

## MINUTES

**JANUARY 28, 2003**  
**NEWPORT NEWS, VIRGINIA**

The January 28, 2003 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt )	Commissioner
Chadwick Ballard, Jr. )	
Gordon M. Birkett )	
S. Lake Cowart, Jr. )	
Russell Garrison )	Members of the Commission
Laura Belle Gordy )	
F. Wayne McLeskey )	
K. Wayne Williams )	
Carl Josephson	Assistant Attorney General
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jane McCroskey	Deputy Chief, Admin-Finance
Jack Travelstead	Chief, Fisheries Management
Rob O' Reilly	Deputy Chief, Fisheries Mgt.
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Jim Wesson	Head, Conservation-Replenishment
Ellen Cosby	Fisheries Management Specialist
Claude Baine	Head-Saltwater Tournament
Roy Insley	Head-Plans and Statistics
Col. Steve Bowman	Chief, Law Enforcement
Capt. Warner Rhodes	Supervisor, Middle Area
Capt. Ray Jewell	Supervisor, Northern Area
Capt. Randy Widgeon	Supervisor, Eastern Shore Area
Capt. Kenny Oliver	Supervisor, Southern Area
MPO Edward Guy	Marine Police Officer
MPO Wayne Litz	Marine Police Officer
Robert Grabb	Chief, Habitat Management

**Commission Meeting**

12222  
**January 28, 2003**

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

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

**Virginia Institute of Marine Science (VIMS):**

Thomas Barnard, Jr.  
Lyle Varnell  
Dr. Roger Mann  
Dr. John Olney  
Pat Crewe

**Virginia Department of Health  
Division of Shellfish Sanitation**

Dr. Robert Croonenbergh

**Virginia Seafood Council**

Mrs. Frances W. Porter

others present included:

Keith Hart  
Dan Hickey  
Marsh Zellhoefer  
Flynn Cunningham  
Chuck Waldroft  
Rom Poff  
Gaffie Rouse  
Deborah Painter  
J. C. West, Jr.  
Walter Gooch  
Pat Boyle  
Alvin Carl Wimbrough  
Bill Barby  
B. Casket  
Kelly W. Place  
Andrew Franco

Chuck Roadley  
Ed Wolcott  
Craig Palubinski  
Janet Ledibuhr  
Cliff M. Garratt  
Douglas F. Jenkins, Sr.  
David E. Sheeley  
Keith Lockwood  
Gordon Jett  
Scott Burke  
Don Lancaster  
Glenn Stevens  
Jery Parks  
Charles Ghent  
Tom Powers

Steve Miller  
Travis Queswby  
Edward C. Hogge  
George Junkin  
Carol Brower  
Bobby Lewis  
Robert Pruhs  
Roy Stamper  
Jerry Decatur, Jr.  
Vernon Haywood  
Dirk Sanford  
Doug Reid  
Donald Rice  
John Forrest  
Vernie J. McKenny

and others.

Commissioner Pruitt called the meeting to order at 9:30 a.m. Associate Member Jones was absent from the meeting.

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

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**The minutes of the December 17, 2002 Commission meeting were approved as circulated. Associate Member Gordy made the motion, which was seconded by Associate Member Birkett. Associate Member Cowart abstained from voting. The motion carried, 6-0**

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**The agenda was approved with the changes requested.** Jack Travelstead, Chief-Fisheries Management, requested that Item 17, "Report on the Status of the Chesapeake Bay Striped Bass" be heard before Item 15, "Request for an Emergency Regulation to Allocate a Recently ASMFC approved Commercial Striped Bass Coastal Area Quota Addition of 55,456 Pounds". Bob Grabb, Chief-Habitat Management, added Hope Springs Marina, LLC, #02-1468-20 as 2© to the Item 2 projects. Commissioner Pruitt said that Item 12 should have been the last item and requested that it be moved to the end of the agenda. **Associate Member Williams moved to approve the agenda with the requested changes. Associate Member Garrison seconded the motion. Motion carried, 7-0.**

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

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Bob Grabb, Chief-Habitat Management, explained the Item 2, Permit Applications, which are \$50,000 or more in total project cost and for which staff recommends approval. His comments are a part of the verbatim record.

There being no questions by the Commission and no comments from the public, Commissioner Pruitt asked for the motion. **Associate Member Ballard moved to approve Item 2 Permit Applications as presented by staff. The motion was seconded by**

**Commission Meeting**

**Associate Member Gordy and carried, 7-0.**

**2A. NORTHWEST BRANCH OF TANNERS CREEK, L.L.C., #02-0089,** requests authorization to modify a previous permit to allow 238 cubic yards of additional dredging in three areas to increase the size of mooring basins in the Northwest Branch of Tanners Creek in the City of Norfolk. Recommend an additional royalty in the amount of \$107.10 for the additional dredging of 238 cubic yards at a rate of \$0.45 per cubic yard.

Royalty fees (238 cu. yds. @\$0.45/cu. yd.).....\$107.10

**2B. MARINE RESOURCES COMMISSION, 02-0481.** Fisheries Management Division requests authorization to construct an artificial fishing reef constructed of environmentally compatible concrete construction materials, designed concrete habitat structures and environmentally prepared steel hulled vessels, maintaining a minimum clearance of 15 feet from mean low water, in the Chesapeake Bay approximately 3.3 nautical miles northwest of Milby’s Point (Nandua Creek) in Accomack County. The reef is centered at 37° 40' 09" North Latitude, 76° 58' 03" West Longitude. The reef will be marked in accordance with all applicable U. S. Coast Guard requirements.

**2C. HOPE SPRINGS MARINA, LLC, #02-1468-20,** requests authorization to construct a boat launch and retrieve facility to serve boats in dry storage, including a 150 linear foot bulkhead; five (5) 12-foot by 30-foot boat launch and retrieve bays, one 10-foot by 83-foot tending pier, two 5-foot by 60-foot tending piers; then dredging of 165 cubic yards of subaqueous lands to achieve minus four feet mean low water depths; remove and replace an existing open-pile, commercial pier with 42 wet slips, fuel and pumpout services; and to construct a 10-foot by 85-foot long, open-pile walkway connecting the new pier to the existing dock. The marina is located along Aquia Creek immediately upstream of the CSX railroad bridge crossing in Stafford County.

Royalty Fee (dredge 165 cu. yd. @\$0.45/cu. yd.)..... \$ 74.25  
Royalty Fee (encroachment of 2,280 sq. ft. @\$0.50/sq. foot).....\$1,140.00  
Permit Fee.....\$ 100.00  
Total Fees.....\$1,314.25

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**EXECUTIVE SESSION:**

**Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or**

**other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:**

**AMERICAN ELECTRIC POWER, #02-1812**, requests authorization to cross the New River, Reed Creek and Peak Creek in two (2) locations in Wythe County, and cross Little Walker Creek, Walker Creek, Helvey's Mill Creek, Wolf Creek, and Clear Fork in Bland County, with an aerial 765kV transmission line, suspended a minimum of 110 feet above ordinary high water, in association with the Wyoming-Jackson's Ferry Transmission Line project in southwestern Virginia. Two property owners along the proposed alignment protest the project.

**REQUEST** for an emergency regulation to allocate a recently ASMFC approved, commercial Striped Bass coastal area quota addition of 55,456 pounds.

**AND for Counsel** to brief the members on pending legal matters and the policy for repeat offenders.

**The motion was seconded by Associate Member Cowart and carried unanimously, 7-0.**

Reconvened the regular meeting at this point.

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

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

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

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

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

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed

meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

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

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

**NAYS: None**

**ABSENT DURING VOTE: Associate Member Jones.**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Member Jones.**

**The motion carried unanimously, 8-0.**

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**Clerk/Secretary  
Virginia Marine Resources Commission**

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**4. PORT MEYERS, LLC, #02-1631**, requests authorization to construct an 82-foot long by 6-foot wide community pier adjacent to their property situated along Chisman Creek in York County. The project is protested by the Concerned Citizens of Heritage Hamlet.

Chip Neikirk, Environmental Engineer, gave the presentation and slides. His comments are part of the verbatim record.

Mr. Neikirk explained that the project site is located within a small cove off of Chisman Creek adjacent to a common property parcel in the Port Myers subdivision in the Seaford area of York County. He said that the residential development is located along the upper reaches of Chisman Creek. He said that the community pier is proposed to provide recreational water access for the residents of the subdivision. He stated that there are no slips or mooring facilities at the proposed pier.

Mr. Neikirk explained that the project was protested by the Concerned Citizens of Heritage Hamlet, a group of property owners along Chisman Creek, in the project vicinity. He said that a petition signed by 54 individuals states that they are concerned with the potential adverse environmental impacts on the tidal wetlands and wildlife within the creek.

Mr. Niekirk stated that the pier was originally proposed to be a total of 113 feet long, but was shortened to 82 feet long after discussions in September between the agent, Mr. Chuck Roadley of Williamsburg Environmental Group, and the Concerned Citizens of Heritage Hamlet.

Mr. Neikirk informed the board that the Department of Conservation and Recreation does not anticipate that the project will adversely impact their programs. He explained that the Department of Environmental Quality determined that a Water Protection Permit would not be required. He further explained that the Health Department found the project to be acceptable. He also said that the Virginia Institute of Marine Science expects the individual and cumulative adverse impacts resulting from the project to be minimal.

Mr. Neikirk explained that the pier was approved by the York County Wetlands Board on November 13, 2002 and that their decision was appealed by the Concerned Citizens of Heritage Hamlet. He said that on December 17, 2002, the Commission heard the appeal and upheld the York County Wetlands Board's decision to approve the project. He said that staff was not aware of any subsequent appeal of the Commission's decision.

Mr. Neikirk told the board that the pier will not encroach on any public or privately leased oyster planting ground and is sited entirely within a small cove and thus should not adversely affect navigation within Chisman Creek.

