

MINUTES

Commission Meeting**October 7, 2003
Newport News, VA**

The postponed September meeting of the Marine Resources Commission was held October 7, 2003 with the following present

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Ernest N. Bowden, Jr.)	
S. Lake Cowart, Jr.)	Associate Members
Russell Garrison)	
Cynthia M. Jones)	
F. Wayne McLeskey)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Michele Guilford	Acting Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin/Finance Div.
Jack Travelstead	Chief, Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Roy Insley	Head, Plan/Statistics Dept.
James Wesson	Head-Conservation/Replenishment
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Cory Routh	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Colonel Steve Bowman	Chief, Law Enforcement Div.
MPO Ed Clifton	Marine Police Officer
MPO Jeff Copperthite	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.
Jeff Madden	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.

Jay Woodward
Benny Stagg
Traycie West

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

Virginia Institute of Marine Science (VIMS)
Lyle Varnell

Other present included:

Susan Rauth	Birge D. Reichard	Kathy Holland
Donna Mason	Tommy Mason	Margot Hunt
Charles D. Kalmykow	Carol Kalmyknow	Karen Nold
Jim Rauth	Richard T. Conklin, Sr.	Carolyn Conklin
Gail Reichard	Kevin Mason	Will Crumming
Earl E. Pruitt	Frances Pruitt	Nancy S. Payne
Elizabeth Hunt	Melanie Frisch	Terry Payne
Wanda Thornton	Jack Tarr	Ellen Reichard
Michael Tolbert	Terry Howard	Jim Frese
James Work	Keith Bull	Ken McDonald
Sandra McDonald	Martin W. Steffens	Philip Brigos
Bill Rice	Glenn Woffe	Alice Allen-Grimes
Bob Jensen	Chuck Roadley	Dave Ramsey
Susan Gaston	Henry Gaston	Jan Marshall
Mark Hodges	Joe DelCampo	Russell Gaskins
Roger Parks	Joe Kelly	Dean Isdalson
Robert Runk	Stanley Ellis	Harry Doernte
Jack Stallings	Paige Hogg	Charles Amory, Jr.
Bryan Peele	Kelly Place	William Keys
Ray Twiford	Jim Dawson	

and others

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Commissioner Pruitt called the meeting to order at 9:33 a.m. with seven other Associate Members present, only Associate Member Holland was absent.

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Associate Member Cowart gave the invocation and Associate Member Garrison 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: Bob Grabb, Chief-Habitat Management, asked the Commission to defer Item No. 5, Daniel R. Newton in the printed agenda until the Commission’s regular October meeting. **Associate Member Ballard moved and Associate Member Bowden seconded the motion to continue item No. 5. The motion carried, 7-0.** Mr. Grabb said Page Two item 2B should be removed and asked that a report on Commission’s response to damage from Hurricane Isabel be placed on the agenda following item No. 7. **Associate Member Ballard made the motion. Associate Member Birkett seconded the motion, which passed, 7-0.**

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- 1. **MINUTES: Associate Member Birkett moved to approve the minutes for the August 26, 2003 Commission meeting. Associate Member Garrison seconded the motion, which carried, 7-0.**

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2. **PERMITS:**

Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items A through F and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unopposed, and have a staff recommendation for approval.

There being no questions from the Commission and no comments from the public, **Associate Member Ballard moved approval of the items A through F. Associate Member Bowden seconded the motion, which carried, 7-0.**

- 2A. **VAUGHN & JACKSON, LLC, #03-0894**, request authorization to construct a roadway crossing consisting of three (3) 38-foot long culverts, fill and paving over 40 linear feet of Back Creek in Roanoke County. Recommend a royalty in the amount of \$760.00 for the encroachment over 1,520 square feet of State-owned subaqueous bottom at a rate of \$0.50 per square foot.

Royalty fee (encroachment on 1,520 square feet of State-owned bottom @ \$.050 per square foot.).....	\$760.00
Permit fee.....	\$100.00
Total fees.....	\$860.00

2C. RICHARD BARRY, III, #03-1577, requests authorization to construct approximately 700 linear feet of breakwater and sill stone structures; install marsh toe stabilization; and place up to 21,000 cubic yards of beach nourishment with appropriate dune vegetation plantings at and adjacent to his property situated along the James River in the City of Suffolk. Recommend a royalty of \$1,050.00 for the beach nourishment encroachment over 21,000 square feet at a rate of \$0.05 per square foot.

Royalty fee (encroachment of over 21,000 square feet of State-owned bottom at \$0.005 per square foot.).....	\$1,050.00
Permit fee.....	\$ 100.00
Total fees.....	\$1,150.00

2D. SEA SEA AND COMPANY, ET AL, #01-0471, requests a modification to their previously issued permit to allow for the construction of 230 linear feet of open-pile marginal wharf from Mamie Davis Park to the channelward end of an existing rock jetty to provide four wet slips for transient boat dockage and a pedestrian boardwalk in Phase I of the Town of Occoquan’s Riverfront Access Project.

2E. NAVY PUBLIC WORKS CENTER, #03-1658, requests authorization to construct 26 finger piers along Pier 7 to create wet slips for recreational use at their property situated within Little Creek Cove at Naval Amphibious Base, Little Creek in Virginia Beach.

Permit fee.....	\$100.00
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2F. HAMPTON YACHT CLUB, #03-1602, requests authorization to dredge 2,700 cubic yards of maintenance material and 100 cubic yards of new material from a basin approximately 350-foot wide by 550-foot long and to maximum depths of minus eight (8) feet below mean low water, to install and backfill 344 linear feet of bulkhead aligned no more than two feet in front of an existing deteriorated bulkhead, and install four (4) six-foot wide main piers, a total of 52 small finger piers and seven (7) large finger piers adjacent to their property situated along the Hampton River in Hampton. All dredged material will be transported to and placed within the Craney Island disposal facility. Recommend royalties of \$45.00 for new dredging at a rate of \$0.45 per cubic yard, \$1,376.00 for the fill of 688 square feet of State-owned submerged lands at a rate of \$2.00 per square foot, and an annual royalty \$746.95 for the encroachment over 14,939 square feet of state-owned submerged lands at a rate of \$0.05 per square foot.

Dredging Royalty (for new dredging of 100 cubic yards @ \$0.45 per cubic yard).....	\$ 45.00
Royalty fee (encroachment on 688 square feet of State-owned bottom @ an annual rate of \$2.00 per square foot).....	\$1,376.00

(encroachment over 14,939 square feet of State-owned bottom @ \$0.05 per square foot).....	\$ 746.95
Permit fee.....	\$ 100.00
Total fees.....	\$2,267.95

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3. **CLOSED SESSION.** No session was held.

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4. **WICOMICO PINES HOMEOWNERS ASSOCIATION, #03-1481.**
Commission review on appeal by the Wicomico Pines Homeowners Association of the August 7, 2003, decision by the Northumberland County Wetlands Board to deny a permit to construct a 25-foot wide by 50-foot long gravel boat ramp adjacent to property situated along the Little Wicomico River in Northumberland County.

Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides and his comments are part of the verbatim record. Mr. Madden explained that the project is located along a headwater section of the Little Wicomico River approximately four (4) miles west of Smith Point. He pointed out the subdivision, noting there are 14 platted lots with seven (7) of those being waterfront lots. The boat ramp is within an easement. The parcel has a vigorous, well-developed fringe marsh that extends the entire width of the parcel and back from the shoreline approximately 40 feet

Mr. Madden said on August 15, 2003, Commission staff received a letter cosigned by Ms. Angie Crown, President of the Wicomico Pines Homeowners Association and Aleta Mahon, Secretary/Treasurer, noting their appeal of the August 8 2003, Northumberland County Wetlands Board decision. The staff considered it timely under the provisions of Section 28.2-1411 (B) of the Code of Virginia. Ms. Crown and Ms. Mahon allege that the members of the Wicomico Pines Homeowners Association were not given the opportunity to fully present their case to the Board.

During their August 7, 2003, public hearing, the wetlands board considered the written comments provided by VIMS, which were read into the record, and testimony in support of the project as well as testimony in opposition. The board also considered a letter of protest that was also read into the record.

