

MINUTES

**NOVEMBER 26, 2002
NEWPORT NEWS, VIRGINIA**

The November 26, 2002 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)	
Cynthia M. Jones)	
F. Wayne McLeskey)	
K. Wayne Williams)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Jane McCroskey	Deputy Chief, Administration and Finance
Jack Travelstead	Chief, Fisheries Management
Rob O' Reilly	Deputy Chief, Fisheries Management
Chad Boyd	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Jim Wesson	Head, Conservation and Replenishment
Cory Routh	Fisheries Management Specialist
Col. Steve Bowman	Chief, Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
Capt. Warner Rhodes	Supervisor, Middle Area
Sgt. Dan Eskridge	Assist. Supervisor, Northern Area
Capt. Randy Widgeon	Supervisor, Eastern Shore Area
Sgt. Ben Majors	Assist. Supervisor, Southern Area

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MPO Michael Dobson
MPO Matt Hargis

Marine Police Officer
Marine Police Officer

Robert Grabb
Tony Watkinson
Hank Badger
Kevin Curling
Mark Eversole
Jeff Madden
Chip Neikirk
Randy Owen
Tracy West
Jay Woodward

Chief, Habitat Management
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:

Dr. Eugene Burreson
Thomas Barnard, Jr.
Lyle Varnell

others present included:

Tom B. Langley	Neil Lowenstein	John E. Matthews
Darlene B. Delano	Oscar E. Delano	Edward L. Delano
Evelyn J. Delano	William Fleming	Frank Fletcher
Andrea Williams	John Williams	Robert Humphries
Philip Parker	Gordon Azlo	Cindy Hall
Wayne Couch	Karla Haynes	Jay Bernas
Vic Yurkovic	Hugh Delauney	Chuck Joyner
Tammy Halstead	Kevin DuBois	Doug Stamper
Daniel Caskie	Susan Gaston	
Robert Haynie	Garmen Parks	Edward Parks, Sr.
Leon McMann	William Marshall	James R. Cahal
Dan Dise	Robert Shores	Donald Crockett
Thomas S. Hall, Jr.	Glenn Stevens	Roy Lijp
Joe Kelly	Hank Jones	Karl Hall
Dave Griffith	Joe Wagner	Denwase Wagner
Joe Wagner, Jr.	Michelle Dever	Jack Mazmanian
David Bleeker	George C. Washington	
Keith Aldridge	Warren M. Cosby, Jr.	
David C. Walker	Doug Reed	Lee R. Smith
Karl Hall, III	Walter Gooch	Vernon Haywood
David Portlock	Robert Crwasher	Ernest Bowden, Jr.

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William T. Daniels	Tom Powers	Dean Wasaacson
Robert Versailles	Tommy Mason	Thomas H. Jones
Kirk Webb	Scott Webb	Steve Bunce
Marks Hodges	Ken Hodges	Rudy Cashwell
David Johnson	Bruce Caskey	Keith Lewis
Rich Puchalski	Robert Hollowell	Kelly Place
Mark Heath	Jim Dawson	Bryan Peele
James Brock	Jack Stallings	Joe Mizelle
Mark Peele	Chris Ludford	Russell Gaskin
Roger Parks	Bill Cox	Jerry Zodi

And others.

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Commissioner Pruitt called the meeting to order at 9:30 a.m. Associate Member Cowart did not arrive to the meeting until the afternoon, approximately 1:45 p.m. The invocation was given by Associate Member Williams. Commissioner Pruitt led the pledge of allegiance to the flag.

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

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The agenda was approved with an additional item added by Bob Grabb for the 2nd page Habitat Items (Marine Hydraulic Inc.). The motion was made by Associate Member Gordy, seconded by Associate Member Williams. Motion carried.

The minutes of the October 22, 2002 and November 1, 2002 were approved as circulated. Associate Member Garrison made the motion to approve the October 22, 2002 minutes and it was seconded by Associate Member Williams. Motion carried with Associate Members Gordy and Ballard abstaining. Associate Member McLeskey moved to approve the November 1, 2002 minutes and it was seconded by Associate Member Ballard. Motion carried with Associates Members Gordy and Williams abstaining. Associate Member Gordy explained that she could not vote on the minutes as she did not receive her briefing package.

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The Commission at this point in the meeting considered the agenda page two items, 2A through 2J and Marine Hydraulic, Inc., together as these projects were \$50,000 or more in total project cost and staff was recommending approval.

Bob Grabb, Chief-Habitat Management, reviewed the individual items for the board.

Associate Member Garrison asked in regards to items 2G, 2H, and 2I, how long do the annual royalties get collected? Bob Grabb explained that the permit is good for 5 years with the option to request an extension of 5 years. He further explained that the maximum would be ten years. He said that after the ten year period a new application would have to be submitted. Associate Member Garrison asked if after the dredging is done would there be any reseeded of the dredge area . Mr. Grabb explained that generally DMME and DEQ are involved in the shoreline aspects of the sand removal and would include these types of requirements in their permits for the upland part of the project.

Associate Member McLeskey asked about the City of Virginia Beach project as regards to the disposal of the material and referred back to another permit issued previously to the City of Norfolk where the spoil was to be put on Ocean Park. He asked if this could be rescinded and have spoil material put on the COE site or another site that won't need truck hauling. Mr. Grabb responded that is a modification of that permit which he didn't have and that one of the specific conditions of that permit. He explained that this motion would alter that. Mr. Grabb asked if this is one time action or a continuous alteration for all succeeding dredging operations. Associate Member Garrison responded just for a city projects not commercial operations.

Commissioner Pruitt asked if any other party wish to comment on this matter. Mr. Philip Rohrs with the City of Virginia Beach Public Works was present and his comments are a part of the verbatim record. Mr. Rohrs stated the City supports this modification, but at times there is a need to stockpile the material then put on some other beach.

Commissioner Pruitt asked for a motion. **Associate Member McLeskey moved to accept all page two items as presented including the specification to have all city projects put all spoil material on the COE site or another site where the need for trucking would be eliminated. Associate Member Williams seconded the motion. The motion carried.**

2A. HARVEY A. DREW, II, #02-1813, requests authorization to establish a site for aquaculture activities in Fishing Creek, a tributary to Pocomoke Sound southwest of the Town of Saxis. The applicant proposes to occupy a 22-acre area above his oyster ground lease, with anchored aquaculture floats and bags, for the commercial grow-out of cultured shellfish. Recommend an annual royalty in the amount of \$4,791.60 for the encroachment over 958,320 square feet of State-owned subaqueous land at a rate of \$0.005 per square foot.

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Royalties (958,320 sq. ft. @ \$0.005/sq. foot).....\$4,791.60/annually
Permit Fee.....\$ 100.00

2B. NATIONAL PARK SERVICE, #02-0930, requests authorization to construct and back-fill 1,130 linear feet of vinyl replacement bulkhead situated adjacent to the causeway from Chincoteague Wasland to Assateague Island along Assateague Channel and Sheepshead Creek in Accomack County. The project was part of roadway and pedestrian access improvements at Assateague Island National Seashore.

Permit Fee.....\$100.00

2C. CITY OF VIRGINIA BEACH, #96-0083, requests a modification to their previously issued permit to allow for the addition of a 100' by 150' turning basin at the mouth of Crab Creek to improve navigation at their *Lynnhaven Boat Ramp and Beach Facility* situated along Crab Creek in Virginia Beach.

Royalties/Permit Fee.....Not applicable

2D. HUDGINS POINT ESTATES CONDOMINIUM OWNERS ASSOCIATION, #97-1285, requests authorization to modify their existing permit to allow paving of the parking area with an associated storm water management plan so as to reduce runoff into Cobbs Creek from the paved area during normal conditions.

Royalties/Permit Fee.....Not applicable

2E. CITY OF WAYNESBORO, #02-1855, request authorization for the installation of a sewer pipe under 90 linear feet of the South River. Recommend standard in-stream construction conditions.

Permit Fee.....\$100.00

2F. CITY OF NORFOLK, #02-1774, request authorization to install 645 linear feet of steel sheet-pile bulkhead adjacent to their property situated along Knitting Mill Creek.

Permit Fee.....\$100.00

2G. PATRICIA M. CONNER, ET AL, #01-0240, requests authorization to annually dredge up to 80,000 cubic yards of sand to a variable depth no more than 4 to 6 feet below ordinary low water from an area 1,150 feet in length by 75 feet in width in the Staunton (Roanoke) River in Halifax and Charlotte Counties. Recommend a time of year restriction from April 15 through June 30 of each year and a royalty of \$0.40 per cubic yard no more than \$32,000.00 per year.

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Royalties...(80,000 cu.yds. @\$0.40/cu. yd.).....	\$32,000.00
Permit Fee.....	\$100.00
Total.....	\$32,100.00

2H. J. R. THARPE TRUCKING COMPANY, INC., #01-1236, requests authorization to excavate up to 1,000 cubic yards of sand annually from State-owned subaqueous lands within the Staunton (Roanoke) River, adjacent to their property in Charlotte County. Recommend a royalty of \$0.40 per cubic yard up to \$400.00 per year.

Royalties...(1,000 cu. yd. @ \$0.40/cu. yd.).....	\$ 400.00
Permit Fee.....	\$100.00
Total.....	\$500.00

2I. J. R. THARPE TRUCKING COMPANY, INC., #02-1945, requests authorization to excavate up to 8,000 cubic yards of sand annually from State-owned subaqueous lands within the Staunton (Roanoke) River in Charlotte and Halifax Counties. Recommend a royalty of \$0.40 per cubic yard up to \$3,200.00 per year.

Royalties...8,000 cu. yds. @\$0.40/cu. yd.	\$3,200.00
Permit Fee.....	\$100.00
Total.....	\$3,300.00

2J. CITY OF LYNCHBURG, #02-1800, requests authorization to install, by open-trench method, 150 linear feet of an e-inch water line and a 4-inch electric conduit located a minimum of 24-inches beneath the existing streambed of the James River near the confluence of Blackwater Creek in the James River. Recommend standard in-stream construction practices.

Permit Fee.....	\$100.00
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2K. MARINE HYDRAULICS, INC., #02-0877, request for authorization to construct a 1,180’ long by 70’ wide open pile commercial pier and to perform new dredging by hydraulic method of 800,000 cubic yards of sand. The material will be taken from a 1,390’ long by 420’ wide channel and mooring basin, which will allow them to achieve a maximum depth of -39’ below mlw. All work is to be done adjacent to their property along the Elizabeth River in Norfolk. All material will be disposed, transported to and disposed onto the Craney Island Basin. In this case staff is recommending a royalty in the amount of \$360,000 for dredging royalty @ \$0.45/cu.yd.

Royalty fees (800,000 cu.yds. @\$0.45/cu. yd.)....	\$360,000.00
Permit Fee.....	\$100.00

Total.....\$360,100.00

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3. SUNSET DEVELOPMENT, L.L.C., #02-0361, Commission review on appeal of the Virginia Beach Wetlands Board’s March 18, 2002, after-the-fact decision and restoration order pertaining to a request to retain, as constructed, a single-family residence with concrete driveway, gravel parking area and timber decks involving a coastal primary sand dune and beach in Virginia Beach.

Randy Owen, Environmental Engineer, gave the presentation with slides. He explained that the project was located at 3100 Sandfiddler Road along the Atlantic Ocean in the Sandbridge Beach section of Virginia Beach. He added that the stated purpose of the project was for the development of personal property as a second home and for its investment value.

Mr. Owen went over the events of the case. He said the project, was originally approved by the Board at its December 18, 2000 hearing. He said at that time the Board authorized the construction of a single-family home with concrete driveway and timber decks. He said that approximately one year later, the applicant called for a final inspection to effect the release of a surety bond. He explained that it was during a compliance inspection conducted on January 10, 2002 that City staff discovered that the project had not been constructed in compliance with the Board permit. He stated that the City staff saw that the finished first floor elevation was lower than approved and an unauthorized gravel parking area and air conditioning platform had been constructed. In addition he also said three timber decks, an entrance and rear stairs and landing, had been constructed outside of the original permitted footprint.

Mr. Owen told the Commission that following the site inspection, Sunset Development, L.L.C. was sent a Notice To Comply, which directed either the removal of the unauthorized construction or the submittal of an after-the-fact application. He said the matter was considered by the board in a Show Cause Hearing on February 18, 2002. He explained that at that hearing, it was determined that a substantial violation had occurred, a \$500.00 civil charge was levied, which Sunset Development, L.L.C. has paid, and ordered the applicant to appear at its March 18, 2002 hearing for consideration of the after-the-fact application and a Restoration Hearing.

Mr. Owen continued to explain that at its March 18, 2002 hearing, the Board considered the after-the-fact application and the oral arguments of Mr. Gordon B. Tayloe, Jr., counsel for the applicant. He said the applicant implied that construction challenges resulted in the project being constructed outside its authorized footprint. He said that at that hearing, Mr. Tayloe advised the board that while they would prefer to have the project authorized as constructed, they were willing to do whatever the Board ordered for the parking area.