Mr. Neikirk explained that the environmental impacts associated with the pier are anticipated to be minimal and the pier should not adversely impact navigation. He said that accordingly, staff recommends approval of the project with a royalty of \$75.00 for the encroachment of the pier over 250 square feet of State-owned submerged land at a rate of \$0.30 per square foot.

Chuck Roadley, Williams Environmental Group, representing the applicant was present and his comments are a part of the verbatim record. Mr. Roadley told the Commission that the pier was for recreational purposes and the water there was too shallow for boats to tie up overnight. He said that boats would be deployed from the shoreline not from the pier.

Steve Miller, representative for the applicant was present and his comments are a part of the verbatim record. He explained that 47 homeowners had requested that a community pier be constructed for use by those who do not have waterfront property.

Flynn Cunningham, representing Concern Citizens of Heritage Hamlet, was present in opposition to the project and her comments are a part of the verbatim record. She stated that the group she represented was opposed to the impact of the long pier on the wildlife in the area and suggested that a 20 or 40-foot pier would be enough for the proposed purposes for the pier.

Commissioner Pruitt asked asked if any others were present to comment on the project and there was no one else to make comments either pro or con. He asked for a motion from the Commission. **Associate Member Garrison moved to approve as presented by staff. Associate Member Gordy seconded the motion. The motion carried, 7-0.**

Royalty Fee (250 sq. feet @ \$0.30/sq. foot).....	\$ 75.00
Permit Fee.....	25.00
Total fees.....	\$100.00

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**5. CRAB CREEK UNIT OWNERS ASSOCIATION, INC., #02-2306**, requests after-the-fact authorization to mechanically dredge approximately 200 cubic yards of State-owned subaqueous bottom material from their 8-slip community dock situated along Crab Creek in the City of Virginia Beach.

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

Mr. Owen explained that the community dock for the Crab Creek Unit Owners Association is located along the western shoreline of Crab Creek in Virginia Beach, southwest of Lynnhaven Inlet and directly across from the City of Virginia Beach’s new *Lynnhaven Boat Ramp*. He said that the community dock, which was approved by the Commission at its April 2001 meeting, provides mooring space for each of the eight condominium units in the Association. He explained that the Crab Creek municipal channel is currently maintained at minus six (-6) feet.

Mr. Owen said that the Association requests after-the-fact authorization for 100 cubic yards of dredging performed in November 2002 without the required VMRC permit. He said in addition, they seek authorization for an additional 100 cubic yards of dredging that will provide maximum depths of minus 3.5 feet at mean low water at their facility.

Mr. Owen stated that on November 25, 2002, staff was contacted by the Department of Environmental Quality and advised of unauthorized dredging in Crab Creek. He explained that staff contacted the City of Virginia Beach’s Planning Department initially, who advised that they had accepted an application from the Association and permitted the subject dredging. He said that at that time, staff learned that the City had failed to forward the Association’s original application and a second application submitted by the Association for an uncovered lift.

Mr. Owen explained that staff next contacted the Association’s agent, Mr. John Merenda, and arranged for an on-site meeting with the Association, their contractor and DEQ



representatives. He said that at that meeting, Mr. Merenda advised that he had submitted the required joint permit application to the City on September 30, 2002. He said that when he picked up his City waterfront construction permit approximately 30 days later, Mr. Merenda stated he was advised by two City Permits and Inspections employees that the Planning Department's written notice to pursue VMRC and Corps of Engineers permits was unnecessary and that he could proceed with his dredge project.

Mr. Owen said that the Association's contractor, Mr. David Sheely with Atlantic Waterfront Structures, stated that Mr. Merenda advised him that the necessary dredge permits had been obtained and that the Association would like him to perform the work. He stated that although Mr. Sheely is an experienced marine contractor in the Virginia Beach area, this was his first dredge project.

Mr. Owen said that staff had spoken with Mr. Merenda and Mr. Sheely on several occasions since first noting the violation. Mr. Merenda had been very apologetic and stated that he would have pursued the required VMRC permit had the City staff not led him to believe no other permits were required. He and Mr. Sheely have been very cooperative and are anxious to have the matter resolved.

Mr. Owen said that the Virginia Institute of Marine Science stated that the individual and cumulative adverse impacts resulting from the project will be minimal. He also said that no other State agencies have raised objections to the project.

Mr. Owen explained that although staff was always concerned with violations, in this case they believe the applicant was misinformed by the City regarding the need for a VMRC permit. He said, in fact, the Association's submittal of the original dredge application to this office and their second application for an uncovered lift, which the City failed to forward to us, suggests that the applicant was not attempting to circumvent the permit review process.

Mr. Owen explained that staff was, however, very concerned with the contractor's role in this violation. He said that in spite of his inexperience with dredging projects, as a contractor he was well aware that he needs all permits in his possession before starting the work. He said that accordingly, in light of the minimal adverse environmental impacts anticipated, staff recommended approval of the Association's after-the-fact request with the assessment of triple permit fees and royalties and the assessment of an appropriate civil charge on the contractor in lieu of further enforcement.

Associate Member Ballard asked whether Virginia Beach confirmed the confusion. Randy Owen responded, yes, they realized their failure on forwarding the application after they had received it. He further explained that they are making changes in their procedures for acceptance of applications because of this case.

John Merenda, representative for the applicant, was present and his comments are a part of the verbatim record. He stated that it was not the intent of the Association to not get all the proper permits and apologized on their behalf. He further explained that he thought he had all the permits he needed when the city gave him a permit.

David Sheely, Contractor for the project, distributed a written statement and his comments are a part of the verbatim record. He explained that Mr. Merenda told him they had all the permits and he proceeded with the work. After some discussion, Mr. Sheely explained that he would make sure he saw the permits before he started any future projects.

Associate Member McLeskey stated that he had known Mr. Sheely for a long time and believed it was an honest mistake. **Associate Member McLeskey made the motion to waive any civil charges or triple permit fees. Associate Member Williams seconded the motion. Associate Member Ballard questioned whether the motion included approval of the permit to which Commissioner Pruitt responded, yes. Motion carried, 7-0.**

Royalty (100 cu. yd. @\$1.35/cu. yd.).....	\$135.00
Royalty (100 cu. yd. @\$0.45/cu. yd.).....	\$ 45.00
Permit fee.....	\$ 25.00
Total Fees.....	\$205.00

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**6. BETTY L. HOACK, #02-1847**, requests authorization to dredge up to 3,822 cubic yards of State-owned bottomland in conjunction with re-floating and removal of the U.S.C.G. Buoy Tender Lilac and to construct up to 430 linear feet of replacement bulkhead at her property situated along Falling Creek, a tributary to the James River in Chesterfield County. Both wetlands and subaqueous permits are required.

Benny Stagg, Environmental Engineer gave the presentation and slides. His comments are a part of the verbatim record.

Mr. Stagg said that the proposed project is located at the confluence of Falling Creek and the James River, just east of I-95 in Chesterfield County.

Mr. Stagg explained that the U. S. C. G. Buoy Tender Lilac was constructed in 1933 and served as a buoy tender until 1978. He said that the applicant's husband purchased the Lilac in 1985. He said that since then it has been moored at the current site. He explained that storm events have resulted in considerable sediment deposition around the ship preventing the refloating and removal of the vessel from its current location. He said that Ms. Hoack had sold the Lilac to new owners who wish to restore the vessel for a museum in New England. He explained that dredging is required to refloat the vessel. He said, additionally,

the applicant wished to construct a replacement bulkhead immediately adjacent to the mooring location, as the existing bulkhead is in a state of disrepair. He stated that if permitted, the applicant intended to complete the dredging before March 1, 2003 to avoid time-of-year dredging restrictions at this location. He explained that the dredging is proposed by both hydraulic and mechanical (clamshell) methods. He said that the hydraulically dredged spoil will be pumped to an upland containment site on the applicants property and the mechanically dredged spoil will be loaded into trucks and deposited in the same upland containment site. He further explained that the proposed bulkhead will be constructed landward of the existing deteriorated bulkhead.

Mr. Stagg said that Chesterfield 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 said that the Commission staff had held a public hearing at the Chesterfield County Administration Building on January 23, 2003, to accept comments on this project.

Mr. Stagg explained that VIMS in their Shoreline Permit Report stated that the proposal, from a marine environmental viewpoint, would result in minimal individual and cumulative impacts. He said that the Department of Environmental Quality had determined that the proposal would not require a Virginia Water Protection (VWP) general or individual permit. He further stated that the Department of Historic Resources has determined that the dredging will not adversely affect the Lilac and has no objections to the proposal. He stated that no other agencies have commented on the project.

Mr. Stagg said that based upon staff's review, they recommended approval of the project as submitted with a time-of- year restriction for the dredging portion of the project from March 15 through October 31.

George Junkin and Charles Waldroft, both representing the applicant, were present and their comments are a part of the verbatim record. Mr. Junkin presented a picture for the Commission's review.

Associate Member Garrison stated that he is familiar with this area and anything here would be an improvement and he would recommend approval.

Commissioner Pruitt asked if anyone was present in opposition? No one was present in opposition.

**Associate Member Garrison moved to approve the project and Associate Member Cowart seconded the motion. The motion carried, 7-0.**

Subaqueous Permit Fee.....\$100.00

Wetlands Permit Fee.....	\$ 10.00
Total Fees.....	\$110.00

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**7. U. S. ARMY CORPS OF ENGINEERS, #02-2103**, requests authorization to place up to 100,000 cubic yards (per dredge cycle) of dredged material, from the maintenance dredging of the Quinby Creek Channel in Accomack County, upon a previously used spoil site adjacent to State-owned marsh northwest of Pealer Point in Public Ground 61. Both wetlands and subaqueous permits are required.

Hank Badger, Environmental Engineer, gave the presentation and slides. His comments are a part of the verbatim record.

