being placed before the County Attorney for legal action. An on-site meeting was held between Mr. Fluhart and Mr. Brown. Mr. Brown indicated he would present

## COMMISSION MEETING

**AUGUST 27, 2002**

information to the Board regarding the placement and continued use of asphalt material in some of the areas.

Mr. Badger stated that a Joint Permit Application was finally submitted by Mr. Brown. In that application, Mr. Brown asked to retain a road culvert and all the fill material that had impacted 650 square feet of vegetated wetlands and 38 square feet of non-vegetated wetlands. In addition, the applicant requested permission to install a 40-foot bulkhead in front of road

material riprap, that would impact 40 square feet of non-vegetated wetlands, and to construct a 10-foot by 16-foot crab shed that would impact 160 square feet of vegetated wetlands.

Mr. Badger noted that the application was considered by the Wetlands Board at a Public Hearing on July 18, 2002. The Board considered the testimony from Mr. Brown, who stated that in September 1999, Hurricane Floyd washed out the culvert under the dirt road. Mr. Brown did not replace it until last year when money became available. Mr. Brown also explained that he replaced the 12" culvert with a 24" culvert, to allow for better drainage between the marsh and the creek. He acknowledged that he had dumped concrete and asphalt road material adjacent to the culvert and pier areas. Mr. Badger added that the Board heard testimony from Mr. George Shrieves, Professional Engineer. Mr. Shrieves stated he had worked in road construction and with road materials for many years, and it was his opinion that the asphalt material was weathered, brittle and was not leaching. The Board also had some concerns with the amount of fill placed over the wetlands but acknowledged that grass had already started re-colonizing the fill material.

Mr. Badger reported that the Wetlands Board voted unanimously to grant approval of the project as presented. Comments from the board members regarding the motion to approve the project suggested they felt that contamination from the asphalt fill material was minimal and the filling of 650 square feet of vegetated wetlands was acceptable. Commission review was being undertaken in accordance with the provisions of Sections 28.2-1310 and 28.2-1311A(2) of the Code of Virginia.

In summary, Mr. Badger stated that based on staff's review, it appeared that the Board's decision accommodated neither the standards for use or development of wetlands contained in Section 28.2-1308 of the Code of Virginia, nor the Wetlands Guidelines. As stated in the Wetlands Guidelines, Section IV, "*When an erosion control structure is deemed necessary, it should ordinarily be placed landward of any existing and productive marsh vegetation.*" Also, "*Fill material, whether on wetlands or nearby fastlands, should not contain contaminants which may leach into adjacent waters.*"

Mr. Badger added that the decision of the Board was also not supported by the VIMS report which was a part of the record in this case. The VIMS report stated, "*The proposed bulkhead involves a very minimal adverse impact on wetlands. The fill for the pipe crossing appears to be greater than necessary and from an environmental perspective we would suggest*

## COMMISSION MEETING

AUGUST 27, 2002

*restoration of as much of the wetlands as possible. A continuing potential problem at both locations is the deposition of asphalt, which has been shown in studies to leach petroleum products into soils and other mediums. We recommend the removal of as much of the asphalt as possible to preclude any potential for leaching into the bay and any future fill precedent.*"

Mr. Badger noted that while testimony presented at the hearing clarified some of the reasons for filling the two areas, it appeared that the decision to authorize the after-the-fact filling of

650 square feet of vegetated wetlands and 38 square feet of non-vegetated wetlands and the use of asphalt fill materials was not consistent with the Wetlands Guidelines. Based on comments provided by VIMS, the Board was clearly aware that the amount of fill was greater than that necessary to stop erosion at the culvert and that the asphalt fill material in both areas was not consistent with the Wetlands Guidelines. Mr. Badger stated that had this not been an after-the fact application, staff was confident the Wetlands Board would not have approved the amount of fill or the inclusion of asphalt material.

Mr. Badger stated that staff recommended that the July 18, 2002, decision of the Accomack County Wetlands Board be modified to permit the bulkhead and crab shed as proposed, but to require the removal of all asphalt riprap and fill in both areas, to preclude any potential for leaching into the bay. Furthermore, staff recommended the fill near the culvert crossing area be removed and the area restored to pre-existing conditions by reducing the length of the plastic 24" culvert from 30 feet to 20 feet. Additionally, staff recommended that a (3-foot wide by 40-foot long) concrete or stone riprap revetment, with filter cloth, be permitted along the road to stop erosion of the road and culvert.

Commissioner Pruitt called for questions from the Commission. Associate Member Garrison briefly explained the composition of materials used in asphalt and the possibility of any leaching into the environment. Counselor Josephson inquired as to whether the recommended revetment had been applied for to date. Mr. Badger stated that it had not and that he felt it would be permitted by VMRC. There being no further questions, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Samuel Brown**, applicant, noted that the crab shedding business had been a family business since the 1940's. He reviewed the measures he had taken to protect the shoreline of his property and the environmental considerations thereof. Commissioner Pruitt and Associate Member Williams questioned Mr. Brown as to the reasons behind his failure to submit a permit application. Mr. Brown stated that he believed he was "grandfathered" and permitted to repair damages to the shoreline caused by storms without applying for permits.

Associate Member Gordy stated that she had visited the site and noted that the asphalt was dry with no apparent leaching. Associate Member Garrison offered suggestions to repair the damaged area. Associate Member Cowart inquired as to whether Mr. Brown originally had a

## COMMISSION MEETING

AUGUST 27, 2002

crab house in the proposed area. He stated that he did and that the pilings were still in place. Associate Member Jones inquired of Mr. Brown what amount of expense would be incurred to remove the asphalt from the wetlands. Mr. Brown stated that he did not know as the asphalt was provided by a friend, free of charge.

Commissioner Pruitt called for comments in opposition to the application. There being none,

the Commissioner then placed the matter before the Commission for consideration and action. Associate Member Gordy stated that she understood Mr. Brown's position, but had concerns with the possible affects of the asphalt on the environment. Associate Member Garrison stated that he could arrange for the asphalt to be tested free of charge.