Mr. Owen pointed out that the Virginia Institute of Marine Science commented that the additional impacts resulting from the structural modifications to the house would be relatively minimal. He further stated, however, that the additional gravel parking area would expand dune impacts and preclude any reformation of the dune.

Mr. Owen explained that the Planning Department comments reminded the Board that the General Assembly adopted legislation governing dunes/beaches. He said they said that by taking this action the General Assembly had expressed their concern for activities in dunes which do not take into account the dynamic nature of coastal dunes and lead to increased expenditure of public funds for disaster assistance in beach replenishment. He stated that the Department recommended denial of the project, concluding that the project would expose life and property to significant risk during coastal storm events.

Mr. Owen stated that at the conclusion of the public testimony, a motion was made and seconded to deny the application. He said that a brief discussion followed wherein the Board, its staff and Mr. Tayloe debated the February 18, 2002, Show Cause Hearing motion as it pertained to the procedure and need for a Restoration Hearing. He also commented that following an agreement that Mr. Tayloe had waived the requirement for a 30-day notice of the hearing, the original motion for denial was withdrawn. He explained that, as a result of that, a new motion was made. He said that it called for the reduction of the house footprint and parking area to the original permitted footprint, exclusive of the removal of the air conditioning platform; restoration of the dune disturbed by the gravel parking area; the submittal of revised drawings within 30 days; and completion of all work within 60 days. He said that the motion passed by a vote of 5 to 1.

Mr. Owen explained that by letter dated March 19, 2002, Mr. Tayloe noted an appeal of the Wetlands Board March 18, 2002 after-the-fact decision and restoration order. He explained that Mr. Tayloe further stated in his letter that if the Board found that restoration would be necessary to recover or prevent further damage to lost resources, they could only order restoration to predevelopment conditions. He commented that Mr. Taylor had concluded that no evidence was presented to the Board that would support the need for restoration.

Mr. Owen stated that following receipt of the notice of appeal, Commission staff advised Mr. Tayloe, by letter dated April 4, 2002, that the Board decision was an enforcement action to remedy a violation as provided for in Article 4 of Chapter 14 in Title 28.2 of the Virginia Code. He explained that Mr. Tayloe was further advised that the Commission did not view local wetland boards Article 4 enforcement orders as being subject to its review under Section 28.2-1411; and, that Article 4 and the general law provided other avenues for judicial consideration of such enforcement matters.

Mr. Owen told the Board that Mr. Tayloe next noted his appeal to the Virginia Beach Circuit Court. He explained that in response, the City Attorney's Office argued that the appellant had

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not exhausted their administrative appeal with VMRC and entered a draft Order of Referral for the Court's consideration. He stated that on October 18, 2002, staff received the Court Order of Referral, dated September 30, 2002, which referred the matter back to the Commission for a decision pursuant to Virginia Code Section 28.2-1411(A)(1).

Mr. Owen said that based on staff's review of the record, they were unable to conclude that the Wetlands Board erred procedurally in their review of this matter or that the substantial rights of the appellant had been prejudiced. He explained that while considerable discussion centered on the need for a Restoration Hearing and the requirements of the final motion, the Board's decision ultimately denied certain elements of the unauthorized construction outside of the permitted footprint, which they ordered restoration of the dune disturbed by the unauthorized gravel parking.

Mr. Owen stated that the VIMS report clearly indicated that the construction of the gravel parking area was ill-advised and would destabilize a portion of the primary dune. He referenced Section 28.2-1417(D) of the Code which grants the Board authority to order restoration to recover lost resources; therefore, staff recommended that the Wetlands Board March 18, 2002 decision should be upheld.

Mr. Gordon Tayloe, Attorney for Sunset, was present and his comments are a part of the verbatim record. Mr. Tayloe stated that without questioning the procedures used for after-the-fact permits and show cause hearings, the appellant was willing to correct the gravel driveway area and restore the dune. The appeal was for the stairway and overhang with were minor encroachments. He added that even the City of Virginia Beach had stated that they were minor. He said that he and his client felt that the appellant were being punished and the Wetlands Board's action was arbitrary and capricious.

Ms. Carla Haynes, Assistant City Attorney, representing The City of Virginia Beach, was present and her comments are a part of the verbatim record. Ms. Haynes stated that the bottom line was that the area was within the Wetland Board's jurisdiction and today the Commission must examine the record as presented and decide if the Wetlands Board fulfilled its duties and did not prejudice the rights of the appellant. She further requested that the Commission uphold the Wetlands Board decision.

Mr. Wayne Couch, City of Virginia Beach representative, was present and his statements are a part of the verbatim record.

Associate Member McLeskey, offered into the record pictures he had taken at the project site and he explained he had taken them because he needed to clarify confusion he had regarding the appeal. Associate Member Garrison moved to accept the pictures and Associate Member Gordy seconded the motion. The motion carried and Commissioner Pruitt open the record.

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Commissioner Pruitt stated that he felt that the board had done its job.

After further discussion, Commissioner Pruitt called for a motion to uphold, remand, reverse or modify the Wetlands Board's decision. **Associate Member McLeskey made a motion to remand the matter back to the Wetlands Board to work the matter out. Associate Member Ballard stated that he did not feel the Board erred in his opinion. Carl Josephson, Counsel for the Commission, stated that there must be a basis or reason for remanding the appeal other than to work it out. Associate Member McLeskey added to his motion that the Wetlands Board's action were too severe and that the board needed to review the matter again to determine exactly how far off the decks and stairs had been constructed outside of the permitted footprint. Motion carried 6 to 1. Associate Member Ballard voted no.**

Royalties and Permit Fees.....Not applicable

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4. HUGH DELAUNEY: Commission review on appeal by the property owner of a September 2002 enforcement action for impacts to a jurisdictional coastal primary sand dune situated along the Chesapeake Bay in the City of Norfolk.

Traycie West, Environmental Engineer, gave the presentation and showed slides. Ms. West said that she had vicinity maps and aerial slides for orientation which has been allowed in the past even though the record was not open.

Ms. West explained that the City of Norfolk Wetlands Board reviewed violations of the Coastal Primary Sand Dune and Beaches Ordinance on three adjacent properties during a special restoration hearing held on September 26, 2002. She said that the properties were located in the Ocean View section of the City and each were treated as a separate violation. She commented that two of the three property owners agreed to the restoration order as presented by the Board. She said that only the property owner who chose to appeal the decision of the Board was Mr. Hugh Delauney in the center.

Ms. West stated that all three properties face East Ocean View Avenue and are bounded by Bay View Avenue, a paper street, to the north. She explained that a coastal primary sand dune was located along Bay View Avenue and it encroaches onto most of the properties situated along this portion of East Ocean View Avenue. She further explained that Mr. Delauney's property was located at 2808 East Ocean View Avenue, in between the properties of the Estate of Mary Evans and the property of Mary Craven/Patricia and Robert Nicholson.

Ms. West commented on what occurred at the Wetlands Board. She stated that Mr. Kevin

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DuBois, the staff person to the Norfolk Wetland Board, provided a briefing to the Board. She said that Mr. DuBois explained that the nature of the violation at Mr. Delauney's property included excavation, removal of stabilizing vegetation and altering a coastal primary sand dune without a permit. She said a chronological list of events since 2001 was summarized for the Board, including reminding the Board that they had recently denied an application for the construction of duplexes on the property due to the proposal being inconsistent with the Beaches and Dunes Guidelines.

At the meeting Ms. West said that the Wetlands Board Staff proceeded to show the Board a set of before and after photographs of the property in order to illustrate the impacts to the jurisdictional dune. She explained that following the slides, the Wetlands Board staff recommended that the Board issue a Restoration Order for the complete restoration of the impacted dune with the following special conditions:

- 1) The denuded areas of the dune shall be cleared of trash and debris.
- 2) No later than December 14, 2002, the dunes shall be planted with Cape American Beach Grass, Bogue or Hatteras variety, and Atlantic Coastal Panic Grass, on 18-inch centers to provide for recolonization of the dune.
- 3) Areas with plant mortality shall be resprigged.
- 4) During dune restoration, every effort shall be made to keep the dune area clear of construction debris and materials.
- 5) If necessary, fill and stabilization will be required to restore grades to restore dune jurisdiction.

Ms. West further explained that Mr. Lowenstein, counsel to Mr. Delauney, expressed his opinion that Mr. Delauney's property was located on the secondary, not the primary dune, and as a result, the Board did not have jurisdiction over the clearing and excavation activities that had occurred. She said that in addition, Mr. Lowenstein suggested that the clearing and excavation of the dune was performed by someone else, not Mr. Delauney.

Ms. West explained that a motion to order restoration per the Wetlands Board staff recommendations to the toe line of the dune, with an added condition requiring the replanting of several trees along the property line between Mr. Delauney and the Estate of Mary Evans, passed unanimously. She said that in addition, a \$1500 civil charge was assessed. She explained that at that time, Mr. Delauney stated his intention to appeal the decision and, therefore, he would not agree to pay the civil charge.

Ms. West commented that the notice of appeal, which was submitted by Mr. Neil S. Lowenstein on behalf of his client, Mr. Hugh Delauney, was received on October 4, 2002 and was considered timely.

Ms. West explained that Mr. Lowenstein had indicated six reasons for Mr. Delauney's appeal

of the decision of the Norfolk Wetlands Board. She said that these include that the Board erred procedurally because they:

- held a hearing without allowing adequate time for preparation,
- refused to conduct a site visit prior to rendering a decision,
- concluded the dune area was jurisdictional,
- did not allow an examination of jurisdictional issues,
- believed that the Mr. Delauney's activities on the property required a permit, and
- concluded that the activities violated any law or ordinance, caused ecological impact, or altered the contour of the dune in question.

Ms. West explained that the VIMS' report for Mr. Delauney's original proposal did not call into question the jurisdictional dune line as determined by Mr. DuBois. She said in an e-mailed correspondence between Mr. DuBois and Mr. David O'Brien of VIMS, Mr. O'Brien stated that he conducted a site visit on December 3, 2001, and he confirmed the Wetlands Board staff's jurisdictional determination as accurate.

Ms. West said that based on staff review of the information that was before the Norfolk Wetlands Board on September 26, 2002, they were unable to conclude that the Board erred procedurally. She said that it was clear that the Board determined that the excavation, removal of vegetation, and resulting dune destabilization took place on a jurisdictional dune; and, that a substantial violation of the Coastal Primary Sand Dunes and Beaches Ordinance had occurred.

Ms. West explained that Mr. David O'Brien of VIMS concurred with the jurisdictional determination made by Wetland Board staff, both during the assessment of Mr. Delauney's original application and through follow-up e-mail correspondence.

Ms. West said it appeared that the Board decision was appropriate and as a result, staff recommended that the decision of the Norfolk Wetlands Board be upheld.

Commissioner Pruitt asked if the applicant was present. Ms. West explained that Mr. John Mathews was in attendance to represent the applicant. He did not speak at the Wetlands Board and she pointed out that allowing him to speak on the applicant's behalf might open the record. Commissioner Pruitt, after conferring with Counsel, ruled that a motion would be necessary and he was only allowing Mr. Mathews to make comments relating to what was in the record. Association Member Gordy moved to allow Mr. Mathews to speak before the board. Associate Member Birkett seconded the motion and the motion carried. Mr. Grabb asked if this opened the record. Commissioner Pruitt answered no.

Carl Josephson, Counsel for the Commission, stated that a lay person cannot speak as an

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attorney. Mr. Mathews said he understood.

Commissioner Pruitt swore in the applicant, Mr. Delauney and Mr. Bill Fleming, Professional Engineer for the applicant.

John Mathews, representing the applicant, requested that the record be opened. He explained that some material printed by staff were not part of the record, some material had not been included in the Commission packet, and whether jurisdictional or not, Mr. Lowenstein at the hearing was denied the right to ask questions. Cindy Hall, City Attorney for Norfolk stated her objection. Commissioner Pruitt asked the board if the record should be open. **Associate Member Ballard moved to deny the request to open the record and only by looking at the record as it exists could a decision be made. Associate Member Garrison seconded the motion. Motion carried.**

Neil Lowenstein, Counsel for the appellant, said that the issue of jurisdiction was what should be heard. Commissioner Pruitt conferred with Mr. Josephson. Mr. Josephson explained that this has to do with legal jurisdiction based on fact, delineation of sand dune, etc. Cindy Hall, City Attorney for Norfolk, stated that Staff and VIMS have both indicated the project was within jurisdiction. Associate Member Ballard, asked if there was testimony in the record on the questions of jurisdiction. Commissioner Pruitt said that Mr. Josephson had dealt with the jurisdiction issue.

Mr. Mathews stated that the issue was not money, it was the principle. He explained that regarding the question of jurisdiction the client's attorney should be able to question the criteria used for determining the jurisdiction.