Mr. Badger stated that the Quinby Creek Federal Project Channel in Upshur Bay, provides navigable access to Quinby Harbor and requires maintenance dredging approximately every three to four years. He explained that the channel was last dredged in the fall of 1999. He said that this particular overboard placement site had been used since 1973. He also said that as a result of the overboard disposal, vegetated wetlands had been created and the placement site had become partially intertidal.

Mr. Badger said that in 2003, the Corps intends to place approximately 100,000 cubic yards of maintenance dredged material within the site. He explained that the elevation of the spoil area would be raised no higher than the adjacent marsh.

Mr. Badger said that although the disposal site is located in Public Ground 61, there does not appear to be any viable public shellfish in the immediate vicinity, however, there are private oyster or clam ground leases adjacent to the channel.

Mr. Badger said that while the actual dredging of the federal project channel was authorized by statute, the placement of the dredge material in the proposed site was not exempt and therefore requires a permit. He said that a permit for this project was last issued by the Commission in 1990. He said that the maximum ten years that the Commission would authorize a permit expired in 2000.

Mr. Badger said that since a portion of the non-vegetated wetlands involved in the project was State-owned, the Commission, rather than the Accomack County Wetlands Board, must issue a permit for their use pursuant to Section 28.2-1306 of the Code of Virginia.

Mr. Badger explained that the Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers, on Wednesday, January 8,

2003, to accept public comments on the project. He said in attendance were three ACE representatives, a representative for the County Wetlands Board and three local citizens. No public opposition had been received on this project to date. He said that the oyster or clam ground leaseholders were notified of the public hearing.

Mr. Badger stated that the Virginia Institute Of Marine Science had indicated that the individual and cumulative adverse environmental impacts resulting from this activity would be significant but of relatively short duration. He said that over the long-term, benthic re-population should occur and the project should also result in the promotion of additional vegetated marsh. He also said that turbidity and siltation should cease with the dredging activity.

Mr. Badger stated that no State agency has expressed any opposition to the project.

Mr. Badger said that since the proposed sites had been used in the past and since it does not appear that the continued use of the site would result in any significant adverse impacts, staff recommended approval of the project. Mr. Badger explained that staff further recommended that the applicant be required to submit post-dredging bathymetric and cross-sectional surveys; and, that the final elevation of the dredged material not exceed that of the adjacent marsh or be placed on any adjacent vegetated wetlands.

Associate Member Birkett asked for any questions of staff. Associate Member Garrison asked about the slopes of the channel. Mr. Badger stated that it will be a standard cut as in the past. Associate Member McLeskey asked about the type of material to which Mr. Badger stated that it would be muck and sand. Associate Member McLeskey also asked about whether a dike was going to be used to retain the fill? Mr. Badger explained that they would be using the same technique as had been done for years.

Associate Member Birkett asked if the Corps had a representative present?

Robert Kruse, Civil Engineer for the Operations Branch of the U. S. Army COE was present. He was sworn in by Associate Member Birkett. His comments are a part of the verbatim record. Associate Member Garrison asked why they were not using a 2 to 1 slope? Mr. Kruse explained that a 1 to 3 standard cut was being used.

Associate Member Birkett asked if anyone was present that was in opposition to the project? No one was present in opposition. Associate Member Birkett stated that the matter was before the board. **Associate Member Gordy moved to approve with staff recommendations. Associate Member McLeskey seconded the motion. The motion carried, 7-0.**

Permit Fee.....\$100.00

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**8. SMITH POINT MARINE, INC., #02-1539**, requests authorization to renovate their existing commercial marina situated along Slough Creek in Northumberland County. The project is protested by adjacent property owners upstream of the project site.

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

Mr. Madden explained that the project was located west of Smith Point at the mouth of Slough Creek, a tributary to the Little Wicomico River in Northumberland County. Slough Creek ranges in width from approximately 400 feet to approximately 600 feet throughout the project area. According to County residents there has been a marina at that location for over 50 years. He said that Mr. Hickey had recently purchased the marina which currently accommodates 92 wetslips and 26 vessels in dry storage spread out within a marina complex, including two boat sheds, a boatramp, travel lift, fuel pier, and three (3) mooring piers.

Mr. Madden stated that Mr. Hickey proposes to construct seven (7) 15-foot long finger piers, a 35-foot long finger pier, a 30-foot long finger pier, 20-foot long finger pier, and a wedge shaped dingy dock for those vessels that would otherwise moor side-to along the existing piers. He said additional construction would include widening of the deck of the existing 150-foot long fuel dock and its 120-foot long T-head to a width of 7 feet. He said that the widening of this pier is in the interest of increased safety during fueling operations. He explained that Mr. Hickey would also like to construct a 90-foot long L-head catwalk and a ten-foot (10) long extension to the longest pier adjacent to day marker #11. He said that the L-head extension will create a mooring for either one large 50-foot vessel or as many as five (5) smaller transient vessels.

Mr. Madden said that the total number of wetslips after the renovation will be increased from the present 92 slips to 97. He explained that all of the intended renovations will not exceed the 105 wetslips already authorized as a result of previous permit activities.

Mr. Madden explained that the project was protested by Mr. and Mrs. Gordon Evans the owners and operators of the nearby Smith Island Cruises and KOA campground located upstream of the Smith Point Marina.

Mr. Madden told the board that Mr. Evans is the owner, and pilot of the Capt. Evans, a tour boat that makes daily excursions to Smith Island during the tourist season. In their October 7, 2002 letter, Mr. and Mrs. Evans object to the side-to mooring of vessels along the outboard side of the proposed L-head extension adjacent to marker #11. He said that the protestants believe that any such mooring will encroach into an already restricted channel. He said that

they also question the need to moor smaller boats within the large wet slip that could otherwise be accommodated elsewhere within the marina complex in shallower water. He stated that the protestants have repeatedly assured Commission Staff that the L-head and the potential navigational encroachments are the only portions of the expansion over which they object.

Mr. Madden explained that in a November 4, 2002, facsimile, Mr. Hickey states that he intends to restrict side-to mooring along the outboard side of the pier by not installing mooring cleats or fenders along the channelward side of the L-head extension. He explained that Mr. Hickey indicated he would further restrict mooring with signage and careful monitoring of those attempting to tie up along the pier. He stated that Mr. Hickey believes that even with the protested extension, the 167-foot wide channel is sufficient enough to accommodate vessel traffic.

Mr. Madden told the board that the Virginia Institute of Marine Science has indicated that the environmental impact associated with the planned renovation will be minimal. He also said that no other agency has expressed opposition to the project.

Mr. Madden said that the construction of the finger piers throughout the marina and the widening of the fuel pier should improve safety and efficiency. He said that in spite of Mr. Hickey's personal assurances, however, staff believed there was no way to effectively prohibit the mooring of vessels along the outboard section of the proposed L-head extension. He explained that furthermore, staff believed that the marina complex had encroached enough into the existing channel adjacent to day marker #11 to ensure safe ingress and egress to the marina. He said accordingly, staff recommended approval of all of the marina infrastructure improvements with the exception of the L-head extension and the assessment of a one-time royalty in the amount \$292.25 for the remaining encroachment over 585 square feet of State-owned submerged lands at a rate of \$.50 per square foot.

Associate Member Gordy asked what was the objection to the project. Mr. Madden explained that the side two mooring encroached into the channel, affecting the navigation of other vessels.

Commissioner Pruitt inquired about the presence of the applicant. Dan Hickey, owner of Smith Point Marina, was sworn in by Commissioner Pruitt. He explained that the L dock was for transient boats and to protect boats along that dock. He explained further that he had a grant for infrastructure to support transient boats. He said that he had offered Mr. Evans in response to his concerns, that he would not use that dock, outside or inside. Mr. Hickey gave the board a handout. He explained that he had spoken with Mr. Jett and if sold he would allow or deed access to the boathouse. Mr. Hickey said that 4,000 boats came to the fuel dock last year.

Associate Member Birkett asked what assurance would there be that no boats would be docked there and would Mr. Hickey accept a civil penalty if that should occur? Mr. Hickey explained that the County had already stated that he would be required to remove the pier if he allowed boats at that dock.

No one in opposition was present.

Commissioner Pruitt asked for a motion. Associate Member Ballard stated that the Public Trust Doctrine of Section 28-2-1205 is applicable and the Commission must look to the future not just the existing conditions. He further stated that it could be a problem if ownership changed. He said he believed the applicant would not allow boats there, but another owner might not be as cooperative.

Associate Member Garrison asked if he could put signs up to prevent dockage? Mr. Hickey said that he had a sample sign.

Associate Member Cowart stated that he felt the same as Mr. Ballard in regards to the closeness of the L head and that it would not be in the best interest to allow it. He said he would vote against a motion to approve it.

Associate Member Birkett expressed his concerns about the County restrictions. Mr. Hickey said the minutes of Board of Supervisor's meeting had this restriction in them.

Associate Member McLeskey asked if he could make this restriction of no mooring as a part of the deed. Carl Josephson said that certainly can be done. Mr Hickey responded, yes, and said it was already required because of public funding.

Commissioner Pruitt asked for the motion. **Associate Member Cowart moved to approve the proposal with the exception of the L head, which was the same as the staff recommendation. Associate Member Ballard seconded the motion.**

Voting:	Cowart	yes	Williams	yes	Gordy	no
	Ballard	yes	Birkett	no	Garrison	no

After further discussion and Commissioner Pruitt conferring with counsel, he stated that the motion needed to be restated.