Associate Member Ballard noted that in addition to the asphalt issue, the proposed structure did not appear to be in compliance with the guidelines that suggest that an erosion control structure to be placed landward of any existing and productive marsh vegetation. Additionally, there was no evidence in the record that the matter was addressed by the Wetlands Board.

**Associate Member Ballard moved to remand the application of Sam Brown, #02-1041, back to the Accomack County Wetlands Board for reconsideration, specifically for the following issues:**

- 1. Evaluate the proposed project on the basis of Section 4 of the Wetlands Guidelines, which advises the placement of erosion control structures.**
- 2. Coordinate an investigation with the Virginia Institute of Marine Science to determine whether the asphalt will leach into the environment.**

**Associate Member Jones seconded the motion. When put to a vote, the motion carried, 6-2.**

\*\*\*\*\*

- 6. INLAND HARBOR HOME OWNERS ASSOCIATION, #99-2313.** Commission review, on appeal by 25 or more freeholders of property within Northumberland County, of the July 9, 2002 decision of the Northumberland County Wetlands Board to approve the modification of the above-referenced application for the placement, stabilization and sprigging of 130 cubic yards of dredged material to be placed behind an existing jetty adjacent to the mouth of Warehouse Creek.

Mr. Jeff Madden, Environmental Engineer Sr., stated that the appellant, Mr. Rob Roy, had called into question whether or not the matter was properly evaluated by the Wetlands Board due to the fact that information presented to the Board may have been incomplete. Mr. Madden distributed copies of Mr. Roy's correspondence and drawing in this regard to the Commission for review. (Copies of this material are filed with the permanent record of the meeting.) Counselor Josephson stated that with the Commission opening the record to

**COMMISSION MEETING**

**AUGUST 27, 2002**

allow consideration of the documents, it would be necessary for a member of the Northumberland County Wetlands Board who was present for the public hearing to testify as to whether the Board considered the information at the time it rendered its decision. Mr. Madden called upon **Mr. Wellington Shirley**, Northumberland County Zoning Administrator, for this testimony. Commissioner Pruitt swore in Mr. Shirley who then stated that the drawing in question was received on July 15, 2002, well after the Board made its decision on July 9, 2002. A discussion ensued as to the dates of receipt for the materials in



question. The appellant, **Mr. Rob Roy**, was sworn in by Commissioner Pruitt and relayed the steps followed in submitting the documents in question to the Board. Mr. Roy stated that he personally delivered the documents to the Secretary to the Wetlands Board who assured Mr. Roy that the Board would receive same.

**Mr. Bob Bierly**, President, Inland Harbor Home Owners Association, clarified that the drawing appeared to have been received in May when, in fact, a marked-up copy of the same drawing was submitted in July. Commissioner Pruitt then stated that the Commission would hear the decision and instructed Mr. Madden to continue with the evaluation.

Mr. Madden provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the project was located near the town of Burgess at the confluence of Warehouse Creek and the Great Wicomico River. The purpose of the project was to dredge 130 cubic yards of sandy material that had shoaled the mouth of Warehouse Creek, to replace deteriorated sheeting on an existing jetty, to extend that timber jetty 32 linear feet channelward of the shoreline, and to place the dredged material behind the jetty. He noted that the jetty extension was intended to prevent at least some of the sand, from migrating back into the narrow boat channel.

Mr. Madden reported that Mr. Roy, on behalf of 27 freeholders, submitted a *Notice of Appeal* and attachments. In his *Petition*, Mr. Roy stated that the Board failed to exercise good judgment when it approved the placement of the 130 yards of sand to be dredged from the channel side of the jetty directly behind the structure. He believed that the decision of the Board was unsupported by the evidence on the record considered as a whole, and he felt that by approving the project, the Board abused its discretion. Mr. Roy further maintained that the dredged material should be hauled away or spread along the shoreline of the Great Wicomico River, upstream and updrift of the jetty and the mouth of Warehouse Creek. The appellant believed that the decision to place the material behind the jetty was based largely on economic grounds. Mr. Roy believed that the Board was influenced by the statement from the applicant's agent that there were no barges in the area to haul away the material. Mr. Roy also felt that the Board acted arbitrarily and capriciously in their decision to allow the material to be placed behind the jetty.

Mr. Madden stated that during the Wetland Board meeting, the VIMS report was read into the record. The report commented that the dredging and jetty improvements were designed

## **COMMISSION MEETING**

**AUGUST 27, 2002**

to reduce the natural movement of sand into the channel and the frequency of dredging. They acknowledged, however, the potential for tidal wetland impacts as a result of dredging equipment access and the disposal of dredged material. VIMS recommended the use of a crane/ barge to dredge the material and haul it off-site to an upland location. Additionally, VIMS believed that barge mounted dredging and the off-site removal of sandy material was the preferred environmental alternative. However, VIMS made specific proposals to mitigate the impacts, namely the use of erosion control measures, the careful monitoring of the elevation of material spread out on the upland, the deployment of construction mats for the

crane barge, and the use of the shoreline along the Great Wicomico River by the tracked excavator at low tide. VIMS further recommended that if the proposed disposal site behind the jetty was approved, the applicant should contain the material with silt fences and any disturbed areas should be restored upon completion of the project.

Mr. Madden stated that following the VIMS report, the Wetlands Board Chairman, Mr. George Rew, noted the receipt of protest letters from Mr. J. Rob Roy and Ms. D. Carolyn Roy, Ms. Evelyn Boucher, Mr. Thomas Wheat and Ms. Ellen V. Carroll. The Chairman then asked staff to clarify the Board's jurisdiction in the matter. Staff said that the limit of the Board's jurisdiction was confined to the proposed on-site disposal of the dredged material on the spit behind the jetty and any associated wetland impacts.

Mr. Madden reported that Ms. Sue Jones, agent for the applicant, then testified that the contractor intended to gain access to the dredge site by clearing the upland slope down to the shoreline of the Great Wicomico along the Beattie's property. The tracked excavator would then creep down the beach at low tide to the stationary site where the dredge material would be dug from the channel and deposited behind the jetty in the containment area. Board member Harry Towne commented that he believed sand was migrating out from behind the failing bulkhead.