The VIMS report stated that the proposed location for the ramp was undesirable from an environmental viewpoint because it would be constructed through a wide tidal marsh fringe, Mr. Madden said. The proposed ramp would directly impact the marsh vegetation and would also divide the existing marsh along the shoreline into isolated sections. The

report also suggested that the gravel would also likely settle into the silt substrate requiring additional gravel to stabilize the ramp base. The report noted potential navigation issues related to safe and efficient use of the ramp. In fact, the pier of Mr. Earl E. Piatt, a protestant, is located only about 40 feet away. Launching and retrieving vessels might be hindered by the proximity of the ramp to adjacent pier structures.

Excessive turbidity and bottom scour resulting from the propellers can create dangerous holes at the end of the ramp. The VIMS report made several recommendations: reducing the size of the ramp; relocating it all together; extending the ramp into deep water or to dredge into the ramp for depth. The report concluded, however, that due to the direct and indirect impacts to a large tidal marsh, and the navigations concerns, serious consideration should be given before approving the ramp as proposed.

The basis of the testimony of Mr. and Mrs. Dan Mahon was that they wanted to launch small personal watercraft or skiffs conveniently rather than having to drive three miles away to Cockrell's Marina. They also expressed a willingness to reduce the size of the ramp. Mr. Piatt, the adjacent property owner, who said the site was not a suitable location for a ramp, gave verbal testimony. He also indicated that launching of the boats from the ramp would directly interfere with his pier and that the water beyond the ramp was only 2 to 3 feet deep. Mr. Piatt said the existing wetlands buffer the runoff from the adjacent farm fields located upgrade from the project site. Without the marsh buffer (some of the grasses are six feet tall), he felt that runoff from the natural swale would funnel over the ramp and silt would accumulate around his pier.

A letter from Mr. And Mrs. Jeffrey LaPrevotte, who object to the destruction of the marsh, the loss of wildlife habitat, the increased bank erosion and siltation into the adjacent pier, was read into the record.

The board discussed the testimony and the VIMS report. A motion was made by Mr. Harry Towne to deny the application. There was a second by Mr. Curry and the five-member Board voted unanimously to deny the application.

Mr. Madden said that based on staff's review of the record, they were unable to conclude that the Board erred procedurally in their review of this matter, or that the substantial rights of the applicants had been prejudiced by their decision. The Board clearly understood that the project, by design, was inconsistent with the policy, standards and guidelines of the Model Wetlands Ordinance and would have significant adverse impacts on the tidal marsh.

Staff believes that the Chairman allowed the public repeated opportunities (Mr. Madden said he counted four) to address the Board as evidenced by the repeated requests by the Chairman for public comment on the project. In addition, it appears the project was denied based on the comments provided by VIMS, the individuals who spoke in opposition, and ultimately a finding that the public and private detriments associated with

the project exceeded the public and private benefits. Staff, therefore, concurred with that finding and recommended that the August 8, 2003, decision of the Northumberland County Wetlands Board be upheld.

Commission Pruitt asked if there were any questions for the staff. There being none, he asked if there was anyone present from the homeowners association or the local wetlands board.

Mr. Paitt, the adjacent property owner, came forward and said he spoke at the local wetlands hearing and that he and a number of others firmly oppose the ramp.

Commissioner Pruitt put the matter before the Commission. **Associate Member Garrison moved that the Commission concur with the decision of the Northumberland Wetlands Board that the project be denied. Associate Member Birkett seconded the motion, which passed, 7-0.**

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Commissioner Pruitt said item No. 5 (Daniel R. Newton, #03-1389) had been postponed to the next meeting.

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6. **VIRGINIA DEPARTMENT OF TRANSPORTATION, #02-0950**, requests authorization to replace the existing bridges over Black Narrows and Chincoteague Channels with a single 5,819-foot long, low-level bridge and bascule span structure on a new alignment beginning at the western side of Black Narrows Channel and terminating at Maddox Boulevard on Chincoteague Island in Accomack County. The new bridge structure will include a 751-foot long connector road to Marsh Island. Many residents of Chincoteague and Marsh Island protest the proposed bridge alignment.

Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides and his comments are part of the verbatim record. As background information, Mr. Woodward said the existing fixed bridge over Black Narrows Channel and the swing-span bridge over Chincoteague Channel were placed into service around 1939 and are deemed to be structurally inadequate to meet current traffic demands. The sufficiency rating of the structures is 23 out of a possible 100. Repair of the existing structures was found to be infeasible. The project is scheduled to go out to bid in 2004 with construction to commence in 2005 at a current estimated project cost of \$49.6 million, according to VDOT representatives.

On July 19, 1994, VDOT initiated early coordination of the Draft Environmental Assessment at their monthly Inter Agency Coordination Meeting (IACM). In February

1996, the Commonwealth Transportation Board (CTB) approved the location and design of the bridges, provided they were (1) as close to the existing alignment as possible and (2) were of low-level design with a bascule (draw) bridge. In September 1997, the Town of Chincoteague requested that the CTB postpone a decision on the alignment of the replacement bridges. The CTB then directed VDOT to examine the Maddox Boulevard alternative and a C-3 ("Downtown") alternative. In December 1999, the CTB rescinded the previous resolution and directed VDOT to examine additional alternatives. On August 17, 2000, the CTB approved the location and major design features for the Maddox Boulevard alignment over objections of state and federal environmental agencies offered at the July 18, 2000 IACM.

The Town of Chincoteague and Accomack County Board of Supervisors favor the Maddox Boulevard alternative and the Chief Engineer for the project has given assurances that no dredging for construction access will be required, in response to environmental agency comments, Mr. Woodward said.

In presenting the slides, Mr. Woodward noted that the proposed new bridge was a completely new route and required additional bridging of Marsh Island. He also presented information on the various alternatives earlier put before the VDOT panel, noting that environmental groups preferred the "C-3" alternative, while town and county officials preferred the Mattox Boulevard alternative.

Mr. Woodward said that during the several IACMs where this project was discussed, the state and federal environmental agencies, including VMRC, DEQ, the Department of Conservation and Recreation (DCR), the U.S. Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), and the Fish and Wildlife Service (FWS) all expressed a preference for the C-3 (Downtown) alternative over the Maddox Boulevard alternative, which would result in greater impacts to natural resources in the area.

Because of the project impacts, the Corps chose to process the application for an individual permit, rather than use a nation wide permit. Likewise, VMRC staff did not feel that the selected alignment minimized impacts to State-owned subaqueous bottom and therefore required the submittal of a standard Joint Permit Application (JPA) rather than use the Virginia General Permit (VGP #1), process which is available for most VDOT projects.

Staff received the JPA on December 13, 2002 and initiated the required public interest review. To date we have received over 15 individual letters of opposition from residents of both Chincoteague and Marsh Islands, including an oyster planting ground leaseholder whose aquaculture operation will be directly impacted by the selected alignment. In addition, we have received copies of letters and petitions written to the Corps and DEQ with concerns related to the issuance of their permits. The concerns primarily have to do with the environmental impacts of the longer bridge, cost, aesthetics, potential impacts on historic resources, and traffic issues.

As part of the state and federal permit application review, VDOT was required to perform an Essential Fish Habitat (EFH) Study. The Staff required a Benthic Resources Study, and the Fish and Wildlife Service required a Colonial Nesting Bird Study. A Storm Water Management (SWM) Compensatory Mitigation Plan also was required.

The EFH study found that the effects of the project on essential fish habitat would likely be minimal. The Benthic Study, looking at specific species, indicated that the construction project would result in permanent disruption of the aquatic benthic habitat, with potential loss of valuable ecological resources. The report stated that construction in areas where depths exceed 2 meters is expected to result in less benthic resource loss than in shallower areas and recommended consideration of a study of the potential resource value of the bridge support structures as a mitigation strategy to offset impacts to benthic resources. The bird study recommended time-of-year restrictions during portions of the demolition and construction, and a minimization of lighting along the structure during and after construction to reduce impacts on waterbirds. The SWM Plan includes the purchase of a street sweeper to remove particulate matter, to which pollutants adhere, from the bridge structure. VDOT felt this would reduce the runoff from vehicular and other pollution from the 4.1 acres of impervious surface created by the new structure, almost all of which will be over shallow water habitat.

