

**MINUTES**

**MAY 22, 2001**  
**NEWPORT NEWS, VA 23601**

The regular Monthly meeting of the Marine Resources Commission was held on May 22, 2001 with the following present:

William A. Pruitt	)	Commissioner
C. Chadwick Ballard	)	
Gordon M. Birkett	)	
Lake Cowart, Jr.	)	Members of the Commission
Henry Lane Hull	)	
F. Wayne McLeskey	)	
John W. White	)	
Kenneth W. Williams	)	
Carl Josephson		Assistant Attorney General
Wilford Kale		Sr. Staff Adviser
Erik Barth		Head - MIS
Andy McNeil		Programmer Analyst Sr.
LaVerne Lewis		Commission Secretary
Bob Craft		Chief-Finance & Administration
Jane McCroskey		Deputy Chief-Finance & Administration
Debbie Brooks		Executive Secretary
Lewis Jones		Deputy Chief-Law Enforcement
Warner Rhodes		Middle Area Supervisor
Kenny Oliver		Southern Area Supervisor
Randy Widgeon		Eastern Shore Area Supervisor
Dan Eskridge		Nothern Area Shore Supervisor
Paul Newman		Marine Patrol Officer
Jeff Coston		Marine Patrol Officer

**VIRGINIA MARINE INSTITUTE OF SCIENCE**

Dr. Eugene Burreson  
 Lyle Varnell  
 Tom Barnard

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Walter Priest  
Dr. Bob Orth

Jack Travelstead  
Rob O'Reilly  
Roy Insley  
Lewis Gillingham  
Ellen Cosby  
Chad Boyce  
Cory Routh  
Mike Meier

Chief-Fisheries Management  
Deputy Chief-Fisheries Management  
Head-Plans and Statistics  
Fisheries Management Specialist  
Fisheries Management Specialist  
Fisheries Management Specialist  
Fisheries Management Specialist  
Fisheries Management Specialist

Dr. Jim Wesson

Head-Conservation and Replenishment

Bob Grabb  
Tony Watkinson  
Chip Neikirk  
Randy Owen  
Traycie West  
Ben Stagg  
Hank Badger  
Jeff Madden  
Mark Eversole  
Jay Woodward  
Kevin Curling

Chief-Habitat Management  
Deputy Chief-Habitat Management  
Environmental Engineer  
Environmental Engineer

Gerry Showalter

Head-Engineering & Surveying

others present:

Edward Inge  
Alor Grantham-Traywick  
P. Young  
Thomas A. Hazelwood  
Charles Garland  
Kevin DuBois  
Ricky Woody  
Jim Ewart  
Karla Haynes  
Ed Bridger

B. K. Wilson  
Thomas E. Metcalf  
Robert Johnson  
Joseph T. Waldo  
Sherry Ashe  
Robert Pretlow  
Mary Ellen Hodges  
Jeff  
Rachel Bridger  
Chris Topping

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Thomas Jordan  
John Fowler  
Dennis B. Clark  
Mark Coberly  
Richard Stilwagen  
Harry Johnson  
Art Hodges  
Margaret B. Ransone  
Tommy Kellum  
Jackie Partin  
John Partin  
Harry Doernte

Dennis H. Dietrich  
Robert Hare  
Carol Collier  
Sherry Hamilton  
Michael Hines  
Mark Hodges  
Douglas F. Jenkins, Sr.  
Linda Crewe  
Frances Porter  
Bob Pride  
Tom Powers

Commissioner Pruitt opened the May meeting at 9:30 a.m. Members present were Associate Members Ballard, Birkett, Cowart, Hull, McLeskey, White and Williams.

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Associate Member Gordy was absent. Commissioner Pruitt established that there was a quorum. Associate Member Hull gave the invocation and Mr. Birkett led the Pledge of Allegiance.

**1. APPROVAL OF MINUTES** of previous meeting.

Associate Member White moved for approval of the Minutes for the April 10, 2001 and April 24, 2001 meetings as distributed. Motion was seconded by Associate Member Hull. Motion was adopted unanimously.

**\*\* APPROVAL OF AGENDA**

Associate Member Ballard asked that at the appropriate time in the agenda there be a discussion of the mining of oyster shells pursuant to Section 28.2-550. Associate Member Hull moved for approval of the agenda as discussed. Motion was seconded by Associate Member Hull and carried unanimously. Mr. Pruitt said the shell mining item would be heard after the appeals.

**2. PERMITS** (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief-Habitat Management, briefed the Commission on the following nine page two items for projects that were over \$50,000 and not contested.

**2A. MARINE RESOURCES COMMISSION, #00-2041.** The Fisheries Management Division requests authorization to modify an existing oyster reef sanctuary permit to allow a scientific test for the use of clean ground concrete, to test oyster settlement on this potential clutch material at the Butlers Hole reef near Fleets Island in the Rappahannock River on Public Ground No.1, in Lancaster County.

Permit fee not applicable

**2B. MARINE RESOURCES COMMISSION, #00-1838.** The Fisheries Management Division requests authorization to construct a 4,800-foot long by 900-foot wide artificial fishing reef oriented north and south and constructed of environmentally acceptable rubble, concrete habitat structures and steel hulled vessels, at a location approximately four (4) nautical miles E - NE of Hughlett Point in the Chesapeake Bay. The center point of the reef will lie at 37° 44' 46" N latitude 076° 13' 19" W longitude, in the vicinity of the area referred to as the "Asphalt Pile." A minimum vertical clearance of 15 feet at mean low water will be maintained.

Permit fee not applicable

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2C. MARINE RESOURCES COMMISSION, #00-2039. The Fisheries Management Division requests authorization to modify an existing oyster sanctuary reef permit to allow the use of clean concrete, ground to 1-inch to 4-inch pieces in addition to the previously authorized oyster and clam shells as reef construction material, to test oyster settlement on this alternative culch material at a previously authorized site located in the Rappahannock River between Broad Creek and Sturgeon Creek in Public Ground Number 1, Middlesex County. Pending expiration of the public comment period.

Permit fee not applicable

2D. CAROLYN C. CHALLONER, ET AL, #01-0091, requests authorization to construct 590 linear feet of riprap revetment and five (5) riprap breakwaters totaling 440 linear feet with 250 cubic yards of sand placed landward of the breakwaters as beach nourishment adjacent to their properties located along the York River in Gloucester County. Recommend approval with the assessment of a royalty in the amount of \$350.00 for the fill due to beach nourishment of 7,000 square feet of State-owned submerged land at a rate of \$0.05 per square foot.

Royalty for fill of 7000 sq. ft @ \$0.05 per sq. ft. due to beach nourishment.....	\$ 350.00
Permit fee.....	<u>100.00</u>
Total	\$ 450.00

2E. HARBOR HOUSE PROPERTY OWNERS ASSOCIATION, #01-0206, requests authorization to construct 397 linear feet of replacement bulkhead aligned a maximum of two (2) feet channelward of an existing deteriorated bulkhead adjacent to their property along Mill Creek in Middlesex County. Recommend approval with the assessment of a royalty of \$722.00 for the filling of 722 square feet of State-owned submerged land at the rate of \$1.00 per square foot.

Royalty for fill of State-owned submerged land of 722 sq. ft. @ \$1.00 per sq. ft.....	\$ 722.00
Permit Fee.....	<u>100.00</u>
Total	\$822.00

2F. CITY OF NORFOLK, #01-0620, requests authorization to replace the existing fender system for the Spirit of Norfolk and other vessels moored at Waterside Festival Park adjacent to City property situated along the Elizabeth River.