Mr. Roy testified before the Wetlands Board that the last time the area was dredged was in 2000 and that the previously dredged material that had been placed behind the jetty had migrated back into the channel. He stated that he felt the whole spit was a catch basin for sand moving down the Great Wicomico and that wetlands and subtidal area immediately adjacent to the proposed jetty extension should be excavated to recreate a basin. Mr. Roy believes that the present 32-foot extension would only need to be lengthened once it filled with sand.

Mr. Madden stated that Mr. Bierly then testified that he believed the source of the sand was the unprotected shoreline of the Beattie property along the Great Wicomico River and that the sand was moving around the jetty and into the channel. The Chairman took the floor and indicated that Mr. Roy had a good idea but, the area Mr. Roy was referring to as a catch basin had been converted into wetlands and should not be excavated. The Wetlands Board concluded its deliberation on the project and voted unanimously to approve the placement of

## **COMMISSION MEETING**

**AUGUST 27, 2002**

the spoils behind the jetty as per VIMS recommendations.

In summary, Mr. Madden stated that based on staff's attendance at the public hearing, their review of the record, as well as the audio tape provided, staff believed that the Wetland Board's decision to approve the use of the area behind the jetty as a disposal site was supported by the evidence on the record considered as a whole. While the placement of the sandy dredged material was not the most favorable option recommended by VIMS, specific recommendations were offered to the Board to consider should they decide to allow the

placement of the material behind the jetty. The applicant agreed to employ measures to reduce impacts to the adjacent wetlands by moving the dredging equipment out to the dredge site at low tide along the beach and to incorporate the erosion and sediment control measures recommended by VIMS. In addition, the applicant agreed to monitor the elevation of the spoil material and to sprig the disposal area. Staff further believed that all interested parties were afforded an opportunity to offer opinions and debate the project. Accordingly, staff recommended that the Commission uphold the Board's decision in this matter.

Commissioner Pruitt called for questions from the Commission. Associate Member Cowart requested clarification on the location of the spoil materials. There being no further questions, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Rob Roy**, appellant, stated that following the dredging performed in 2000, the sand was placed in the same area and more than half was now gone. Mr. Roy stated that he had an oyster lease in the area and that the appeal was personal in that regard, as well as the concerns he had that the dredged sand would continue to flow back into the channel. In his opinion, VIMS' recommendation to haul the sand away by barge was the preferred solution.

Associate Member McLeskey inquired as to whether an offsite disposal area had been identified. Mr. Roy stated that he did not know. Associate Member Cowart asked whether the Commission had granted a permit to dredge the channel. Mr. Madden stated that dredging of the wetlands portion had been permitted. Associate Member Cowart inquired as to whether the two other oyster leaseholders had objected to the project. Mr. Roy stated that one leaseholder had indicated he did not object; the other gentleman had made no indication.

Commissioner Pruitt called for comments from the applicant. **Mr. Frank Fletcher**, member of the Board of Directors of the Inland Harbor Home Owners Association, stated that the replenishment of the sand on the backshore would have a minimal, temporary impact on the wetlands.

**Mr. Wellington Shirley**, noted that the members of the Wetlands Board had access to the protests and the VIMS report, all five members visited the site personally, and completely understood the request being made. The Board believed they had all information necessary

#### COMMISSION MEETING

AUGUST 27, 2002

to render an opinion and felt that their decision was appropriate. Commissioner Pruitt placed the matter before the Commission for consideration and action.

**Associate Member Cowart moved to uphold the decision of the Northumberland County Wetlands Board in the matter of the Inland Harbor Home Owners Association, #99-2313, based upon the fact that testimony was given in support of the Board hearing the evidence that was presented and a fair hearing was held.** Mr. Cowart noted his

concern for the oyster leases located in the area, and stated that without objections from adjacent leaseholders, the decision should be upheld. **Associate Member Garrison seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

\*\*\*\*\*

The Commission recessed for lunch at 1:20 p.m. and reconvened at 1:55 p.m.

\*\*\*\*\*

7. **DAVID A. HARRISON, III, #02-1378**, requests authorization to construct up to 897 linear feet of stone riprap revetment at his property situated along the James River in Prince George County. Wetlands permit required.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Prince George County had not yet adopted the Model Wetland Zoning Ordinance. Therefore, the Commission was charged with reviewing the wetlands impacts associated with this project.

Mr. Stagg reported that the proposed project was located adjacent to the Threemile Reach portion of the James River, south of Windmill Point at the Flowerdew Hundred Farm, in Prince George County. The Benjamin Harrison Bridge was approximately 7.5 miles northwest and upstream of the property.

Mr. Stagg noted that the shoreline along this reach had experienced considerable erosion in recent years resulting in the exposure of tires that had been placed along the shoreline many years ago. The contractor proposed to remove all tires before the riprap was installed. The proposal would stabilize the shoreline near previously excavated historical dig sites. Two other non-adjacent areas of the farm property had been previously protected in a similar manner.

Mr. Stagg reported that the Commission staff held a public hearing at the Prince George County Human Resources Building to accept comments on this project. Additionally, in their Shoreline Permit Report, VIMS stated that the proposal, from a marine environmental viewpoint, would result in minimal individual and cumulative impacts. No other agencies

**COMMISSION MEETING**

**AUGUST 27, 2002**

had commented on the project.

In summary, Mr. Stagg stated that staff recommended approval of the project to include the incorporation of filter cloth and a buried toe at an elevation below that of mean low water. Additionally, staff recommended the submittal of an access plan, to include drawings which minimized the number of construction access points in an effort to avoid existing historical dig sites along the adjacent upland area.

Commissioner Pruitt called for questions from the Commission and comments from the applicant. There being none, the Commissioner called for comments in opposition to the application. There being none, the Commissioner then placed the matter before the Commission for consideration and action.

**Associate Member Williams moved to approve the application of David A. Harrison, III, #02-1378, as recommended by staff. Associate Member Garrison seconded the motion. When put to a vote, the motion carried, 7-0.** Associate Member McLeskey abstained from the vote.