The Virginia Institute of Marine Science, in response to the July 18, 2000 IACM request for comments, indicated a preference for the Downtown alternative over the Maddox Boulevard alignment due to its proposed location and extended length. VIMS expressed concern about the effects of the piers on currents and submerged aquatic vegetation in the area. Their Shoreline Permit Application Report, dated September 12, 2003, indicates that impacts resulting from the Maddox alignment have been reduced, but the alternative still has potential secondary impacts related to changes in tidal current, sedimentation patterns and scour that the other alternatives do not have. VIMS recommends that VDOT develop a comprehensive compensatory mitigation plan to offset unavoidable impacts during construction.

DEQ issued their Public Notice and draft Virginia Water Protection Permit on July 16, 2003. Dredging activities are not authorized under their draft permit. Mr. Woodward said he did not have a clarification as to whether the denial was for dredging associated with construction or dredging "period." DCR questioned whether the alignment should be reevaluated by CTB, in light of the potential impacts to shorebirds.

The Corps issued its permit on June 19, 2003. Their permit does not authorize any dredging for construction access. The permit also states that should dredging be proposed in the future, it will be necessary to consider all of the other alignment alternatives so the project's impacts may be reevaluated in light of the construction access dredging.

The Accomack County Wetlands Board did not issue a permit for the impacts to tidal wetlands since VDOT projects are exempt pursuant to Section 28.2-1302 (3) (10) of the Code of Virginia.

Mr. Woodward said it was clear from the record that the Maddox Boulevard alignment was not the environmental review agencies' preferred alternative. The Commonwealth Transportation Board chose to support this more costly proposal, at the request of the Town of Chincoteague and the Accomack County Board of Supervisors. Selection of roadway alignments, like pipeline, transmission line, and other linear public utility and transportation projects, is generally decided by other entities than the Commission. Accordingly, staff is required to review the selected alternative and develop recommendations that will attempt to minimize the environmental impacts on the Commonwealth's submerged lands.

While staff is sympathetic to the citizens who oppose the Maddox Alternative, the CTB decision has been made, and short of a rescission of that decision, staff feels the Commission has little choice of alternatives. Accordingly, staff recommended approval of the application for a Virginia Marine Resources Commission Subaqueous Bed Permit, with the following conditions:

- 1) VDOT shall make all potential contractors for the project aware that there will be no dredging for construction access during the removal of the existing bridges or construction of the new bridges. Should the contractor request such dredging, VDOT will be required to appear before the Commission with a revised application which specifies the areas and amounts of subtidal bottom to be dredged and identify the dredge disposal areas prior to any approval of dredging for construction access, and provide an alternatives analysis of the potential dredging associated with the other alternatives considered in the interagency review.
- 2) All existing bridge material to be removed shall be made available to VMRC for use by the Commission's Artificial Reef Program. VDOT shall work closely with VMRC's reef manager to evaluate, prepare and place any suitable reef materials at a location or location(s) to be determined by staff.
- 3) Any Submerged Aquatic Vegetation (SAV) that will be directly impacted by the structure(s) or indirectly impacted by shading shall be compensated at a 2:1 ratio (area). An SAV Mitigation Plan acceptable to staff and VIMS shall be prepared and submitted. It must include monitoring and plan for replanting, as necessary, for a period of no less than 3 years. The Commission's Regulation 4 VAC 20-337-10, et.seq, shall guide VDOT. "Submerged Aquatic Vegetation (SAV) Transplantation Guidelines" in the development of any required SAV mitigation plan. The Right-of-Way

alignment of the bridges shall be surveyed no sooner than six months prior to commencement of construction.

Commissioner Pruitt asked if any Commission member had a question for Mr. Woodward. Associate Member Garrison said the longer bridge was a \$49.6 million cost and the "C-3" alignment bridge would be a savings of \$30 million, leaving \$19.6 million. He then questioned a statement that the new bridge would reduce traffic. Mr. Woodward said that throughout the public hearing process it was said that traffic would be reduced in the downtown area if the new bridge were constructed. Associate Member Garrison then asked why VDOT wanted the longer bridge. Commissioner Pruitt said there was a representative of VDOT on hand who could answer that question.

Associate Member Garrison asked if the "C-3" alignment had less environmental impact. Mr. Woodward answered in the affirmative.

Ms. Melanie Frisch, VDOT project manager for the bridge permits, came forward and first answered Associate Member Garrison's question. She said the initial decision was made prior to designs. No further design work was done on the C-3 alignment once the Maddox Boulevard site was selected. Therefore, she said that to say now that the cost of C-3 was \$30 million less than the Maddox Boulevard Bridge was not based on any factual information because the C-3 Bridge was never designed. Associate Member Garrison asked if the information could be obtained if this decision were delayed. Ms. Frisch said that Mr. William M. Cummings, Jr. VDOT's resident engineer in Accomack, was on hand and could better answer that question.

Commission Pruitt then swore in all VDOT personnel who might testify.

Mr. Cummings said he did not know where the \$30 million figure came from. The last comparison VDOT had was a \$5-7 million difference between the C-3 and Maddox alignment. He felt \$30 million was incorrect. His comments are part of the verbatim record.

Associate Member Garrison asked if the 2005 construction schedule was still on line. Mr. Cummings said the earliest possible date it could go to construction was 2004 and as late as 2008.

Associate Member Ballard asked if there was an alternative that was the least environmental damaging and least costly, what was the rationale the Transportation Board used in making its decision? Mr. Cummings said Ms. Frisch could address the environmental aspects, but the CTB looked at it from several issues. If the bridge was moved to the north the number of bridge openings due to traffic on the water was greatly reduced. It also reduced the impact on the downtown area. In addition, both the town and county requested that the Maddox alignment be approved.

Ms. Frisch said that before the CTB made its decision, public hearings were held and there was a division among the residents and officials and those comments were taken to the ICAM at the pre-application time. In response, the agencies came back saying that the C-3 would have less impact—than existing bridge at the same location—but once the CTB directed VDOT to proceed with the Maddox Boulevard alignment VDOT did studies to see what the impacts would be. They found that the impacts were minimal and the Army Corps of Engineers and DEQ have issued their permits based upon the fact that this was the least damaging alternative. The migratory species, for example, would be impacted only at the time of construction and there would be no problems later. Her comments are part of the verbatim record.

Associate Member Garrison asked what permits were outstanding. Ms. Frisch said only VMRC. He then asked why the agencies favored the C-3 as the least environmentally objectionable. Ms. Frisch said there was no longer a preference from the environmental agencies for the C-3 or they would not have issued the permits.

Ms. Frisch said this was the first VDOT had seen the VIMS report and that VDOT has no objections to the conditions. Contact already has been made with the agency's artificial reef program so that material from the old bridge could be made available for the program's use.

Associate Member Bowden asked if the location of the bridge were changed back to downtown, what the timetable would be? Ms. Frisch said it would take another three years and the bridge would get older and the potential for failure would increase.

Associate Member Jones asked what was the probability of a bridge failure? Ms. Frisch said it periodically gets stuck and there are currently lots of problems with the bridge. There is some crumbling underneath.

Associate Member Ballard asked about the compensation from shellfish leaseholders. Ms. Frisch said they were waiting for VMRC information before deciding what to do, but that VDOT right-of-way personnel would be contacting the leaseholders to offer a financial accommodation.

Associate Member Garrison said the bridge engineer was present and could probably answer Dr. Jones' question.

Mr. Cummings said the bridge was inspected annually and was presently safe. VDOT plans to maintain the bridge for legal loads. Should something be found that makes the bridge unsafe, however, a load limit would be posed.

Commissioner Pruitt then opened the public hearing. He swore in all the speakers at once. He said the Commission would allow three minutes for individuals and five minutes for representatives of a group. He first called for comments from elected officials.

Ms. Wanda Thornton, past chair of the Accomack County Board of Supervisors and the Board's representative spoke first. She said when she started working on the bridge project in 1989, there was 60-80 percent structural loss at that time. She said the majority of Chincoteague residents prefer the Maddox Boulevard alignment. She said the C-3 alignment lands right in front of the firehouse. There is difficulty now in getting fire and rescue equipment out of the firehouse. The road is also 30-feet wide. This year with the traffic it was difficult to move through town. A lot of thought was given by the CTB regarding the Maddox Boulevard alignment. She said the shellfish in the Maddox alignment can be removed in two years. It takes only two years for aquaculture animals to grow out.

Ms. Thornton read into the record the bridge report. Her comments are part of the verbatim record. She said to hold this project up, when all other agencies have given their permission, would endanger the health and safety of our citizens. The bridge replacement was the number one priority of Accomack County.