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Permit fee..... \$ 100.00

**2G. KENNETH G. BUCHANAN, #01-0712**, requests authorization to construct a clearspan bridge measuring 220' by 22' across the North Fork Holston River for vehicular access to property situated adjacent to State Route 611 in Washington County. Recommend approval pending expiration of the public comment period and an encroachment royalty of \$924.00 for the encroachment over 1,848 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot.

Royalty for encroachment of 1,848 sq. ft. of State-owned subaqueous land @ \$0.50 sq. ft.....	\$ 924.00
Permit fee.....	<u>100.00</u>
Total	\$ 1024.00

**2H. METRO MACHINE CORPORATION, #01-0690**, requests authorization to dredge, by clamshell method, a maximum of 147,300 cubic yards of State-owned submerged materials to provide maximum depths of -59 feet at mean low water and install five (5) new mooring dolphins and three tower cranes on platforms in order to allow for the expansion of the existing drydock at their facility situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in Norfolk. Recommend a royalty for all new dredging at a rate of \$0.45 per cubic yard. All dredged material will be transported to Craney Island for disposal.

Royalty for new dredging of 147,300 cu. yds. @ \$0.45 per cu. yd.....	\$66,285.00
Permit fee.....	<u>100.00</u>
Total	\$66,385.00

**2I. SUFFOLK DEPARTMENT OF PUBLIC UTILITIES, #00-1848**, requests authorization to install a 16-inch water main, crossing the Nansemond River in the City of Suffolk, by bridge attachment method to the existing Mills Godwin Bridge and within the VDOT R/W.

Permit fee..... \$ 100.00

There being no comments or questions from the Commission members or public, Associate Member White moved to approved the nine page two items as presented. Motion was seconded by Associate Member Cowart. Motion carried unanimously.

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Mr. Grabb stated that he had received requests to continue Items 6 and 14 until the June meeting. Mr. Pruitt checked to see if any protestants on the two cases were in attendance (none were present or planning to attend). Associate Member Williams made a motion to continue Items 6 and 14 until the June meeting. The motion was seconded by Associate Member McLesky and carried unanimously.

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3. **EXECUTIVE SESSION.** No executive session was held.

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4. **THOMAS METCALF, #00-1545.** Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form a permit to construct and backfill 77 linear feet of timber bulkheading at property situated along Buchanan Creek in Virginia Beach. Continued from the April 24, 2001, Commission Meeting.

5. **MICHAEL PICKARD, #00-1548.** Commission review on appeal of the February 19, 2001, decision by the Virginia Beach Wetlands Board to approve in modified form a permit to construct and backfill 158 linear feet of timber bulkheading at property situated along Buchanan Creek in Virginia Beach. Continued from the April 24, 2001, Commission Meeting.

Randy Owen, Environmental Engineer, requested permission to brief Items 4 and 5 together. Commissioner Pruitt agreed to briefing the appeal cases together and noted that the Commission would vote on the cases separately. Mr. Owen showed one slide not seen at the Wetlands Board's hearing to orient the Commission to the projects, then reviewed the slides seen by the Board. He explained that the applicants had dredged their boat basin in September 2000 under a separate permit, and then had applied for a permit to install a bulkhead to reduce erosion at the head of the boat basin. He said the proposed bulkhead would have required the removal of marsh grasses. To avoid marsh impacts VIMS had recommended two alternative bulkhead alignments. He said after several meetings the Board approved the project using one of the VIMS suggested alternatives and directed their CZM administrator to delineate the final location of the approved bulkhead. He said the final location was not acceptable to the applicants and they subsequently appealed the Board's decision. Mr. Owen stated that staff did not believe the Wetlands Board had erred procedurally and recommended their decision be upheld. Comments are part of the verbatim record.

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Associate Member Ballard asked to see the Board approved alignment. Mr. Thomas Metcalf, applicant, pointed out the alignment on a slide. Mr. Metcalf continued and explained that he did not think the Board erred procedurally either, but an appeal was his only recourse to protest a decision he did not like. He noted that Walter Priest from VIMS had visited the site and said the grass should be protected if possible; he also said that several other agencies had visited the site and none had stated that the marsh grass had any significant value. He said he wanted a square alignment as originally applied for. Comments are part of the verbatim record.

Mr. Pruitt reminded the applicants that the Commission was not there to rehear the case, just to review the Wetland Board's decision. Associate Member White asked how far from the water the Board approved alignment was. Mr. Metcalf said it was about 15 feet from the water.

Mr. Mike Pickard, applicant, stated that he felt that the State law had been broken because a non-licensed individual was making engineering decisions. He also felt the 45-day deadline had been exceeded. He said he did not agree with the flow over the bulkhead alternative and did not think the grass resource that was being protected by the second alternative was significant. He suggested that grass could be resprigged outside of the boat basin in a sunnier area to have more benefit.

Mr. Pruitt asked if he had suggested this to the Wetlands Board. Mr. Pickard said he had not. Associate Member McLeskey asked if he would be willing to compensate for wetland impacts. Mr. Pickard responded that he would have to know how much it would cost first. Comments are part of the verbatim record.

Ms. Kay Wilson, Assistant City Attorney, spoke on behalf of the Board. She said there would be destruction of wetlands and that the Board had fulfilled its responsibility by following the recommendations of VIMS and the City Planning Department. She asked that the Board's decision be upheld.

Commissioner Pruitt asked if the Board had talked about possible wetland compensation. Ms. Wilson said the applicants had not mentioned compensation, but she thought the area they mentioned today as a possible site that already had cordgrass growing on it. Comments are part of the verbatim record.

Associate Member Birkett said he had a problem with compensation not being discussed by the Board. He questioned how the applicant was supposed to know that compensation was ever an option. Ms. Wilson commented that the applicant's had an agent and she felt the Board had done everything they could do to help. Associate Member Ballard said he was troubled by the Board's decision to place the final decision on the bulkhead alignment in the hands of their CZM administrator without the applicants having the option to come back to the Board to discuss it.

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Associate Member Hull asked about Mr. Pickard's charge that the decision was illegal for engineering reasons. Ms. Wilson stated that VIMS and the Planning Department only made suggestions. They did not tell them how to build it.

Mr. Pruitt asked how many times the Board had discussed the case. Ms. Wilson said there had been two meetings where the cases were discussed and two deferrals. Mr. Pruitt commented that he agreed with staff that the Board had considered the cases adequately. Comments are part of the verbatim record.

Associate Member Williams made a motion on Application #00-1545 to uphold the Wetland Board's decision. The motion was seconded by Associate Member Hull and passed on a vote of 5-2, with Associate Members Birkett and Ballard voting no.

Associate Member Williams made a motion on Application #00-1548 to uphold the Wetland Board's decision. The motion was seconded by Associate Member Hull and passed on a vote of 5-2, with Associate Members Birkett and Ballard voting no.

Mr. McLeskey commented that in the future the Wetlands Board should take a more active role in regards to compensation.

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6. **CRAB CREEK IMPROVEMENTS, L.L.C., #00-2197.** Commission review, on appeal by 43 freeholders of property within the City of Norfolk, of the December 13, 2000, decision by the Norfolk Wetlands Board to approve, in modified form, an application to dredge navigation channels within Crab Creek, a tributary of the Lafayette River.

Continued until the June meeting (see vote after Item 2).

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**6B. Discussion: Oyster Shell Mining in James River by Oyster Conservation and Replenishment Department (added to agenda by Associate Member Ballard at beginning of meeting).**

Commissioner Pruitt read §28.2-550 (A) for the record:

"The Commissioner with the approval of the Commission may contract with any person to take or dredge submerged oyster shells or any other subaqueous materials from the tidal waters of the Commonwealth, and shall have the authority to plant, use, or sell such shells or other

materials in whatever manner the Commission deems to be in the best interest of the Commonwealth."