**Associate Member Ballard moved to reconsider the motion or vote. Associate Member Cowart seconded the motion. The motion carried.**

**After further questions and discussion by the board, Associate Member Cowart moved that only the L portion that is parallel to the channel be denied and for approval of the remaining proposed construction. Associate Member Ballard seconded the motion.**



**After further discussion, the motion carried, 7-0.**

Royalty Fees (585 sq. ft. @\$0.50/sq. foot).....	\$292.25
Permit Fee.....	\$100.00
Total Fees.....	\$392.25

\* \* \* \* \*

**9. KING GEORGE COUNTY, #02-1582**, requests authorization to install by the directional drill method, a 12-inch diameter plastic sanitary sewer discharge pipe a minimum of five (5) feet beneath and extending approximately 500 feet channelward of mean low water, into Williams Creek in King George County. The project is protested by several oyster ground leaseholders.

Associate Member Cowart announced that he was disqualifying himself and left the meeting.

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

Mr. Eversole said that the project was located in King George County, at the confluence of Williams and Upper Machodoc Creeks, near the U.S. Naval Reservation at Dahlgren. He explained that this application to relocate the discharge pipe was part of an overall plan, in response to a DEQ Consent Order, to bring the treatment plant into compliance with new discharge limits. He said that correspondence from Mr. Tom Lovett, General Manager of the County Service Authority, indicated that the upper portions of Williams Creek, at the current discharge pipe location, does not have sufficient flow to allow enough mixing to meet the new limits.

Mr. Eversole said that adjacent property owners, in addition to several companies leasing oyster grounds in the area were notified. A public notice was also placed in the Free Lance Star, a newspaper which has general circulation in the project area. He stated that while no opposition was received in response to the public notice, a letter of opposition from Bevans Oyster Company and Cowart Seafood Corporation was received on November 1, 2002. Mr. Eversole explained that in his letter of protest, Mr. Ronald Bevans states that the two companies are concerned that the placement of the discharge pipe would result in future closures of their oyster beds. He said that both the applicant and their agent were made aware of the objections. He explained that they had attempted, albeit unsuccessfully, to resolve the issue.

Mr. Eversole said that the King George County Wetlands Board approved the project on September 26, 2002. He further said that the Virginia Institute of Marine Science stated that the impacts to both wetlands and subaqueous bottom, would be minimal and temporary. He

also said that the Department of Health-Wastewater Engineering report stated that the application was acceptable. He explained that the Department of Health-Bureau of Shellfish Sanitation reported that the existing condemnation zone would not be increased by the relocation of the outfall. He said that while there would be a new "prohibited zone" in the immediate vicinity of the discharge pipe, that area was currently condemned due to the existing discharge pipe.

Mr. Eversole told the board that the VMRC's Fisheries Management Division reported that the relocation of the discharge pipe to the mouth of Williams Creek was acceptable. He explained that finally, on January 6, 2003, the Department of Environmental Quality, approved both the relocation of the discharge pipe and an increased flow rate from the treatment plant.

Mr. Eversole said that in granting or denying any permit for use of State-owned bottom land and the waters overlying those lands, the Commission's Subaqueous Guidelines directed the Commission to consider, among other things, the effect of the proposed project upon: other reasonable and permissible uses of State waters and State-owned bottom lands; marine and fisheries resources, wetlands, adjacent or nearby properties; anticipated public and private benefits; and water quality standards established by the State Water Control Board.

Mr. Eversole stated that based upon the proposed use of the directional drill method of construction, it appeared that the installation of the 12-inch diameter pipe can be conducted with minimal impacts to State-owned subaqueous land. He said that all appropriate state agencies had stated that the project was acceptable and would not impact water quality. He explained that finally, the current condemnation zones imposed by the Health Department's Bureau of Shellfish Sanitation would not be increased.

Mr. Eversole said that while staff understands and was sympathetic to the concerns of the leaseholders, that the Commission must rely on the expertise and assurances provided by the agencies who have commented on this project. He said that in light of the Health Department comments, staff recommended approval of the project as proposed.

Bob Croonenbergh, Division of Shellfish Sanitation, was present and his comments are a part of the verbatim record.

Associate Member Williams asked if bonds were sold? There was a yes response and he said that he would abstain from this item and left the meeting.

Tom Lovett, Manager of the Sanitation Authority, representing King George County, was present and his comments are a part of the verbatim record. Mr. Lovett said that there was a 18 month deadline that started last month and this project would take the entire 18 months to be completed. He also said that this was a significant investment and \$6 million was required

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for the upgrade. He explained that they were using the Virginia Department of Transportation right of way for this project. He said that the project will not be near oyster grounds nor is there any long term planning for further expansion.

Bill Kreye, Engineer with Draper Aden Association, was present and his comments are a part of the verbatim record. Mr. Kreye explained that time restraints hindered the use of combining two pipes side by side. He said also it was not cost effective and was a compliance issue with putting 2 pipes together according to Navy personnel.

Matt Overton, Engineer with Draper Aden Association, was present and his comments are a part of the verbatim record.

Commissioner Pruitt asked if anyone was present in opposition that wished to speak on this matter.

Douglas F. Jenkins, Sr., representative for Bevans Oyster Company, was present and his comments are a part of the verbatim record. He said on behalf of Bevans Oyster Company he was requesting that the pipe be moved further up the creek and Bevans had plans to put seed oysters in this area in the spring. He further explained that they are not opposed to the project, but just want the pipe to be moved to the head of the creek, 4,000 feet. He said the seasonal closure was for a marina, which restricted the harvest of shellfish to a time period from November to spring. He said if the pipeline were in the present proposed location it could be a problem in the future and we cannot control the weather. He said the drought had made it necessary to plant the seed in this location. He also stated that the bottom in this area was the best because it was hard-firm ground.

No one else was present in opposition.

Associate Member Ballard asked about the model run by the Health Department to determine whether the outflow would cause any additional closure? Mr. Croonenbergh stated that it had been checked at 2 million gallons of flow and still did not have to increase size of current condemnation. His comments are a part of the verbatim record.

Associate Member Ballard stated that when determining whether to grant or deny any permit for the use of State-owned subaqueous lands, the Commission is guided by the provisions of Section 28.2-1205 of the Code of Virginia. He said that in addition to Article XI, Section 1 of the Constitution, the Commission is to specifically weigh the public and private benefits of a project. His comments are a part of the verbatim record.

**Associate Member Ballard made the motion to approve with staff conditions and that authority be based on current DEQ requirements; and, if any additional shellfish condemnations should occur as a result of this project, a show cause hearing would be**

**heard at the next regular meeting of the Commission to determine if the permit should be revoked. Motion carried, 4 - 1. Associate Members Cowart and Williams abstained from voting.**

Permit Fee.....\$100.00

\* \* \* \* \*

**10. GLENMORE ASSOCIATES LIMITED PARTNERSHIP, #02-2007**, requests authorization to install six (6), approximately 20-foot long submerged stream crossings, of a concrete encased, ductile iron sewer pipeline beneath sections of Carroll Creek in Albemarle County. An adjacent property owner protests one of the crossings.

Jeff Madden, Environmental Engineer, gave the presentation with slides.

Mr. Madden explained that the project was located approximately ten (10) miles east of the city of Charlottesville in the Glenmore subdivision adjacent to Carroll Creek in Albemarle County. He said that the applicant proposed six (6) crossings of Carroll Creek for the purpose of installing a concrete encased sewer line. He stated that the developer owns the property on either side of Carroll Creek throughout the project area.

Mr. Madden stated that the concrete encased utility lines will be countersunk at least three (3) feet below the stream bed. He explained that in addition, the contractor would conduct all instream work, including any blasting, within cofferdams constructed of non-erodible materials and conduct such activities during low flow conditions to the greatest extent practicable. He further explained that any excess material would be moved to an upland location upon completion of the construction activities. He said that barren areas would be revegetated, and the appropriate sediment control measure area as described in the Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) would be incorporated.

Mr. Madden said that the application was received on October 22, 2002 . The adjacent property owners nearest the sewer line crossings were notified and a public notice was placed in The Daily Progress, a newspaper that had general circulation in the project area.

He stated that On November 21, 2002, a letter of opposition was received from Mr. Scott Gardiner. In his letter, Mr. Scott said he believed the crossing and the necessary blasting near his property would be harmful to the creek.

Mr. Madden explained that Mr. Gardiner’s property borders the corridor owned by the developer adjacent to the sewer line crossing at the location which would eventually connect manhole #24 (constructed) with manhole #25. He also explained that Carroll Creek at this location was only 13 feet wide.

Mr. Madden said that the applicant had received all County authorizations. He said that the Department of Game and Inland Fisheries (DGIF) had indicated that there were no documented threatened or endangered species within the project area. He said that DGIF further recommended conducting instream activities during low-flow conditions; using non-erodible cofferdams to isolate the construction area; blocking no more than 50% of the stream flow at any given time; stockpiling excavated material in a manner that prevents reentry into the stream; restoring original stream bed and streambank contours; revegetating barren areas and implementing strict erosion and sediment control measures throughout project construction.

Mr. Madden stated that no other parties had objected to the project.

When reviewing proposals for submerged utility crossings, Mr. Madden said that staff relied on the Commission's Subaqueous Guidelines for direction. He said that they also endeavored to safeguard fisheries by minimizing impacts on aquatic resources, public health, safety and welfare, while accommodating economic development.

Mr. Madden stated that our guidelines suggest that a project such as this could be permitted if reasonable measures are taken to protect aquatic resources. He said that the Department of Game and Inland Fisheries had provided favorable comments and recommendations, which were consistent with our standard instream conditions. He stated that staff recommended approval of the application with a royalty assessment of \$78.00 for the encroachment upon 78 linear feet of Carroll Creek at a rate of \$1.00 per linear foot with the following special conditions:

- Any blasting associated with the river crossings will be conducted in the dry within the confines of the cofferdam.
- The in-stream construction shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half of the waterway shall be obstructed at any point in time.
- The cofferdams and any excess material will be removed to approved upland areas upon completion of the construction.
- Construction shall be performed during low-flow conditions to the greatest extent practicable.
- The Permittee agrees to restore the streambed and streambank to original contours, revegetate barren areas along the stream bank and implement strict erosion and sediment control measures throughout the project as described in The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992)

throughout construction.