Mr. Lowenstein again brought up the issue of opening the record since items in the Commission's package were not presented to the Wetlands Board or given to the appellant. He also said that some of the slides were not part of the record and regarding the issue of jurisdiction, the e-mail/testimony from VIMS was not presented to the Wetlands Board and Ms. West testimony was not part of the record. He also questioned a slide shown with written notations on it. In response, Ms. Hall stated that all this material was in the Wetland Board's package.

Commissioner Pruitt stated that since this was an appeal of an enforcement action and Mr. Mathews was a new involvement, he recommended that the board remand the case back to the Wetlands Board in its entirety. **Associate Member Williams made the motion to remand the matter back to the Wetlands Board for their review. Associate Member Birkett seconded the motion and the motion carried.**

Royalties and Permit Fees.....Not applicable

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5. INLAND HARBOR PROPERTY OWNERS ASSOCIATION, #99-2313, requests a modification to a previously issued permit authorizing the construction of a 32-foot long continuous height extension to an existing timber jetty; and, to dredge 130 cubic yards of sand and bottom material to provide depths of minus six (-6) feet at mean low water adjacent to property situated at the mouth of Warehouse Creek in Northumberland County.

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

Mr. Madden said the project was located at the confluence of Warehouse Creek and the Great Wicomico River at the end of the accreting sand spit. He said that the accretion of sand around the jetty was threatening to narrow the existing 50-foot wide channel entrance into Warehouse Creek. He explained that much of Warehouse Creek upstream of the mouth averages minus eight (-8) feet at mean low water while the Great Wicomico River, which averages 11 feet deep beyond the creek mouth.

Mr. Madden stated that in 1989, work was completed on a 190-foot long, freestanding timber jetty designed to maintain the channel by blocking the migration of sand into the mouth of Warehouse Creek. He said that since the initial construction, however, enough sand had accreted on the western side of the jetty to create a sandy beach and tidal wetlands.

Mr. Madden explained that in 1998, the applicant received authorization to dredge 80 cubic yards of sand from the mouth of Warehouse Creek and to place the material behind the jetty. He said that the dredged material was used to fill a shallow depression immediately behind the jetty. Since the completion of dredging in June 2000, the channel has once again become partially block by the accumulated sand. He explained the applicant's most recent request was to modify their permit to include removal of 130 cubic yards of accumulated sand to establish a minus six foot (mlw) depth contour in the channel. He said that in addition, the applicant wished to repair the existing jetty and construct 32-foot extension to the jetty. He said the applicant intended to use the sandy dredged material to backfill and to stabilize the area behind the jetty. He also said that the newly deposited material would be sprigged with wetland grasses and the applicant would monitor survival of the restored grasses.

Mr. Madden said the Commission will recall, it reviewed on appeal the July, 9 2002 decision by the Northumberland County Wetland Board to approve the modification to this application for the placement, stabilization and sprigging of 130 cubic yards of dredged material to be placed behind the applicant's existing jetty. He explained that the Commission upheld the Board's decision, which a Mr. J. Rob Roy later appealed to the Circuit Court. He said this hearing was to consider the modification of the subaqueous portion of the application, which required Commission action. He acknowledged that the Commission's decisions were not stayed by Circuit Court litigation.

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Mr. Madden explained that the subaqueous portion of the proposed project was also protested by Mr. J. Rob Roy, an oyster ground leaseholder in Warehouse Creek. He explained that in his letter dated September 16, 2002, Mr. Roy stated that, while he did not object to the dredging, he was not in favor of the 32-foot jetty extension or the placement of the dredged sand behind the existing jetty. He stated that Mr. Roy maintained that the sand should be hauled off and that the extension of the timber jetty was only a temporary stopgap measure. He explained that Mr. Roy also believed that his oyster lease was being threatened by the proposed changes in the creek entrance.

Mr. Madden said that the Commission staff notified all four of the oyster ground leaseholders within a 1500-foot radius of the project, including Mr. Jodi Kress, the oyster ground leaseholder directly impacted by the dredging. He explained that Mr. Roy was the only leaseholder who protested.

Mr. Madden said that VIMS had commented that the proposed jetty extension and repairs were necessary to reduce the natural movement of sand into the channel and the frequency of dredging. He said that it was VIMS' opinion that the long-term adverse impacts resulting from the proposed maintenance dredging would be minimal. They pointed out, however, that wetland impacts would result from the proposed disposal of the sandy material. He said that while dredging by a crane mounted offshore barge and off-site disposal of the sand was the preferred method, the report included recommendations to reduce wetland impacts. He explained that VIMS recommended that any required erosion and sediment control measures be observed, and that monitoring of the elevation of the sandy material during dredge operations and springing the disposal site be required. He said that the applicant agreed to all of the VIMS recommendations during the Wetland Board hearing on July 9, 2002.

Mr. Madden stated that no other agency had expressed any opposition to the project.

Mr. Madden said that staff believed that dredging of the creek mouth was necessary in order to maintain navigation into Warehouse Creek. He said furthermore, the jetty extension should reduce the dredging frequency. He said that Staff believes that the Northumberland County Wetlands Board adequately addressed the wetland impacts associated with the disposal of the sandy material in their public hearing and through their permit, which was upheld by the Commission. As a result, staff was recommending approval of the subaqueous portion of the project as proposed. When questioned about what the royalty charge would be, he said staff recommended \$0.45 per cubic yard since this was considered to be new dredging.

Mr. Frank Fletcher, applicant, was present and his comments are a part of the verbatim record.

There was no one present in opposition to the project.

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After some discussion, Associate Member Garrison made a motion to approve per staff's recommendation. Associate Member Gordy seconded the motion and the motion carried.

Royalties (130 cu. yds. @\$0.45/cu. yd.).....	\$58.50
Permit Fee.....	\$25.00
Total	\$80.50

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At this point in the meeting the Commission recessed for a half hour lunch break at 11:56 a.m. When the board reconvened Commissioner Pruitt was absent and Associate Member Birkett took over as the Chair.

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6. NEWELL'S BOAT WORKS, INC., #02-1324, requests authorization to install 313 linear feet of bulkhead, 84 linear feet of rip rap and to dredge to minus five (-5) feet below mean low water, with some areas to minus seven (-7) feet below mean low water, adjacent to their facility on Scotts Creek in the City of Portsmouth.

Tracy West, Environmental Engineer, gave the presentation with slides.

Ms. West explained that Newell's Boat Works, formerly known as Pritchard's Marine Railway, was located on Scotts Creek in Portsmouth. She explained that the creek was relatively shallow, with mean low water depths generally averaging around minus two and a half feet (-2.5').

Ms. West said that the purpose of the project was to create adequate depths around the existing piers and shed for boat mooring. She explained that Mr. Langley, Mr. Newell's agent, further stated that the purpose of the dredging was to maintain the viability of the business. She said that Mr. Newell intends to service and repair powerboats ranging up to 57' in length with 4.5' drafts and sailboats with 6' keels. She explained that it was staff's understanding that vessels needing Mr. Newell's services will access the facility at high tide. She said that once these vessels are moored at the facility, however, there are inadequate depths to keep them off the bottom at low tide.

Ms. West explained that Mr. Pritchard, the former owner, may have obtained a permit from the Army Corps of Engineers in 1956 for dredging work adjacent to his facility. She said that the Joint Permit Application package submitted by Mr. Newell included two drawings labeled "Application by David A. Pritchard July 1956". She said an actual permit document was not provided and the drawing of the dredged area does not indicate the proposed depth.

Ms. West stated that in 1991, the City of Portsmouth submitted an application to develop a marina and dredge a 3,100-foot long channel to minus eight (-8) feet within Scotts Creek. She explained that as proposed, the channel would have connected to the Federal Project Channel at the mouth of Scotts Creek.

Ms. West said that the City did not obtain permits for the proposal. She said that conversations between staff and Ms. Stacy Porter, staff to the Portsmouth Wetlands Board, reveal that the City of Portsmouth does not intend to pursue the project further at this time.

Ms. West stated that there are no oyster ground leases near the facility.

Ms. West explained that the dredging would be conducted mechanically, with the dredged materials, comprised of silt and sand, being transported by barge to the Craney Island Rehandling Basin for disposal.

Ms. West said that both the rip rap and bulkhead portions of the proposal appear to be necessary and reasonable for the protection of the existing structures and upland. She said that staff had no issues or concerns regarding these portions of the proposed project. She said that staff was concerned, however, that the proposed dredging will not be tied into depths similar to that which are proposed.

Ms. West explained that The Virginia Institute of Marine Science (VIMS) has stated that the project warrants careful consideration. She said that their concerns center on the dredging to minus five (-5) and minus seven (-7) feet below MLW in an area where the controlling depths range between -1.7 feet and -2.5 feet below MLW. She explained that the dredged basins will not flush adequately and will most likely become a sink for organic materials. She said as a result, there was a potential for anoxic conditions to develop within the dredged basins. She said that the Virginia Institute of Marine Science recommends that the dredge depth not exceed 1 foot deeper than the surrounding controlling depths. She said that as an alternative, the applicant might consider dredging a channel to connect to the controlling depths of minus four feet (-4') or minus five feet (-5') below MLW and limiting the basin surrounding the facility to depths similar to the channel.

Ms. West explained that in order to avoid creating water circulation and flushing problems, the VMRC's Subaqueous Guidelines and Shoreline Development BMP's establishes that dredging small craft channels cannot be more than one-foot deeper than the adjacent natural water bodies depths and only as wide as necessary to safely navigate. She said that dredging to depths deeper than the additional one-foot would create stagnant conditions that can lead to lower oxygen levels, unpleasant odors, and degradation of local marine resources.

Ms. West said that staff had no concerns regarding the rip rap and bulkhead portions of the proposal. She explained that while staff understands Mr. Newell's desires to provide

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adequate depths for mooring of deeper draft vessels at his facility, it does not appear that the creek was capable of supporting Mr. Newell’s wishes without detrimental effects to water quality and the marine resources of Scotts Creek. She explained that staff recommended approval of the rip rap and bulkhead portions of the proposal and denial of the proposed dredged basin areas.

Associate Members Ballard and Jones returned to the meeting after the staff presentation.

Associate Member Garrison asked if this flushing problem was detrimental. Ms. West explained that the dredge area needs to connect to like depths that already exist. The way it was now proposed these would be just big holes.

Associate Member Williams stated that he was familiar with the operation that had been in this location for 40 years and what worked then doesn't work now. He said there needed to be more done to address storm water runoff. He said there was no sense in the rip rap and/or bulkhead if the could not get more depth than one foot. Associate Member Garrison also questioned the 1-foot depth. He said that the applicant's got to get the boats in. Associate Member Jones questioned if the concerns would be corrected if the dredged areas were connected to a deeper channel. Associate Member McLeskey said that the depth the applicant had would put him out of business. Ms. West explained to the board members that what was meant was 1 foot deeper than the controlling depths in the area, it was not limited to 1-foot depth.

Associate Member Birkett asked if the applicant was present.

Tom Langley of Langley and McDonald, an engineering firm and representing the applicant, was present and his comments are a part of the verbatim record. He explained that the operation was not being expanded, but the lack of depth was causing a hardship for meeting the applicant's current client demand.

Associate Member Birkett asked if anyone was present in opposition. No one was present opposing the project.

Associate Member Ballard asked if any crab potting or seafood harvest activity in the area. Ms. West stated that she had seen what she thought were crab pots.

Associate Member Birkett asked for a motion. **Associate Member McLeskey moved to approve the application as proposed. Associate Member Garrison seconded the motion and the motion carried.**

Royalties..(5,366 cu. yds. @\$0.45/cu. yd.).....	\$2,414.70
Permit Fee.....	\$100.00

Total.....\$2,514.70

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7. TANGIER OIL COMPANY, #01-0588, requests after-the-fact authorization to retain a 12-foot by 7-foot gas shed, a 14-foot extension to the new fuel pier, and to retain the old fuel pier which was to be removed along Mail Boat Harbor in the Town of Tangier.

Hank Badger, Environmental Engineer, gave the presentation with slides.

Mr. Badger explained that in 1997, the Commission authorized Tangier Oil Company to construct at their existing facility along Tangier Creek in Accomack County: a 12-foot by 90-foot, open-pile, timber fuel dock; install and backfill 45 linear feet of bulkhead that is a maximum of two feet channel-ward of the deteriorating bulkhead; and to dredge by clamshell method approximately 24 cubic yards of bottom material that would facilitate construction access.

Mr. Badger said that on June 2, 2000, staff conducted a routine compliance inspection of the permitted project and determined that the bulkhead and dredging were in compliance with the VMRC permit. He explained that it was found upon inspection that the commercial gas pier was 104 foot long by 12 foot wide, encroaching 14 feet more than permitted on State subaqueous bottom. He said that the Staff also noted that a 12 foot by 7 foot gas shed had been built on the pier and that the old gas pier had not been removed as shown on the permit drawings.