Jack Tarr, Mayor of Chincoteague, asked the Commission to look favorably on the bridge project. The bridges have been rated poorly by VDOT and are in bad shape. The town council has supported the design and proposed location of this bridge. His comments are part of the verbatim record.

Keith Bull, County Administrator of Accomack County, said Chincoteague has only one way on and one way off. The two bridges that are being replaced are in terrible condition. He said he had read the reports and seen the bottom side of the bridges. Even with the existing schedule, there still may be a catastrophic failure with loss of life. If weight limits are placed on the bridge, an empty concrete truck, or a full-load of fuel or a fire truck could not travel on the bridge. His comments are part of the verbatim record.

Terry Howard, a member of the Chincoteague Town Council, said bridge inspections are done, but from a layman's point of view, the bridge was scary. When NASA base traffic gets out or on weekends during the height of the tourist season, a bridge collapse would be a catastrophe. He supported the new bridge. His comments are part of the verbatim record.

Jim Frese, a member of the Chincoteague Town Council, urged and begged the Commission to approve the permit. The bridges are deteriorating and causing a great deal of concern. He said it was a very serious matter and they could not afford to drag it out further. His comments are part of the verbatim record.

Ellen Richardson, an Accomack County school bus driver and a member of the Chincoteague Town Council, said she was very concerned about the condition of the bridge. She said the bridges were a vital connection to the mainland. In 1988 a neighboring town Pocomoke City, Maryland had a bridge failure. The current bridge opens

about 2,000 times a year and would open about 20 percent more at the C-3 position compared with the Maddox location. She urged the Commission to approve the permit.

Jim West, Chincoteague Town Manager, said the town was very concerned with public safety and if the weight limits on the bridge are reduced it will harm the town's economy. He asked the Commission to approve the permit.

Mike Talbert, a Chincoteague resident and licensed engineer said his testimony was based upon the state's bridge inspection reports. He urged the Commission to approve the permits and his comments are part of the verbatim record.

Commissioner Pruitt asked for other speakers in support of the project. There were none. He then called for those persons who oppose the project.

Dr. Glen Wolfe, a family physician on the island and member of the Chincoteague Town Council and representing the Bridge Location group, asked the Commission to use a little common sense. Look at the Maddox Boulevard alignment and compare it with the C-3 alternative; if it's shorter, it's going to be less expensive. He said if he believed the Commission was putting the public safety in jeopardy by his asking that the project rejected or sent back to the CTB, he would not be at this meeting.

Donna Mason, a Chincoteague resident, said the majority of the people would like to see the new bridge put at the current location. She read a letter from Mrs. Helen Merritt who also opposes the Maddox Boulevard location. Her home and business is located on Maddox Boulevard. Ms. Mason's comments are part of the verbatim record.

Birge Reichard, a Chincoteague resident, said that so much money was needed by other agencies that wasting money on another location did not make sense. The current cost estimated at \$49 million, could go as high as \$65 million. He said he wanted to appeal to the simple, common sense logic of longer vs. shorter bridge. Simple logic says a bridge three times longer will cost more than the shorter bridge.

Susan Routh, a Chincoteague resident who lives on Marsh Island, said while the prevailing winds are westerly, strong north-northeast and west winds sweep across Chincoteague Bay without restraint. Much of the Maddox alignment was perpendicular to these winds. No doubt bridges can be built to withstand strong crosswinds, but she asked the Commission to imagine what would happen to those driving on the bridge. Her comments are part of the verbatim record.

Kathy Holland, a Chincoteague resident, said she was concerned about the safety of the environment if the bridge came to the Maddox Boulevard site. She said residents of Marsh Island would have a difficult approach to the new bridge and there would be a safety problem with turns onto the bridge. Her comments are part of the verbatim record.

Margo Hunt, a Chincoteague resident, spoke about the storm water management plan. The first two alternatives would provide for meeting water quality regulations, while the third alternative (compensatory treatment) would cost less. Why the third alternative was selected was not clear and there was no mention of it meeting water quality standards. Her comments are part of the verbatim record.

Karen Noll, a Marsh Island resident, said she had many questions on the bird study conducted by the Department of Game and Inland Fisheries. She said the location of the bird colony was wrong as were the bird sighting numbers. She also had problems with the dredging explanations. Her comments are part of the verbatim record.

Kevin Mason, co-owner of Tom's Cove Aquaculture Farms, said the shellfish revenue off the two leases that will be impacted by the new bridge was \$33,000. He said the Black Narrows clam ground was the company's ace in the hole if the worse happens and the Tom's Cove grounds were destroyed. He urged the Commission not to approve the permit.

Tommy Mason, a Chincoteague resident, said the new bridge would be detrimental to the tourist and seafood business. It will go through some of the best clam and oyster ground on Chincoteague. He said the bridge also would go through a large SAV bed. There are only 961 parking spaces at the Chincoteague Wild Life Preserve. He asked what would happen when it was full; there would be a backup on Maddox Boulevard, the proposed location of the new bridge. His comments are part of the verbatim record.

Nancy Payne, a Chincoteague resident, said she was a homeowner on Maddox Boulevard. While she acknowledged there would be an increase in our property's commercial value, it would not translate into hard cash. She said the atmosphere of the area would be changed by the new bridge location. Her comments are part of the verbatim record.

Jim Routh, a Marsh Island resident and representative of the Marsh Island Homeowners Association, said there had been a lot of misinformation put out, including funding profile and construction time schedule. He said he had contacted VDOT and the funding will not start until 2006 and construction will not begin until 2008. Mr. Routh said he also challenged Ms. Thornton's statement that the majority of the Chincoteague residents want the Maddox Boulevard alignment. His comments are part of the verbatim record.

Commissioner Pruitt closed the public hearing. He then called upon Alice Grimes, a project manager with the U.S. Army Corps of Engineers, to clarify a few points. Ms. Grimes said the Corps does not have regulatory authority over the bridge. The Corps regulates only the near-shore fill; therefore any of the alternatives were agreeable once the dredging was eliminated. Ms. Grimes said issues related to stormwater run off, colonial nesting birds, the shellfish beds, and the SAV beds were not within their consideration and were not factors that the Corps evaluated. The bridge falls under the U.S. Coast Guard, she added.

Ms. Frisch of VDOT spoke about the alternatives analysis that documented why the selected alignment application was the least environmentally damaging alternative. VDOT did not want to speak to the disagreements among town residents. She said the proposed speed limit on the bridge would be about 25 mph, not 40 mph as was suggested by an earlier speaker. She also spoke about the stormwater management alternative and the fact that two of the possibilities would require stormwater basins to be placed in wetlands, which would be impossible. Ms. Frisch reiterated that there would be no dredging for construction access. There will be excavation only and drilling at the bridge landfall onto Chincoteague. She said that 2004 was the earliest possible date. That was the date they needed to work toward and that was why permits were obtained so early.

Associate Member Bowden asked how much funding was already devoted to the project? Ms. Frisch said \$23 million has been identified. Associate Member Bowden said he had a letter than identified another \$14.4 million.

Russell Martin, Engineer, Structural and Bridge Division, VDOT, said the 715 feet on the spur bridge was included in the 5,819-foot bridge, including the approach roadways. He also said the last time there were comparative estimates, the Maddox Cost was only \$5-7 million more. He said in looking at relative lengths there would be more of a difference in costs, but at the existing bridge and at the C-3 alternatives, the channel was 100 feet wide. A moveable bridge is 12-15 times more expensive than the moveable bridge at Maddox because the channel there is only 60 feet and would require only a single lift rather than a double at the C-3. That is one reason the cost difference is not so great.

Associate Member Garrison asked how many other bridges are in a similar degraded condition in the southern area. Mr. Martin said he was not prepared to answer that question.

Associate Member Garrison asked Mr. Cummings, resident engineer, if he could assure the Commission that all the VMRC recommendations would be followed. Mr. Cummings said positively. Associate Member Garrison reminded him that many times recommendations are made, but never followed.

Commissioner Pruitt said he would have to question the statement about “never” being followed. There had been problems, but they have been rectified to the satisfaction of the agency and sometimes by the courts, he added.

Associate Member Garrison questioned the costs of the bridge alignment. Mr. Cummings said that the Maddox Bridge can be at a 90-degree angle to the island and a 60-foot channel crossing can be secured.