Andrew Franco, representative for Glenmore Associates Limited Partnership, was present and his comments are a part of the verbatim. No one had any questions for Mr. Franco.

No one was present in opposition.

Commissioner Pruitt asked for a motion. **Associate Member Ballard moved to approve the request with staff special conditions. Associate Member Garrison seconded the motion. Motion carried, 7-0.**

Royalty Fees (94 linear ft. @ \$1.00/linear foot).....	\$94.00
Permit Fee.....	\$100.00
Total Fees.....	\$194.00

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**11. AMERICAN ELECTRIC POWER, #02-1812**, requests authorization to cross the New River, Reed Creek and Peak Creek in two (2) locations in Wythe County, and cross Little Walker Creek, Walker Creek, Helvey’s Mill Creek, Wolf Creek, and Clear Fork in Bland County, with an aerial 765kV transmission line, suspended a minimum of 110 feet above ordinary high water, in association with the Wyoming-Jackson’s Ferry Transmission Line project in southwestern Virginia. Two property owners along the proposed alignment protest the project.

Jay Woodward, Environmental Engineer, gave the presentation with slides.

Mr. Woodward stated that the purpose of the American Electric Power (AEP) Cloverdale Project is to reinforce existing electric service within southwestern Virginia and southern West Virginia. He explained that AEP submitted an application to the State Corporation Commission (SCC) in 1991 for the Wyoming to Cloverdale Corridor. He said that on May 31, 2001, the SCC issued an Order Granting Authority to Construct Transmission Facilities to AEP which includes the jurisdictional, State-owned submerged lands. He also said that the project would consist of several station expansions with the construction of a single circuit, three-phase 765 k. line, covering a distance of 90 miles from AEP’s Wyoming Station near Oceana, West Virginia to its Jackson Ferry Station near Wytheville, Virginia. He said that the line would require 4 to 5 steel support towers per mile and would involve 9 jurisdictional stream and river crossings in Virginia, with the towers placed at least 400 feet from the stream banks.

Mr. Woodward stated that staff had received two letters of opposition to the project. He explained that Mr. James C. Shaffer was concerned that the line would cross a 104-acre farm

he owns and was upset that the survey crew cut down trees on his property without his permission. He said that Mr. Shaffer believed that AEP could have stayed on National Forest property and avoided the larger tract of his land. He said that Dr. George A. Thompson had indicated that he would like to know what AEP planned to do for him in exchange for “trashing” his property and “creating a health hazard” for him and future residents of his home. Mr. Woodward explained that the applicant had been working with these individuals in an effort to resolve their concerns but had been unsuccessful to date.

Mr. Woodward stated that the Department of Conservation and Recreation recommended the implementation of and strict adherence to erosion and sediment control measures at all stream crossings. He said that they also recommended that no trees in the area of the New River crossing be cut and that the lines be strung above the tree canopy to prevent them from being seen by those using the New River for recreation.

Mr. Woodward stated that the Department of Environmental Quality had indicated that a Virginia Water Protection Permit (VWPP) would not be required as the water quality impacts should be minimal and temporary in nature.

Mr. Woodward said that the Department of Health found the project acceptable. He stated that no other state agencies had commented on the project to date.

Mr. Woodward stated that staff believed that by crossing the water bodies at a minimum height of 110 feet above ordinary high water and constructing the support towers a minimum of 400 feet from the stream banks that the potential impacts to jurisdictional submerged lands would be minimal. He said that it appeared that AEP had tried to work with the two individuals opposing the project and staff believed their concerns were not within the Commission’s purview to resolve.

Mr. Woodward said that accordingly, staff recommended approval of the project as proposed, with strict adherence to approved erosion and sediment control plans, and a prohibition on cutting of trees along the banks of the New River at the crossing location. He said that staff further recommended a royalty in the amount of \$1,048 for the encroachment over 1,048 linear feet of State-owned submerged land at a rate of \$1.00 per linear foot.

Ron Poff, AEP 765 Project Manager, was present and his comments are a part of the verbatim record. He said that they were willing to work with the Department of Conservation and Recreation to not cut any trees and to put the conductor up higher above the trees. In response to a question by Associate Member Garrison, he said that they had talked with the Department of Game and Inland Fisheries.

No one was present in opposition.

**Associate Member Garrison moved to approve the request per staff recommendation. Associate Member Gordy seconded the motion. The motion carried, 7-0.**

Royalty Fees (1,048 linear ft. @\$1.00/linear foot).....	\$1,048.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,148.00

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**13. DISCUSSION:** 2003 management measures for the Virginia recreational Summer Flounder season, request for February public hearing.

Rob O'Reilly, Deputy Chief-Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly stated that the Atlantic States Marine Fisheries Commission has concluded its discussion of recreational summer flounder measures for 2003. He explained that unlike in 1999 and 2000, when Virginia was the only state that did not exceed its target (number of summer flounder as landings), Virginia is the only state that exceeded its 2002 target.

Mr. O'Reilly said that Table 1 indicated that the other states that are part of the ASMFC management plan are able to relax 2002 regulatory requirements, as these states failed to reach their landings targets in 2002. He said that Virginia was required to achieve a 10.9 reduction in its 2002 landings, in order to potentially achieve its 2003 landings target of 689,000 summer flounder. He explained that the 2002 landings are expected to be 773,598 summer flounder.

Mr. O'Reilly said that currently, the summer flounder recreational fishery is closed until March 29. He also said that, Statewide, there was a 17 ½-inch minimum size limit and 8-summer flounder possession limit in effect.

Mr. O'Reilly said that there was no expectation that anyone in industry would want to lower the minimum size limit, as that would significantly increase the required reduction for 2003. He said that, also, there was very little credit or reduction given for possession limits that are 5, 6 or 7 fish. He said that at this time it was expected that a summer closed season, slightly shorter than the 2001 closed summer season of July 24 through August 7, would be necessary to achieve a 10.9% reduction in 2003 landings.

Mr. O' Reilly said that the National Marine Fisheries Service had been working with staff to separate the 2002 Virginia landings during April and May into its geographic contributions. He said that there are 2 broad geographic groupings to the NMFS reporting system: 1) Inland; and, 2) Ocean. He stated that within the Inland component there are 2 sub-groupings by



geographical area: 1) coastal bays, seaside of Eastern Shore; and, 2) Chesapeake and its tributaries.

Mr. O' Reilly explained that the reason staff had asked for this "post-stratification" of the 2002 data was because the coastal bays and ocean areas were managed by a 15 ½-inch minimum size and 5-fish possession limits during April and May of 2002. He said that all other areas were managed by a 17 ½-inch limit and 8- fish possession limit during April and May, and by June 1, there was a 17 ½ minimum size limit and 8-fish possession limit on a statewide basis. He explained that if the current, state-wide 17 ½-inch minimum size limit stays in effect through 2003, there should be a certain amount of summer flounder from 15 ½" to less than 17 ½" that were harvested from coastal bays and the ocean in April and May of 2002 that will not be harvested in April and May 2003 in those areas. He said that amount of fish can be considered a potential savings for 2003 and should lessen the required reduction of 10.9%.

Mr. O'Reilly explained that one complication associated with determining these savings was that the NMFS determined that Wave 3, May-June, landings estimates in 2002, for all states are unusable because there were problems with obtaining reliable effort estimates from the telephone survey for that Wave. He said that May is part of Wave 3, and that is one of the months that staff suspected would help defray the overall 10.9% required reduction, as a 15 ½" minimum size limit was in effect that month in the ocean and coastal bays.

Mr. O'Reilly said that staff was looking at other strategies for lowering the 2003 reduction requirement, as the reduction plan was due at ASMFC by January 30.

Mr. O'Reilly said that the staff recommended advertising this issue for a February public hearing.

**Associate Member Cowart moved to approve the request and have a Public Hearing in February on this matter. Associate Member Garrison seconded the motion. Motion carried, 7-0.**

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**14. REQUEST** for emergency regulation to lower Winter I commercial scup landing limits.

Chad Boyce, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Boyce explained that this was a request for an emergency regulation to lower Winter I commercial scup landing limits.

Mr. Boyce explained that addendum 1 to the Fishery Management Plan for Scup provides that the annual coastwide quota is divided among three periods. He said that the Winter I period runs from January 1 through April 30, the Summer period runs from May 1 through October 31, and the Winter II period runs from November 1 through December 31. During the winter periods, the quota is available coastwide and is controlled through trip limits.

Mr. Boyce stated that on August 6, 2002, the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board approved lower landing limits for the scup Winter I commercial period. He said the landing limit will be adjusted from 10,000 pounds per trip to 15,000 pounds per each consecutive seven-day landing period. He explained that the trigger to reduce landing limits from 15,000 pounds per each seven day landing period to 1,000 pounds per each seven day landing period will be enacted when 85% of the coastwide quota for Winter I has been projected to be reached.

Mr. Boyce said that all states included in the Fishery Management Plan for Scup would be required to implement the provisions established in Addendum IV to the scup management plan. He said that these provisions included requiring each state to close its commercial scup fisheries when its landings have reached the available quota.

Mr. Boyce explained that to maintain compliance with the ASMFC Scup Management Plan, Staff recommends adoption of emergency regulation 4VAC 20-910-10 ET. SEQ., with the amended Winter I commercial scup landing limit of 15,000 pounds of scup per each consecutive seven day landing period.

**There being no further questions and no one from the public to comment, Associate Member Ballard made a motion to adopt the Emergency Regulation. Associate Member Cowart seconded the motion. The motion carried, 7-0.**

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**15. REQUEST** for an emergency regulation to allocate a recently ASMFC approved, commercial Striped Bass coastal area quota addition of 55,456 pounds.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly explained that following the December 2002 Commission meeting, the ASMFC, as part of its adoption of Amendment 6, provided for a 40% increase in Atlantic coastal commercial fisheries. The Virginia Coastal Area quota increases by 55,456 pounds, and the 2003 quota is 184,853 pounds.