Jack Travelstead, Chief-Fisheries Management, briefly reviewed the Commission's plans. He said there were four sites in the Tribell area well above Deepwater Shoals that were planned to be used. He said they had the Corps permit in hand and the DEQ permit was being pursued (waiting for a 30-day public review). He commented that he would characterize the VIMS comments on the project as favorable. Comments are part of the verbatim record.

Associate Member Ballard made a motion approving the Commissioner's decision to take action at the Tribell shoals sites. He stated that other sites in consideration, like the 10W site, would be subject to public review prior to use. The motion was seconded by Associate Member White and adopted unanimously. Mr. Pruitt commented that dredging may occur in August or September and that the public would be notified.

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7. **SHELTER HARBOR MARINE, #01-0260**, requests authorization to install 24 fender piles, 344 linear feet of 6-foot wide floating pier and 101 linear feet of open-pile pier to create 3 fueling slips, improve access to the travel lift area, and provide temporary mooring space at the Severn River Marina located along Willetts Creek in Gloucester County. The project is protested by an adjacent property owner.

Chip Neikirk, Environmental Engineer briefed the Commission. He said the facility had opened this year as the Severn River Marina and the owner was interested in several improvements including a floating fuel pier, catwalk, and a floating pier. He noted that the fixed piers at the site were high (5.5 feet at MLW) and the applicant was interested in the floating piers to make the facility more accessible by small boats. He commented that a floating pool had been removed from the application because it was not water dependent. He said VIMS and DEQ found the project acceptable, VDH had approved the sewage handling facilities, and no oyster grounds were involved. He said staff recommended approval since the improvements would offer safer and easier access to the marina's services. Comments are part of the verbatim record.

Mr. Mark Coverly, representing the protestant, Mr. Young, asked if the pool had been withdrawn. Mr. Neikirk confirmed that it had been withdrawn from the application.

The agent for the applicant stated that he agreed with staff's presentation and recommendation and asked the Commission to approve the improvements.

Mr. Coverly said his client was protesting the three floating piers near the fuel dock because it

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would add four additional wetslips. He said when the original permit was approved the facility had been restricted to 49 wetslips because of environmental concerns. He then handed out some pictures indicating that the facility did not need more dock space. Comments are part of the verbatim record.

The applicant's agent stated that the four additional slips were for fueling only and were not for mooring. Mr. Ballard asked if they were willing to agree to a stipulation in their permit that the slips could not be used for overnight mooring. The agent agreed.

Associate Member McLeskey made a motion to approve the application. The motion was seconded by Mr. Birkett. Associate Member Hull asked if the motion included Mr. Ballard's suggested stipulation that there would be no overnight mooring at the fueling slips. Mr. McLeskey said it did. The motion was adopted unanimously.

Encroachment (annually) over 2372 sq. ft.@	
\$0.05 sq. ft.....	\$ 118.60
Permit fee.....	<u>100.00</u>
Total	\$ 218.60

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- 8. **EDWARD M. INGE, #00-2203-19**, requests authorization to construct a 5-foot by 62-foot pier and five (5) finger piers two (2) feet by 10 feet along 182 feet of proposed vinyl bulkhead and to construct two (2) finger piers two (2) feet by 10 feet at a second location to create a total of 18 wetslips as part of a proposed marina/repair facility at the applicant's property situated along Beechland Creek, a tributary to Horn Harbor in Mathews County. The project is protested by a number of nearby property owners.

Ben Stagg, Environmental Engineer, briefed the Commission and showed slides. He commented that the facility had been an old seafood processing facility that the applicant wanted to turn into a marina/boat repair facility. He reviewed the proposed improvements and said the application had been revised to accommodate comments received. He said the protestants had several concerns including the potential for environmental impacts and prop dredging. He said the VDH had approved the wastewater handling facilities and did not anticipate imposing additional condemnations because of the project. Mr. Stagg noted the project had been approved by the local wetlands board and had received the necessary zoning approval. He said staff recommended approval of the application. Comments are part of the verbatim record.

Associate Member Ballard asked why staff recommended approving the replacement bulkhead aligned up to four feet channelward of the existing bulkhead, when the usual policy was no

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more than two feet. Mr. Stagg explained that the recommendation was to accommodate a bow in the old bulkhead and that the additional encroachment should not exceed 2.5 feet.

Edward Inge, applicant, spoke in favor of his application. He explained that he wanted to build a small marina and he had talked to a lot of neighbors in an attempt to get rid of any opposition. Comments are part of the verbatim record.

Mr. Ballard asked Mr. Inge if he had any problem keeping the new bulkhead within two feet of the old one. Mr. Inge said he would try. Mr. Stagg said by staff's recommendation that the distance from the old wall would average two feet over the length of the wall. Associate Member White made a motion to accept the staff recommendation. The motion was seconded by Mr. Williams and adopted unanimously.

Encroachment 450 sq. ft. @ \$0.50 sq.ft.....	\$ 225.00
Fill of 270 sq. ft. @ \$2.00 sq. ft.....	<u>540.00</u>
Total	\$ 765.00

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- 9. **BUSH PARK CAMPGROUND, #99-1850**, requests authorization to construct a total of 356 linear feet of open-pile pier extension to two existing piers to create thirty (30) new wetslips adjacent to the Bush Park Campground facility located along Bush Park Creek in Middlesex County. The project is protested by several nearby property owners.

Encroachment (annually) of piers over 22576 sq. ft @ \$0.05 sq. ft.	
yearly .....	\$ 128.80
Permit fee.....	<u>100.00</u>
Total	\$ 228.00

- 10. **BUSH PARK CAMPGROUND, #00-0263**, requests authorization to construct a 34-foot by 6-foot pier with a 180-foot by 6-foot T-head containing 16 new wetslips and to replace an existing 140-foot pier containing 12 wetslips with a 45-foot by 6-foot pier with a 360-foot by 6-foot pierhead containing 30 wetslips adjacent to the Bush Park Campground facility located along Bush Park Creek in Middlesex County. The project is protested by several nearby property owners.

Encroachment (annually) of pier over 2500 sq. ft. @ \$0.05 sq. ft.....	\$ 125.00
Permit fee.....	<u>100.00</u>
Total	\$ 225.00

Associate Members Ballard and Williams stated that they would not be participating in the discussions on Items 9 and 10.

Chip Neikirk, Environmental Engineer, briefed the Commission and showed slides. He said the campground had 592 sites and 670 feet of shoreline with 156 slips at 7 existing piers. He said the applicants were requesting a total of 64 new slips at various piers. He then reviewed the proposed changes. He stated the protestants were worried about erosion, pollution, and navigation. Mr. Neikirk reviewed the agency comments: 1) VIMS suggested there would be minimal direct impacts, but some potential for long term cumulative impacts, and recommended a marina management plan be done; 2) VDH had approved the sewage handling plan; 3) the creek was already condemned and no oyster grounds were in the area. He commented that the facility was vacant for half the year, currently had one slip for each 43 feet of shoreline and with the new proposal would have one slip for each 30 feet of shoreline which was not as high as some marinas, but was higher than other similar facilities. He said staff agreed with the reconstruction of Piers 3 and 4 as proposed, recommended approval of Pier 6 with an alignment change, but recommended denial of the proposed new Pier 8 because of potential boat wake problems. He said staff also would want the applicants to prepare a marina management plan. Comments are part of the verbatim record.

Carol Collier, agent, spoke on behalf of the applicant. Commissioner Pruitt asked how her client felt about the staff recommendation. She responded that it would be a hardship for her client since they had just developed 100 more campsites and they needed to reduce congestion at the boat ramp. She commented that there were existing long piers of 60-90 feet across from the area of the proposed Pier 8. Associate Member White asked if they would consider a reconfiguration of Pier 8 closer to shore. Ms. Collier said they were okay with the reconfiguration of Pier 6, but she was not sure on Pier 8. Comments are part of the verbatim record.

Rachel Bridger, protestant, stated that she represented many residents from along the east side of Bush Park Creek. She commented that a petition had been filed. She said the creek was small and they were worried about boat traffic moving sediment around. Comments are part of the verbatim record.

Ms. Collier asked if she could have some time to meet with the protestants. Mr. Pruitt said they could have some time to meet before the Commission decided on the case. He noted that there clearly was a problem with Pier 8.

Item 11 was heard while the applicants and protestants met. Mr. Neikirk then reported that a compromise was not reached. He said Ms. Collier was suggesting that a reconfigured Pier 7 be substituted for the proposed Pier 8. Associate Member Hull noted that this would require a new application. Mr. Grabb concurred that the change would require a revised drawing and a

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new public review. Dr. Hull made a motion to approve changes to Piers 3 and 4 as proposed, approve Pier 6 changes as recommended by staff, and require a marina management plan. The motion was seconded by Mr. White and was adopted 5-0-2, with Associate Member Ballard and Williams abstaining.

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Jack Travelstead, Chief of Fisheries Management, presented an ASMFC Award of Excellence in Science and Technology to Bob Fisher from VIMS for his work with conch bait bags.

Kenny Oliver, Southern Area Law Enforcement Supervisor, showed the Commission a third place trophy won by the newly formed Marine Patrol Honor Guard and a first place trophy won by a Commission boat displayed at a VFW parade in Williamsburg.

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11. **JAMES B. HILL, #00-0717**, requests authorization to construct a 16-foot by 16-foot open-sided gazebo adjacent to his property situated along Chisman Creek in York County.

Traycie West, Environmental Engineer, briefed the Commission and showed slides. She said the applicant wanted to build an open-sided gazebo near his pier because he could not put it on the upland because of the Chesapeake Bay protection area ordinances. She said he wanted a roofed structure for a fish cleaning station. She said that staff recommended denial since the structure was not water dependent. Comments are part of the verbatim record.

Mr. Ballard asked when the applicants pier was built. Mrs. West said it had been built in mid-2000.

Chris Topping, agent for the applicant, said his client was handicapped by a bad leg and wanted to use a golf cart to go to his pier and he also needed a place to stay on the pier that was out of the weather. Mr. Pruitt asked if Mr. Hill had pursued a RPA waiver. Mr. Topping said he did not. Mr. Hull suggested that Mr. Hill could use a collapsible umbrella. Mr. Birkett asked if there would be any more encroachment by the roofed structure. Associate Member Williams made a motion to deny the application as recommended by staff. The motion was seconded by Associate Member Hull and adopted 6-1, with Mr. Birkett voting no.

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12. **WINSTON WRIGHT, #00-2190**, requests authorization to construct two (2) 10-foot by 30-foot riprap breakwaters situated approximately 25 feet channelward of mean low water adjacent to his property situated along Sturgeon Creek in Middlesex County. The project is protested by a nearby property owner.

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Permit fee..... \$ 100.00

- 13. **ROBERT POLLARD, #00-2257**, requests authorization to construct two (2) 10-foot by 30-foot riprap breakwaters situated approximately 25 feet channelward of mean low water adjacent to his property situated along Sturgeon Creek in Middlesex County. The project is protested by an adjoining property owner.

Chip Neikirk, Environmental Engineer, briefed the Commission on Items 12 and 13 together. He said that a sand spit recently eroded away exposing the applicants properties to a long fetch. He said the applicants were proposing 10 foot by 30 foot low profile breakwaters following the suggestions of VIMS and VMRC staff. He said there were no agency comments and no oyster grounds involved. He said the protestants were concerned about siltation in the channel and navigation. Mr. Neikirk stated that staff thought the structures would help and recommended approval. Comments are part of the verbatim record.

Alor Grantham-Traywick, agent for the applicant, was available for questions.

There being no questions or public comment, Associate Member Williams made a motion to approve the permit as recommended by staff. The motion was seconded by Mr. Birkett and adopted unanimously.

Permit fee..... \$ 100.00

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- 14. **CAPT. BOB'S MARINA, #00-2163**, requests authorization to dredge by clamshell and dragline methods, on an as-needed basis, approximately 4,170 cubic yards of subaqueous material from the entrance channel leading to Captain Bob's Marina, to provide maximum dredge depths of minus six (-6) feet at mean low water, along Chincoteague Channel in the Town of Chincoteague.

Continued until the June meeting (see vote after Item 2).

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- 15. **APAC-VIRGINIA, INC., et al, #01-0398**, requests authorization to construct 4-lane and 6-lane divided highways from the VDOT Rt 288/Rt 60 interchange in Chesterfield County north to the Route 288/I 64 interchange in Goochland County, which will bridge Bernard's Creek, the James River, Broad Branch, Tuckahoe Creek and Little Tuckahoe Creek with a temporary construction access. The project is protested by adjacent

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property owners.

Jeff Madden, Environmental Engineer, briefed the Commission. He explained that since the work was being done by a contractor and not VDOT a permit was required. He described the nine crossings between Rt. 60 and I-64 that were being proposed, concentrating on the two crossings that were protested. He noted that one of the main areas of concern from the protestants was a cemetery dating back to the 1700s that was near one of the crossings. He said that although the grave site issue was important, it was an upland issue outside of the jurisdiction of the Commission. He said that for the subaqueous portions of the project the work was being done with Best Management Practices and would be done with DGIF recommended time of year restrictions. He said staff recommended approval. Comments are part of the verbatim record.

Jim Ewart, president of APAC representing the applicant, said his company was building a 236 million dollar facility for Virginia.

Joe Waldo, attorney for the protestants, discussed the cemetery site that would be potentially impacted by the proposed road work. He said his clients were requesting that the Commission defer its decision with this issue was resolved. Comments are part of the verbatim record.

There was a discussion about a court case related to the road project. Dr. Hull asked Mr. Josephson if there was any pending litigation that would effect their decision. Mr. Josephson said he was not aware of any. Mary Ellen Hodges, VDOT Historic Resources Section, explained the court order referenced by Mr. Waldo. Mr. Josephson clarified that although the Commission could consider effects on nearby properties, the Commission was only deciding on the subaqueous crossings and any work authorized did not enable an applicant to violate any other law. Comments are part of the verbatim record.

Mr. Ballard stated that he agreed with staff that although the cemetery issue was important, it was outside of their jurisdiction. He then made a motion to approve all crossings as proposed, noting that APAC was subject to the law regarding the cemetery site and would have to follow a time of year and erosion protection practices as recommended by staff. The motion was seconded by Associate Member Cowart and adopted unanimously.

Royalty for encroachment of 63,408	
sq. ft. @ \$0.05 per sq. ft.....	\$3120.40
Permit fee.....	<u>100.00</u>
Total	\$ 3220.40

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**16. PUBLIC COMMENTS.**

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Pete Nixon, President of the Lower Chesapeake Watermen's Association, spoke in his own behalf, and not as a member of the Crab Committee. He spoke about the peeler crab run and the male crabs being available for spawning. He also talked about the watermen switching from the hard crab pot to peeler crab fishing and its effect on the blue crab spawning stock. He said the peeler pots were taking a large part of juvenile male crabs before they ever reached the female crabs. He then recommended that the Commission consider the following:

1. Two, 2 5/16 escape rings be used in all of the hard crab pots in all parts of the Bay, and a 2 3/8 escape ring would be even better; two, 1 1/2 inch escape rings be used in all peeler pots.
2. Tag all hard and peeler crab pots (because the crab potters must be made accountable for the amount of gear they have overboard.)
3. Maximum use of one peeler and one hard crab pot permit per vessel (permit holder must be onboard vessel while fishing as limited entry fishery).
4. For a three year period: In the Old Lower Bay Sanctuary that has been in place for approximately 30 years, that the lower part of the Bay should become a year round sanctuary for three years.
5. A three year peeler pot restriction inside Hampton Roads Bridge Tunnel, and have a six-week season from April 15 to the end of May each year. He said he felt the James River was their greatest resource for replenishing the crabs.

Tom Powers, representing the Coastal Conservation Association, spoke on the conch pot issue. He talked about the October 1999 experimental conch pot fishery converting to a regular license fishery starting in January 2000. He said the regulation did not have any restrictions regarding conch pots being set next to the Chesapeake Bay Bridge Tunnel. He said recently recreational fishermen had reported conch pots being set adjacent to Bay Bridge Tunnel and he was concerned about the gear conflict and the a safety issue. Mr. Powell then requested that the Commission enact an emergency regulation that would prohibit setting conch pots within 250 yards of the centerline of the roadway on the Chesapeake Bay Bridge Tunnel; similar to the way the current regulation is for gill nets.

There were no conch potters present and Commissioner Pruitt suggested that Mr. Nixon represent the conch potters in a meeting along with Mr. Powers, staff and law enforcement. Mr. Pruitt said because of the safety issue involved, immediate action should be taken.

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Douglas Jenkins, President of the Twin Rivers Association, addressed the Commission. He gave comments in reference to the red tides and bad water quality within Colonial Beach to the mouth of Yeomico. He said they were experiencing poor water quality on the marine life. Mr. Jenkins indicated that he had contacted Dennis Tracey with DEQ and Mark Allen. He said every effort should be made to improve the water quality in that area.

Commissioner Pruitt asked if DEQ had named this as a red tide area or if they had another name for the condition. Mr. Pruitt also asked if the Shellfish and Sanitation Department had been notified. Mr. Jenkins responded that he had notified everyone he could think of.

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**17. VIRGINIA SEAFOOD COUNCIL:** Oyster aquaculture in France and the non-native oyster research.

Associate Member Cowart and Associate Member Ballard both indicated that they would not be participating in the discussion of this issue because of their involvement in the seafood industry.

Frances Porter, from the Virginia Seafood Council presented an article from the *Maryland Women's Gazette*. She said the article gave a good layman's view of the Virginia's non-native project. Ms. Porter indicated that after the Commission granted permission in March 2000 to introduce the non-native oyster; in August 2000 the triploid, a non native oyster, was placed on the bottom in the Bay. Today, a market-size oyster was sampled by the Commission. She then briefed the Commission on the progress of the pilot project. Comments are a part of the verbatim record. Mrs. Porter then introduced, J. Carter Fox, an aquacultural enthusiast and a strong advocate of the restoration for the Virginia oyster industry.

Carter Fox addressed the Commission. He gave information regarding the French Oyster Growing Region in May 2000. He indicated that there were three participants from the General Assembly, three marine scientists and one oyster grower working on this project. He then provided information on the methods and different techniques used for raising oysters in France and China. He also talked about the efforts Virginia had used to try and bring back the oyster population. Other comments are a part of the verbatim record.

Associate Member Ballard asked when did the French industry introduce the non-native oyster in their waters? Mr. Carter responded that it was introduced around 1969 or 1970. A brief discussion followed regarding the introduction of the non-native oyster to the French industry. Comments are a part of the verbatim record.

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Mrs. Porter then pointed out that Dr. Stanley Allen, of the Aquaculture and Genetics Breeding Center at the Virginia Institute of Marine Science, had certified that the triploid oysters be available for the Seafood Council's pilot project. Mrs. Porter also mentioned the nine specific recommendations set forth by VIMS for the pilot project. Comments are a part of the verbatim record.

Mrs. Porter introduced Mr. Tom Kellum, the Regional Vice President of the Seafood Council and also the Vice President of the W. Kellum, Inc., an oyster packing house in Weems. She provided background information on the success of the pilot project. Comments are a part of the verbatim record.

Mr. Kellum talked about his appearance before the Commission less than a year ago for support of the pilot program for the non native ariakensis oyster. He said the seed for the program was planted in 1995. During the 1995 session of the Virginia General Assembly, they adopted Joint House Resolution 450, which was to determine if the non native oyster could play a role in the Virginia shellfish industry. Mr. Kellum indicated that "yes" the non native oyster could be beneficial for the restoration of the Virginia shellfish industry. Mr. Kellum said there were two sites that had market size oysters now, and that the oysters had been shipped to markets in San Francisco, Columbus, Cincinnati, Detroit, Pittsburgh and Charlotte, NC. He said the feedback was done and the project was successful. Mr. Kellum requested that the Seafood Council be allowed to continue with the study using the same stock of oysters that were used last year from VIMS. He said every aspect of the proposal that was granted last year was followed. In addition, they had an excellent rapport with VMRC and VIMS on the project. He said they saw different sizes in the growth of the oyster from site to site and they were working closely between the sites along with the agencies to make sure that the guidelines the Commission set forth were followed.

Commissioner Pruitt asked how would the market be handled. Mr. Kellum said that each site would probably get approximately 10,000 oysters, raise the oysters to market size and then determine how quickly that process could be done, and what the cost of that many oysters in a contained environment would be, and then sell the oysters in the market place to three or four different dealers.

Mr. Pruitt then asked staff if this could be done. Mr. Travelstead responded that this would come under the Exotic Species Program of the Chesapeake Bay Commission, which would normally request that they be given the opportunity to advise the Commission on any proposal to put non native oysters overboard for study. Mr. Travelstead also stated that the Virginia Code gave the Commission the authority to implement this type of program. He said a public hearing had been held in the past. In some cases, however, he saw this project as a continuation of the existing experiment. A discussion followed.

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Commissioner Pruitt indicated that scientifically everything seemed all right but he requested Dr. Burreson's comments.

Dr. Burreson stated that as long as the conditions remained the same as the previous one, that the non native oysters were contained and that someone was overseeing the project, VIMS had no problem with the continuation.

Associate Member Hull said based on the information they had received and based on the samples the Commission tasted at lunchtime, he would move to continue with the program. Motion was seconded by Associate Member White. Motion carried, with Associate Members Ballard and Cowart abstaining.

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**18. PUBLIC HEARING: Continuation of the crabbing license sales moratorium.**

Commissioner Pruitt indicated that the members were familiar with the information on the crab license sales moratorium. He then opened the public hearing.

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

Mr. Rob O'Reilly said this request was for the moratorium to continue until May 26, 2004. This request was different from the one year schedule used during the past two years in that the moratorium was done every year. Mr. O'Reilly said the reason for the request for continuation of the moratorium until May 26, 2004 was because of the proposed ongoing work to reduce the fishing mortality and the harvest, which will start with a 5% reduction this year and a 15% reduction by 2003. He said the other reason for the 2004 extension date was the recent information received from the Chesapeake Bay Stock Assessment Committee which updated the status of the blue crab stock through 2000. Mr. O'Reilly then presented slides to demonstrate information on the status of the stock. Comments are a part of the verbatim record.

Mr. O'Reilly then presented a letter from Dewey Crockett, Mayor of Tangier, requesting an exemption for Tangier from the license moratorium. Specifically, regarding crab pots and scraping license because of Tangier's unique situation of dependency on the blue crab fishery. Mr. O'Reilly further indicated that Dr. Brambaugh of the Chesapeake Bay Foundation also requested the same type of exemption for Tangier. Mr. O'Reilly then indicated that staff did not advertise this request as part of the public notice for this exemption.

Associate Member Ballard stated that he would like to make a two part motion on this issue. He then moved to adopt 4 VAC 20-10-40 et. seq. , to extend the moratorium on the crab license until 2004. Mr. Ballard further moved that the Crab Committee take up the Tangier issue, which he thought would be a way to start the ball rolling and bring back their recommendations to the Commission. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**19. PUBLIC HEARING: Black Sea Bass quarterly triggers and possession limits for the commercial fishery.**

Jack Travelstead, Chief Fisheries Management, briefed the Commission on the emergency regulation adopted last month that would adjust the trigger level and quarterly quota trip limits for the commercial black sea bass fishery. Mr. Travelstead indicated that this hearing was to make the regulation permanent. He said the regulation would change the trigger percentage from 50 percent to 40 percent; and for each, second, third and fourth quarters the regulation would establish a 1,000 pound possession limit and prohibit a fisherman from landing more than four times during a seven-day period; the regulation would also require that the fisherman call the Commission's interactive voice recording on a daily basis to report their landings.

Commissioner Pruitt opened the public hearing.

Mark Hodges, a pot fisherman for black sea bass and he worked out of Virginia, addressed the Commission. He said he objected to the 40 percent quota trigger limit and 1,000 pounds a week limit because it unfairly favored the parttime fisherman. Mr. Hodges said that he realized these limitations were passed by ASMFC and everyone would have to abide by them. However, he felt that the black sea bass had come back in the northeast, mainly in Massachusetts. He said the people in Massachusetts were not regulated by federal requirements and they had mostly part time fishermen. Other comments are a part of the verbatim record.

Harry Doernte, hook and line fishermen for black sea bass from Poquoson, addressed the Commission. He said the overages were brought about last year and was carried forward to the following quota of the next year. He said that for the last three quarters they were only allowed to fish 124 days and they should have only been allowed to fish 98 days which caused the overage.

Mr. Travelstead said that Mr. Hodges and Mr. Doernte had been working with staff for the past two years and they had attended all the ASMFC and Mid-Atlantic Council Meetings on black sea bass. He also indicated that no one along the Atlantic coast (fishermen or managers) were

pleased with the current Black Sea Bass Fishery Management Plan. He said the plan was not working because there were still long periods of time during each quarter when the fishery was closed. Mr. Travelstead said that both ASMFC and the Mid-Atlantic Council had agreed to amend the Management Plan to devise a new scheme in which the black sea bass fishery could be managed to avoid the long closures. Mr. Travelstead indicated that the answer seemed to be the state-by-state quotas similar to the summer flounder plan. The state-by state quota system would divide and allocate a portion of the quota to each of the States and then the individual State would devise a management program that would work for their fishermen. Mr. Travelstead said the state-by-state quota system seemed to be the direction that ASMFC and Mid-Atlantic Council were going, and hopefully some time next year the new plan would be in place and staff could come before the Commission with new regulations specific to Virginia's fishermen needs. He said that the 40 percent trigger limits and trip limits were compliance requirements and there was no choice but to adopt them and move on with the new amendments.

Associate Member Williams commented that he understood what staff had said, but how could that help Mr. Hodges who had been pot fishing for ten years. Mr. Williams said that plan would basically put Mr. Hodges out of business. Commissioner Pruitt commented that there was nothing that could be done this year and the alternative would be a closure of the fishery.

Commissioner Pruitt then placed the matter before the Commission.

Associate Member Ballard said he reluctantly moved to make permanent the emergency regulation pertaining to black sea bass 4 VAC 20-950-10 et. seq. Motion was seconded by Associate Member Cowart. Commissioner Pruitt suggested that the change Mr. Travelstead made on page three of the Notice be included in the motion. Mr. Ballard was acceptable to amendment. Mr. Cowart was also acceptable to the amended motion. Motion carried, with Mr. Williams voting no.

Commissioner Pruitt commented that he would hope that Mr. Pride would provide staff assistance with the Mid-Atlantic Council on this issue.

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**20. PUBLIC HEARING:** Recreational summer flounder closed season, 2001.

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the options that were advertised for Virginia tidal waters as follows:

- 1) The recreational fishing season shall be closed from July 24 through August 7.

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- 2) The recreational fishing season shall be closed from July 19 through August 1.
- 3) The recreational fishing season shall be closed from July 24 through August 1 and from September 18 through December 31.

Mr. O'Reilly said that the Potomac River Fisheries Commission (PRFC) had not yet established its full season for 2001. However, the PRFC was expecting, by emergency Regulation, to establish an entirely different set of Regulations which would be a 17-inch minimum size limit, with 8-fish possession limit. He said this was the second year that the PRFC had endorsed Maryland's Regulation. Mr. O'Reilly then indicated that any person fishing with a recreational hook-and-line, rod-and-reel, spear, gig or other recreational gear in the Potomac River tributaries shall abide by the possession limit established by PRFC for the mainstem of the Potomac River.

Commissioner Pruitt opened the public hearing.

Bob Pride, a recreational fisherman, addressed the Commission. He said no one wanted a Fall closure for that length of time and they were debating between options one and two. He said he supported option one. Other comments are a part of the verbatim record.

Douglas Jenkins addressed the Commission. He indicated that he felt that when the Potomac River Fisheries Commission met, the Virginia fishermen would suffer because the overage quota of Maryland was governed by the Potomac River quota. He said that PRFC and Maryland had proposed at the Fishery Advisory Committee to implement a 17-inch flounder with a possession limit of 3 to 8 fish from July to December. Mr. Jenkins said he was concerned because there were no flounders in the tributaries of the Potomac that were that size from July to December. He also commented that the flounders were plentiful last year, but a 17-inch flounder was difficult to find then.

Rob O'Reilly commented that Mr. Jenkins had asked approximately two years ago that the Commission consider adopting the same limits as the Potomac River for the tributaries. Mr. O'Reilly said that he had looked at the fish length data for the Potomac River tributaries and compared it to the rest of the State, and Mr. Jenkins was correct you could not find a lot of large fish in the tributaries.

Mr. Jenkins indicated that even though he had requested adoption of the same requirement as the PRFC and Maryland in the Potomac tributaries, he would like to request the adoption of the same limitations (15 1/2 inch flounder, 8 fish possession limit) as the other parts of the State because of the difficulty in catching a 17-inch flounder in the Potomac River Tributaries. A brief discussion followed regarding the limitations in the tributaries. Comments are a part

of the verbatim record.

Commissioner Pruitt placed the matter before the Commission.

Associate Member McLeskey moved to adopt option one, a closed season from July 24 to August 7. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Commissioner Pruitt then placed Mr. Jenkins' request before the Commission. Associate Member Cowart requested that the language in the Notice be stricken regarding the Potomac River Tributaries and allow the fishermen in the Potomac River Tributaries this year to reflect the same season, same size limit, and the same catch limit as the rest of Virginia. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**21. RECOMMENDATIONS of the Recreational Fishing Advisory Board.**

Cory Routh, Fisheries Management Specialist, briefed the Commission on the recommendations from the Recreational Fishing Advisory Board's as follows:

Recommendations of the Recreational Fishing Advisory Board.

The Recreational Fishing Advisory Board (RFAB) has completed its five month review of pending applications and on May 14, 2001 developed its final recommendations for funding.

Each of the projects submitted during this review cycle has been the subject of a staff review, a professional peer review, and public hearing. Written comments received from the public are attached.

The following is a list of projects reviewed by the RFAB. Included for each project is the RFAB recommendation on funding. The RFAB also recommends that work may begin as early as June 1, but funding will not be available until September, 2001.