Mr. Badger explained that a Notice to Comply was issued to Tangier Oil Company in July, 2000. He said that the notice directed removal of the illegal structures and restoration of the area to pre-existing conditions within 30 days. He stated that since Mr. Rudy Thomas, Jr., agent for Tangier Oil Company, indicated to staff that he would like the Marine Resources Commission to consider an after-the-fact application, he said staff agreed to withhold further enforcement in abeyance, pending submittal of a permit application within 15 days and Commission action on his application.

Mr. Badger stated that on April 2, 2001, a Joint Permit Application was received from Tangier Oil Company requesting permission to retain the 14-foot commercial pier extension and gas shed. He said that in addition, the applicant requested authorization to retain the old gas pier and shed for additional boat dockage.

Mr. Badger said that Mr. Thomas indicated Tangier Oil Company was unaware the pier was longer than authorized and the gas shed was an oversight on their part. He explained that while they originally intended to remove the old pier and shed, they decided to keep the pier when their boating needs changed.

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Mr. Badger said that the Virginia Institute of Marine Science had indicated that the individual and cumulative adverse impacts resulting from this activity will be minimal.

Mr. Badger stated that the Virginia Health Department had granted a variance for five years, with four conditions. He explained that the variance also allowed for the omission of the required number of onshore sanitary facilities at the piers.

Mr. Badger said that the U.S. Army Corps of Engineers issued a Regional Permit 97-RP-19 for the project and the Department of Environmental Quality has stated that the project will not require a Virginia Water Protection Permit.

Mr. Badger stated that the project was not protested, and no other State agencies have commented on the proposal.

Mr. Badger explained that while staff believes Tangier Oil Company was certainly in violation for not obtaining proper authorization for the structures, had the original Joint Permit Application included the pier extension and gas shed as required, the pier and gas shed would most likely have been permitted as proposed.

Mr. Badger said that staff recommended approval of the 14-foot pier extension; the 12-foot by 7-foot gas shed, and the applicant's request to retain the old gas pier and shed for additional boat dockage. In light of the after-the-fact nature of the request, however, staff also recommended the assessment of triple permit fees as provided by 28.2-1205 (D) of the Code of Virginia and a royalty of \$168.00 for the additional encroachment over 168 square feet of State-owned submerged land at the rate of \$1.00 per square foot.

Mr. Badger stated that the staff also believed a civil charge may be appropriate in lieu of further enforcement action. He said when questioned about the royalty fee by Mr. Williams that staff recommended \$1.00/square foot.

Commissioner Pruitt asked if there were any questions. **After some discussion, Associate Member Garrison made the motion to approve with triple fees. Association McLeskey seconded the motion. And the motion carried with Associate Member Ballard voting no.**

Royalties (168 Sq. Ft. @\$1.00/sq. ft.).....	\$168.00
Permit Fee.....	\$75.00
Total.....	\$243.00

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8. ROBERT S. HUMPHRIES, #02-1556, requests after-the-fact authorization to retain 115 linear feet of replacement vinyl bulkhead, aligned a maximum of two (2) feet channel-ward of a deteriorated wooden bulkhead. He explained that the request also included authorization to construct an additional 110 linear feet of replacement bulkhead adjacent to his property situated along Meachim Creek in Middlesex County.

Chip Neikirk, Environmental Engineer, gave the presentation with slides.

Mr. Neikirk explained that Mr. Humphrie's property was situated along the southernmost branch of Meachim Creek in Middlesex County. He further explained that the creek was approximately 400 feet wide at the project site and that development along Meachim Creek was primarily residential.

Mr. Neikirk stated that Mr. Humphries was requesting authorization to retain 115 linear feet of replacement vinyl bulkhead and to install an additional 110 feet of replacement bulkhead attached to the channelward side of a deteriorated wooden bulkhead. He said that the total encroachment of the replacement bulkhead was not designed to exceed two feet.

Mr. Neikirk said that Mr. Humphries had stated that he constructed the initial 115 feet of work by himself and, if authorized, he intended to complete the project himself. He said that apparently no contractor or agent had been involved with the project.

Mr. Neikirk explained that Mr. Humphries had submitted an application to construct the bulkhead on August 7, 2002. He said that while conducting a routine site visit on August 30, 2002, staff noted that approximately 115' of the replacement bulkhead had recently been constructed. He said that a Sworn Complaint was prepared on September 6, 2002, and a Notice to Comply was sent to Mr. Humphries on the same day. He explained that the Notice to Comply directed Mr. Humphries to either remove the structure or request after-the-fact authorization to retain it. He stated that similar notices regarding the violation were sent by the Middlesex County Wetlands Board.

Mr. Neikirk said that staff had spoken with Mr. Humphries on several occasions since first noting the violation. He said that Mr. Humphries had been very apologetic and stated he was confused by the permit process. He said that Mr. Humphries had been very willing to cooperate and was anxious to have this matter resolved.

He explained that after submitting his application, Mr. Humphries stated that he spoke to Mr. Jordan, staff for the Middlesex County Wetlands Board, and was told that if there were no wetlands channel-ward of the existing bulkhead, that a Wetlands Permit would not be required. He said that also, Mr. Humphries was apparently somewhat aware of the

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Corps of Engineers' Regional Permit, which allows replacement of a bulkhead within two feet of a deteriorated bulkhead.

Mr. Neikirk said that although a condition of the Corp' Regional Permit requires the applicant to receive either a VMRC or Wetlands Permit, Mr. Humphries was apparently unaware that a VMRC permit was required. He said that in addition, during staff's site visit on August 30, 2002, Mr. Jordan determined that the return wall which was for the replacement bulkhead, which was a portion of the completed work, was within the Wetlands Board's jurisdiction.

Mr. Neikirk said that since only a small portion of the bulkhead return was in the Wetland Board's jurisdiction, Mr. Humphries decided to remove that section of the bulkhead and await issuance of their permit. He said that by Mr. Humphries doing this, he had restored the wetlands and avoided after-the-fact Wetlands Board fees and a possible civil charge. He said that the Middlesex County Wetlands Board approved the matter during their November 5, 2002, public hearing.

Mr. Neikirk explained that the bulkhead did not encroach over any public or privately leased oyster ground and none of the neighbors or the general public had objected to the project.

Mr. Neikirk explained that the Virginia Institute of Marine Science stated that the individual and cumulative adverse impacts resulting from the activity were minimal. He also said that no other state agencies had commented on the project.

Mr. Neikirk explained that the environmental impacts associated with this project were minimal and staff generally recommends approval of replacement bulkheads constructed within two feet of deteriorating bulkheads. He said that although staff was always concerned with violations, in this case they believed the applicant was confused and was not attempting to circumvent the permit review process. He also said that had Mr. Humphries been fully aware of the process, it was unlikely he would have submitted the application and then subsequently begun construction, knowing that site visits would be conducted by the various agencies involved. He explained that we obviously would have been very concerned had an agent or contractor been involved.

Mr. Neikirk explained that staff recommended approval of the after-the-fact request with the assessment of triple permit fees and royalties as provided by 28.2-1206(D) of the Virginia Code.

Associate Member Garrison asked if applicant was applying for the rest of the wall. Mr. Neikirk responded yes.

Robert Humphries, applicant, was present and his comments are a part of the verbatim

record. Mr. Humphries said he couldn't add any more to what Mr. Neikirk had said. Associate Member Williams stated that the applicant was known to him and was a good citizen.

Associate Member Birkett asked if there was any opposition. No one was present opposed to the project. He then asked for a motion from the board.

Associate Garrison made the motion to accept staff recommendation with the triple permit fee. Associate Member McLeskey seconded the motion and the motion carried.

Associate Member Garrison said that staff should be instructed to tell Wetlands Board that they are not the end of the process. He further stated that one more letter would be cheaper than having these continued hearings.

Royalties (After-the-fact triple royalty fees).....	\$225.00
Permit Fee (After the fact triple permit fee assessment)...	\$75.00
Total.....	\$300.00

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9. ATTACK PROPERTIES, #02-0441, requests authorization to construct a community boat ramp 16 feet in width, extending approximately 12 feet channel ward of mean low water, adjacent to their property situated along the Rappahannock River in Richmond County. The ramp was for the private use of a new six-(6) lot subdivision. Adjacent property owners are protesting the project.

Mark Eversole, Environmental Engineer, gave the presentation with slides.

Mr. Eversole explained that the project was located approximately four (4) miles south of the Town of Warsaw, in a primarily agricultural portion of Richmond County. He said that this subdivision of property from a large waterfront farm tract was typical of the development of land for residential use in the area, as the Northern Neck continues to experience rapid growth and development.

Mr. Eversole explained that in this case, Attack Properties was developing a 6-lot "family" subdivision along a 1,500 linear-foot stretch of waterfront property. He said that a part of the subdivision plan was a timber bulkhead with rip rap scour protection, bank grading and stabilization, and a boat ramp for use by the 6 lot owners.

Mr. Eversole said the application was received on March 12, 2002. Adjacent property owners were notified and a public notice was placed in the Rappahannock Times, a newspaper having general circulation in the project area. He said that a letter of protest was

received from Mr. Oscar Delano, a property owner immediately to the west of the proposed boat ramp. He explained that Mr. Delano's opposition centers on the use of the boat ramp. He stated that apparently Mr. Delano and several other area property owners have shared the use of the ramp with the previous owner of the Attack property. He said that while the bulk of the ramp was located on the Attack property, a small upland corner extends onto Mr. Delano's lot.

Mr. Eversole said in his letters, dated April 1 and June 29, 2002, Mr. Delano had expressed a desire to work out a compromise with representatives of Attack Properties, concerning easements and continued use of the ramp. He said both the applicant and their agent were made aware of Mr. Delano's objection, and have attempted, albeit unsuccessfully, to resolve the "use" issue.

Mr. Eversole explained that the Army Corps of Engineers, as well as the Departments of Conservation and Recreation, and Health (Wastewater Engineering) had all stated that the project was acceptable. He said that the Virginia Institute of Marine Science Shoreline Permit Application Report states that the project should have minimal impact.

The Richmond County Wetlands Board approved the proposal on April 25, 2002.

Mr. Eversole explained that when reviewing proposals to build over State-owned submerged lands, the Commission's Subaqueous Guidelines direct staff to consider, among other things, the water dependency and the necessity for the proposed structure. In this case, the proposal would replace an aging wooden ramp with a more durable concrete ramp. He said that impacts to wetlands and State-owned submerged lands related to this project were minimal and temporary in nature, and a local wetlands permit had been obtained.

Mr. Eversole further explained that it appeared from the drawings provided, that the bulk of the existing ramp was contained within the Attack Property and that access to the ramp would be an issue whether a replacement ramp was constructed or not. He stated that these types of upland land use issues are not within the jurisdiction of the Marine Resources Commission, and must be resolved by the property owners.

Mr. Eversole said that staff recommended approval of the project finding that its public and private benefits outweighed any potential public or private detriments.

Carl Josephson, Counsel for the Commission asked if the new ramp was right next to the old ramp and not a replacement. Mr. Eversole responded yes.

Associate Member Ballard asked if the only objection was if the ramp was not available for use by the adjoining property owners as in the past. Mr. Eversole stated yes and the two parties were close to an agreement.

Philip Parker, Vice President for Attack Properties was present and his comments are a part of the verbatim record. He stated that the deed of easement was the holdup, which was not feasible, but they have told the parties that they are welcome to use the boat ramp as in the past and that Attack just wanted to be a good neighbor. He said they do not want an encumbrance on the title with a recorded easement.

Darlene Delano, adjoining property owner and protestant, was present and her comments are a part of the verbatim record. She stated that there was not a lot of notice given for this meeting and she did not feel prepared. She said that if the old ramp, which they add been allowed to utilize, was to be removed, they just wanted access to use the new ramp. She explained that they had not been able to reach the applicant and that they want a signed agreement recorded at the courthouse. She said that Oscar, Harold, and Edward Delano were also concerned parties.

Associate Member Birkett asked if there was anyone else wishing to speak. No one else wanted to speak.

Associate Member Gordy asked if the ramp could be removed off their property. Mr. Parker responded that it was not on their property. Associate Member Gordy asked to be shown the slide of the boat ramp.

Associated member McLeskey questioned whether the applicant had considered improving the existing ramp. Mr. Parker said they had considered that but decided it was not viable to encroach on Delano property.

Associate Member Birkett stated that it was more of a civil matter than VMRC since the new ramp was on the applicant's property. Mr. Birkett asked for a motion. **Associate Member Gordy moved to approve the application. Associate Member Ballard seconded the motion and the motion carried. Associate Member Williams asked what will happen to the old ramp. Carl Josephson stated that it was a highland issue, the board was only approving the subaqueous encroachment.**

Royalties.....	\$43.00
Permit Fee.....	\$100.00
Total.....	\$143.00

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Associate Member Cowart arrived at the meeting and Commissioner Pruitt returned to the meeting.

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10. ARMY CORPS OF ENGINEERS, #02-1648, requests authorization to place up to 200,000 cubic yards of dredged material from the maintenance of Sloop Channel and North Channel, part of the WCV, in Accomack County, upon two previously used spoil sites in Hog Island Bay. Wetlands and Subaqueous permits are required.