\*\*\*\*\*

8. **WAYNE K. TAYLOR, #01-2142**, requests authorization to retain the placement of 150 feet of concrete panel bulkhead aligned approximately seven (7) feet channelward of an existing sheet metal bulkhead and the backfilling of 1,050 square feet of tidal wetlands at the applicant's property situated along the Appomattox River in Prince George County. Wetlands permit required.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Mr. Taylor's property was situated along the Appomattox River between Hopewell and Colonial Heights in Prince George County. There are a number of residential lots along this reach of the southern shoreline.

Mr. Stagg stated that, pursuant to a phone conversation with a property owner in the area received in mid-September, 2001, staff visited the site and observed what appeared to be unauthorized structures at Mr. Taylor's property. Subsequently, Mr. Taylor was notified and a second site visit, with Mr. Taylor present, was conducted. On October 16, 2001, a *Sworn Complaint* was issued and a *Notice to Comply* was sent by certified mail to Mr. Taylor, directing removal of the unauthorized concrete structures within 60 days. VMRC also informed Mr. Taylor that upon completion of the removal, the submission of a Joint Permit Application requesting authorization for a properly designed shoreline erosion structure would be accepted. In subsequent correspondence with Mr. Taylor, staff provided additional information on shoreline erosion guidelines, pertinent sections of the Code of Virginia related

## COMMISSION MEETING

**AUGUST 27, 2002**

to both subaqueous and wetland encroachment permit requirements, as well as information on previously authorized bulkheads at other properties along this reach of shoreline.

Mr. Stagg reported that VMRC received a Joint Permit Application in which Mr. Taylor requested authorization to retain the concrete structures as installed and to backfill the area behind the structures. Staff acknowledged receipt of the application and reiterated that review of an appropriate shoreline erosion control project would be considered. Staff inquired why a second bulkhead was needed which extended up to six feet channelward of an existing stable metal bulkhead. Staff also agreed to visit the site at low tide to verify that

the area in question was intertidal in nature and did not involve a subaqueous permit requirement.

Mr. Stagg noted that staff visited the site with Mr. Tom Barnard of VIMS. During this visit, staff observed that the area between the concrete structures and the metal bulkhead had been backfilled impacting approximately 900 square feet of intertidal area adjacent to the river.

A second *Sworn Complaint* and *Notice To Comply* were issued to Mr. Taylor, requesting removal of the concrete structures and backfill within 30 days. In addition, Mr. Taylor was informed, by letter, that staff had suspended any further processing of his after-the-fact permit application pending removal of the structures. Staff further advised Mr. Taylor that unless the structures and backfill were removed and the area restored to pre-construction conditions, a Restoration Hearing would be scheduled before the Commission on July 23, 2002. At that hearing the Commission declined to direct removal and directed staff to continue to process Mr. Taylor's after-the-fact application, and to subject it to a full public interest review.

Mr. Stagg noted that Prince George County had not yet adopted the Model Wetland Zoning Ordinance, therefore, the Commission was charged with reviewing the wetlands impacts associated with this project. Mr. Stagg reported that the Commission staff held a public hearing at the Prince George County Human Resources Building to accept comments on this project.

Mr. Stagg stated that Mr. Taylor had an existing functional steel bulkhead at this location. The unauthorized concrete structures were neither of the type nor were they installed in a manner that would likely have warranted approval through the normal permit review process. Additionally, Mr. Taylor was informed in the first *Notice to Comply* and in subsequent correspondence, that a VMRC permit was required.

In their Shoreline Permit Report for the after-the-fact application, VIMS noted that the concrete bulkhead contained numerous gaps and with the lack of filter cloth the fill material could leach into the river and be lost from behind the structure. The structure and backfill impacted approximately 1,050 square feet of non-vegetated wetlands. VIMS further stated that had they had the opportunity to comment prior to the construction of the bulkhead, they would have recommended that the structure be aligned no more than 2 feet channelward of

## COMMISSION MEETING

**AUGUST 27, 2002**

existing steel bulkhead with the incorporation of filter cloth. Staff had verified that VIMS' original comments still applied. No other agencies had commented on this project.

In summary, Mr. Stagg stated that in conformance with Chapter 12, Article 4, Section 28.2-1317 (D) of the Code of Virginia, staff recommended that the Commission order removal of the unauthorized concrete structures, removal of all backfill placed channelward of the existing metal bulkhead and that the shoreline be restored to pre-construction conditions. Staff further recommended that a reasonable bond or letter of credit be required in an amount and with surety and conditions satisfactory to secure compliance with any conditions set forth in the restoration order.

Mr. Stagg added that in the event the Commission approved the after-the-fact bulkhead, staff recommended a significant civil charge be considered given the degree of deviation and the substantial nature of the violation and given Mr. Taylor's continued work subsequent to VMRC's issuance of a *Notice to Comply*.

Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Wayne Taylor**, applicant, requested that he be permitted to retain the structure, noting that the concrete was more attractive than the metal that was previously in place. Associate Member Ballard inquired as to whether Mr. Taylor was unaware that a permit was necessary to work in wetlands. Mr. Taylor stated he was unaware that a permit was required to finish off the wall. He noted that he was under the impression that the permit issued by the Army Corps of Engineers allowed for the backfill.

**Mr. Wolfgang Grimm**, adjacent property owner, spoke on behalf of Mr. Taylor adding that the property owners had witnessed a great deal of erosion and damage to their shoreline over the years. Mr. Taylor's efforts had been attempts to protect his property rather than destroy it.

Commissioner Pruitt called for comments in opposition to the application. There being none, the Commissioner then placed the matter before the Commission for consideration and action. Associate Member Jones questioned whether an initial permit was required for the first bulkhead and, if so, was it obtained. Mr. Stagg stated that the bulkhead was installed in the timeframe that the wetlands regulations were being revised to include non-vegetated shorelines. Hence, VMRC did not pursue a violation under those circumstances.

Associate Member Ballard stated that he felt the neighborhood accepted the structure as it had been brought into compliance. However, the primary issue appeared to be an after-the-fact permit to retain a bulkhead that would not have been authorized originally.