**Long Term (Multi-year) Projects**

- A. Seagrass Habitat: A continuing Partnership in Research and Education For Restoration in the 21<sup>st</sup> Century. VIMS; Dr. Robert J. Orth, \$88,276.00. Voted unanimously to recommend funding.

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- B. Support of Facilities to Provide Finfish Ageing for Virginia Catches and Application of Virtual Population Analysis to Provide Management advice. ODU; Dr. Cynthia M. Jones, \$237,756.00 Voted 5 to 3 to recommend funding.
- G. Estimating Relative Abundance of Recreationally Important Finfish in the Virginia Portion of the Chesapeake Bay. VIMS; Dr. Herbert M. Austin, \$184,169.00. Voted unanimously to recommend funding.
- H. A Delineation of Shark Nursery Grounds in the Chesapeake Bay and Assessment of Abundance of Shark Stocks. VIMS; Dr. John A. Musick' \$133,674.00. Voted 7 to 1 to recommend funding of the adjusted amount of \$19,875.00
- I. Scarring Effects on Submerged Aquatic Vegetation in Virginia (Year 2). VIMS; Dr. Robert J. Orth, \$30,081.00. Voted unanimously to commend funding.
- J. Mycobacteriosis in Striped Bass of the Chesapeake Bay. VIMS; Dr. Ilsa Kaattari, \$30,173.00. Voted unanimously to recommend funding.

**New Projects**

The RAFB combined projects C and D into one project.

- C. Sport Utility 4-Wheel Drive Vehicles for Law Enforcement Use. VMRC, \$57,000.00. Voted unanimously to recommend funding.
- D. Law Enforcement Vessels for the Virginia Marine Patrol. VMRC, \$156,040.00. Voted unanimously to recommend funding.
- E. Dredge Boat Launch Area, York River State Park. DCR, \$100,000.00 Voted unanimously not to recommend funding.
- K. Conservation Through Education. Virginia Marine Science Museum; W. Mark Swingle, \$21,400.00. Voted unanimously to fund up to \$6100 requested for brochures. The other costs were not approved.
- L. Mobile Virtual Sport Fishing Simulator System. CCA-Eastern Shore Chapter; Art Saunders, \$28,000.00. Voted unanimously to table until details of responsibility for the system are settled.
- X. Glebe Point Public Fishing Pier. County of Northumberland; Luttrell

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Tadlock, \$24,000.00. Voted unanimously to recommend funding.

Commissioner Pruitt opening the meeting for comments from the public. There were no public comments. Mr. Pruitt then placed all the projects before the Commission except for B, E, and L.

Associate Member Ballard moved to approve all the projects except B, E, and L in the stated funded amount recommended by the Recreational Fishery Advisory Board. Motion seconded by Associate Member Birkett.

Associate Member Hull commented on project "X", Glebe Point Fishing Pier. He said this was a project that had been spearheaded for 10 years by his former colleague and friend, Al Fisher, who retired last year and served as the Chairman of the Northumberland County Planning Commission for the past five years and had served on the Commission for the previous five years. He said he spent hundreds of devoted hours on this project and the Commission would be very proud of him for his service in that regard.

The motion was carried unanimously.

The Commission then considered items B, E, and L:

Item B:

Commissioner Pruitt commented that this was a continuation of the project and a lot of work had been done on the project and he did not think it made good sense to stop the project in the middle. Mr. Travelstead indicated that this project had been ongoing for four years and the project had provided data on the age structure of the various fish population. Mr. Travelstead said the RFAB felt it was a good project, but it was the RFB continuing issue of why should the recreational fishermen in this State pay for most of the research, when the commercial fishermen paid nothing for research. He also pointed out that some of the ageing done in this project was mandated by ASMFC, therefore it was in compliance with the management plan.

Associate Member Cowart asked how much money was available through the commercial fishing fund after the statistical information was gathered and if the recreational fund participated in the statistical information that was gathered in the State of Virginia. Mr. Travelstead responded that they were at a stage now where the entire amount of money collected from the sale of commercial registration license was used for mandatory reporting of commercial harvest. Therefore, there was no additional money left in the fund for other projects. After a discussion, Commissioner

Pruitt placed the matter before the Commission.

Associate Member Ballard moved to approve item B. Motion was seconded by Associate Member Williams. Motion carried unanimously.

Item E:

Associate Member Ballard wanted to know why the RFAB unanimously opposed item E.

Mr. Routh responded that this was the second time this area had to be dredged and the dredging had already been done, without getting prior approval from the RFAB.

There being no motion, Commissioner Pruitt stated that the Recreational Board's recommendation would stand for no funding as submitted.

Item L: Was tabled by the Recreational Board, therefore, no action was necessary.

Mr. Routh then briefed the Commission on the additional recommendations as follows. He also indicated that Mr. Claude Bain indicated that there were approximately 40 scales that were broken or in need of repair.

#### **Additional Recommendations**

- 1) The RFAB unanimously voted to recommend appropriation of \$10,000 to the Virginia Saltwater Recreational Fishing Tournament to repair and replace broken scales.
- 2) The RFAB unanimously voted to recommend that non-licensed individuals ~~who~~ request the Virginia Anglers Guides pay a \$2.00 fee. The fee will help offset the shipping and handling of the booklets.

Commissioner Pruitt placed the two additional recommendations before the Commission.

Associate Member Cowart moved that the two additional recommendations be adopted and funded as listed. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**22. DISCUSSION: Working as a licensed agent when license is revoked. Request for public hearing.**

Jack Travelstead, Chief-Fisheries Management, requested the Commission advertise an amendment to Regulation 610. Mr. Travelstead explained that the Virginia law gave authorization to the Commission to revoke the licenses of individuals who violated fisheries and habitat regulations of tidal waters. He said this Regulation allows people to serve as an agent for commercial fishermen to fish their gear and to sell their catch for the commercial waterman. Mr. Travelstead said the conflict develops when an individual's license has been revoked and the individual finds someone that he can work for as an agent. However, the Finfish Advisory Committee, law enforcement, and the fishery staff did not think that was appropriate. Therefore, they have suggested that the Regulation be amended so that if your license has been revoked by the Commission that you cannot serve as an agent for someone else.

There being no comments from the Commission, Acting Chairman White placed the matter before the Commission.

Associate Member Cowart moved to advertise for an amendment to Regulation 4 VAC 20-610-30 et. seq. that prohibits any person whose license has been revoked by the Commission from serving as an agent for another person during his license revocation period. Motion was seconded by Associate Member Hull. Motion carried unanimously.

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**23. DISCUSSION: Clarification of 150 pound grey trout bycatch limitation.**

Rob O'Reilly, Deputy Chief-Fisheries Management, briefed the Commission on the definition of "closed season" in the grey trout regulation.

"Closed season" means an interval of time, in days, when it shall be unlawful for any fisherman to possess any grey trout less than 12 inches in length or more than 150 pounds of grey trout 12 inches or greater in length.

Mr. O'Reilly said for each gear type, gill net, haul seine, pound net, and out-of-state trawl when there was a closed season it was intended that there be 150 pounds of grey trout as bycatch from other fisheries. It was not meant to be a directed fishery.

Mr. O'Reilly then indicated for clarification that the proposed language for possession limit will now be for the boat or vessel and shall be the lesser 450 pounds or an amount equal to the number of registered commercial fishermen on board multiplied by 150 pounds. Mr. O'Reilly said FMAC provided the information and staff was just

forwarding it to the Commission. He then requested that a public hearing be held next month.

Associate Member Williams asked if the grey trout was a recovered species? Mr. O'Reilly responded that he thought the perception was that the grey trout fishery had recovered. However, the ASMFC was the management arm and they had not declared that it was fully restored. A discussion followed regarding the grey trout as a recovered species. Comments are a part of verbatim record.