Hank Badger, Environmental Engineer, gave the presentation with slides.

Mr. Badger stated that Sloop Channel and North Channel were part of the Waterway on the Coast of Virginia (WVC) and required maintenance dredging approximately every two to three years. He said that these particular overboard spoil sites had been used since 1957. He also said that as a result of the overboard disposal, the site north of the intersection of Great Machipongo and North Channels had become partially intertidal. He explained that the spoil site adjacent to State-owned marsh northwest of Cunjer Channel in Public Ground 66 had become partially vegetated.

Mr. Badger said that in the year 2003, the Corps intends to place approximately 200,000 cubic yards of maintenance dredged material within the two sites. He explained that the elevation of the spoil areas would be raised no higher than two feet above mean low water or the adjacent marsh.

Mr. Badger stated 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 required a permit. He said that a permit was issued by for this project by the Commission in 1992 and extended in 1997. It expired in 2002.

Mr. Badger explained that since a portion of the non-vegetated wetlands involved in the project were 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 said that Commission staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers, on Wednesday, October 30, 2002, to accept public comments on the project. He said that four Army Corps representatives, a representative for the County Wetlands Board and one nearby property owner attended the hearing. He stated that no public opposition had been received on this project to date. He explained that the Virginia Institute Of Marine Science had indicated that the individual and cumulative adverse environmental impacts resulting from this activity, although substantial, are temporary and subject to re-colonization by the adjacent benthic community. He also said that the disposal areas had been used during previous dredging cycles and no less damaging placement alternatives had been identified in the environmental review process.

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Mr. Badger stated that no State agency had expressed any opposition to the project. Mr. Badger stated that since the proposed sites had been used in the past and since it does not appear that the continued use of the site will result in any significant impacts, staff recommended approval of the project. He said that staff further recommended that the applicant be required to submit post-dredging bathymetric and cross-sectional surveys and that the elevation of the dredged material not exceed two feet above mean low water or the adjacent marsh.

Corps of Engineers representative stated that the staff had covered the matter and they had no further comments.

There was no one in opposition to the project.

Associate Member McLeskey made the motion to accept staff recommendations. Associate Member Gordy seconded the motion and the motion carried.

Permit Fee.....\$100.00

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11. ARMY CORPS OF ENGINEERS, #02-0523, requests a modification to their previously issued permit to allow for the use of a side-cast dredge to remove a shoal in the entrance channel portion of the Rudee Inlet Federal Project Channel in the City of Virginia Beach.

Randy Owen, Environmental Engineer, gave the presentation with slides.

Mr. Owen explained that the project was located at Rudee Inlet along the Atlantic Ocean in Virginia Beach. The entrance channel, which was subject to continuous shoaling, was authorized by Section 107 of the Rivers and Harbors Act to a design depth of ten feet (10') with an allowable two-foot (2') over dredge.

Mr. Owen stated that the Commission would recall that the board recently authorized, at its September 2002 meeting, the annual placement of 150,000 cubic yards of the sandy material dredged from this channel on the downdrift beach immediately north of the north jetty. At the October 2002, meeting, The Commission additionally approved the Corps' request for a four-foot (4') overdredge tolerance in the entrance channel to combat the high shoaling rates. He further stated that additional material would also be hydraulically pumped to the beach.

Mr. Owen explained that on November 8, 2002, the Corps advised staff that a portion of the entrance channel had recently shoaled to approximately three and one-half feet (3.5'). He said that the Corps had requested emergency authorization to use a sidecast dredge to remove

the shoal.

Mr. Owen said that the City of Virginia Beach routinely maintains the inner harbor, sand trap and portions of the entrance channel with its river class cutterhead dredge. He said the dredge could not normally be used outside the protection of the stone jetties because of heavy seas.

Mr. Owen explained that in 1997 the Commission authorized the *Currituck*, a Corps hopper dredge, to dredge the entrance channel and deposit the material within 500 feet of the mean high water shoreline. He further explained that this modification was in keeping with the Code mandate contained in Section 10.1-704, which requires that sandy dredge material be placed on Commonwealth beaches as beach nourishment. The 500-foot condition was necessitated by the fact that the Corps hopper dredge could not get any closer to shore than that.

The *Currituck* was not available at this time. Instead, a sidecast dredge, if allowed, could be moved from Wilmington, North Carolina to Rudee Inlet to remove the shoal. He explained that in keeping with its name, a sidecast dredge would only be able to deposit the dredged material 120 feet on either side of the channel.

On November 20, 2002, staff had learned that the Norfolk District was pursuing emergency authorization to use the sidecast dredge from its North Atlantic Division (NAD) office in New York without Commission approval. He explained that if authorized by NAD, the *Merritt* or the *Fry*, could arrive as early as Friday, November 22, 2002. He said that it was anticipated that the dredge would immediately begin removing the shoal and continue with 24 hours shifts until the channel had been cleared. As part of their emergency request, the Corps had been unsuccessful in locating a commercial dredge that could remove the shoal within the time frame and budget allocated for the *Merritt* or *Fry*.

Mr. Owen said in addition, staff had learned that the City's dredge had managed to remove a portion of the shoal. He said that it began working at approximately 6 p. m. Tuesday night (November 19, 2002) and would continue to dredge at the mouth with 24 hour shifts, weather permitting. He stated that the City advised staff that the dredge could not safely reach the most offshore component of the shoal. He said that as a result, the Corps request remained before the Commission.

Mr. Owen said that in light of the Corps' intent to proceed without Commission authorization, staff would provide a verbal update on the status of the shoal removal during its brief on November 26, 2002.

Mr. Owen explained that VIMS had stated that while the use of a sidecast dredge was not the preferred method for disposal of the material, they believed that the adverse impacts to the marine environment would be short-term. He said that accordingly, they had no objections to

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the Corps' request.

Mr. Owen explained that while staff recognized the urgency of this request, staff believed that the use of a sidecast dredge for this channel would be inconsistent with the mandate provided in Virginia Code Section 10.1-704. He said that staff further believed that the subject dredge's inability to place the material no more than 120 feet from the channel would do little to abate the shoal given on-site conditions and would only be a short-term temporary solution to the problem, at best. He said that in fact, it might actually accelerate the need for future emergency measures as the material, since it was to be placed on either side of the channel, could be expected to fill back in under either northeast or southeast wind conditions.

As a result, staff recommended denial of the request as proposed. He said that the current permit requires the direct placement of the material on the beach. He said this could be accomplished in part by the City's dredge and a commercial contractor. He stated that in addition, the Corps might be able to employ booster pumps to assist in beach placement of the dredged material.

Mr. Owens stated that the Corp of Engineers had requested that the matter be removed from the agenda, but staff had determined that it was under the jurisdiction of the Commission and that was why the matter was before the board today.

No one was present from the Corps of Engineers. No one was present to speak either for or against the application.

Associate Member McLeskey stated that he believed the Corps of Engineers had acted correctly because the situation was dangerous and he commended them for their action. He said that the city had been negligent in not maintaining this inlet in the past. He further recommended that no further enforcement action be taken. Associate Member Williams said he concurred with Mr. McLeskey.

Commissioner Pruitt stated that if the Commission concurred that no enforcement action be taken then a motion was not necessary. He did say that he wanted staff to get with the City and Corps of Engineers to decide on a long range plan for the future.

Commissioner Pruitt after returning back from a 5-minute recess, explained to the board members that a motion was needed for the modification requested for the Corps of Engineers' project. Associate Member Jones moved to reconsider and approve a one-time modification to authorize the use of the sidecast dredge. Associate Member McLeskey seconded the motion. The motion carried.

Royalties/Permit Fee.....not applicable

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12. PUBLIC COMMENTS:

Request by Tangier Waterman to have the weight limit for the standard oyster dredge increased from 100 lbs. to 150 lbs. by emergency action.

Dan Dise, Tangier Watermen, representing the watermen of Tangier, that the weight of the oyster dredge needed to be increased for the following reasons:

1. Keep dredge on bottom at 25-40' depths and along the channel at 70' depth.
2. Post rigged need more braces and more weights.
3. Gaff rig use plastic rope, which does not add weight.
4. Need to change to 150 lbs. because too many existing dredges weigh more than 100 lbs. (average about 135 lbs.)

Mr. Dise's comments are a part of the verbatim record.

Jack Travelstead, Chief-Fisheries Management, explained the existing restrictions.

Associate Member Williams stated that when weights were discussed at the Hand Scrape Committee meeting where it was noted that the weights were need to keep the dredge from bouncing on the bottom.

Steve Bowman, Chief-Law Enforcement, stated that dimensions were easier to enforce than weight. He said that Law Enforcement had weighed the Tangier dredges just yesterday.

Commissioner Pruitt said the request was for a 50 pound increase and asked for a motion.

Associate Member Williams moved to increase the weight limit from 100 lbs. to 150 lbs. Associate Member Garrison seconded the motion. The motion carried.

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Discussion on Temples Bay area description, replenishment activities and reasons for keeping that area below the bridge to the mouth of the Rappahannock River closed to the harvesting of oysters.

George Washington, President of the Working Watermen Association in Northern Neck area, stated that the Temples Bay area had been redefined by the VMRC Staff.

David Bleeker, Rappahannock River Oyster Harvester, asked numerous questions of staff:

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1. What was the reason for closing Stingray Pt. upriver to the bridge?
2. Is harvesting harming the resource?
3. It has been closed for 12 years. Has there been any improvement noted?
4. How does it help to close?

Mr. Bleeker also stated that the Commission needed to tighten the reporting of harvest rock and number of vessels working. Mr. Bleeker's comments are a part of the verbatim record.

James Wesson, Head-Conservation and Replenishment, commented that the original proposal was to open areas above the bridge and to keep areas below the bridge closed. He further explained that the closures are necessary to determine their long term benefits.

Commissioner Pruitt stated that Mr. Wesson only made recommendations to the board and the Commission made the decisions.

Associate Member Cowart stated he supported the closure of the mouth of the Rappahannock River because you cannot see effects of a closure, unless you can compare the open areas with the closed areas. He said that scientist need this kind of information.

Associate Member Garrison asked if turning would help the public oyster grounds? Mr. Wesson explained that before Mr. Garrison came onto the board a big effort at oyster restoration had been done in the Rappahannock River.

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Associate Member Garrison brought to the attention of the Commission the following issues for discussion.

1. The matter of menhaden purse seining in the Rappahannock River and the conflicts with recreational fishery.

Susan Gaston, Omega Industries, was present and her comments are a part of the verbatim record. She explained that efforts are still being done to resolve issues between Mr. Garrison and the purse seine fishery

2. Media made such a big deal of the striped bass lesions that its affecting the recreational charter boat industry causing them to lose customers.

Dr. Eugene Bureson, VIMS representative, said VIMS was preparing a Facts Sheet and it will say that the lesions do not cause human health risk by consumption. He explained that it would let people know that handling the fish may cause fish handler's disease and handling needs to be minimal and done carefully. He said VIMS could issue a Press Release. Dr.

Burreson's comments are a part of the verbatim record.

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13. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass," to allocate the coastal striped bass fishery quota.

Rob O'Reilly, Deputy Chief-Fisheries Management, gave the presentation with slides and handouts. He said the ASMFC has raised the quota from 98,000 lbs. to 129,000 lbs. He reviewed the options for allocation of the quota, which were as follows:

1) Allocate the 129,000-pound Coastal quota among the current Chesapeake System Striped Bass ITQ Holders (523 as of February 1, 2002), such that each ITQ holder would receive approximately 16 additional tags.

FMAC supported this option by a narrow voting margin, and some members said they only supported the option, for the basis of letting the public review it. This option, if implemented, would likely result in un-used Coastal area quota and provides no means for traditional Coastal area fishermen to continue harvesting Coastal area striped bass. Some harvesters have harvested striped bass from coastal waters for decades and would need to go to great lengths to harvest within the Chesapeake System. Importantly, each Chesapeake System ITQ holder will receive the equivalent of 16 extra tags in 2003, as 8,085 tags will be surrendered by those fishermen who opt in to the Coastal area fishery. The total number of tags (8,085) were calculated based on recent average weight data of coastal harvests of striped bass, as described in draft Regulation 4 VAC 20-252-150 D.

2) Allocate the 129,000-pound Coastal Area quota only among recent Coastal Area harvesters. There were 177 fishermen who harvested from the Coastal Area during either 2001 or 2002. This option would provide roughly 34 tags to each of the 177 current Chesapeake System Striped Bass ITQ holders.

Throughout the FMAC meetings in 2002, this option never garnered any support. In contrast, there were several members who pointed to the expansive recent Coastal area striped bass harvests as having a detrimental effect on the number of allocated Chesapeake System tags in recent years. The excessive harvests of ocean striped bass in recent years (1998-2002) resulted in the ASMFC decision to disallow our single quota system.