Associate Member Cowart asked if the problems of the shellfish growers had been addressed by VDOT. Mr. Cummings said that would be handled through the right-of-way

process where the leasor would be compensated for damages and lack of income. The study will be done by VIMS to determine the value of the beds.

Associate Member Bowden said that there was a lot of structure damage to the bridges and he asked Mr. Cummings if they could withstand a hurricane? Mr. Cummings said the bridges are in a weakened condition. He said the bridge would stand less of a chance of surviving a direct hit than when they were originally built. Repairs have been made to ensure that legal loads can cross. He said the engineering community in the 1930's did not know as much about (hurricane) impacts as we do today. The new bridge would be better able to withstand such storms. His comments are part of the verbatim record.

Commissioner Pruitt thanked both sides of the issue, saying he had never heard more concise and less repetition in reports in all his time of public hearings.

Associate Member Garrison said it was hard to conceive that a smaller or shorter bridge would not work better. He said he would not vote against it, but still did not understand. He said he had no objections to offer at the time. He said he was reluctant to go against the grain of staff's recommendations.

Associate Member Bowden said he was between a rock and a hard place. He was a lifelong Chincoteague resident and like the Commissioner had said several times; he had strong feelings on both sides. After seeing the engineering report, Associate Member Bowden agreed that the bridges were in poor shape and structural loss had to affect the integrity of the bridge. He said also that he sides with the business community because no one knows what will happen if the bridge moves away from downtown. He took an informal survey and found that only two people wanted the downtown location and that was he and his wife. He said it will be a hard decision, but he is doing what he thought was best for the community. He acknowledged that all the other permits were in hand. The Commission could not vote on traffic safety and other matters that may be very valid, but were not within the Commission's jurisdiction. Associate Member Bowden said that his decision was downtown and VDOT's decision was Maddox Boulevard, but he said he had never been one to run away from a fight. He said he felt the Commission had no other course other than to vote for the permit. He said he couldn't believe that a smaller bridge would not cost less, though.

Associate Member Bowden moved that the Commission approve VDOT's request and that if any dredging were later required, VDOT would have to come back to us. He asked Carl Josephson (Commission's legal counsel) a question: Could the Commission recommend any clam ground compensation to VDOT?

Assistant Attorney General Josephson said that was a matter between VDOT and the ground leaseholders.

Associate Member Bowden said staff conditions were very pertinent and should be considered. He said he would make a formal motion that the Commission approve the VDOT permit with contingencies (three conditions in the staff report) placed by the Commission and that any dredging would require them to come back to the Commission for further review. Associate Member Garrison seconded the motion.

Commission Pruitt asked for comment and/or discussion on the motion. Associate Member Jones asked if it was automatic that if a violation of the conditions occurred that the permit would be revoked? Commissioner Pruitt said if there were a violation, Mr. Grabb would bring it back to the Commission.

Mr. Grabb said he wanted make a clarification. There was a minor amount of dredging that would have to occur, but staff was talking about further dredging for access. That additional dredging would be another element and would need to come back for further review.

Associate Member Bowden asked if it were not true that some excavation would be required no matter where the bridge was place. Mr. Grabb responded affirmatively for the swing span or draw span. If the successful contractor wants access dredging that was not something that had been evaluation at this point and would need to come back to the Commission.

Commissioner Pruitt returned to Associate Member Jones' question regarding a possible violation of a permit condition. Mr. Josephson said some form of enforcement must be taken by the Commission on a violation for it to have any effect.

Associate Member Ballard said he had absolutely no desire to do the CTB's job, but he wanted to ask the Commission members a question. He took the Commission back to the pipeline issue in Patrick County; where there was a question of federal supremacy. The Attorney General told the Commission it could not change what had already been determined, but we do not have the same situation here. He said if the Commission was not dealing with another state agency and if individuals had come with this request and the Commission had to choose between two (bridge) alternatives, what would the Commission do? He said he thought he knew. The Commission would vote for the less environmentally damaging and shorter alternative. He said he was not entirely comfortable with the motion, but did not have another motion. His comments are part of the verbatim record.

Associate Member Birkett said he shared Associate Member Ballard's view. In his own heart, he said there was another responsibility above the environment that was more important: that was human safety. All testimony and reports from the experts deemed the present bridge totally unsafe. In that vein, for public welfare and public safety, he said he would have to support the permit.

Associate Member Cowart said he shared Associate Member Ballard’s view, but believed the Commission was compromising the natural resources the Commission was charged with looking after in order to provide for a bridge that was more environmentally damaging. He said he has not heard anybody say what would take place if this were sent back to the CTB board with directions to look at the downtown location. Maybe someone could enlighten the Commission on a time frame?

Associate Member Bowden said the lady from VDOT said it would take at least two to three years longer. No one was more uncomfortable with this motion that he was, Associate Member Bowden said. Public safety must outweigh everything, he said. His comments are part of the verbatim record.

Associate Member Garrison said it would not take that long to change horses. He said there were hundreds of bridges in Virginia that were deficient.

After no additional questions, Commissioner Pruitt called the roll: Mr. Bowden, yes; Mr. Garrison, yes; Mr. Ballard, no; Mr. Birkett, yes; Mr. Cowart, no; Dr. Jones, yes; and Mr. McLeskey, yes. The vote was 5-2 and the motion carried.

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The Commission recessed for lunch for about 40 minutes

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The Commission resumed its meeting about 1:10 p.m. and Commissioner Pruitt called for Item No. 7 on the agenda.

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- 7. **RICHMOND METROPOLITAN AUTHORITY, #02-1025,** requests authorization to relocate 383 linear feet of stream channel and extend an existing box culvert an additional 83 linear feet within Powwhite Creek as part of a proposed widening of Powwhite Parkway in the City of Richmond. Two adjoining property owners protest the project.

Benny Stagg, Environmental Engineer, Sr., gave the presentation with slides and his comments are part of the verbatim record. Mr. Stagg said the proposed project was near the James River at the Forest Hill Avenue exit of Powwhite Parkway in the City of Richmond.

Mr. Stagg said Powwhite Parkway beyond the limits of this proposal carries four (4) thru lanes in each direction. Between the Forest Hill Avenue interchange and the Chippenham Parkway, the number of thru lanes is three (3). The proposed widening would allow for a

continuous four (4) lanes through the area. The proposed widening required the relocation of a portion of Powhite Creek and the extension of a culvert where the creek crossed under the Parkway. Due to the location of railroad bridge piers, the Forest Hill Avenue bridge piers, existing ramps, and a 20-foot high retaining wall, widening to the east could not be achieved.

Mr. Stagg said the total replacement channel to be constructed totaled 13,881 square feet and would match the current stream width. The eighty-three feet of box culvert extension would impact 4,090 square feet of stream channel. All work would be within the existing right-of-way.

Staff received letters of concern from one adjoining property owner and another nearby property owner. Mr. Joseph E. Burrough, III, the adjoining owner, noted his concern over effects to the flow of the creek, removal of mature timber that provide a natural protection against erosion bordering his property and wildlife impacts. Additionally, he stated that removal of any existing woodlands would result in a nuisance of noise and noxious fumes from the roadway. Mr. John Dutton, who owns property immediately adjacent to Mr. Burroughs, as well as other nearby properties, also objected to the project. His concerns included the removal of the forested buffer, which could result in increased noise and pollution, and a potential increase in silt from erosion and storm water runoff. Mr. Dutton further requested that, if approved, a sound wall should be considered along the portion bordering the Granite Acres neighborhood.

The agent for the project, HNTB, provided information regarding the issues raised by the two letters. Based upon that information, staff had concluded that impacts of the project would be minimal and mainly during the construction and relocation of the stream phases, with little if any long term impacts.

Last week staff received a joint letter from Mr. Burroughs in response to the agent's letter. Mr. Stagg said he spoke with both individuals and they wanted to continue their objections. They continued to want some kind of buffer installed. The agent said there was currently no proposal for a sound barrier. This, however, was outside of the Commission's jurisdiction.

There were no concerns received related to the extension of the existing culvert.

The U. S. Army Corps of Engineers and the Department of Environmental Quality had issued permits for the project. DGIF had no objections. No other agencies had commented.

Since all work proposed by the applicant was to be within the existing right of way, and the proposed stream channel relocation will mimic the original stream in width and depth, staff recommended approval of the project as proposed.

Commissioner Pruitt asked if there were any questions of staff. No one wished to speak and no one was present in opposition.

Associate Member Garrison made a motion to approve the project. Associate Member McLeskey seconded the motion, which passed, 7-0.

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8. PUBLIC COMMENTS:

Robert Jensen of the Rappahannock Preservation Society presented the Commission with a two-minute videotape shot September 11, 2003 showing the Yorktown material at the Steamer Rock oyster reef in the Rappahannock River. He said there had been great response from the larvae. The reef was three years old and there were many native oysters growing on the reef. He said there were 1,500 piles of concrete in the southeast segment of the rock with healthy native animals that came to the site by themselves. He showed a module that was constructed and placed at the reef. The cube is about 7.4 feet by 7.4 feet by 7 feet.

Jensen gave the Commission a brochure that outlined what had been done and what needed to be done. He said he needed something from the Commission. Jensen said he had an idea to bring the native oyster back to the Chesapeake Bay. He said he had space to put about 1,000 modules at Steamer Rock, but he could not take them up. Under the current state law, once something was placed on Baylor Ground it could not be taken up. He said Del. Harvey Moran, R-Urbana, had agreed to be his patron to get legislation introduced that would allow him to remove modules from the site.

Mr. Jensen said he could raise money from the private sector to support the project to establish more reefs. He needed the Commission to agree that maybe the General Assembly should look at the Baylor laws to allow him to put core modules at Steamer Rock and then remove the modules for placement elsewhere to build some serious oyster reefs. Finfish like to hang around his oyster reefs, too, he said.

His own company, ReefTec, was ready to build some core modules and place them at Steamer Rock, Mr. Jensen said, but he needed the ability to get the modules off the rock once they were populated with oysters. His comments are part of the verbatim record.

As a regulatory body, if the Commission thinks it was a good idea working with concrete, Mr. Jensen asked the Commission to support him with a resolution or an "informal" note to the General Assembly to make an exception to existing state law. No bank will loan him money if he cannot move them to a new location, he said.

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Commissioner Pruitt asked if there were any questions from the Commission. He also suggested that Mr. Jensen take the idea to the Chesapeake Bay Commission. Mr. Jensen said he wanted an exception to the law made for his use.

Mr. Grabb said the thrust of Mr. Jensen's proposal was 1) the General Assembly has the power to remove that portion of Baylor and 2) that the Attorney General has said that the Commission is empowered to authorize public uses of Baylor Ground, but is not authorized to permit private uses of Baylor Ground. Mr. Grabb said he was not sure what kind of mechanism that the legislature can take.

Commissioner Pruitt said the Commission does not take positions on legislation in advance. He said the Commission could not give him a blank resolution today.

Mr. Jensen said the Commission gave him the permit to do the work. Mr. Jensen said that 10 years ago the Commission did not want to hear him and one person, Mr. Don Liverman, urged the Commission to hear it. Commissioner Pruitt told him to bring the Commission a copy of the proposed legislation.

Commissioner Pruitt asked if anyone else had a comment. There were none.

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8A. DAMAGE FROM HURRICANE ISABEL:

Mr. Grabb said Hurricane Isabel left much destruction in its wake and people wanted to repair and replace damaged property. In April 1998, the Commission passed a general wetlands permit for emergency situations. It was designed to allow local wetlands boards to look at emergency situations primarily related to shoreline erosion structures to expedite the process and certain criteria were established. Currently there is a regulation for tidal wetlands with certain criteria. It is not designed if there was no pre-existing structure. When it was done in 1998, there was recognition that the Commission had no authority to waive permit requirements. The Commission tended to rely on an Executive Order issued by the Governor. Governor Warner, on September 15, 2003 in advance of the storm said if there was a threat to health, safety and welfare, people can remove debris or damaged structure. There also was no problem for someone to do something in a public health, safety and welfare situation. There were clearly situations that do not fall under that situation, such as private piers. What the Habitat Management staff had done was come up with a list of criteria that would give the staff guidance to authorize reconstruction of previous and serviceable structures. He distributed the Staff recommendation in the form of a resolution. His comments are part of the verbatim record.

Commissioner Pruitt asked if there were any questions for Mr. Grabb. Associate Member Birkett said he had had numerous persons call concerned about the dates. He said the

local contractors say its 15 months out now if someone calls to rebuild. Mr. Grabb said the thrust was an emergency. He said his response is that if there was a 15 months wait he was not sure it would qualify as an emergency.

Associate Member Garrison said his concern was to go a year until September 15, 2004 or October 1, 2004, to find out what was left. He said there are projects that were done prior to permits. How do they operate? Mr. Grabb said there would be predecessors in title and that the projects would have been authorized earlier.

Associate Member Garrison asked several questions about the form that was attached to the proposed resolution. Mr. Grabb's answers are part of the verbatim record. Mr. Grabb said forms would be distributed to local wetlands boards.

Commissioner Pruitt asked that in cases, like Tangier and Saxis, where people would be doing their own rebuilding, must they use the same form? Mr. Grabb responded affirmatively. He said individuals needed to identify what was to be reconstructed.

Associate Member Cowart asked about those persons who had just constructed their structure in recent months and still have an existing permit. Mr. Grabb said those individual could probably rebuild under that existing permit.

Commissioner Pruitt said the key was that the individuals get in contact with one of the staff environmental engineers at VMRC. That was what was important.

Commissioner Pruitt asked if anyone had other comments. Since there were none, he called for a motion.

Associate Member Ballard said he would not go through the tedium of reading the resolution and instead moved that the Commission adopt the resolution entitled, "Hurricane Isabel Emergency Resolution." Associate Member Birkett seconded the motion.

The resolution read: "In an effort to address the impacts attributable to Hurricane Isabel on the health, safety and general welfare of the citizens of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as is possible, the Virginia Marine Resources Commission hereby resolves that no permits for encroachments over State-owned submerged lands shall be required to replace previously permitted structures that conform with the following criteria:

- 1) The pre-existing structure must have been previously authorized and in a serviceable condition prior to the onset of the hurricane.

- 2) The replacement structure must be reconstructed in the same location and in the identical or smaller dimensions as the previously permitted structure.
- 3) Reconstruction activities must be initiated prior to December 31, 2003, and completed prior to June 30, 2004.
- 4) Authorization to proceed will be contingent upon receipt of a letter from the property owner(s) attesting to the foregoing and containing suitable drawings of the proposed replacement structure(s) for comparison purposes.
- 5) This expedited authorization is not intended to supercede, or cover the actions of any entity; private, local, State or Federal, not authorized by Executive Order 56 or any subsequent Executive Order.

Commissioner Pruitt asked if anyone had any other comments.

Associate Member Garrison asked if the Executive Order were extended beyond June 30, 2004, would the dates in this resolution, likewise, be extended? Assistant Attorney General Josephson acknowledged affirmatively.

Commissioner Pruitt then called for the vote. The motion was approved, 7-0.

Mr. Marty Steffens, representing Merrimack Shores neighborhood group, told the Commission that all but 16 of the area's 48 homes were damaged by the hurricane and 18 homes were severely damaged. He said the group wished to thank the Commission for its prompt and understanding attention to the problem.

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9. **PUBLIC HEARING:** proposed amendments to regulation 620 to establish trip limits and opening date for the fall season commercial flounder fishery.

Lewis Gillingham, Fisheries Management Specialist, said last fall staff submitted a request from industry to modify the resolution. They requested a week earlier opening of the fall season, rather than first Monday in November, move to the last Monday in October and increase the cumulative possession limit from 7,500 to 10,000 pounds. Their requests were advertised. Mr. Gillingham said he had received one telephone call and it was in support of the regulation.

Commissioner Pruitt opened the public hearing. Mr. Charles Amory said he was there to just answer questions. Commissioner Pruitt asked for questions. There being none, he called for a motion. **Associate Member Bowden moved that the regulation be amended. Associate Member Ballard seconded the motion, which passed, 7-0.**

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10. Public Hearing: proposed amendments to Regulation 650 and 720 to establish the 2003/04 oyster harvest rules.

James Wesson—Head, Conservation and Replenishment Department, reminded the Commission that these rules were considered every fall. He said this year shows the same low level of stocks. Prospects for this year's harvest do not appear good. Several minor changes were proposed. Last year the Commission allowed hand scrapes in the Potomac River tributaries but it was felt it was important go back to hand tongs in Potomac tributaries. Last year there was a request of small by-catch of clams in Tangier and Deep Rock dredge areas. That should be removed. Last year also in Tangier Sound the oysters go straight to Maryland to be marketed. Staff has been lenient in the past, but now taxes must be paid prior to going to Maryland with a misdemeanor rather than a penalty of loss of license. Mr. Wesson's presentation is part of the verbatim record.

Associate Members Ballard and Cowart asked questions specifically regarding the map that was presented before the Commission. The Health Department currently had closed the James River area and portions of the Rappahannock.

Commissioner Pruitt opened the public hearing.

Jan Marshall, a Tangier waterman, said his group would like a three-month season. He said watermen lost a lot of time to weather last year. He said Tangier watermen lost a lot to Hurricane Isabel and many of the oystermen also harvest crabs. The watermen have seen a big survival rate and good size in oysters and we can make good money. They asked for an earlier daily start.

Associate Member Cowart asked if the starting time were statutory? He was told it was regulatory.

Paige Hogge of Urbanna asked the Commission to adopt a state wide, two and a half (2 ½) inch cull law. At 2-½ inches, the oysters have spawned once and if they last they probably will be hit by disease. She reminded them that the real brood stock is not on the rocks, but in the crevices and in the shoals near the reed channels. Mrs. Hogge said the Commission was already equipped to enforce the 2-½ inch cull law.

Associate Member Cowart asked if the cull law were statutory? Jack Travelstead, Head-Fisheries Management Division, said it was in the regulations.

Russell Gaskins, working waterman, asked the Commission to define what areas can and cannot be worked in the initial regulation. Dr. Wesson said everything is listed specifically in the regulations.

Mr. Gaskins also asked the Commission to try to open rocks below the Route 3 Bridge on the Rappahannock River. He said he could not understand why those rocks were always closed.

Commissioner Pruitt asked if the Commission wished to open a rock below the bridge could it be done immediately. Mr. Travelstead responded affirmatively.

Associate Member Bowden asked Dr. Wesson if there would be large effect on the brood stock to open one rock? Dr. Wesson said there had been a large effort by the Oyster Heritage Program to restore the mouth of the river. About half already had been opened and there had been pressure to keep the other half closed. A question would be which rock, in the other half that had been closed, would now be picked to open? Another question was whether the Commission would bite into another section of the sanctuary.

Commissioner Pruitt said everyone hopes the native oyster would come back, but Maryland and Virginia were proceeding on the other approach (with non-native oysters).

Associate Member Cowart asked what was the scientific view regarding the 2-½ inch cull law? Dr. Wesson said that matter could not be considered without another advertisement. He added that moving to a 2-½ inch oyster would be going into the oyster brood stock. Associate Member Cowart asked what was the difference in spawn ratio for the 2 ½ and 3-inch oyster. Dr. Wesson said there was an exponential increase with size. It was million per oyster. Dr. Wesson's remarks are part of the verbatim record.

Commissioner Pruitt asked for other questions. There being none, he closed the public hearing.

Taking the proposals in order, Commissioner Pruitt called for a discussion on the earlier daily starting time. Associate Member Ballard said it had been a half-hour before dawn every year and another month was added to the season last year because of the weather. Associate Member Ballard asked if there was a law enforcement problem with the half-hour earlier daily opening request? Commissioner Pruitt said he did not know of any. Dr. Wesson said the only issue would be that watermen would be on site much earlier. The watermen had asked to leave the docks one-hour before sunrise.

Commissioner Pruitt said he did not see a problem with the request. Associate Member Garrison said he did not see a problem whenever the watermen leave the dock, just as long as they do not begin harvest until sunrise.

Associate Member Ballard said the Commission demonstrated a willingness to go to three months last year because of the weather, but was reluctant to go to three months initially.

Commissioner Pruitt asked Mr. Marshall if he asked for the three months just in case it was necessary. Mr. Marshall said the watermen wanted three months initially.

Commissioner Pruitt asked for a motion on leaving the dock. **Associate Member Cowart moved that watermen be allowed to leave the dock one-hour before sunrise. Associate Member Jones seconded the motion, which was adopted, 7-0.**

Commissioner Pruitt said the second request was for an extra month for the season. Associate Member Bowden said he understood the watermen's problems. Giving them three months gives the watermen a chance to make up for bad days. When the available oysters are gone, the watermen will quit.

Associate Member Bowden made a motion to add a month to the season (December 1 to February 28, 2004). Associate Member McLeskey seconded the motion, which passed, 5-2.

Commissioner Pruitt asked for discussion or motion on the 2-½ inch cull law. Associate Member Ballard said Dr. Wesson had said the issue could not be considered at this time. Commissioner Pruitt said he recalled the statement and asked for a motion to take the matter to a public hearing. **Associate Member Birkett moved the motion. Associate Member Cowart seconded the motion, which was adopted, 6-1.**

Regarding the lower Rappahannock River, Associate Member Bowden asked how many rocks were below the bridge? Dr. Wesson said there were many and that they run together. Associate Member Cowart asked if there was a separate area that could be identified for harvesting. Dr. Wesson said there were several natural boundaries. Mr. Gaskins said he would like all rocks to be opened. They can put buoys around everything. Associate Member Garrison said there are numerous opportunities to harvest.

Commissioner Pruitt asked if a location could be worked out and brought back to the Commission's October 28th meeting, just a few weeks later. It was decided to hold over the matter over until the next meeting.

Associate Member Cowart moved the approval of the full regulation VAC 720-10 to establish oyster harvest season and rules. Associate Member Ballard seconded the motion, which includes the previously approved amendments. Associate Member Cowart agreed. The motion was adopted, 7-0.

Dr. Wesson said the next regulation was VAC 20-650-10 and asked that a permanent regulation be established to keep people 300 feet off the reconstructed reef sites (oyster management area). Commissioner Pruitt opened the public hearing on the proposal. There being no comments, Associate Member Cowart asked if the regulation applied to private or public bottom. Dr. Wesson said the way it was written it would apply to public.

Associate Member Cowart said the issue affects him personally. Dr. Wesson said one word could be added that might clarify the intent. Commissioner Pruitt asked that the matter be held over until the October 28th meeting for further study.

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- 10. Public Hearing:** proposed amendments to Regulation 950 to establish provisions for the 2004 commercial black sea bass fishery.

Jack Travelstead, Head—Fisheries Management Division, said it was a complex issue that involved a number of sub-issues. He suggested the Commission hear the staff presentation and the public hearing comments and then defer a final decision until its October 28th meeting.

Mr. Travelstead said the quota for 2004 would increase from 558,000 to 716,000 pounds with the by-catch going from 42,000 to 54,000. He said Virginia had about 170,000 pounds of new quota available next year and viewed those pounds as a great opportunity to correct some of the problems that industry had identified. Was it enough poundage to solve all the problems? No, he said, but there were plenty of pounds that everyone in the fishery would see an increase.

Associate Member Jones asked if this was the same fishery where a young man came to the Commission last year and talked about being a young fisherman who wanted to begin fishing on black sea bass but under the current rules he could not. She said he was about 21-years of age and caught black sea bass as a by-catch and he was concerned about this being a “closed shop fishery.” Mr. Travelstead said he recalled the young man and that there would be an opportunity for quota transfers.

Relating to by-catch, Mr. Travelstead said industry sent several letters, especially from the trawl fishery that the current by-catch level is not adequate. There were occasions when trawlers had to throw back thousands of pounds of black sea bass because it could not be landed. The industry wanted that the entire 170,000-pound quota should be allocated to by-catch; others asked for a significant portion going to the by-catch.

He said staff examined the by-catch issue and the trip limits. Mr. Travelstead presented a chart to the Commission showing trips and quotas. His comments are part of the verbatim record. The testimony from the industry was a little confusing, he said, when one looked at the data. For that reason, staff suggested that the by-catch limit be doubled from 47,000 pounds to 84,000 pounds and that the trip limit be increased from 100 to 500 pounds.

Mr. Travelstead said one of the dangers in increasing the quota and trip limits was to encourage a directed fishery by trawlers. The higher the trip limit, the more you encourage a directed fishery; this was why the recommendation was not at the 1,000 pound level. He said that once 75 percent of the by-catch quota was used, the trip limit would be dropped back to 100 pounds.