**COMMISSION MEETING**

**AUGUST 27, 2002**

**In the matter of Wayne K. Taylor, #01-2142, Associate Member Ballard moved that the Commission, having considered the documents and materials in the pre-hearing public record included in the Commission's Agenda packet, staff's briefing and recommendations presented at this hearing, the evidence and arguments presented at this hearing on behalf of the applicant, comments of other State agencies, particularly the Virginia Institute of Marine Science, and Chapter 13, Title 28.2 of the Code of Virginia, particularly the provisions of Sections 9 and 10 of the Wetlands Ordinance relating to the Commission's responsibilities in matters to be considered and criteria for determining "*whether to grant, grant in modified form or deny a permit*" to use or develop a wetland area, finds the structure does not meet the guidelines the Commission has established and orders its removal, the removal of all backfill placed**

**channelward of the existing metal bulkhead, and that the shoreline be restored to its pre-construction conditions. Associate Member Cowart seconded the motion.** Associate Member McLeskey stated that levying a civil charge for non-compliance and bringing the bulkhead into compliance with staff recommendations might be the better ruling rather than risk further endangerment to the environment by ordering the removal of the structure. A brief discussion ensued with regard to the materials used in constructing the bulkhead and the possible impacts to the wetlands were it to be removed. **Associate Member Birkett called for the question. When put to a roll call vote, the motion failed, 3-5.**

Associate Member Cowart then inquired as to whether the Commission should consider the non-compliant structure as a significant environmental impact or a moderate environmental impact. Mr. Grabb stated that the significance of the structure was considered to be moderate. He added that it might be possible to have Mr. Taylor participate in the future development of a wetland bank in the area.

**In the matter of Wayne K. Taylor, #01-2142, Associate Member Garrison moved to allow the concrete structure to remain in place; to require that within 30 days, pilings be poured to the design recommended by staff with filter cloth installed behind the pilings; and to levy a moderate, voluntary civil charge of a maximum of \$5,500.00. Should Mr. Wayne K. Taylor not agree to the civil charge, the Commission may exercise its options to either refer the matter to the Office of the Attorney General for enforcement of said charge, or order immediate restoration of the property. Associate Member Birkett seconded the motion. When put to a roll call vote, the motion carried, 5-3.**

\*\*\*\*\*

## COMMISSION MEETING

AUGUST 27, 2002

9. **HAMPTON HALL SEAFOOD, #02-0003**, requests authorization to construct a commercial, open-pile, timber pier extending 56 feet channelward of mean low water with a 36-foot long by 44-foot wide (1,584 square feet) L-head for the shedding of crabs. The pier will be located adjacent to the applicant's property situated along Hampton Hall Creek, approximately 270 feet downstream of the Route 202 bridge crossing in Westmoreland County. The project is protested by a property owner across the creek.

Mr. Mark Eversole, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the project was located approximately (1) one mile south of the Town of Kinsale, approximately 270 feet downstream of the Route 202 bridge crossing of Hampton Hall Creek which serves



as the boundary between Westmoreland and Northumberland Counties.

Mr. Eversole stated that the owner of Hampton Hall Seafood, Mr. Edgar Harper, had obtained a Special Exception Permit from Westmoreland County to construct and operate a Seafood Processing Facility (open-pile crab shedding facility enclosed) in an Agricultural, A-1 zoning district. He noted that one condition of that permit was a requirement that the facility be constructed only over water, even though Mr. Harper owned 150+ acres of undeveloped land bordering on the creek.

The facility, as proposed, included a 902 square foot roofed, screen-enclosed structure designed to house a portion of the facility's shedding tanks. The remainder of the tanks surrounded the exterior portion of the pier. Mr. Eversole reported that Mr. Harper currently held the following permits from the VMRC: Commercial Registration, 15 Crab Trap, Crab Peeler Pot, Crab Pot-300 or Less, and Crab Shed Tank-20 or Less.

Mr. Eversole stated that the application was received on January 8, 2002. Additional information was requested concerning the need to construct the facility over State-owned public trust lands. The applicant's agent attempted to address the questions raised by letter. Their apparent rationale for not constructing the facility on the adjacent upland property centered on potential additional "start up" and operating expenses, as well as decreasing efficiency as the operation moved progressively inland. Following receipt of the requested information, the application was deemed complete.

Mr. Eversole noted that in keeping with VMRC procedures, the adjacent property owners were notified and a public notice was placed in the *Westmoreland News*. A letter of protest was subsequently received from Mr. and Mrs. Warren Wooley, residents in the immediate vicinity of the proposed pier. Their protest centered on "use issues" such as increased boat traffic, waste disposal (both production-related and human), and increased noise from pumps and workers.

## **COMMISSION MEETING**

**AUGUST 27, 2002**

Mr. Eversole stated that the VIMS Report recommended that, in order to minimize avoidable impacts, the structure should be constructed on the adjacent uplands. The Department of Health-Division of Shellfish Sanitation found the proposal acceptable. The Department of Health-Division of Wastewater Engineering advised that the applicant had submitted an approved plan for sanitary facilities, and that they considered the proposal was acceptable. The Army Corps of Engineers issued a Regional 19 permit for the application. Mr. Eversole added that the Department of Environmental Quality (DEQ) stated in a letter that no permit was necessary for this proposal. In subsequent phone conversations, DEQ staff reported that if the facility was moved upland and the Corps of Engineers required an individual permit, a permit would also be required from the DEQ.

In summary, Mr. Eversole stated that when reviewing proposals to build over State-owned submerged lands, the Commission's Subaqueous Guidelines direct staff to consider, among

other things, the water dependency and the necessity for the proposed structure. No one can argue that crab shedding operations, by their nature, depend on water. In this case, however, the structure itself was not considered to be water dependent. The applicant owned sufficient adjacent, undeveloped upland waterfront property on the 150+-acre tract, on which to construct the facility. Accordingly, staff recommended denial of the permit to construct the facilities over State-owned public trust submerged land as proposed.

Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Craig Polubinski**, Bay Shore Design and agent for the applicant, presented an overview of the crab shedding process to be followed by the applicant on the proposed site. He delineated reasons why constructing the facility on the upland, rather than over State-owned subaqueous bottom as proposed, would be cost prohibitive for the applicant.