3) Allocate the 129,000-pound Coastal Area quota only among Coastal Area harvesters who have a history of harvesting from the Coastal Area during any three years, from 1993 through 1997. Under this option, 22 current Chesapeake System Striped Bass ITQ holders would receive 278 tags each for harvesting Coastal Area striped bass.

This option and Option 4, shown below, were the preferred options of the FMAC. In August 2002 the FMAC voted unanimously to support Options 3 and 4 and allow staff to work out the details of establishing participation guidelines, based on those two options. Table 1 provides a summary of these two allocation options, based on how each option (3 and 4) affects participation in the Coastal area fishery.

4) Allocate the 129,000-pound Coastal Area quota only among recent (2001-2002) Coastal Area harvesters who also have a history of harvesting striped bass from the Coastal Area during any 3 years from 1993-1997. This option provides 340 tags to each of 18 eligible current Chesapeake System Striped Bass ITQ holders.

Mr. O'Reilly explained that options 3 and 4 were based on the premise that historical participation was a legitimate criterion for establishing a limited access fishery, in accordance with Section 28.2-204.1 B of the Code of Virginia. There were several reasons why the years of 1993-97 were chosen as an historical basis for the Coastal area striped bass fishery. First, 1993 coincides with the onset of limited entry and was a valid starting point for historical participation. Fishermen who held a 1993 permit had been subjected to limiting criteria during 1992 that included a stipulation that 50% of an applicant's earned income must have been derived from fishing activities.

Mr. O'Reilly stated that of the current 500+ Chesapeake System ITQ tag holders, only 78 harvested striped bass from the coastal area during one or more years, from 1993-97. However, greater than 70% of these fishermen only harvested from this area during one or two years of the 1993-97 period and more than one-half of those fishermen harvested very few fish from the coastal area, indicating most of their tags were used in the Chesapeake Bay and its tributaries. For these reasons, a 3 of 5-year (1993-97) participation requirement was recommended by staff, and most FMAC members supported this basis for allocation.

Mr. O'Reilly said that compared to Option 4 which would allow 18 fishermen to participate in the 2003 Coastal area fishery, 22 fishermen would receive Coastal area tags in 2003, under Option 3, including the 18 who would be eligible for Coastal area classified under Option 4. Staff recommends providing tags to those fishermen eligible according to the provisions of Option 4 because they not only harvested 3 years of the 5-year "historical" period, but also harvested striped bass from the Coastal area in recent years (2001 or 2002). The recent harvests indicate that these fishermen remain as directed Coastal area harvesters.

Mr. O'Reilly explained that staff recommends that current Chesapeake System ITQ holders 1 – 18 of Table 1 should be offered the initial opportunity to receive shares of the coastal quota, as described in draft Regulation 4 VAC 20-252-130 C. 1. Table 1 provides the method for allocating Coastal area tags to other fishermen, should any of the first 18 fishermen decline Coastal area quota. Each of 18 fishermen would receive 340 tags of the total quota (6119 tags). In turn, if an eligible fisherman accepts a share of the Coastal area quota, he would be

required to surrender an equivalent share of Chesapeake System ITQ.

Mr. O'Reilly said that staff had also devised an allocation strategy, for Option 3 (see Table 1, FMAC Allocation Options). Coastal Area striped bass tags would be offered, initially, to fishermen 1 – 22, and each Coastal area ITQ fisherman would receive 278 tags, in return for surrendering an equivalent share of his Chesapeake System ITQ.

Mr. O'Reilly said that staff expects that a very few harvesters will not want Coastal Area tags. In these cases, a sequence of alternate harvesters would be offered any remaining shares (tags) of the Coastal Area quota, as described in draft Regulation 4 VAC 20-252 C. 2.

For example, if tags remain after offering tags to the 18 harvesters who satisfy the criteria (green shaded area of Table 1), current Chesapeake System ITQ holders 23 - 35 (in that order) would be offered coastal quota. The order within this category, wherein all harvesters landed coastal striped bass during two years of the 1993-97 period and one year of the 2001-02 fisheries, was determined by the annual average harvest during the 5-year period, 1993-97.

Mr. O'Reilly said that concerning an appropriate trade-in ratio or how many Chesapeake tags must be turned in by current ITQ holders, in order to obtain a single tag for harvesting coastal striped bas, staff recommends a 1 share of Chesapeake ITQ:1 share of Coastal ITQ, as describe in draft Regulation 4 VAC 20-252-130 C. Initially, staff did not think any Chesapeake tags needed to be forfeited, in order for a relatively few traditional coastal harvesters to receive coastal quota, as this was essentially a new Virginia quota. However, FMAC, on several occasions, strongly supported a reciprocal process to govern the initial allocation of coastal tags.

Mr. O'Reilly said that reciprocity should be based on turning in 1 share of Chesapeake ITQ for 1 share of Coastal ITQ, as there was no reason to penalize coastal fisherman unnecessarily. For example, the average size of striped bass used to calculate a share of the coastal allotment of tags was much greater than the average size used for allocation of Chesapeake tags, yet some Chesapeake fishermen may harvest large or larger striped bass than some coastal fishermen, on average in 2003. After the initial allocation, this coastal quota will be available for transfers so some Chesapeake fishermen will also have an opportunity to gain coastal tags, without any payment of Chesapeake tags in return as described in draft Regulation. (Subsection 4 VAC 20-252-160 also specifies that transferred tag is only for use in the jurisdiction where the tags originated). Staff supports the FMAC recommendation that no individual should hold more than 11 percent of the Coastal area quota, as described in draft Regulation (Subdivision 4 VAC 20-252-160 B. 2).

Mr. O'Reilly discussed that although the current ASMFC-based quota for our coastal commercial striped bass fishery was established as 129,000 pounds, there are two opportunities for an increase in that quota. At present, the coastal quota was 53% of the 1972-79 coastal Virginia landings, yet other coastal states' commercial quotas may be set at 70% of landings from the 1972-79 period. The ASMFC was examining this apparent

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discrepancy, and we will have the ASMFC decision on this issue for your meeting. Additionally, Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass was scheduled for adoption by the ASMFC in mid-December, and this amendment contains several options for an increase in all Atlantic coastal commercial striped bass quotas.

Mr. O'Reilly said we have received only one written comment on this issue (see attached) and can only infer that the individual had been a Coastal harvester but does not satisfy the 3 of 5-year (1993-97) proposed requirement. During the FMAC proceedings some public comments indicated that there were watermen who began in the coastal fishery in 1996 or later. As shown above the Coastal harvest was nearly 166,000 pounds by 1996. Using that year or any subsequent year as part of an allocation strategy would result in small shares of the Coastal quota. There will be also be some who feel they should receive special consideration and be granted Coastal quota. For example, at the last FMAC meeting a hook and-line Chesapeake ITQ holder correctly stated that hook-and-line tags were not initiated until 1996, so he should receive Coastal area tags as an exception, since he had no hook and line ITQ in 1993-95. However, the striped bass fishery opened in 1990, and any commercial fisherman with any gear license was eligible at that time.

Mr. O'Reilly reviewed the proposed amendments to the regulation. He said throughout the regulation we have January 1, 2003 implementation date of the recommendation. He said the expectation is still to make this effective February 1, 2003. He explained that page two gives a new definition of Chesapeake area and that is for ease of discussing the fact that the Bay and its tributaries, as well as the Potomac and its tributaries are now all deemed the Chesapeake area. He said you need to look at page ten to see the substantial changes and explained them for the board.

Mr. O'Reilly said that the staff recommendation for Option 4 places the Coastal area harvester roughly on par with the Chesapeake ITQ holder, given the requirements of draft Regulation 4 VAC 20-252-10 Et Seq., outlined above. Conversely, any management strategy, such as Option 2, that provides few tags to many, does not efficient utilization of the Coastal area quota.

Mr. O'Reilly said that staff recommends that you adopt draft Regulation 4 VAC 20-252-10 Et Seq., as a permanent regulation, thereby, establishing 18 Coastal area commercial striped bass ITQ's for 2003, in accordance with Option 4.

Associate Member Cowart said he did not catch the bay tag and ocean tag reallocation. He asked if this was going to be done on a 1.6 or 1 to 1. Mr. O'Reilly said no that's being proposed to you on a 1 to 1. Associate Member Cowart said he understood what staff was recommending, but he didn't understand what ASMFC was going to do, will they accept the 1 to 1 change of that tag? Even tough the ocean fish are bigger? Mr. O'Reilly explained that it's really under our management and we still have 129,000 quota, which we have to adhere

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to, so there is no change there, its just a matter the initial start up.

Associate Member Garrison said he did not understand selling, loaning, or giving away of tags. Mr. O'Reilly responded ITQ is the best way to stay within the quota, but allows for the transfer of tags on a temporary or permanent basis, therefore, you broaden the amount of participation you have but also provide extra economics on the transfer of tags.

Commissioner Pruitt opened the public hearing at this point.

Tom Powers was present and comments are a part of the verbatim record. He explained he was not representing anyone but himself who serves on the FMAC. He said the basic issue was how to distribute the windfall. He explained that the second issue was how to issue the tags and issue of trade in. He said that the economics needs to be spread out over the whole fishery. He said the third issue is the number to be issued and with the increased quota there is a need to increase the 18 to 20 eligible individuals to a bigger number. He said the last issue was a concern on the shift of effort to larger fish in the Bay and there was a need to keep the pressure off the larger size fish.

Kelly Place, Commercial Waterman, was present and comments are a part of the verbatim record. He said that he agreed with Mr. Powers that the economics were not being properly addressed. He said that might want to consider going to 30 or 35 people that meet the criteria. Mr. Kelly's comments included a suggestion that because of the new data and another issue was due to come up the next meeting that could be considered together the matter should be tabled until the next meeting. He also stated that he and Mr. Burroughs wanted to suggest that a committee of fisherman be formed.

Joe DelCapo, Commercial Waterman, was present and comments are a part of the verbatim record. He said that the 1993 to 1997 is not fair. He said that right now he doesn't qualify according to the criteria. Letting 35 people into the fishery would be fairer. He asked that if the quota should increase in the future would it be spread among the 18 and not allow others to have some of that increased quota.

Warren Cosby, representative for Upper River Waterman Association and Croaker Landing Association. Mr. Cosby entered into the record signed petitions of individuals opposed to the proposed amended changes to VMRC Regulation 4VAC 20-252-10, et. seq., Pertaining to the Taking of Striped Bass, options 2, 3, and 4 on the Notice for Public Hearing at VMRC on Tuesday, November 26, 2002. The petitions further say that the undersigned support proposed amendment 1, to allocate the 98,000-pound Coastal Area quota among current Chesapeake System. Striped Bass ITQ holders, such that each ITQ holder would receive an equal number of additional tags. He read the following reasons stated in the petition:

1. A majority of the participants in the Ocean Fishery would be primarily from a small group of fishermen on the Eastern Shore of Virginia. This violates the standards set in Code

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Section 28.2-203 whereby fisheries managers are to be fair and equitable to all fishermen and implement regulations in a manner that no person acquires an excessive share of such privileges. A history of participation from 1993-1997 was not fair and reasonable. It was a selective standard favoring a small geographic group.

2. Code Section 28.2-204.1 enabling the Commission to limit entry in a fishery clearly states that the Commonwealth's management policy will be followed and economic and social consequences will be considered. Many fishermen will be negatively impacted both economically and socially.

3. Watermen have under the present ITQ system geared up through necessity, to fish in the ocean fishery. The present ITQ Program was promoted by VMRC, to encourage a free-enterprise system, so all commercially registered fishermen could have a chance to obtain Striped Bass Tags if they wanted to. The proposed options 2, 3, and 4 will be an economic burden and indefinitely remove all but a select few from the Ocean Striped Bass fishery. This was a shift in fishery management policy at VMRC, and goes against the original intent of the regulation.

4. The present Ocean quota of 98,000 pounds will serve to fulfill AMFC requirements and protect the resource from overfishing on large fish.

5. The ASMFC has released proposals to increase the Ocean Quota annually. Virginia Fisherman from all geographic areas should be able to participate in a recovered fishery.

Mr. Cosby says Mr. O'Reilly needs to clarify what has been discussed today. He felt that the Bay fisherman has been penalized. He said trading 1 Ocean for 1 Bay is crazy and unfair. He further stated that half the quota for the Bay have been lost to the Ocean fishery.

Chris Ludford, Commercial Waterman, was present and his comments are a part of the verbatim record. Mr Ludford stated that he supported option 3 and modify it to include 35 fishermen instead of the 18. He commented also that staff had worked hard with ASMFC and that the Commission had to follow ASMFC guidelines.

Walter Cole Burroughs, Commercial Waterman, was present and his comments are a part of the verbatim. Mr. Burroughs said these tags are wasting fish and that the board needs to go to poundage to be fair to all fishermen. He further stated that watermen need more protection than fish do.

Robert Hollowell, Commercial Waterman, was present and his comments are a part of the verbatim record. He said outside the demarcation line could be put in the federal quota separate from the State quota. He said that would give everybody up and down the east coast outside equal opportunity to catch them fish and the ones in the Bay the opportunity to catch

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them fish.