The second provision was related to medical hardships, he explained. There were several individuals who did not meet the requirements because of medical concerns. The staff said the Commission could prepare for them by allocating 10 percent of the new quota, or 17,000 pounds for hardship cases. Any granting of hardships would be done prior to January 1, 2004 by a subcommittee of the Commission. If the full 17,000 pounds were not utilized, the remainder would revert to the direct fishery.

The third provision would be a complete reallocation of the quota received by the 42 vessels in the fishery. The original allocation was based on landings from 1997 to 2001. Now with 2002 data available, a reallocation would be made. Previously only landings history was used, but there were some cases that vessels in one trip and in one year landed the 11,000 pounds necessary and that concerned some in the industry. There should be an additional requirement showing landings in three of the six years. These would be new requirements, Mr. Travelstead said. Associate Member Ballard reiterated that last year's allocation scheme did not use 2002 data.

Mr. Travelstead said there was some discussion about penalties for soak time, the time when watermen left pots in the water and could harvest fish on the first day, while others had to go out and find fish. This action, many people felt, would give black sea bass pot fishermen a distinct advantage.

The staff presented all this issues as problems and if the Commission wished to correct them, it could do so through the new quota, Mr. Travelstead added. He said there were nine vessels out of 42 that were potters and they would not get an increase if action were to be taken regarding potters. However, some potters would get an increase based upon use of 2002 data. The end result, he said, on the directed fishery would be the use of 2002 data, vessel landings for three of six years and, soak fishery penalty. In almost all cases, the quota would go up.

Commissioner Pruitt asked for questions of staff from Commission members. Associate Member Garrison asked what would happen if a potter brought the pots in and put them out and was not involved in soak time. Mr. Travelstead said soak time was an issue between 1997 and 2001 and not now.

Associate Member Ballard said that rather than coming up with an excellent allocation scheme, what if we divided the 170,000 into 17, 10,000-pound allotments and let watermen bid on them. Mr. Travelstead said Mr. Ballard was way ahead of his time, but Virginia was not in the position to do that now.

Commissioner Pruitt opened the public hearing.

Jim Dawson, a hook and line fishermen, said one thing that had not been stated was that the drop trappers bring their gear in every time they go out. They were not soak time fishermen. Mark Hodges, a waterman, said he was in favor of several points including the

transfer of shares. He said there were problems about people landing fish in Virginia who only had federal permits. Sometime down the line, he said, those fishermen should have Virginia landing permits so they were aware that people must have permits to sell. That would, hopefully, reduce our harvest overages. He said he was opposed to vessel caps, especially when he had three employees on the boat. Mr. Hodges said he had landed 20 percent of the catch for a number of years and there had been no problems. He said a cap on his boat was not fair. Mr. Hodges questioned a penalty for leaving traps in the water. The state of Virginia, he said, benefited financially from traps being in the water and fishermen harvesting those fish. He said he was being penalized for keeping the quota share in Virginia. His comments are part of the verbatim record.

William Keys, a hook and line fisherman, said he was completely in agreement with increasing the by-catch limit, especially stretching it out more during the year. He said the 100-pound by-catch limit was too small and a larger limit would put some boats into the profit margin. The 500-pound a week would be better than maybe 500-pounds per trip.

Harry Doernte, a hook and line fisherman, said he supported surrendering a permit when quota was reached. Regarding a transfer of quota, he said, he was 100 percent against it, especially for just one year. Regarding hardships or allowing young people into the fishery, he said, its bad for people to have to buy their way into a fishery. Using 2002 numbers was horrible because the price of black sea bass went to 60 percent of the price earlier in the year. Consequently, people did not fish because the price was so low. His comments are part of the verbatim record.

Jack Stallings, a waterman from Virginia Beach, said he was in favor of retaining an IFQ, reviewing the VTR reports and having a pot penalty and was also against using the 2002 data.

Joe Kelly of the Eastern Shore said he was in favor of a cap of some kind in the fishery about 10 percent or less. He asked what the Virginia quota was based upon? Mr. Travelstead said Virginia's quota was a negotiated amount. Then, Mr. Kelly asked why the 1997 to 2001 data was used? Mr. Travelstead said those were the years of mandatory reporting. Mr. Kelly said IFQs should be used on dealer landings only; one is fact the other is fiction. He also favored the use of 2002 data, but does not favor penalizing potters. His comments are part of the verbatim record.

Kelly Place of Williamsburg said he had no financial interest in the fishery, but one thing that disturbed him was a concentration of the quota in too few hands. His comments are part of the verbatim record.

Robert Ruhle said he would like to see an increased amount for by-catch in the traditional fisheries of which sea bass is a by-catch. His comments are part of the verbatim record.

Ray Trithe of Chincoteague said he wanted a cap of seven (7) percent or so. He agreed that license should be turned in after the quota was met. He said the VTR reports were estimates and do not mean much. He said he had numerous letters of people who wanted changes made.

Joe Delcampo, commercial watermen, said he thought the hardship issue should not be an issue over a five-year period. Commissioner Pruitt said he was forming a committee to examine the hardship question before the October 28th meeting. Mr. Delcampo said he wanted a penalty for soak timers.

Charles Amory of Hampton agreed basically with staff comments and put a percentage or weight maximum to keep by-catch from becoming a directed fishery.

Mark Hodges said he is against putting a cap on individual boats and a penalty on soak time potters.

Commissioner Pruitt asked Mr. Travelstead how many people were needed for the hardship committee? Mr. Travelstead said the committee was not needed unless that aspect of the regulation was approved.

Associate Member Jones said she was still mindful of the young fisherman who pleaded with the Commission to consider having a way for a young person to get into the fishery. He was discarding black sea bass and not targeting. He wanted a chance to get into a fishery. When the National Academy considered individual fishing quotas, it talked about inequities, including the fact that initial fishermen were given quotas and the only way to get into the fishery was to purchase their way in. One way the Commissioner could help would be to set aside some of the quota for a lottery to let young people get into the fishery. That would be a way to build equity into the system, she explained.

Mr. Travelstead asked if the Commission was asking him to adjust the staff recommendation to take Dr. Jones' suggestion into account. His problem, he said, is that there are 42 boats in the directed fishery and 194 vessels in the by-catch fishery and other young people that Dr. Jones is concerned about. You could take a portion, but you will hear from the others about some kind of age discrimination factor. Mr. Travelstead said that allowing for transfer of ITQ's made it possible for young people to come in, but sometimes they do not have the equity that might allow them to do it. Now the Commission had 170,000 new pounds to handle such problems.

Associate Member Garrison said he had received a telephone call from the young man Dr. Jones was talking about. He said her idea of a lottery made sense.

Commissioner Pruitt said additional comments would be accepted between now and the October 28th meeting when the issue would be settled.

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11. **Discussion:** the 2003/04 Spiny Dogfish fishery; request to lower quota and adjust trip limits. Request for public hearing.

Jack Travelstead, Head-Fishery Management Division, asked for a recommendation to go to a public hearing to establish 500,000 pound quota and trip limits and reporting requirements. **Associate Member Birkett moved to go to a public hearing. Associate Member Garrison seconded the motion, which was adopted, 6-0.**

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12. **Recommendation:** Recreational Fishing Advisory Board.

Rob O'Reilly, Deputy Head—Fisheries Management Division, reported the issue was a follow-up to action last year. On November 26, 2002, the Commission approved funding for the Oyster boat landing parking lot improvements in Northampton County. The Commission approved \$90,000, with \$70,000 to be funded by the grant recipient. The Natural Conservancy now was not willing to sell the property, Mr. O'Reilly said. TNC was willing to authorize a 20-year lease on the property. The Recreational Fishing Advisory Board voted 6-2 in favor of amending the current contract with the county to allow the property to be leased, rather than purchased.

Commissioner Pruitt asked if there were persons present who wanted to speak to the issue. Associate Member Jones said she must recuse herself from the case because she has obtained direct funding from TNC. **Associate Member Garrison moved to approve the RFAB's recommendation. Associate Member Birkett second the motion, which was adopted, 5-0.**

There being no further business, Commissioner Pruitt adjourned the meeting at 4:25 p.m. The next meeting date is Tuesday, October 28, 2003.

William A. Pruitt, Commissioner

Wilford Kale, Recording Secretary