Associate Members McLeskey and Ballard made inquiries of Mr. Polubinski as to the logistics of the crab shedding process if the facility were to be located on the upland as opposed to the water site. Associate Member Cowart noted that the initial start-up cost would be more if the facility were located on the upland. He added that there were several upland facilities in the area.

Commissioner Pruitt called for comments in opposition to the application. There being none, the Commissioner then placed the matter before the Commission for consideration and action.

Associate Member Cowart stated that the applicant would need to build a dock in either case, therefore, the noise factor would still be a consideration. He also commented on the possible impacts to the natural environment in order to construct a building on land.

## **COMMISSION MEETING**

**AUGUST 27, 2002**

**Associate Member Cowart then moved to approve the application of Hampton Hall Seafood, #02-0003, with the following requirements:**

- 1. The facility is to be used for crab shedding only.**
- 2. There are to be no solid waste materials disposed of overboard; all trash to be hauled upstream and disposed of properly.**
- 3. Conversion of the facility to some other use would not be permitted by this Commission ruling. The applicant would be required to re-apply with the VMRC for such use.**

**Associate Member Gordy seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

\*\*\*\*\*

- 10. NORTHUMBERLAND COUNTY BOARD OF SUPERVISORS, #02-1164,** requests authorization to replace an existing deteriorated public boat ramp with a 30-foot long, by 12-foot wide, concrete ramp which will extend 11.5 feet channelward of mean low water adjacent to property situated along Cranes Creek in Northumberland County. The project is protested by two adjacent or nearby property owners.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the public boat ramp, one of five ramps in the County, was located near the confluence of Cranes Creek and Ingram Bay, approximately eight miles northeast of the town of Kilmarnock. The ramp and the associated pier, which were originally constructed (prior to 1950) as an off-loading site for commercial watermen, were currently in poor condition. The ramp had been undermined and the concrete slab was cracked. The County wanted to excavate the present ramp, restore the gravel slope under the ramp and replace the failing ramp with a new pre-cast concrete slab.

Mr. Madden reported that the project was protested by Mr. Ree R. Ellis, the adjacent property owner immediately west and upstream of the project site. Mr. Ellis had indicated that he was dissatisfied with the upland vehicular parking and the traffic circulation pattern. He further stated that the property should be sold to the highest bidder and the money spent on a location that would better accommodate a public ramp.

Mr. Madden added that the project was also protested by Mr. Robert E. Johnson, a nearby resident of 43 years. Mr. Johnson contacted Commission staff during the review period and indicated that, while he did not have property immediately adjacent to the ramp, he owned property that bordered the access road down to the ramp. Mr. Johnson was also very concerned over the parking issue. He objected to the congestion created by parked vehicles and their trailers, and felt that the State should provide adequate parking.

## **COMMISSION MEETING**

**AUGUST 27, 2002**

Mr. Madden stated that according to County records, the public boat ramp was recorded in 1950, prior to Mr. Ellis' purchase of his property in 1968. He stated that the existence of the public boat ramp was noted in Mr. Ellis' deed.

Commission staff had received a petition and cover letter from Mr. Jimmy Atkinson endorsed by 35 citizens who concurred with Mr. Atkinson that the ramp was an asset to County residents and those of the surrounding area.

Mr. Madden noted that the project was approved by the Northumberland County Wetlands Board at their public hearing. VIMS commented that the cumulative adverse impacts resulting from the activity would be minimal. No other agency had objected to the project.

In summary, Mr. Madden stated that while Commission staff was aware that congestion stemming from upland parking can be inconvenient to adjacent residents, the issues raised by the protestants were upland in nature and not within the jurisdiction of the Commission. In addition, the County sought only to conduct needed maintenance on an existing structure while not increasing the original foot print. As such, staff recommended that the project be approved as proposed.

Commissioner Pruitt called for questions from the Commission. Associate Member Garrison noted the need for additional ramps and parking areas throughout the Commonwealth. There being no one present wishing to speak to this matter, Commissioner placed the matter before the Commission for consideration and action.

**Associate Member Williams moved to approve the application of the Northumberland County Board of Supervisors, #02-1164, as recommended by staff. Associate Member Garrison seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

\*\*\*\*\*

## **11. PUBLIC COMMENTS**

Commissioner Pruitt opened the floor for public comments. Associate Member Cowart spoke on behalf of Mr. Douglas Jenkins, inviting the Commission's Associate Members to the Twin Rivers Watermen's Association Crab Feast, August 31, 2002, 2:00 p.m. – 6:00 p.m., Cole's Point.

There being no further comments, Commissioner Pruitt closed the Public Comments portion of the meeting.

\*\*\*\*\*

## **COMMISSION MEETING**

**AUGUST 27, 2002**

- 12. PUBLIC HEARING:** Request adoption of emergency change to the boundary of the Virginia Blue Crab Sanctuary near Smith Point as part of permanent Regulation 4 VAC 20-752-10 et seq.

Mr. Rob O'Reilly, Deputy Chief, Fisheries Management, stated that the Commission held a special meeting on July 11, 2002 to resolve confusion and complaints from industry surrounding the boundary near Smith Point contained within the recently expanded Virginia Blue Crab Sanctuary. Mr. O'Reilly noted that the primary confusion was with regard to the boundary coordinates and the shallow area not originally planned for the sanctuary.

Mr. O'Reilly reported that a Notice for Public Hearing was advertised and included charts depicting the change in boundary being proposed. He distributed copies of the revised

Regulation 4 VAC 20-752-10 et seq., “*Pertaining to Blue Crab Sanctuaries*,” a copy of which is filed with the permanent record of this meeting.

Based upon the consensus of an *ad hoc committee* appointed by the Commissioner, the Commission adopted an emergency amendment which modified the northwest boundary of the Virginia Blue Crab Sanctuary near Smith Point. The new boundary line was moved approximately 1.4 miles to the east in the area generally stretching from Smith Point to Great Wicomico Light. Mr. O’Reilly stated that the sanctuary currently closes 927 square miles to commercial and recreational crabbing during the June 1 through September 15 period, except that recreational crabbing is lawful in the lower Bay area (146 square miles) set aside as sanctuary from commercial crabbing by Section 28.2-709 of the Code of Virginia

Commissioner Pruitt opened the Public Hearing on the matter. With no comments offered, the Commissioner closed the Public Hearing and placed the matter before the Commission for discussion and consideration. **Associate Member Ballard moved for the adoption of the Emergency Amendment to the Virginia Blue Crab Sanctuary as a permanent part of Regulation 4 VAC 20-752-20 et seq. Associate Member Cowart seconded the motion; motion carried unanimously, 8-0.**

\*\*\*\*\*

**13. DISCUSSION:** Opening the Hampton Flats Hard Clam Harvest Area.

Mr. Chad Boyce, Fisheries Management Specialist, presented staffs evaluation of opening the Hampton Flats Hard Clam Harvest Area. He stated that staff has a completed a survey on the area which indicated high to medium densities of large clams and low densities of small clams. He noted that the results were very similar to those found in a survey of the same area in 2000. Staff also received input from the clam industry for the opening of this area in September 2002.

**COMMISSION MEETING**

**AUGUST 27, 2002**

Mr. Boyce stated that the Hampton Flats is an important broodstock area, containing a moderate stock of large clams. Additionally, the survey indicated a lack of small clams which shows inadequate recovery from the opening and harvesting from this same area in the year 2000. Mr. Boyce noted that several industry participants have expressed opposition to opening the area which suggests a lack of industry support. Staff does not recommend the opening of the Hampton Flats Hard Clam Harvest Area.

Commissioner Pruitt called for comments on the matter. There being none, **it was the consensus of the Commission to not open the Hampton Flats Hard Clam Harvest Area.**

\*\*\*\*\*

- 14. DISCUSSION:** Amendment to Regulation 4 VAC 20-430-10 et seq., "*Pertaining to the Marking and Minimum Mesh Size of Gill Nets.*" Request for Public Hearing.

Mr. Rob O'Reilly, Deputy Chief, Fisheries Management Specialist, presented the proposed amendment to Regulation 4 VAC 20-430-10 et seq. He stated that the Finfish Management Advisory Committee recommends doing away with the requirement of matching numbers or symbols on gill net end-marker flags and balls but continuing with the requirement of the fisherman's Last 4 CRL identification numbers. Additionally, the Committee recommends continuation of using matching color flags. Mr. O'Reilly noted that the request for the amendment is being made from both an economic and convenience basis for the commercial fishermen.

Mr. O'Reilly stated that staff recommends that a Public Hearing be held in September to consider adoption of amended Regulation 4 VAC 20-430-10 et seq., with the deletion of gill net end-marker matching numbers and symbols requirement.

Commissioner Pruitt placed the matter before the Commission for discussion and consideration. **Associate Member Gordy moved to advertise for a Public Hearing in the matter of Regulation 4 VAC 20-430-10 et seq., to be held on August 27, 2002. Associate Member Birkett seconded the motion; motion carried unanimously, 8-0.**

\*\*\*\*\*

- 15. DISCUSSION:** The 2002-2003 Public Oyster Harvest Season. A request for Public Hearing at the August 27, 2002 Commission Meeting (Regulation 4 VAC 20-720-10 et seq.)

Dr. James Wesson, Head, Conservation & Replenishment, presented the request for a Public Hearing in the matter of the 2002-2003 Public Oyster Harvest Season. He noted that the 2002-2002 harvest has been reported to be very low, and the Commonwealth is in the

## COMMISSION MEETING

**AUGUST 27, 2002**

midst of a very severe drought; conditions for oysters are very poor. Dr. Wesson stated that Regulation 4 VAC 20-720-10 et seq. would provide for most of the same harvest regulations as last year while staggering the seasons over a longer period of time so that the watermen would be able to maximize the value of the oysters they catch. Additionally, a new dredge area is suggested for the Deep Rock area near Gwynn's Island and the harvest area in Tangier has been enlarged. Dr. Wesson stated that staff recommends advertisement for a Public Hearing on Regulation 4 VAC 20-720-10 et seq.

Commissioner Pruitt placed the matter before the Commission for discussion and consideration. Associate Member Cowart requested clarification on the season dates. Dr. Wesson stated that the seasons would overlap with the last season running until April 30, 2003.

Commissioner Pruitt recognized **Mr. George Washington**, President of the Virginia Watermen's Association, whose remarks are recorded verbatim on the permanent record of this meeting. Mr. Washington stated that the watermen of the Rappahannock River area have two alternatives to propose in this matter. The first is that they would like to see the season for all areas above the Norris Bridge opened for harvest at the same time; the second being to raise the current bushel limit from six to eight.

Upon inquiry of the Commissioner, Counselor Josephson advised that staff include the watermen's requests in the written Notice for Public Hearing for consideration. There being no further comments, Commissioner Pruitt placed the matter before the Commission for discussion and action. **Associate Member Ballard moved to advertise for a Public Hearing in the matter of Regulation 4 VAC 20-720-10 et seq., to be held on August 27, 2002, and that the Notice for Public Hearing contain the alternatives proposed by the Virginia Watermen's Association. Associate Member Birkett seconded the motion; motion carried unanimously, 8-0.**

\*\*\*\*\*

**16. MIKE McGEE** requests an after-the-fact approval for imported hatchery seed clams.

Mr. Rob O'Reilly, Deputy Chief, Fisheries Management Specialist, distributed the evaluation on this issue, a copy of which is filed with the permanent record of the meeting. Mr. O'Reilly reported that staff was informed that Mr. McGee was in possession of five million hatchery seed clams (*Mercenaria mercenaria*) that had been imported unlawfully into Virginia from Hawaii. Mr. O'Reilly noted Regulation 4 VAC 20-754-10 et seq. and Virginia Code Section 28.2-825 provide only for legally importing seed clams from within the continental United States.

#### COMMISSION MEETING

**AUGUST 27, 2002**

Mr. O'Reilly briefly reviewed the VMRC investigation of Mr. McGee's importation of seed clams and stated that Mr. McGee failed to request permission from the Commissioner. Mr. McGee did, however, provide evidence to the Marine Police showing that he had previously imported Hawaiian hatchery seed clams in March 2002, and produced a disease-free certification for that importation. Mr. O'Reilly noted that Mr. McGee failed to follow the cited requirements established for importation of clams in the previous importation.

Mr. O'Reilly reviewed the importance in testing clam seed from hatcheries to ensure that they are disease free. Testing of four separate batches of seed clams from Mr. McGee's importation from the Hawaiian hatchery resulted in a pathogen-free status by VIMS, thus, staff recommends an after-the-fact approval for the Hawaiian hatchery seed clams imported by Mr. McGee on or before August 9, 2002.

Commissioner Pruitt called **Mr. Mike McGee** forward and swore him in for testimony before the Commission. Commissioner Pruitt inquired as to whether Mr. McGee has

imported seed clams previously and if he plans to continue importation. Mr. McGee stated that he has previously imported clam seeds without any problems. He stated that he was not fully aware of the laws, but that he holds reports and certificates for inspection of all importations. The clam seed has been disease-free and growing well. Mr. McGee noted that he has cooperated with VIMS and all other agencies that have made inquiries to date.

Commissioner Pruitt stated that he believed that Mr. McGee did not intentionally bypass the Code of Virginia in this matter. He then stressed that there is a problem with such importations, as the Commonwealth of Virginia has a multi-billion dollar clam aquaculture business which must be properly regulated. One disease could wipe out the entire business, including Mr. McGee's business. Associate Member Cowart asked if Mr. McGee was aware of others importing clam seeds and who may also not be aware of the statutory requirements. McGee stated that there may be others importing in the same manner. Mr. Cowart noted the existence of a mass mailing list for importation and stressed the need for publicizing the requirements in an effort to prevent disease.

**Dr. Eugene Burreson**, VIMS, stated that the pathologist who reported on Mr. McGee's clam seeds, Dr. Ralph Elston, is one of the most creditable shellfish pathologist in the world. He stated that VIMS would be happy to perform tests on the clam seed if the Commission wishes. Commissioner Pruitt stated that he is requesting the test be performed in order to take a "step beyond" the norm in ensuring that the clams are disease-free.

There being no further discussion, Commissioner Pruitt placed the matter before the Commission for consideration and action. **Associate Member Cowart moved to approve the after-the-fact Hawaiian hatchery seed clams imported by Mr. Mike McGee on or before August 9, 2002, provided that additional tests requested by the Commissioner are performed by VIMS. Associate Member Gordy seconded the motion; motion**

**COMMISSION MEETING**

**AUGUST 27, 2002**

**carried, 7-0.** Associate Member Ballard abstained from the vote.

\*\*\*\*\*

**17. DISCUSSION:** Emergency Regulation 4 VAC 20-754-10 et seq., *"Pertaining to Importation of Fish, Shellfish or Crustacea."*

Mr. Rob O'Reilly, Deputy Chief, Fisheries Management, reviewed the conditions which have prompted the need for this emergency regulation and distributed copies of the proposed emergency regulation, a copy of which is filed with the permanent record of this meeting. Reiterating the need for proper regulations and testing for lawful importation of fish, shellfish and/or Crustacea into State waters, Mr. O'Reilly stated that staff feels there are problems with current importation. He noted that Florida and South Carolina seed being imported into Virginia appears to pose great risk at this point in time.



Dr. Burreson addressed the Commission with regard to the South Carolina/Florida and Hawaii/West Coast clam issues. He stated that clam seed coming from South Carolina and Florida are more susceptible to the QPX parasite than Virginia seed. There are tests and insurance claims to document that these seed are a risk for Virginia waters. Dr. Burreson stated that the Hawaii issue is different as they are a Virginia strain sent to Hawaii and are getting disease certified as they come back in. The issue with the West Coast is that the seed are coming from a different ocean. The concern is what might be coming in with the clam seed from the ocean. There may be a need for a moratorium as, to date, there is no direct evidence whether or not there is a problem with this seed.

Associate Member Jones stated that she would be concerned if the hatcheries are using the broodstock to perpetuate future broodstock which could be diseased. Associate Member Ballard stated that he was concerned that the correct animal was being defined in this matter. Mr. O'Reilly stated that "*genus mercenaria*" would be used.

There being no further discussion, Commissioner Pruitt placed the matter before the Commission for consideration and action. Associate Member Cowart moved to adopt Emergency Regulation 4 VAC 20-754-10 et seq., "*Pertaining to Importation of Fish, Shellfish or Crustacea,*" to prohibit the importation of hatchery seed for *genus mercenaria* species for up to 180 days. Associate Member Garrison seconded the motion; motion carried, 7-0. Associate Member Ballard abstained from the vote.

\*\*\*\*\*

## COMMISSION MEETING

AUGUST 27, 2002

### 18. CLAM MANAGEMENT ADVISORY COMMITTEE REPORT

Associate Member Williams stated that the Clam Management Advisory Committee met on August 22, 2002, and reported on the following items addressed by the Committee:

- 1) Request a new clam management area adjacent from Hampton Creek to the Hampton Roads Tunnel. Mr. Roy Insley, Head, Plans and Statistics, suggested that staff be given the opportunity to evaluate this request and make a recommendation to the Clam Committee in September. Commissioner Pruitt concurred with this suggestion.
- 2) Request an extension of the Clam Relay Season for an additional two weeks beyond the two-week extension granted by the Commission in July. Mr. Insley stated that staff has evaluated this request and has determined that the catch per unit efforts has dropped from 375 clams per hour to 250 clams per hour. This figure represents a severe decline in the standing stock and health of the resource; staff does not recommend a further extension of the season. Commissioner Pruitt concurred with this suggestion.

- 3) Request that the Commission hold a Public Hearing on matters prior to water permits to shell anything near the Norfolk International Terminal. Commissioner Pruitt directed the staff to be aware of this matter and notify the Commission if there is a need for a Public Hearing.
- 4) Committee will take 1 3/8" ring size for minimum clam size, statewide, back to the different watermen groups for feedback.

\*\*\*\*\*

**\*\* DATE OF NEXT COMMISSION MEETING: AUGUST 27, 2002**

\*\*\*\*\*

**\*\* ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 4:15 p.m.

---

William A. Pruitt, Commissioner

---

Stephanie Montgomery CPS, Recording Secretary