Charles Gant, Gillnet Fisherman, was present and his comments are a part of the verbatim record. He said he would appreciate getting some of the tags for the ocean, right now it looks like he was out of the fishery. He suggested that remove gill nets on the weekends to allow the recreational to catch fish.

Dan McCullough, Commercial Fisherman, was present and his comments are a part of the verbatim record. He said that need to use a container or scale and allow 200-300 lbs. per day in the ocean instead of limiting to 18-20 individuals. He said that need to spread it out among everyone. He also said that need to get the tags to the full-time fishermen not those that only fish part-time.

Tom Nickrett, Commercial Fisherman, was present and his comments are a part of the verbatim record. He said he had problem with 3 and 4. He explained that he bought most of his tags, that 70% of his fish caught came out of the ocean. He said why can't use ocean catch history should qualify an individual for being in the fishery.

J. C. West, Commercial Fisherman, was present and his comments are a part of the verbatim record. Mr. West stated that he was confused why so few people got into the fishery. Mr. O'Reilly explained data showing who met the criteria was derived from mandatory reporting. Mr. West commented that it was not fair to 508 if only 18-20 would be allowed into the fishery and there was a need to give everybody tags since there was 129,000 quota.

Ernest Bowden, Eastern Shore Working Watermen Association, was present and his comments are a part of the verbatim record. He said he more than qualifies for the ocean and bay fishery.

After hearing the staff presentation and public comments, Commissioner Pruitt closed the public hearing.

After further discussion, Associate Member Gordy moved to study information provided today and wait until next meeting to make a decision. Associate Member Birkett seconded the motion and the motion carried. Commissioner Pruitt explained that it's not a public hearing, everyone is welcome to come and listen, but its only a board deliberation. Mr. Place asked if written comments would be accepted and Commissioner Pruitt responded no the records are closed.

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14. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest," to improve the reporting of oyster harvests.

James Wesson, Head-Conservation and Replenishment, gave the presentation. He explained that the Commission upheld the revocation of the oyster dredge licenses as the penalty for failure to report oyster harvest and pay taxes in the Pocomoke-Tangier Sound Management Area (4VAC 20-720-80(C)). Following that action, Mr. Cowart suggested that we advertise a similar penalty for failure to report oyster harvest for the remainder of the State.

As background he explained the current system. He said that because we had a long standing system for reporting oyster catch and paying associated replenishment taxes, the reporting of oyster harvests was exempted from the Mandatory Reporting requirements in 4VAC 20-610-40(J) (Attachment 1). The reporting of oyster harvest was covered by its own regulation 4VAC 20-200-10 (Attachment 2) which refers to code sections 28.2-538 and 28.2-546 (Attachment 3). Oyster harvest reporting was more complicated because of the replenishment tax on all oysters from public grounds (\$0.05 - \$0.50/bushel) and the inspection tax (\$0.03/bushel) on all oysters from public and private grounds and for imported oysters. All oyster harvesting from state waters must be reported daily on Form MRC 53 (Attachment 4). For oyster harvests, this form satisfies the National Shellfish Sanitation Program (Attachment 5) and was generally filled out in triplicate by the buyer, with one copy each for the harvester, buyer, and MRC. The replenishment taxes for public grounds are paid based on this form. Inspection taxes are paid from a combination of the MRC 53 and MRC 55 forms. The MRC 55 form was used for dealer to dealer transaction records and for all imported oysters. Both of these forms are filled out on each transaction occurrence, which would be daily for the harvester. By code, on a bi-monthly basis, the MRC 53 and 55 tickets are summarized and tabulated into Form MRC 457 (Attachment 6), and taxes due are paid to a District Marine Police Officer. The replenishment tax was collected and deposited to the Special Public Oyster Rocks Replenishment Fund for oyster restoration and the inspection tax goes back to the State General Fund.

He said that the situation in the Pocomoke-Tangier Sound Management area requires the daily reporting and tax payment because almost all oysters harvested in that area are exported and sold in Maryland by the harvester. Code Section 28.2-546 (Attachment 3) requires that a harvester from public grounds must get a permit to carry oysters out of the Commonwealth and that all taxes are paid prior to leaving the State. Since intercepting this flow of oysters would be an extremely difficult burden for Law Enforcement, we have adopted this severe penalty (losing one's license for the season) to guarantee that as soon as the harvester returns to port in Virginia, that they report and pay their taxes on the harvest carried out of the State each day.

He commented that generally for harvest in the remainder of the State, watermen sell daily and receive a MRC 53 Form for their transaction. He stated that staff does not believe that such a serious penalty was warranted for these harvesters. However, for those harvesters who

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sell their catch directly to the public and not to a licensed Virginia Oyster Buyer, staff believes that adopting such a severe penalty for not reporting harvest may be needed. If a harvester sells directly, they are then responsible for all recordkeeping and tax payments. Product from these harvesters should be tagged on the water, daily records kept for all harvested amounts and the location of the harvest area, and taxes paid bi-monthly with Form MRC 53 and MRC 457. To sell to the public, the harvester was also required by the National Shellfish Sanitation Program to be a licensed, Certified Shellfish Shipper. The Virginia Division of Shellfish Sanitation was responsible for that certification. Currently we believe many of those harvesters who sell directly to the public do not report their harvest, pay taxes, nor are they Certified Shellfish Shippers

He emphasized that compliance with this reporting was critically important to Virginia for the National Shellfish Sanitation Program, the maintenance of complete harvest data, and the payment of replenishment taxes. Although this change could be made in 4VAC 20-720-10, as advertised, it seems most appropriate to strengthen the penalty in Regulation 4VAC 20-200-10.

He said that staff has prepared two versions of Subdivision 4VAC 20-720-80(E) for consideration. In Version 1, the last sentence in subdivision 4VAC 20-720-80(C) was simply moved to Subdivision E. In Version 2, the last sentence in Subdivision C would remain and Subdivision E would be added to focus on those harvesters that directly market their product to the public. And he said that staff recommends that the public hearing be held, but that 4VAC 20-720-10 remain unchanged to keep the reporting requirement severe only for the Pocomoke-Tangier Sound Management Area. Since most watermen who are marketing directly could not take the Certified Shellfish Shipper class immediately, staff would like to improve 4VAC 20-200-10 over the next several months, advertise and have a public hearing on those changes, and have that regulation be in effect prior to next year's public oyster season. In that way the self-marketers could be forewarned for a sufficient time period of the changes, and the severe penalty for not complying.

Associated Member Cowart said that his intent was to collect the taxes and get the harvest reported. He said the Potomac River Fisheries Commission has a fail proof system and explained that system. He said we want to improve our system and also make sure we are in compliance with FDA guidelines. **Commissioner Pruitt concurred with Mr. Cowart that it be studied and made more equitable. He suggested that the Commission needed to have a study group to look at how best to handle the problem and the matter was tabled.**

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15. PUBLIC HEARING: Proposed amendments to Regulation 4 VAC 20-754-10 et seq., "Pertaining to Importation of Fish, Shellfish, or Crustacea," to establish requirements for the

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importation of hard clam seed from South Carolina and Florida. Jack Travelstead, Chief-Fisheries Management told the board that this was a continuation of amendments made last month. Commissioner Pruitt asked for staff's recommendation. Mr. Travelstead said staff was recommending that the amendments be made permanent.

Associate Member Garrison asked if this meant that clams would be accepted for importation from South Carolina and Florida? Commissioner Pruitt explained that yes, but a paper trailed would be maintained to assure that northern seed stock were being used.

Tommy Mason, Chincoteague Shellfish Importer, stated that he wanted to thank Commission for its 30-day emergency action taken last month and he hoped that this would be made permanent today. His comments are a part of the verbatim record.

Hank Jones, shellfish importer, commented that there was no opposition present and he supports the approval of this regulation. His comments are a part of the verbatim record.

There being no other comments, Commissioner Pruitt closed the public hearing and ask for a motion from the board. **Associate Member Jones made the motion to make the amendments to regulation 4VAC 20-754-10 permanent. Associate Member Gordy seconded the motion. Motion carried with Associate Member Ballard abstaining.**

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16. PUBLIC HEARING: Proposed amendments to Regulations 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass," to establish management measures and allocation of quota for the 2003 and 2004 commercial fisheries.

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

Mr. Travelstead explained that since 1996, the Black Sea Bass fishery has been managed jointly by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council. The fishery was conducted almost entirely in federal waters by three major gear types: trawls, pots, and rods-and-reels. Harvests by the three gear types in recent years was roughly equal, although historically trawlers accounted for almost all of the catch.

Mr. Travelstead said that from 1997 through 2002, the fishery has been managed under a coastwide harvest quota, which was divided into equal quarterly quotas. Each vessel permitted in the fishery was restricted to daily or weekly trip limits, which were lowered as the harvest approached the quarterly quota. The program was designed to allow commercial harvests to occur throughout the year without closures. Unfortunately, the plan rarely succeeded and, in fact, the fishery was often closed early in each quarter. Over the last three

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years, the fishery was closed 365 days.

Mr. Travelstead stated that in addition to the problem of significant closures, the ASMFC and MAFMC often struggled with the setting of trip limits, attempting to insure equity between the gear types and the states. To the north, sea bass occur much closer to shore (within 3 miles) while they occur 20-50 miles off of Virginia's coast. Thus, small trip limits were preferred by the northern states while larger daily limits were needed in the south to account for the significant per trip fuel costs.

Mr. Travelstead said that in response to these issues, the ASMFC and MAFMC adopted amendment 13 to the FMP to allocate the coastwide quota on a state-by-state basis. Under the agreement, Virginia received 20 percent of the coastwide quota, which will equate to 666,400 pounds in 2003.

Mr. Travelstead said that over the last three months, staff has worked with Virginia's sea bass fishermen to develop a regulatory framework for the Virginia fishery to operate under the 666,400 pound quota.

Mr. Travelstead explained the issues as shown in the evaluation and felt this would show the progression of where the staff derived the draft regulation. The issues were as follows: (various hand-outs that were tables with data were used during this discussion)

1. Open Entry versus Limited Entry

Today, 1472 fishermen have Black Sea Bass Moratorium Permits to harvest black sea bass from federal waters, and in an open entry fishery any of them could land sea bass in Virginia. An open entry system certainly would result in early closures of the fishery and cause significant economic impacts to those fishermen who have invested heavily and participated in a full time capacity in the fishery. With early closures, discards of bycatch would increase as well.

The ASMFC and MAFMC made the mistake of granting moratorium harvest permits to any vessel that had previously landed at least one pound of sea bass. As a result, the fishery was overcapitalized. Unless, Virginia takes action to limit entry into its fishery, our entire 666,400 pounds could be taken in short order. This results in early closures of the fishery and a loss of income for those who have traditionally participated in the fishery.

Limited entry to the fishery would offer some protection to those who are invested in the fishery and would reduce the overcapitalization that has occurred as the result of so many federal permits being issued. However, limiting entry to the 239 vessels that have landed Black Sea bass in Virginia over the last five years was not sufficient. Additional landing criteria are needed to reduce the number of participants to a level that can be supported by the

666,400 pound quota.

2. Appropriate criteria to limit entry.

Our industry group examined several types of criteria that could be used to limit entry to the Black Sea bass fishery. Examples centered around minimum total pounds landed over a specified time period and number of years in the fishery. Several levels of landings were examined: 1 pound, 2500 pounds, 5000 pounds and 11,000 pounds.

A five year time period (1997-2001) was used since it represents the most recent data available. Also, that time frame, specifically July 1, 1997-December 31, 2001 corresponds to the period when mandatory reporting of harvest was required by everyone in the fishery. In the last five years, over 3.6 million pounds of Black Sea bass have been landed in Virginia by 239 vessels. However, only 22 of those vessels landed more than 1 percent of the total landings. The top three vessels landed a combined total of 31 percent of the total landings. Additionally, 46 vessels landed at least 11,000 pounds or .03 percent of the total landings for the five year period.

Staff believes that 11,000 pounds was not a significant quantity of landings for a commercial vessel over a five year period, but it was a sufficient criteria to limit entry to the fishery to a reasonable number of vessels (46). Certainly, vessels landing less than 11,000 pounds over the five years could not be classified as full time sea bass fishermen, therefore the impact of their being excluded from a directed fishery for sea bass should be minimal.

Therefore, staff recommends using an 11,000 pound landing during the period July 1, 1997 through December 31, 2001, as the criteria for determining eligible participants in the directed fishery. Other eligibility criteria do not appear to be necessary since the exclusion of vessels can occur without them.

3. Individual Fishery Quotas vs. Trip Limits:

Upon limiting the directed fishery to 46 vessels (based upon an 11,000 pound landings history), distribution of the available quota to these fishermen in the form of individual fishery quotas would provide each fisherman with the maximum flexibility in the use of the quota. Under this scenario, each of the 46 vessels would be assigned a share of the quota based upon the vessel's harvest history from July 1, 1997 through December 31, 2001. Specifically, an individual vessel's share of the quota would be equal to the vessel's percentage of landings in Virginia during the five year period. Upon assignment of the individual share, the fisherman then can make his own business decisions about when to harvest and how quickly to use his own quota, without fear that the fishery would be closed because the state quota or a quarterly quota had been harvested.