Mr. O'Reilly stated that last month the Commission approved the allocation of 26 shares of

Coastal Area striped bass ITQ. The Commission allocated the 129,397-pound Coastal Area quota to recent (2001 or 2002) Coastal Area harvesters of striped bass who also harvested at least 1000 pounds of striped bass from the Coastal Area over the course of at least 2 years, from 1993 through 1997.

Mr. O'Reilly said that the Commission decision to include a 1000-pound minimum harvest requirement over the course of 2 years, from 1993 through 1997, resulted in establishing 27 shareholders of the new Coastal Area ITQ, with 25 fishermen eligible for a full share of Coastal Area striped bass ITQ (311 tags) and 2 fishermen eligible to split a share of 311 tags.

Mr. O'Reilly explained that from Table 1, eligible fishermen include Harvesters 1 through 18, 23 through 30 and 40, with harvester 4 eligible for a  $\frac{1}{4}$  share and harvester 40 eligible for a  $\frac{3}{4}$  share of Coastal Area striped bass ITQ. Harvester 40 is eligible, as the next fisherman who harvested during both the 1993-97 and 2001 or 2002 seasons. The effect of current Regulation 4 VAC 20-252-10 is to allow harvester 41 (Table 1) to be next in line to receive Coastal Area tags, should any fisherman currently eligible for Coastal Area quota decline such quota.

Mr. O'Reilly said that each potential Coastal Area harvester in 2003 is required by regulation to forfeit 236 tags, equivalent to a Chesapeake area share of that quota, prior to receiving 311 Coastal Area tags. At this time, all eligible harvesters have indicated they will accept Coastal Area tags.

Mr. O'Reilly said that regardless of any action by the Commission to allocate this additional 55,456 pounds, staff recommends that harvester 20 of Table 1 receive 311 Coastal Area tags. Only recently did staff learn that harvester 20 meets all the entry criteria adopted by the Commission in December 2002. Harvester 20 and another permittee had reported their 2002 harvests of striped bass on one reporting form. Harvester 20 was not denoted on the other harvester's reporting forms by the customary last 4 of his commercial registration, nor was his name recorded. After harvester 20 contacted staff about his omission from the Coastal Area fishery for 2003, staff found that harvester 20's striped bass permit number had been recorded by the other harvester on the reporting forms. Further checking found that harvester 20 landed 3575 pounds of striped bass from the Coastal Area in 2002.

Mr. O'Reilly explained that should the Commission retroactively approve harvester 20 to receive 311 tags from the Coastal Area striped bass fishery, the remaining quota is sufficient to provide 311 Coastal Area striped bass tags to 10 additional harvesters from Table 1.

Mr. O'Reilly explained that harvesters 41 through 50 harvested striped bass from the Coastal Area during 1 year, from 1993-97 and at least 1 year in 2001-02. All landed at least 1000 pounds of striped bass, from 1993-97. The harvesters, starting with harvester 41, are the individuals who would have been eligible for a share of the Coastal Area quota of 129,397

pounds, had any of the 27 eligible harvesters, as of last month, rejected a share of Coastal Area quota. This is one justification to allocate the recently ASMFC-approved quota of 55,456 pounds, minus an allotment for harvester 20, as explained above, to harvesters 41 through 50. The 11 proposed permittees do have a past, at least 1 year, and a recent history of harvesting striped bass from coastal waters. All 38 harvesters, 27 permitted last month and 11 proposed, are not only “traditional coastal harvesters they also pre-date the current economically based Chesapeake ITQ system that originated in 1998.

Mr. O'Reilly said that compared to harvesters 19 – 22 and 36 and 37, who harvested from the Coastal Area in more years than harvesters 41 – 50, harvesters 41 – 50 better represent a dedicated Coastal Area harvester, as they continued to harvest from that area in recent years. For 2 of the most recent years, 2001 and 2002, harvesters 19 – 22 and 36 – 37 did not land a single striped bass from coastal waters. Please note that whichever harvester is the last qualified eligible, that harvester would receive a  $\frac{3}{4}$  share, as harvester 4 is scheduled for a  $\frac{1}{2}$  share of 311 tags, see Table 1.

Mr. O' Reilly said that staff realizes that several commercial seafood industry members contend that this additional Coastal Area quota should be distributed to all 511 Chesapeake System ITQ holders. This additional quota would provide each of 511 Chesapeake ITQ holders six Coastal Area tags. No doubt, this would be an inefficient use of the coastal quota, as a number of fishermen would neither transfer nor directly use such a small number of coastal tags. Likely, a small number of the 511 Chesapeake ITQ holders, who are already equipped for ocean harvest, would amass as many Coastal Area tags as allowed, and those who bothered to sell their own would be out of the Coastal Area fishery. This is a system of economic allocation that does not consider those who have a long-term dependence on the Coastal Area striped bass fishery. Those fishermen who were permitted by the Commission for the Coastal Area fishery in 2003 have been part of the striped bass fishery for several years, before the inception of an ITQ system in Virginia, meaning they do typify candidates for a limited entry fishery. In contrast, economic allocation system is a wide departure from the system established last month by the Commission, as it places no emphasis on traditional dependence on the fishery or social consequences.

Mr. O'Reilly said that staff recommended that the Commission adopt draft emergency Regulation 4 VAC 20-252-10 Et Seq. and advertise this emergency regulation for a February public hearing.

Commissioner Pruitt opened the public hearing.

Jamie Green, Commercial Fisherman, was present and his comments are a part of the verbatim record. Mr. Green said the criteria for eligibility for history of harvest for 93-97 made him ineligible because at that time he was still a freshman in High School. He asked where was the Socio-Economic Impact Statement? Commissioner Pruitt answered that there

was no requirement for an impact statement. Carl Josephson, Counsel for VMRC, explained that there was no requirement for an impact statement, only to take into account the socio-economic impact. He explained further that by holding a public hearing where individuals can speak is providing information on economic impact.

Douglas Jenkins, Twin Rivers Waterman's Association, representing the association and other watermen that had asked him to speak for them at the public hearing, was present and his comments are a part of the verbatim record. He read a written statement into the record, of which a portion has been included in these minutes:

"According to the Magnuson Act: the Bible and Ten Commandments that regulate fisheries up and down the coast, allocation is a political, social and economic decision usually made by elected or appointed officials. In an attempt to be fair, allocation decisions are often made on the basis of historical catches".

"All fishery management plans must comply with seven national standards specified in the Magnuson Act. According to number 4 of those seven standards, conservation and management measures shall not discriminate between residents of different states or fisherman or groups. The allocation shall be a) fair and equitable to all fishermen; b) reasonably calculated to promote conservation; c) carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privileges."

Mr. Jenkins in his statement expressed his concern that VMRC had not worked out a fair and equitable plan for all fishermen in the State. His suggestion was that a fair allocation would be to issue 135 coastal tags to 70 fishermen who have been fishing on the coast recently and issue 270 bay tags to the rest of the fishermen. That allotment would be equal in pounds because coastal fish average twice the size as bay fish and would keep the coastal quota the same.

Chris Ludford, fisherman, was present and his comments are a part of the verbatim record. He stated that the decision today would not help him. He further explained that this issue started 18 months ago, this was a good plan and he was in favor of the additional 11.

Kelly Place, Commercial Fisherman, was present and his comments are a part of the verbatim record. He stated that Douglas Jenkins had a point. He said there was a consensus of trading 1.5 to 1 tags and what was presented at the Public Hearing was a consensus for 1 to 1 trade in and that was not correct. He said he wanted to see equitability. He said that there was a gear conflict when switching from ocean to bay and it went too far. He said the 16.03 poundage was inaccurate and the correct amount was 19-22 pounds.

Doug Reid, Commercial Fisherman, was present and his comments are a part of the verbatim

record. He said the 11 would benefit him and that he caught just as many in the ocean and the bay. He agreed that 11 should be given the tags.

Clark Whitehurst, Commercial Fisherman, was present on behalf of his son, Clark Whitehurst, Jr. and his comments are a part of the verbatim record. He explained that during 2001 his son was going through personal hardships and he had copies for the staff of what he had done for 2002 in December. He asked that his son be allowed into the fishery.

Warren Cosby was present and his comments are a part of the verbatim record. He said that this situation did not require emergency action because we have known about this for some time. He said that the Commission just needed to divide the quota fairly and equally.

Tom Powers was present and his comments a part of the verbatim record. He said that in trading one for one he suggest that the Commission use the lottery to be fairer and let chance take care of it. He said to be even fairer to them the Commission should do a 1.5 to 1 trade and not allow transfer of tags for a period of time and require them to actually participate in the fishery.

Don Pollock, Commercial Fisherman, was present and his comments a part of the verbatim record. He explained that the fishery is affected by the market and the market demands ocean over bay because the fish are larger and more money is made. He said this is not being addressed.

J. C. West, Commercial Fisherman, was present and his comments are a part of the verbatim record. He said that what is going to happen with the proposed action is to overload the bay when the ocean fisherman come into the bay to catch fish.

Mike Shackelford, Commercial Fisherman, was present and his comments are a part of the verbatim record. He said that since we've got the quota, there is a need to give everybody a chance. He said that there is no sense in using tags. He explained that there is only a small group and the Commission should just let the quota be caught and when it's caught it'll be over.

Pete Nixon, Lower Chesapeake Bay Waterman's Association and a member of Finfish Committee, was present and his comments are a part of the verbatim record. He stated that the Commission needs to do what staff recommends. He said that if you give to everyone the quota will be caught in 2 days.

Walter Coles Burroughs was present and his comments are a part of the verbatim record. He said the commercial fishermen had bought their license and should be able to fish. He said the fishery needs to be open to all.

Ernest Bowden, representing himself and others, was present and his comments are a part of the verbatim record. He said that if spread among everyone the fishery will be wasted. He said that last year the ocean fishery caught 5 times what the bay fishery caught.

Mr. O'Reilly stated that for the tag turn-in there was confusion. He said that 1 to 1 is a share and the regulation states share of tags. Also he explained that 184,000 plus pound quota is different from the 700,000 to 900,000 harvests enjoyed up until 2002.

After further questions and discussion Commissioner Pruitt said the matter was before the Commission.

**Associate Member Ballard made the motion to adopt the staff recommendations and allow fishermen 19 and 20 into the fishery and also giving fishermen, 21-48, a full share and fisherman 49 a 3/4 share. Associate Member Birkett seconded the motion. After further discussion the motion carried, 4-3. The voting count:**

Birkett	yes	Ballard	yes	Cowart	no
Williams	no	Garrison	no	Gordy	yes
McLeskey	yes				

\* \* \* \* \*

**16. DISCUSSION:** 2003 management measure for the Virginia recreational Black Sea Bass fishery, for a February public hearing.

Chad Boyce, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Boyce said that in December of 2002, the Atlantic States Marine Fisheries Commission (ASMFC) met to discuss proposed rules for the 2003 black sea bass recreational fishery. Currently, the recreational fishery operates with a minimum size limit of 11 1/2 inches, a 25 fish bag limit, and a continuous open season.

Mr. Boyce said that it should be noted that the majority of Virginia's black sea bass recreational landings come from the Exclusive Economic Zone or federal waters (3-200 miles). However, there are minor landings of black sea bass that occur inside Virginia waters (0-3 miles).

Mr. Boyce explained that the ASMFC had adopted new minimum size limits and closed seasons for the recreational black sea bass fishery. The minimum size limit would be increased from 11 1/2 inches to 12 inches, and a closed season will be in effect from September 2 through September 15 and from December 1 through December 31. The

measures must be implemented to maintain compliance with the ASMFC black sea bass management plan.

Mr. Boyce said that staff recommended advertising for a public hearing for changes to regulation 4VAC-20-950-10 ET.SEQ., to include a recreational size limit increase from 11 1/2 inches to 12 inches, and a closed season from September 2 through September 15 and December 1 through December 31.

Commissioner Pruitt asked for any questions and there being none, asked for a motion. **Associate Member Ballard moved to approve the request and hold a public hearing on this matter in February 2003. Associate Member Gordy seconded the motion. The motion carried.**

\* \* \* \* \*

**17. REPORT** on the status of the Chesapeake Bay striped bass.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly gave the following information on the status of the striped bass:

- ❖ 941,000 pounds of fish caught, Virginia ranked the second largest commercial state
- ❖ 70% of commercial harvest were male
- ❖ generally more commercial fish are 24"-28" size
- ❖ recreational catch is 2 times what is caught commercially, coast-wide
- ❖ discard of 8% of harvest, is keeping pace with recreational fishery
- ❖ tournament catches and releases for 98 and after have meant lots of fish and lots of fishing
- ❖ Chesapeake Bay contributes about 70% of coastwide abundance
- ❖ 2001 was a good year class for Virginia and Maryland
- ❖ 55 million pounds - spawning - population size continues stock growth
- ❖ young of year - 1989-93-96 and 2001 - good year classes in Virginia and Maryland in Chesapeake Bay - abundance of stock the reason

\* \* \* \* \*

**18. DISCUSSION:** Proposed Grey Trout management measures to comply with ASMFC amendment 4, request for February public hearing.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments



are a part of the verbatim record.

Mr. O' Reilly said that the Atlantic States Marine Fisheries Commission (ASMFC) adopted Amendment 4 to the Interstate Fishery Management Plan for Weakfish in November 2002.

Mr. O' Reilly said that during a closed season, a fisherman may possess up to 300 pounds of grey trout in any one day or trip (whichever is longer in duration), provided that there is at least equal poundage of other species as weakfish on board the vessel (see page 30 of the ASMFC attached document). Currently, the regulation allows up to 150 pounds per day as by-catch, without requiring a like amount of other species.

Mr. O' Reilly explained that up to 300 undersized weakfish taken in finfish trawl fisheries may be landed, provided none of the undersized fish (< 12 inches total length) may be sold. Currently, the regulation established a 12-inch minimum size limit for grey trout landed by out-of-state trawl vessels, without any tolerance.

Mr. O'Reilly said that a copy of the commercial management measures that were submitted to the ASMFC on January 15 (Attachment I) were in the meeting books. For recreational fisheries, each state must implement one of the combinations of minimum size and possession limits, as listed on page 29 of the ASMFC document.

Mr. O' Reilly said that amendment 4 requires states with approved management programs to implement Amendment 4 by July 1, 2003. However, states may begin implementing management programs prior to this deadline, if approved by the ASMFC Management Board. The Management Board does not meet until February 26. Any change to the current regulation must occur at your March meeting.

Mr O'Reilly explained that staff expected the adoption of new minimum size and possession limits for the recreational weakfish fisheries would be controversial. Currently, the recreational fisheries (shore, private boat and charter/party boat) are managed over the course of 12 months, by a two-measure system. From May 1 through August 15, a 12-inch minimum size limit and 4-weakfish possession limit had been in effect and from August 16 through April 30, a 14-fish limit and 14-inch minimum size limit had governed the harvest of grey trout. This two-measure system emerged in 1998 and followed several changes, back and forth, from a 12-inch minimum size and 4-grey trout limit to a 14-inch minimum size and 14-grey trout limit, during 1995-98.

Mr. O'Reilly told the board that in the past several years, the charter/party boat fishery had supported the smaller size limit, whereas a number of shore and private boat fishermen, especially bayside of Eastern Shore anglers had supported the larger size limit and larger possession limit. Compared to the previous ASMFC amendment, 3 additional grey trout would be allowed for a 12-inch minimum size limit, but 5 less grey trout would be allowed

with a 14-inch minimum size limit. That any minimum size limit of 15 inches or greater allows for a 10-grey trout possession limit. That significantly, the new amendment does not allow a state to implement a 2-measure system such as Virginia has employed since 1998. That we are limited to one of the combinations of minimum size and possession limits, listed in the table shown above.

Mr. O'Reilly explained that the implementation of commercial management measures for Amendment 4, the ASMFC allowed states to continue current management programs. For the most part, our compliance plan submitted on January 15 advanced a continuation of minimum size limits and closed seasons currently in place. That the exception concerns our proposal for the gill net fishery. The staff-proposed change (shortening) in the gill net closed season is attributed to three separate modifications of its previous (Amendment 3) plan.

Mr. O'Reilly stated that changes to the ASMFC compliance plan also include our request to modify the by-catch limit from 150 to 300 pounds. For each directed fishery gear fishery (gill net, pound net, haul seine and trawl), staff has requested that ASMFC allow fishermen to possess up to 300 pounds of weakfish greater than or equal to 12 inches total length, provided that at least an equal poundage of other seafood species are on board the vessel of landing. Both the increase to 300 pounds and the stipulation that equal poundage of other seafood species are on board the vessel of landing are new ASMFC provisions.

Mr. O'Reilly said that another new allowance under Amendment 4 concerns tolerance for trawl landings of grey trout. Up to 300 undersized weakfish taken in finfish trawl fisheries may be landed, provided none of the undersized fish (< 12 inches total length) may be sold. This allowance is not a requirement. Currently, the VMRC regulation establishes a 12-inch minimum size limit for grey trout landed by out-of-state trawl vessels, without any tolerance.

**Associate Member Gordy moved to approve the request for a public hearing at the February meeting. Associate Member Williams seconded the motion. The motion carried.**

\* \* \* \* \*

**19. AMERICAN SHAD:** Update of FMAC review of the by-catch fishery

Jack Travelstead, Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

This matter was before the board at the request of Douglas F. Jenkins, Sr. that the Marine Resources Commission seek approval by ASMFC to get a shad by-catch fishery.

John Olney of the Virginia Institute of Marine Science, gave his presentation on the American

Shad Fishery Status and Where the ASMFC are regarding the Shad and his presentation is a part of the verbatim record. Commissioner Pruitt thanked Mr. Olney for his presentation.

Mr. Travelstead stated that FMAC needed a regulation to change to 10% of weight in possession. Mr. Olney was asked his opinion on what ASMFC would do regarding the establishment of the shad bycatch fishery. He said the ASMFC would ask where are your restoration targets? He said also that ASMFC will look at the status of the American Shad. He stated he was reluctant to suggest taking this to ASMFC because he didn't feel it would be successful.

Douglas F. Jenkins, Sr., President of Twin Rivers Waterman's Association, was present and his comments are a part of the verbatim record. He said that it's time for a shad fishery in the Bay and rivers and a bycatch fishery is a good way to start. He said this would provide an income to fishermen on a wasted resource that are thrown back either weak or drowned anyway. He said that he can't accept Mr. Olney's report, that a bycatch fishery is needed and that the FMAC recommended it.

Kelly Place was present and his comments are a part of the verbatim record. He said he supported Doug Jenkins in the establishment of a shad bycatch fishery. He said that VMRC needs to go the Technical Committee anyway even if it does end up being denied. He said that way we could see what was needed to be done and where we're wrong in seeking this fishery. He recommended a 10% bycatch or staff recommendation to establish a directed fishery to avoid waste.

Commissioner Pruitt said that the matter needs to go to ASMFC first.

Warren Cosby was present and his comments are a part of the verbatim record. He said that the ASMFC has even asked for some kind of fishery to add to the database.

**After further discussion and questions, Associate Member Birkett said that he agreed with Kelly Place and that he made sense. He said he felt that there would be no harm in asking the ASMFC for a bycatch to be established. He also said that a bycatch fishery would give some indication of the fish population. He made it a motion to ask the VMRC staff to take this matter to the ASMFC. Associate Member Garrison seconded the motion. The motion carried.**

\* \* \* \* \*

**20. PROCUREMENT** of services for the 2003 American Shad Restoration Program. Approval of Procurement Procedures and Notice for the American Shad Restoration Program

Jack Travelstead, Chief-Fisheries Management, gave the presentation and his comments are a

part of the verbatim record.

Mr. Travelstead explained that annually, the Commission must approve the procurement procedures for obtaining the services of watermen to participate in the American Shad Restoration Program. The authority to approve such procurement is found in Section 28.2-550 of the Code of Virginia.

Mr. Travelstead stated that as in the past, the staff proposes to procure the services of up to 9 watermen and 1 alternate to capture spawning American Shad from the Pamunkey River under the direction of the Virginia Department of Game and Inland Fisheries. The project dates are March 11 through May 15. As was the case for last year's project, all harvested American shad are strictly for use in the hatchery process.

As advertised in the notice for the project:

PROJECT DESCRIPTION: A total of nine individuals will be selected as permitted project participants, and one individual will be selected as project alternate. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries project coordinator. The need for participation by alternates in the project will be determined by the Virginia Department of Game and Inland Fisheries project coordinator.

For fishing days during the March 11 through mid-May, 2003 period, permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 7 at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

**EVALUATION CRITERIA**

1. You must have participated in one or more of the 1992 through 2002 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals

- who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.
  3. You must be available to fish for shad during most of the days between mid-March and mid-May.
  4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

Mr. Travelstead stated that staff recommended approval of the procurement procedures.

**Associate Member Cowart made the motion to approve the Shad Project Procurement . The motion was seconded by Associate Member Ballard. The motion carried, 7-0.**

\* \* \* \* \*

**21. REPEAT OFFENDERS**

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

**William Elton Brown - 2<sup>nd</sup> appearance before the Commission. Associate Member Garrison made a motion to suspend his application to apply for commercial card. Associate Member Birkett seconded the motion. Motion carried.**

**Bryan H. Dalheim - no action taken.**

**Ernest H. Diggs - not present. Associated Member Ballard made the motion to suspend his license until he appears before the Commission. Associate Member Garrison seconded the motion. Motion carried.**

**Ernest Hoover Diggs, Jr. - no action taken.**

**John H. Giddens - no action taken.**

**Keith A. Hart - present and sworn in by Commissioner Pruitt. 3 Charges, first appearance before the Commission. Written statement by the Marine Patrol Officer provided to the Commission. Mr. Hart testified that he reported to the main office of the officer's misconduct. Colonel Bowman stated that there was no record of such a report in the log book and Mr. Hart could not provide a name of who he spoke with at the time.**

Mr. Hart stated that on advice of his attorney he pleaded guilty to all charges when brought to court. Mr. Hart said he had been a waterman for 22 years. When asked about other violations Mr. Hart stated there were none and Colonel Bowman stated that in 1994 Mr. Hart had been charged with resisting arrest. Associate Member Birkett expressed his concern that Mr. Hart testified that there no other violations and no knowledge of reporting the officer.

**Associate Member Williams stated that Mr. Hart only works the water for his living, he had paid the fines to the court, and this was something that Mr. Hart couldn't afford to lose; therefore, he moved to put Mr. Hart on probation for 1 year. Associate Member Gordy seconded the motion. The motion did not pass, voting count was 3 yes and 4 no.**

**Associate Member Garrison moved to take Mr. Hart's license for 1 year and if there are no other violations during that time his license would be reinstated. Motion failed for lack of a second.**

**Associate Member Ballard moved for 1 year probation with revocation of license for 30 days in lieu of abuse of the officer. Associate Member Cowart seconded the motion. In answer to Associate Member McLeskey's question, Colonel Bowman stated that his license would be revoked for one month of crabbing season. Motion carried, voting count was 4 yes; 3 no.**

**Edwart Curtis Hogge, Jr. - 3 charges, 1<sup>st</sup> appearance before the Commission, no improper conduct with officer. Associate Member Cowart moved for 1 year probation. Associate Member Birkett seconded the motion. Motion carried.**

**Freddie S. Laird, Jr. - no action taken.**

**Bobby Wayne Lewis - 3 violations, Sunday peeler potting, possession of jimmies, no previous problem. Associate Member Gordy moved for 1 year probation. Associate Member Birkett seconded the motion. Motion carried.**

**Harold G. Pruitt, Jr. - no action taken.  
Lynnwood James Williams - no action taken.**

**Daniel E. Yoder - no action taken.**

**\* \* \* \* \***

**ITEM 12. PUBLIC COMMENTS:**

**GORDON DALLAS JETT:** Request for the return of his fish stands. Mr. Jett told the Commission that he had had his boat confiscated when he was found with a stolen boat motor

that he said he didn't realize was stolen. He explained because of the loss of this vessel he had not been able to fish his stands. He was ticketed by VMRC for abandoned nets and lost his stands. Mr. Jett said that he wants to at least get the stands that were previously his father's.

Colonel Steve Bowman, Chief, Law Enforcement, explained the stands must be fished and due to the stolen motor Mr. Jett had not been able to fish the stands as required.

Captain Ray Jewell, Law Enforcement Supervisor for the Northern Area, said that VMRC had been taking applications on the stands, but were holding them pending a decision by the Commission today. He said that not all the stands had been applied for as yet. He said that he had the applications, but can give them all back or just what he applies for on February 1.

Commissioner Pruitt stated that he should at least be able to get the ones that had belonged to his father.

**Associate Member Garrison made a motion to let him apply for the others and have the ones that belonged to his father. Associate Member Gordy seconded the motion. Motion carried.**

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**WILFORD D. MILLER:** Request that the Deep Rock Area presently opened to the harvesting of oysters by dredge be changed to patent tong only. Mr. Miller explained that the dredge tears the rocks down and the dredge was made to clean the bottom. He said that the rock needs to be protected if the oysters are going to come back. He requested that emergency action be taken to change from dredging to patent tonging. His comments are a part of the verbatim record.

David Smith said that the VMRC needed to take this step in order to protect the oyster rock. He said that when you dredge the rock it takes the shells too and if there are no shells there's nothing there for the spawn to strike. He says must consider the future also. His comments are a part of the verbatim record.

Associate Member Cowart asked for Dr. Wesson's opinion. Dr. Wesson stated that it would have been better to have discussed this back two months ago. He said biologically they are right. He said that for a short season, dredges are okay, but long season there would be more damage.

Associate Member Gordy said she had been asked by Tangier Watermen to extend the season in the Pocomoke-Tangier Sound through February. She said they explained to her that they had missed time because of the weather, ice, and wind. She asked if this could be done.

James Wesson said it would not be quite a month. She explained that Associate Member Ballard had suggested giving them an extension for days missed.

Doug Jenkins stated that the Commission should stay with the dredge since the weight had just been increased. He explained that if a dredger knows what he is doing, he won't harm the rock. His comments are a part of the verbatim record.

**After much discussion, Associate Member Ballard made the motion to extend the Pocomoke-Tangier Sound season for the days of ice events that had occurred over the last two weeks. And he also moved to delay the opening of the Deep Rock area for one week and to allow patent tonging only. Associate Member Williams seconded the motion. The motion carried.**

\* \* \* \* \*

**KELLY PLACE:** Discussed the Senate Bill 917 for increasing fees for the Recreational and Commercial Licenses.

Mr. Place stated that the license fee increases were necessary. He said that Recreational license increase of \$5.00 and the \$25.00 increase for Commercial license are both reasonable, but he would suggest the Recreational license be increased \$10-\$20 more and the Commercial License be increased from \$150 to \$200 with a hardship exemption. His comments are a part of the verbatim record.

\* \* \* \* \*

**J. C. WEST:** Request the transfer of an ocean shad permit to him from a friend that does not use his permit. He said that the individual had said he wasn't going to use the permit and had agreed to the transfer.

Jack Travelstead, Chief, Fisheries Management, said that 26 permits were issued and there was no provision for a transfer.

Carl Josephson, Counsel for VMRC, asked who was next on the list. He asked didn't VMRC select and rank the applicants for a permit. Mr. Travelstead said doesn't provide for going to the next in line either.

Mr. Travelstead said there was no provision for going to the next individual.

Lewis Gillingham, Fisheries Management Specialist, said they did not rank just gave to the qualified persons.



Commissioner Pruitt after conferring with Counsel said that the Commission must amend the regulation and advertise for a public hearing.

**Associate Member Cowart made the motion to advertise the amendment to allow for transfer among the group that had the poundage and hold a public hearing at the February meeting. Associate Member Birkett seconded the motion. The motion carried.**

\* \* \* \* \*

Associate Member Garrison suggested announcing the fact that a meeting of the Chesapeake and Natural Resources, Aquaculture Committee to discuss legislature for consolidating the Marine Resources Commission and the Game and Inland Fisheries Commission was being held in the morning. **Commissioner Pruitt announced that the meeting of the Aquaculture Committee would be changed from 8 a.m. to 7:30 a.m. tomorrow.**

\* \* \* \* \*

Associate Member Gordy asked if the February meeting date would be changed. Commissioner Pruitt responded, No. There was not action taken to change the February meeting date. **The next Commission meeting will be held Tuesday, February 25, 2003.**

\* \* \* \* \*

**TOM POWERS:** Brought to the attention of the Commission of a regulatory action taken by the City of Virginia for shark fishing within 500 yards of the shoreline. Mr. Powell wanted to alert the Commission and to say that when he looked through the Code of Virginia he could not find anything authorizing the city to take such action. He stated that this was contrary to code and under the authority of the Commission.

Commissioner Pruitt thanked Mr. Powers for the information.

\* \* \* \* \*

The meeting adjourned at 6:25 p.m.

**Commission Meeting**

**12262  
January 28, 2003**

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William A. Pruitt, Commissioner

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Katherine V. Leonard, Recording Secretary