Acting Chairman White placed the matter before the Commission.

Associate Member Ballard moved to have a public hearing next month. Motion seconded by Associate Member Birkett. Motion carried unanimously.

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#### **24. STATUS of Chincoteague Bay SAV Sanctuary.**

Dr. Orth, from VIMS, briefed the Commission on the status of the SAV sanctuary in Chincoteague Bay. He said that in 1998, the Commission approved a Regulation that approved a SAV sanctuary which prohibited clam and crab dredging in the SAV grass beds. Dr. Orth said there were two things that concerned them and they wanted to bring them to the Commission's attention. He said there were indications that the spaghetti like linear scars indicated the use of hydraulic dredges in the SAV grass bed. In addition, there were circular scars that indicated a modified oyster dredge was used. Dr. Orth said in the 2000 General Assembly they passed House Bill 2417 that a person was not allowed to have on board a hydraulic escalator except by permit. However, the Bill stated that you could have that equipment on board for maintenance or repair of the boat or equipment or unloading catches made in Federal waters. Dr. Orth stated that the Bill may eliminate the problem of using hydraulic dredges.

Associate Member Cowart asked if law enforcement was aware of this activity in 2000. Deputy Chief, Lewis Jones, responded that they were aware of that activity and they had five cases brought to court, but the Judge dismissed them all because there was no map issued by VMRC of the SAV area, nor was the area buoyed or stuckup. The Court rendered that the area was not enforceable at this time. Associate Member Cowart asked what did VMRC need to do to make the cases stick in Court. Mr. Jones said the whole area needed to be closed. Dr. Orth said that in the beginning they discussed marking the area, but it was tough to do and there were not a lot of watermen using that area at that time. He said the economics of marking the

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area would be prohibitive and, therefore, they went with the option of acting in good faith. A discussion followed regarding the marking of the area. Comments are a part of the verbatim record.

Associate Member Ballard asked when would the 2001 photography be available. Dr. Orth responded that they were due to get the photography next month.

After a discussion between Commission members regarding alternatives for enforcing the Regulation in the SAV grass beds, Commissioner Pruitt turned the matter over to the Chairman of the Clam Committee.

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Roy Insley, Head-Plans and Statistics, said that they had called around and found out that there were three or four conch potters working in the area of the Bay Bridge Tunnel. He said the Committee agreed unanimously that they were concerned for the boaters that might get entangled in the conch pots, along with the strong tides, and the boaters might go against the bridge tunnel. He also stated that the Committee unanimously felt this was a safety issue for the recreational fishermen. Therefore, the Committee felt the Commission should pass an emergency regulation with the Memorial Day weekend coming up and in anticipation of heavy recreational fishing around the Bridge Tunnel. In addition, the Committee would like to have a permanent regulation that would include conch pots, fish pots, and crab pots.

Mr. Insley indicated that the Committee came up with the following language for the Regulation: "It shall be unlawful for any person to set, place or fish or conch pot of any type in any area extending 250 yards from either span of the Chesapeake Bay Bridge Tunnel for purposes of this section the distance shall be measured from the outer edges of each span and shall extend from the low water mark on Fisherman's Island to the one mile marker on the south end of the Bridge Tunnel."

Mr. Insley also commented that Mr. Nixon had to leave, but requested that the Commission not consider this as a precedent for all the bridges in the State of Virginia.

Associate Member Ballard asked if Rick Robbins or Burnie Rolley were contacted. Mr. Insley said that Rick Robbins was contacted by Mr. Gillingham. Mr. Gillingham said that Mr. Robbins stated that he saw no problems with the closure of that small footprint of an area.

Associate Member Cowart moved to adopt the emergency regulation pertaining to channeled whelk, and to make it illegal to pot within the 250 yards extended area at

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the Chesapeake Bay Bridge Tunnel. Motion seconded by Associate Member Birkett. Motion carried unanimously.

Associate Member Williams commented that the three boats should be contacted before Friday. Mr. Insley indicated that staff could also contact the boaters.

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**ITEM 25: REPEAT OFFENDERS.**

Associate Member Williams indicated that he would be abstaining on all the repeat offender cases.

**CHARLES H. BUCHANAN**

Lewis Jones, Deputy Chief-Law Enforcement, briefed the Commission on Mr. Buchanan as a first time repeat offender. He said Mr. Buchanan offenses occurred in March 26, 2000, five counts of improper marked gill nets; May 5, 2000, Possession of untagged striped bass; September 26, 2000, placed gill net in channel. Mr. Buchanan was found guilty on all three offenses.

Commissioner Pruitt asked Mr. Buchanan if he went to Court on the three offenses. Mr. Buchanan said he went to court on two of the offenses.

Associate Member White moved to give Mr. Buchanan one year's probation. Motion was seconded by Associate Member Hull. Motion carried 6 to 1, with Associate Member Williams abstaining.

**JAMES W. ESKRIDGE - CONTINUED UNTIL NEXT MONTH**

**ARTHUR A. KELLUM - NOT PRESENT**

Commissioner Pruitt placed the matter before the Commission. Mr. Pruitt indicated that until Mr. Kellum appeared before the Commission, all his licenses should be revoked.

Associate Member Hull moved to revoke all his licenses until he appears before the Commission. Motion seconded Birkett. Motion carried unanimously.

**EDWARD F. LANDON - Present**

Lewis Jones, Deputy Chief-Law enforcement, said this was Mr. Landon's first time

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appearing before the Commission as a repeat offender. He indicated that Mr. Landon had three offenses within a twelve month period as follows: November 20, 1999, undersized crabs; May 12, 2000, dredging conch in a closed area in the Bay; August 22, 2000, undersized crabs.

Commissioner Pruitt asked if he went to court on any of the charges. Mr. Landon said he did not go to court.

Associate Member Ballard moved that Mr. Landon be placed on a year's probation. Motion seconded by Associate Member Birkett. Motion carried unanimously.

**DENNIS P. DALHEIM, NOT PRESENT**

Lewis Jones, Deputy-Chief Law Enforcement, indicated that no return was received on the certified mailing. Therefore, Mr. Dalheim would be served personally and he should appear next month before the Commission.

**WILLIAM J. PARKS - PRESENT**

Lewis Jones, Deputy Chief-Law Enforcement, said Mr. Parks had three offenses within the twelve month period. He had been before the Commission many years ago. Mr. Parks offenses were: June 7, 2000, possession of undersized crabs; August 7, 2000, possession of dark sponge crabs; October 13, 2000, obstruction of cull ring in crab pot.

Commissioner Pruitt asked Mr. Parks if he had gone to court on any of the charges? Mr. Parks said he went to court in Accomac. Commissioner Pruitt placed the matter before the Commission.

Associate Member Cowart moved to place Mr. Parks on a year's probation. Motion seconded by Associate Member White. Motion carried unanimously.

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Assistant Attorney General Josephson corrected himself on a statement he had made earlier. He said after looking at the statute concerning the adoption of an emergency regulation, the Code stated that no regulation adopted as an emergency regulation shall remain in effect longer than 30 days. He said if the conch regulation was made effective Friday, then it would remain in effect until the next meeting.

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Associate Member Cowart commented that Tangier was the only area in the State of Virginia that was unable to commute to work by automobile because of the location. He said he felt that the Commission would totally discourage those people from staying on the island, if they cannot get a crab license. Mr. Cowart indicated that if the Tangier situation was not addressed, the people would be forced to leave the island because they cannot get a license to work the water, but he did not know how the Blue Crab Committee would vote on this issue.

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Meeting adjourned at 4:20 p.m.

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William A. Pruitt, Commissioner

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LaVerne Lewis, Commission Secretary