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On the other hand, management of the fishery by quarterly quotas and weekly trip limits would continue to result in early closures of the fishery. This results in the same negative impacts seen over the last five years. From 1997-2001, an average 718 trips for sea bass were taken annually. With 46 vessels in the fishery, each vessel would get 15 trips during the year. To allow for more trips during the year, smaller than average trip limits would be needed, which was precisely what the industry wishes to avoid.

4. Need for a bycatch fishery:

Out of the 239 vessels that have landed at least one pound of sea bass in Virginia since 1997, 193 have landed less than 11,000 pounds and therefore would not qualify for a portion of the directed fishery quota. Each of these vessels had landed small quantities of sea bass that generally are bycatch in other fisheries. If a provision for this by-catch were not established, these sea bass would continue to be harvested, but then discarded at sea and wasted.

A portion of the 666,400 pound quota should be set aside for a by-catch fishery and should be made available to the 193 vessels that do not qualify for the directed fishery quota. Staff proposes that the by-catch quota be equal to the percentage of the historical landings by the 193 vessels (6%) multiplied by 666,400 pounds or about 40,000 pounds.

To ensure that boycott quota was available for as much of the fishing year as possible, staff recommends a 100 pound daily boycott trip limit be imposed for each vessel permitted in the boycott fishery. Larger trip limits have been suggested by some, but it must be understood that larger trip limits would result in early closure of the bycatch fishery.

5. Individual Quota Cap

Several members of the industry have recommended a cap on the quantity of black sea bass quota for the directed fishery any one person could hold. For example, the current striped bass ITQ program provides a two percent cap. That cap was created at a time when no person held more than 0.2 percent of the total quota. That cap was intended to prevent any person from gaining an excessive share of the striped bass quota through quota transfer from other fishermen.

Quota transfers are not proposed for the black sea bass fishery, therefore a cap was not needed for the purpose of preventing excessive shares by transfer.

Under the proposed IFQ, most of the quota would be held by 20 vessels. The top three vessels would each hold between 7-15 percent of the quota. The imposition of a cap less than 15 percent would appear to be arbitrary and capricious.

6. Databases:

NMFS uses both dealer based reports as well as vessel trip reports. Staff has noted differences between these sources of vessel landing histories which could affect the outcome of any IFQ based quota allocation program. Therefore, staff recommends the use of both databases to accommodate the best scenario for each fisherman. Staff also recommends that landing data in the NMFS databases as of November 26, 2002 should be final landings to be used when calculating the various quota allocation option. This control date would prevent additions to quota reports to alter a fisherman's percentage of the quota.

7. Quota Monitoring and Reporting Requirements:

Given the small quota available to Virginia and the nature of the fishery, monitoring of the harvests relative to the quota was imperative if overages are to be prevented. Under the FMP, any quota overage in 2003 would be deducted from the 2004 quota.

For proper monitoring, daily calls from permitted fishermen and maintenance of reports for buyers must be required.

Mr. Travelstead stated that staff recommends adoption of the attached draft regulation with an effective date of January 1, 2003.

Commissioner Pruitt opened the public hearing.

Waverly L. Berkley, III, Counsel for several Hook-n-line Fishermen, was present and his comments are a part of the verbatim record. Mr. Berkley commented that staff has done an excellent job, but not all of the plan was pleasing. He said the law requires that there must be equity among all user groups. He offered recommendations to allocate the quota more equitably.

Keith Aldridge, Commercial Fisherman, was present and his comments are a part of the verbatim record. Mr. Aldridge stated that since he's new to the fishery, he has no history to be allowed into the fishery. He stated that the system needs to be left the way it was. The 208 to 46 reduction was too much. He said he had done one thousand pounds last year part-time and this was to be his first year full-time.

Ray Trayford, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. Mr. Trayford stated he has a significant financial investment in a new boat and he won't be able to make it. He further stated that it was unconstitutional to do this to Sea Bass Fishermen.

William Keyes, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. He stated he has just made a big financial investment and just got a license.

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Jack Stalling, Sea Bass Fishermen, was present and his comments are a part of the verbatim record. Mr. Stallings commented on the various options and said he was in favor of limited entry and agreed with #'s 4, 6, 8 and 10. Considering catch from June 97 through Dec. 31, 2001 discriminates against Sea Bass Fisherman in the first 2 quarters by not using that catch data in the equation. He also stated that there are lots of landings on the list for fish that are now no longer the legal size, 11 inch.

Joe Wagner, Sea Bass Pot Fisherman, was present and his comments are a part of the verbatim record. He thanked everyone for their job, especially Jack, and that he had been to MAFC meeting and agreed with everything staff proposes. He said that quarterly system will not work and would still mean early closure of the fishery and be a derby fishery. He further stated that if could go back further than 97, he would have more catch than most of the other watermen.

Harry L. Doernte was present and his comments are a part of the verbatim record. He stated that more than historical criteria was needed and agreed with Jack Stallings. He also suggested that there was too much information to be absorbed and needed to study until the next meeting before making a decision.

Jim Dawson, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. Mr. Dawson stated that the federal figures are wrong and need to make sure numbers are right before distributed. He further commented that the quota system would not work for the full-time Sea Bass Fisherman. He also said that he agreed with IFQ, but check statistics first.

Joe Kelley, Chincoteague, Federal Water Fisherman, was present and his comments are a part of the verbatim record. He stated he had never had to be here before concerning state issues. He continued talking about the catch statistics and said the IFQ was designed to help the top vessels. He also said that the quota system was the best way to go. He commented that last year 60 percent of the catch were large or bigger. And he said that the 46 vessels should get the elevated poundage and to the rest make trip limits for 1/3 or 1/4 of the other vessels.

Mark Hodges, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. Mr. Hodges stated that he is a full-time Sea Bass Fisherman. He referred them to a letter he had sent and hoped had been included in the package. He said that he is in favor of ITQ system. He said it is not fair to limit him to the trip limits as he has a large investment in the fishery.

Jimmy Martin, Hook-n-line Fisherman, was present and his comments are a part of the verbatim record. He stated that he agreed with ITQ if the system was done fairly.

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David Portlock, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. He stated that he disagreed with the 11,000 trip limit and all should be treated fairly.

Kevin Southerly was present and his comments are a part of the verbatim record. He stated that should be quarterly quota and trip limits of 2,000-3,000 pounds.

Joe DiCapo was present and his comments are a part of the verbatim record. He stated he was in favor of a derby fishery and a cap put on vessels.

Rob Hollowell was present and his comments are a part of the verbatim record. He explained that he is long-time hook-n-line. He goes along with what Mr. Berkley and Mr. Doernte said.

There being no other comments forthcoming, Commissioner Pruitt closed the public hearing.

After further discussion, Commissioner Pruitt, after conferring with Counsel as to whether a motion was necessary, stated that the matter would be continued until the December meeting and no public comments would be heard.

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17. American Shad: Proposed 40 percent reduction in the 2003 coastal intercept fishery. Request for public hearing.

Rob O'Reilly, Deputy Chief-Fisheries Management, said that this is a request for public hearing. He said that staff is proposing to advertise a 168,000 pound quota for 2003, 2004 and that in keeping with this 40 percent reduction. He explained a number of options and ask to advertise options from an open entry fishery which would be the most lenient to option a strict limited entry option.

Associate Member Cowart said that Doug Jenkins wanted to include language about bycatch. Mr. O'Reilly said that the bycatch issued pertained to the Bay fishery. Associate Member Cowart asked how Mr. Jenkins' issue could be addressed. Mr. O'Reilly explained that John Onley from VIMS will address the FMAC in January on this matter and give them a status report on his findings. He said from there it's a matter of trying to come up with some kind of bycatch allowance and convincing ASMFC. He said it would be January before we have a straw plan for the board but first it must go before the ASMFC for concurrence.

Commissioner Pruitt asked for a motion.

After some discussion with staff, Association Member Cowart moved for a Public Hearing to be held at the December meeting. The motion was seconded by Associate Member

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Garrison. Motion carried.

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18. Red Drum: Establishment of 2003 possession and size limit restrictions. Request for public hearing.

Lewis Gillingham explained that is a request for public hearing in December and is a compliance issue with the ASMFC by January 1, 2003. Associate Member Garrison moved to approve the matter for Public Hearing at the December 17, 2002 board meeting. The motion was seconded by Associate Member Gordy. Motion carried.

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19. Tautog: Establishment of 2003 possession and size limit restrictions. Request for public hearing.

Lewis Gillingham, Fisheries Management Specialist, told the board that this matter had been pulled from the agenda for consideration at this meeting.

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20. Recommendations of the Recreational Fishing Advisory Board.

Cory Routh, Fisheries Management Specialist, was present and his comments are a part of the verbatim record.

Commissioner Pruitt ask for any comments regarding the matter before the board. There was no one present to comment from the public.

Associate Member Jones asked if it was okay that the Law Enforcement request was not fully funded. Colonel Steve Bowman, Chief-Law Enforcement, stated that it was fine, will just scale back the amount of purchases.

Associate Member Ballard asked about the boat ramp at Oyster having reduced funding and if that would be a problem. Mr. Routh stated the budget recommended would meet their needs.

Associate Member Garrison made the motion to accept staff recommendations. The motion was seconded by Associate Member Birkett and the motion carried.

RECOMMENDATIONS:

Multi-Year Projects for Renewal

- Approve A. 2003 Children's Fishing Clinic. Newport News Rotary Club & CCA, Rob Cowling. \$6,000. Voted unanimously to recommend funding.
- Approve B. 2003 Hampton Roads Kids Fishing Day. CCA, Bill Dieffenbach. \$6,000. Voted unanimously to recommend funding.
- Approve C. 2003 Virginia Game Fish Tagging Program. VMRC/VIMS, Claude Bain and John Lucy. \$45,365. Voted unanimously to recommend funding.

New Projects

- Removed D. Breast Cancer Recovery Through Saltwater Flyfishing. Casting for Recovery, Laura Wamhoff and Carol Stevenson. \$13,677.

REMOVED FROM CONSIDERATION BY APPLICANT.

- Approve E. Expansion and Rehabilitation of the Oyster Boat Ramp. Northampton County, Mark Cline. \$120,000. Voted unanimously to fund \$90,000 of the requested \$120,000. Upland project, no permit required.
- Approve F. Wishart's Point Landing. County of Accomack, Keith Bull. \$240,000. Voted unanimously to fund \$25,000 of the requested \$240,000 for an architectural/engineering study.
- Approve G. 2002 – 2003 vessel services for the VMRC Artificial Reef Program. Mike Meier. \$30,000. Voted unanimously to fund the requested amount of \$30,000 plus an additional \$16,100 to replace funding lost in the budget reduction. (total Funding \$46,100)
- Defer H. Little Island Fishing Pier Improvements. City of Virginia Beach, Brian Solis. \$291,000. Voted 4 to 3 to defer this project to the next funding cycle.
- Approve I. Undercover Law Enforcement Vehicles for the Virginia Marine Police – Special Investigative Unit. VMRC Marine Police. Col. Steve Bowman.

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\$60,000. Voted unanimously to fund \$40,000 of the requested \$60,000, and an additional \$12,500 for funding lost in the last budget reduction process.

Approve J. Challenger Youth Little League-fishing and Marine Biology Education.CCA. Richard Welton. \$2000. Voted unanimously to recommend funding.

Defer K. CCA/Virginia Beach Oyster Project. CCA. Richard Welton. \$2000. Voted unanimously to defer this project until the next funding cycle.

Deny L. Tale of the Striped Bass – The Species that Almost Got Away. VMSM Exhibit. Virginia Marine Science Museum. Alice Scanlan. \$97,000. Voted unanimously not to recommend funding.

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21. Discussion on the Oyster Hand Scrape and the report of Committee examining weight limits.

No action was taken on this matter by the board.

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22. Discussion on the report on status of Temples Bay oyster area.

Commissioner Pruitt asked for staff recommendations.

James Wesson, Head-Conservation and Replenishment said that this was not a biological matter, but rather a matter of having oysters for the harvesters to catch next year. He stated that staff recommends holding the southern (Temples Bay) side of the river closed for this year, and propose it be opened next year when the northern (Drumming Ground) side was closed.

Associate Member Williams stated that the map shows more than Temples Bay, which if you heard his motion in September it would show that he did not mean this area as shown on the map.

Jack Travelstead, Chief-Fisheries Management, stated that there was a misunderstanding regarding the matter of the area. He further stated that this could be open by emergency regulation and made effective tomorrow.

Associate Member Cowart made the motion to open the Temples Bay Hand Scrape area above the bridge for remainder of the season. The motion was seconded by Associate Member Williams. Motion carried.

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The Commission meeting adjourned at 7:00 p.m. .

William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary