

## MINUTES

### Commission Meeting

**January 27, 2004**  
**Newport News, VA**

The meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt )	Commissioner
Chad Ballard )	
Gordon M. Birkett )	
Ernest N. Bowden, Jr. )	
S. Lake Cowart )	Associate Members
Russell Garrison )	
J. T. Holland )	
Cynthia Jones )	
Carl Josephson	Assistant Attorney General
Colonel Steve Bowman	Acting Deputy Commissioner
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Jane McCroskey	Chief, Admin/Finance Div.
Jack Travelstead	Chief, Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Jim Wesson	Head, Conservation/Replenishment
Roy Insley	Head, Plans/Statistics Dept.
Chad Boyce	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Carter Shackelford	Fisheries Management Technician
Lt. Col. Lewis Jones	Deputy Chief-Law Enforcement
MPO Mike Morris	MPO
MPO Tim Litz	MPO
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.

Benny Stagg  
Tracy West  
Hank Badger  
Justin Worrell  
Randy Owen  
Paul Rogers

Environmental Engineer, Sr.  
Surveyor

Virginia Institute of Marine Science (VIMS)  
Lyle Varnell

Other present included:

Newman T. Scott, Jr.  
John S. Milleson  
Robert Reid  
Chas Berle  
Mark Conboy  
Nancy Alm  
Ellen Zuccans  
James Windsor  
Bryan Greene  
Roger Parks  
Freddie Linton

Andrews Parks  
Joe Andrew  
Virginia H. Meredith  
Otis Asel  
Marvin Milton  
Chuck Roadley  
Carol Zuccans  
Marshall B. Cox, Sr.  
Eric Turner  
Kenneth Watkins  
Tim Pruitt

Janice Sklar  
Raymond Biar  
John Lain  
Robert Scott  
Patricia Milton  
Allen Houghter  
Karl D. Horner  
Ed Bowdon  
Douglas F. Jenkins, Sr.  
Russell Gaskins

and others

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Commissioner Pruitt called the meeting to order at 9:47 a.m. with only five Associate Members present. Associate Members Cowart and Birkett both arrived later. Associate Member McLeskey was absent the entire meeting.

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Associate Member Garrison gave the invocation and Associate Member Holland led the pledge of allegiance to the flag.

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

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**Approval of Agenda:** Commissioner Pruitt asked if there were any changes to the agenda. Jack Travelstead, Chief-Fisheries Management, said that he had a Mr. Piercy, a

Maryland waterman, who was requesting a transit permit for a hydraulic dredge. Bob Grabb, Chief-Habitat Management, responded none.

Associate Member Ballard announced that he would be abstaining from Item 8.

**Associate Member Ballard moved to approve the agenda with the change. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

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- 1. MINUTES: December 22, 2003 regular meeting and January 20, 2004 special meeting.**

**Associate Member Holland moved to approve the minutes for the December 22, 2003 Commission meeting. Associate Member Garrison seconded the motion. The motion carried, 5-0. Associate Member Ballard moved to approve the minutes for the special meeting held on January 20, 2004. Associate Member Garrison seconded the motion. The motion carried, 5-0.**

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- 2. PERMITS:**

Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items, A through D, and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unprotested, and staff is recommending approval. Mr. Grabb explained that staff recommended that Item 2B, Colonial Beach Yacht Center, be approved pending VMRC receiving approval from the Health Department.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con. There were none.

There being no further comments either pro or con on the page two items from the public, **Associate Member Garrison moved to approve Page Two items, A through D. Associate Member Holland seconded the motion. Associate Member Ballard asked if this included the Health Department approval pending for Item 2B recommended by staff. Commissioner Pruitt responded, yes. The motion carried, 5-0.**

- 2A. CAVALIER GOLF AND YACHT CLUB, #03-0279**, requests authorization to construct two floating docks to provide 14 additional wet slips at their exiting marina situated along Little Neck Creek in Virginia Beach. Recommend an annual encroachment royalty of \$335.80 for the encroachment over 6,716 square feet of State-owned subaqueous land at a rate of \$0.05 per square foot.

Royalty Fee (Encroach on 6,716 sq. ft. @\$0.05/sq. ft.).....	\$335.80 (Annual)
Permit Fee.....	100.00
Total Fees.....	\$435.80

**2B. COLONIAL BEACH YACHT CENTER, #03-0144**, requests authorization to hydraulically dredge approximately 37,000 cubic yards of subaqueous material to provide maximum depths up to minus eight (-8) feet at mean low water in conjunction with the redevelopment and reconfiguration of the Colonial Beach Yacht Center situated along Monroe Bay in Westmoreland County. The proposed redevelopment also includes the construction of 99 covered slips and 59 open slips on a combination of floating and fixed open-pile piers to replace the existing slips, a new 335 linear foot floating fuel pier, two 65 foot long travel lift piers to replace the existing travel lift facility, and a 500 linear foot floating pier extending into the Potomac River to support aquaculture and fishing activities. The floating piers are designed to house floating shellfish upweller units to support oyster aquaculture activities. Staff recommends a one-time royalty of \$16,200.00 for the new dredging of 36,000 cubic yards of State-owned subaqueous bottom material at a rate of \$0.45 per cubic yard and an annual royalty of \$5,852.35 for the encroachment over 117,047 square feet of additional State-owned submerged land at an annual rate of \$0.05 per square foot.

Royalty Fee (Encroach on 117,047 sq. ft. @ \$0.05/sq. ft.).....	\$ 5,852.35 (Annual)
Royalty Fee (Dredging 36,000 cu. yds. @\$0.45 cu. yd).....	16,200.00
Permit Fee.....	100.00
Total Fees.....	\$22,152.35

**2C. ARMY CORPS OF ENGINEERS, #03-2261**, requests authorization to hydraulically place approximately 40,000 cubic yards of dredged material, per dredge cycle, generated from the maintenance dredging of the Trout Creek to Kegotank Bay section of the WCV Federal Navigation Project channel into the surf zone along Metompkin Island, 3,000 feet south of Gargathy Inlet in Accomack County.

Fees not applicable.

**2D. RICHMOND DEPARTMENT OF PUBLIC WORKS, #03-2163**, requests authorization to construct and backfill 164 linear feet of sheet pile retaining wall aligned up to 30 feet channelward of mean low water, resulting in the filling of 4,920 square feet of State-owned subaqueous lands at the Richmond Terminal Dock within the James River in the City of Richmond.

Permit Fee.....	\$100.00
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- 3. **CLOSED SESSION.** A closed session was held later in the meeting (see page 12653).

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- 4. **APM TERMINALS VIRGINIA, INC., #02-1913,** requests authorization to develop a marine container terminal facility and to maintenance dredge on an as-needed basis adjacent to property situated along the Elizabeth River in Portsmouth. Continued from December 22, 2003, meeting.

Bob Grabb, Chief-Habitat Management, gave the presentation. Mr. Grabb stated that staff did not have any additional information to present to the Commission. His comments are a part of the verbatim record.

Commissioner Pruitt explained that the applicant agreed with everything except for the determination of commercial value on some of the material and the \$0.45 per cubic yard dredging royalty fee.

Associate Member Garrison asked Mr. Lain, if they had gotten with the Corps to get respite from the \$0.87 per cubic yard disposal cost the federal government assesses.

John Lain, Attorney for APM Terminals, was present and his comments are a part of the verbatim record. Mr. Lain explained that they had asked the Corps but that their statutes were already in place and they could not get any relief. He explained that the definition of commercial value was directly related to an expected income or profit, and since they had to pay disposal fees that meant there was no commercial value.

No one else was present, pro or con, to speak to this matter.

**After further discussion, Associate Member Ballard moved to adopt the staff recommendations except that the royalty be \$0.20 per cubic yard for all of the material dredged. Associate Member Bowden seconded the motion. The motion carried, 4-1. Associate Member Garrison voted no.**

Royalty Fees (Fill 90,169 sq. ft. @\$2.00/sq. ft.).....	\$ 180,388.00
Royalty Fees (Encroach on 324,475 sq. ft. @\$1.00/sq. ft.).....	324,475.00
Royalty Fee (Four-400 sq. ft. mooring dolphins @\$1.00/sq. ft.)...	1,600.00
Royalty Fee (Encroach on 750 sq. ft. @\$1.00/sq. ft.).....	750.00
Royalty Fee (Dredging 10,300,000 cu. yds. @\$0.20/cu. yd.).....	2,060,000.00
Permit Fee.....	100.00
Total Fees.....	\$2,567,313.00

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5. **DONALD BRITTON, ET AL, #03-1873.** Commission review of the October 23, 2003, decision of the Accomack County Wetlands Board to approve the filling of 4,500 square feet of vegetated wetlands along Chincoteague Channel in the Town of Chincoteague, Accomack County. Continued from the December 22, 2003 Commission meeting.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides and his comments are a part of the verbatim record. Mr. Badger said that he had some orientation slides to present that were not a part of the Wetlands Board record. **Associate Member Ballard moved to allow the orientation slides. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Associate Member Birkett arrived at the meeting at approximately 10:17 a.m.

Mr. Badger explained that the Britton's property was located on South Main Street north of the Coast Guard Station and Captain Fish's Restaurant. The proposal involved the expansion of an existing mooring basin through the alignment of the existing bulkheads and dredging to deepen and widen the area. The number of slips in the marina would increase from 28 to 57.

Mr. Badger said that the applicant sought authorization to install and backfill 1,051 linear feet of bulkhead; construct a 168-foot long by 5-foot wide open-pile pier with finger piers and mooring pilings; nineteen catwalk piers with mooring pilings; fill 4,500 square feet of tidal vegetated wetlands; and dredge the boat basin to a depth of minus four (-4) feet at mean low water to create a total of 57 boat slips.

Mr. Badger stated that the Commission's review was being undertaken in accordance with the provisions of Sections 28-2-1310 and 28.2-1311 (A)(2).

Mr. Badger explained that during the October 23, 2003 public hearing, the Accomack County Wetlands Board considered the report provided by the Virginia Institute of Marine Science (VIMS), as well as the testimony provided by the applicant's agent, Mr. Raymond Britton.

Mr. Badger said that VIMS stated in their report that the impacts could be reduced significantly and therefore the project warranted careful consideration. The report indicated that the dredged material was to be placed in a wetlands/upland area vegetated by salt marsh cordgrass (*Spartina alterniflora*) and reed grass (*Phragmites sp.*) in the uplands. The wetlands loss would amount to approximately 2,800 square feet from the placement of the dredged material and an additional 1,700 square feet of wetlands would be filled behind the proposed bulkhead on the north side of the property.

Mr. Badger said that although, the applicant had offered as mitigation a permanent conservation easement over a mostly upland area located north of the high school in a natural ridge and swale area, VIMS pointed out this area had a very minimal tidal connection to the Chincoteague Bay.

Mr. Badger explained that the shoreline report continued by citing the Commonwealth's Wetlands Mitigation/Compensation guidelines, which state that the filling of wetlands should first be avoided as much as possible and then minimized so that only unavoidable wetlands impacts occur. Compensatory mitigation should only be used to offset the unavoidable wetland losses. In addition, it is generally recommended that compensation be in-kind and in the same watershed.

Mr. Badger stated that VIMS recommended that the bulkhead on the north side of the property be realigned where wetlands were present. They also recommended that the saltmarsh cordgrass marsh to the east of the boat basin not be filled and that the section of the bulkhead proposed seaward of this marsh not be built. They continued by stating that if compensatory mitigation was considered necessary, the proposed compensation plan did not mitigate for tidal wetlands very well. Although they would not recommend grading down the present uplands in the ridge and swale area, they would recommend that the tidal connection to the area be improved significantly in order for the wetlands mitigation to have a greater impact to counter the tidal wetlands losses.

Mr. Badger said that Mr. Britton provided a brief description of the property in which he described a compensation plan where he would place 75,000 square feet of property near the high school under a permanent conservation easement. The board and Mr. Britton discussed at length whether the compensation easement and mitigation would work in that area. Mr. Britton offered to create vegetated wetlands by lowering an area of upland next to the ditch leading to the Chincoteague Bay, as compensation for the loss of wetlands at his proposed marina plus the conservation easement.

Mr. Badger explained that board member C. Lee Davis stated that the vegetated wetlands at the marina was a trash catcher. Mr. Davis continued by stating that the marina property would be worth a lot more money and would bring in a lot more taxes with the proposed improvements. Mr. Britton's willingness to compensate for the loss of wetlands near the high school was acceptable to him.

Mr. Badger said that Gerald D. Tracy, with the U. S. Army Corps of Engineers stated that the vegetated wetlands were of good quality, but they were surrounded by commercial activity and had already been degraded by human activity. Mr. Tracy felt the mitigation site could support salt marsh cordgrass (Spartina alterniflora).

Mr. Badger said that after considering the testimony provided, Mr. Davis made a motion to approve the proposed project as presented, with a mitigation plan that included the creation of a 4,500 square foot salt marsh planted with cordgrass (Spartina alterniflora)

and a three year monitoring plan. The motion was seconded and the board voted 3 to 0 to approve the application.

Mr. Badger said that based on staff's review, it appeared that the board's decision did not accommodate the standards for use or development of wetlands contained in Section 28.2-1308 of the Code of Virginia, nor the Commonwealth's Wetlands Mitigation/Compensation Guidelines, which state that the filling of wetlands should first be avoided as much as possible and then minimized so that only those wetlands are filled that are unavoidable. Compensatory mitigation should only be used to offset the unavoidable wetlands losses. In addition, it is generally recommended that the compensation be in-kind.

Mr. Badger explained that VIMS had stated that space appeared to be available on the existing upland to construct the building proposed for the filled marsh area. There was no site plan presented to the board showing the required zoning or need for parking spaces or the size of the proposed building.

Mr. Badger said that furthermore, the board neither avoided nor minimized any of the proposed wetlands losses. VIMS recommended that the bulkhead on the north side of the property be realigned. They also recommended that the vegetated marsh east of the boat basin not be filled and the section of the bulkhead proposed seaward of this marsh not be built. By incorporating these two recommendations the Wetlands Board could have avoided approximately 4,450 square feet of tidal vegetated wetlands losses and the need for compensation. Therefore, staff recommended that the Accomack County Wetlands Board's decision be reversed and the application as proposed be denied.

John Poulson, Attorney for Mr. Britton, was present and his comments are a part of the verbatim record. Mr. Poulson asked for the application drawing to be shown for his presentation. He explained that the project's private/public benefits exceeded the detriments (28.2-1302(10)(B)); it met all standards pursuant to Code (28.2-1301); and provided access to water. He further agreed, however, that the wetlands board did not do its job and the bottomline was that the Commission could not uphold their decision based on the record. He said the board had discussed mitigation, yet there was no discussion about need, intrusion on wetlands, no site drawing, and no evidence. He suggested the Commission remand the matter back to the wetlands board for them to reconsider the project in accordance with the statutes (Sections 28.2-1302 (9,10) and 28.3-1308) and the guidelines.

No one from the Accomack County Wetlands Board was present to offer comments.

**Associate Member Holland made the motion to remand the case back to the Wetlands Board. Associate Member Bowden seconded the motion. Associate Member Ballard asked if this motion was made in accordance with Section 28.2-1302 (9 & 10) of the Code. Associate Member Holland responded, yes. Associate**

**Member Bowden asked if a stipulation could be established as relates to parking, building size, etc. Commissioner Pruitt responded that would be a zoning issue for the County, not for the Commission. Motion carried, 6-0.**

No applicable fees, remanded back to the Wetlands Board.

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6. **CYPRESS COVE VILLAS ASSOC., INC., #03-1578**, requests authorization to install 1,100 linear feet of bulkhead aligned a maximum of two (2) feet channelward of the existing deteriorated bulkhead adjacent to their property situated along Lily Creek in the City of Portsmouth. The project was protested by nearby residents.

Tracy West, Environmental Engineer, Sr. gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. West explained that the project was located along Lily Creek, a small creek draining to Carney Creek and the Western Branch of the Elizabeth River in the City of Portsmouth. The project consisted of the installation of a new replacement bulkhead aligned no greater than two feet channelward of the existing bulkhead along the entire length of the current deteriorated structure.

Ms. West said that two nearby property owners opposed the project. Both were located across Lily Creek from the project. Mr. William Mooring was concerned that allowing the bulkhead to encroach two feet channelward would require the existing piers to be extended two feet channelward, thereby, impacting navigation. Mr. and Mrs. Beutel had similar concerns regarding any resulting channel restriction in Lily Creek. All of the protestants stated that they would not object to the replacement of the bulkhead in place or behind the existing structure.

Ms. West said that in response to the concerns of the protestants, Janice Sklar, agent for the applicant, provided information that indicated the distances across Lily Creek and from the applicant's property to the line of navigation at 6 locations. At the most narrow point of Lily Creek, the toe of the channel was 55' from the applicant's bulkhead.

Ms. West stated that VIMS had noted that there did not appear to be a practicable alternative to the proposal. No active oyster ground leases were in the vicinity and no other State agencies had commented on the project proposal. The Portsmouth Wetlands Board had not considered the project because there are no proposed tidal wetland impacts. Ms. West also explained that it was an acceptable construction practice in Virginia to allow replacement bulkheads to be constructed on an alignment no further than two feet channelward of the deteriorated bulkheads. In staff's opinion, reducing the distance from

the toe of the channel from 55 feet to 53 feet should still allow adequate navigational access through the Creek.

Ms. West said that during construction, the pier owners would be required to remove some planking at the landward end of their piers to facilitate construction access. It should be noted that staff had not received any requests from the residents of Cypress Cove Villas for authorization to extend their piers in response to this proposed project.

Ms. West stated that, in light of the foregoing, staff recommended approval of the project as proposed. The Commission did not have any questions of staff.

Janice Sklar, agent for the applicant, was present and her comments are a part of the verbatim record. Ms. Sklar said she would wait to comment until after the protestants had testified.

Bob Beutell, President of the Homeowners Association, was present and his comments are a part of the verbatim record. Mr. Beutell stated that he was opposed to the change in alignment of the bulkhead from the existing one, and remained concerned that it would interfere with navigation in the area.

Commissioner Pruitt explained to Mr. Beutell that they could certainly appeal the Commission's decision to the Circuit Court. He further explained that the Commission does not have resources to monitor every project.

Associate Member Cowart arrived to the meeting at approximately 10:45 a.m.

In rebuttal, Ms. Sklar, agent for the applicant, explained that dredged materials were used to backfill the existing bulkhead. She further explained that if they were not allowed to replace the bulkhead, all of this material would go back into the creek because of the serious deterioration of the existing bulkhead. Her rebuttal comments are a part of the verbatim record.

**Associate Member Garrison made the motion to approve the project. Associate Member Holland seconded the motion. The motion carried, 6-0-1. Associate Member Cowart abstained from voting because of his late arrival he had not heard all of the testimony.**

Royalty Fees (Fill on 2,200 sq. ft. @ \$2.00/sq. ft.).....	\$4,400.00
Permit Fee.....	100.00
Total Fees.....	\$4,500.00

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7. **GREEN HILL BY THE BAY CONDOMINIUM OWNERS ASSOCIATION, #03-0895**, requests authorization to construct a 150-foot long community pier with a 12' by 16' T-head at their property situated along Broad Bay in Virginia Beach. Adjacent property owners protested the project.

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

Mr. Owen explained that the project was located at property situated along the southern shoreline of Broad Bay, approximately 0.4 miles upstream from its confluence with Long Creek Canal, in Virginia Beach. Bay Island and First Landing State Park are situated north and northeast of the project, respectively, on the opposing shoreline. Broad Bay's southern shoreline is intensely developed as residential property and Broad Bay is heavily utilized by recreational boaters. Public boat ramps exist at First Landing State Park and at Crab Creek.

Mr. Owen further explained that the Green Hill by the Bay Condominium Owners Association was comprised of twenty-eight (28) residential units. Established in 1981, it was unlike most other condominium developments in that each of the 28 individually owned properties represent a "unit" upon which detached single-family homes are constructed. Its associated common elements include its residential streets, beach path and stairway, deck, gazebo and community beach.

Mr. Owen said that there were four (4) waterfront units upon which one (1) shared-use pier (Units 17 & 18) and one (1) private-use pier (Unit 15) were constructed. The owner of Unit 16 has not constructed a pier to date. The current pier project was proposed for the exclusive use of the Association's members.

Mr. Owen said that two adjacent property owners (Units 16 and 17) objected to the project. Mr. John Birsch and Mrs. Anne Birsch (Unit 17) maintained that the pier's use would be unregulated and accessible to citizens outside the Association. Ms. Virginia Meredith (Unit 16) remained concerned that those parking for pier access would impede fire and emergency rescue vehicles.

Mr. Owen stated that prior to the submission of its application, the Association met and obtained over two-thirds (2/3) of the Unit Owners vote in support of the project. They recently received unanimous approval from both the City of Virginia Beach Planning Commission and City Council. In approving its Conditional Use Permit, City Council prohibited the overnight mooring of boats, any commercial use of the pier and restricted its exclusive use to the Association's members.

Mr. Owen said that the project as proposed was exempt from wetland permit requirements and had obtained approval from the Virginia Department of Health. The Department of Environmental Quality and the Department of Conservation and

Recreation had advised that the project would not adversely impact water quality, natural heritage resources or state recreational facilities. The Virginia Institute of Marine Science had no objection to the project and indicated that it would have minimal adverse impacts on the marine environment.

Mr. Owen explained that to date, the Association had agreed to a number of concessions in an attempt to allay the concerns of the protestants. These included restricting use of the pier to Association members for fishing and crabbing, and as a day use pier for boating. Additionally, no mooring piles would be allowed, no lighting and sewerage facilities would be provided and no overnight docking would be permitted. Although the Commission had no jurisdiction over the common areas themselves (i.e., street, walkway, deck, gazebo and beach), the Association had also proposed a new gate and locking system to prevent non-member access to the common area and proposed pier.

Mr. Owen explained that it was staff’s understanding that the protestants were the original owners who elected to purchase their units subject to and adjacent to the “common area” as recorded on the development’s original plat.

Mr. Owen said that accordingly, in light of the restrictions proffered by the Association, the City’s recent approvals, and the minimal environmental impacts anticipated with the pier’s construction, staff recommended approval of the project with the aforementioned restrictions as conditions for approval. The staff also recommended the assessment of a royalty in the amount of \$471.00 for the encroachment of the pier over 942 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot.

Eddie Bourdon, applicant's representative, was present and his comments are a part of the verbatim record. Mr. Bourdon said that the applicant agreed with the staff's evaluation, conditions, and fees.

Commissioner Pruitt asked if any one was present in opposition to the project.

Virginia A. Meredith, protestant, was present and her comments are a part of the verbatim record. Ms. Meredith stated that her main concern was with the safety of the project.

Commissioner Pruitt explained that the City covered that issue and it was not within the jurisdiction of the Commission. He further explained that Ms. Meredith needed to address her concerns to the City Council.

**Associate Member Holland moved to accept staff recommendations. Associate Member Garrison seconded the motion. The motion carried, 7-0.**

Royalty Fees (Encroach on 942 sq. ft. @0.50/sq. ft.).....	\$471.00
Permit Fee.....	100.00
Total Fees.....	\$571.00

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8. **MARSHALL B. COX, SR., #03-061S; OTIS P. ASAL AND ROBERT A. SCOTT, #03-027S; D.S. LONG AND L.H. LONG, #02-053S**, have requested authorization to lease 10, 5 and 7 acres, respectively, of oyster planting ground along the Chesapeake Bay near the mouth of Old Plantation Creek in Northampton County. The projects are protested by nearby property owners.

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

Mr. Badger explained that the three proposed leases were all located adjacent to and southwest of the mouth of Old Plantation Creek, and about two and one half (2.5) miles south of Cape Charles Harbor. The water depths vary from minus one tenth (-0.1) of a foot near the beach and sand bars, to minus two (-2) feet (MLW) in the small channel. The bottom was mostly sand with some areas of submerged aquatic vegetation (SAV). Old Plantation Creek had a large amount of clam aquaculture activity.

Mr. Badger said that Mr. Asal and Mr. Scott had first applied for a lease in 1999 (#99-085). That application was for an area that had SAV on the southern portion and was protested by nearby homeowners in the Arlington Plantation subdivision. The protest was based on a potential negative impact to the shallow channel leading into Plantation Creek. The two parties agreed to a line approximately 25 feet northwest of the existing channel and the protest was withdrawn. A survey was made bounded on the north by Nottingham (Plat File 17494), east by an agreed to line 25 feet of the channel, south by SAV beds and west by SAV. A lease (Plat file 17690, 8.69 acres) was assigned to Mr. Asal and Mr. Scott in 2000.

Mr. Badger explained that on June 13, 2002, Daniel Long applied to lease 12 acres of Oyster Planting Ground (#02-052) adjacent to and south of the Asal and Scott lease (P.F. #17690). This was part of the original area that Asal and Scott had applied for, which had SAV on it. The application was administratively denied on June 25, 2002, because of the SAV beds in the area.

Mr. Badger stated that on January 22, 2003, Charles Stant and W.T Nottingham applied to lease the same area (#03-010) that was denied to Mr. Long. The application was subsequently withdrawn on February 12, 2003, because of the SAV beds in the area.

Mr. Badger said that on September 11, 2003 staff received an application for oyster planting ground from Mr. Cox (#03-061) for 10 acres. That application was bounded on the north by the oyster ground lease of Asal and Scott (P.F. #17690); east by vacant bottom and the channel into the creek; south by an oyster ground application in the name of Daniel Long (#02-053) and on the west by vacant bottom. This was in approximately

the same area within which both Long and Stant were administratively denied . Mr. Cox would not accept staff's decision and asked that his oyster ground application be heard by the full Commission.

Mr. Badger said that Mr. Asal and Mr. Scott first applied for a lease in 1999 (#99-085). Their application was for an area that had SAV on the southern portion. It was protested by nearby homeowners in the Arlington Plantation subdivision. Their protests were based on the impacts to the shallow channel leading into Plantation Creek. The two parties agreed to a line approx 25 feet northwest of the existing channel and the protests were withdrawn. A survey was made bounded on the north by the Nottingham lease (Plat File 17494), east by the agreed to line 25 feet of the channel, south by SAV beds and west by SAV. A lease (Plat file 17690, encompassing 8.69 acres) was assigned to Mr. Asal and Mr. Scott in 2000.

Mr. Badger explained that on October 16, 2001 staff received an application for oyster planting ground from Otis P. Asal and Robert A. Scott for 10 acres (#01-091). That application was bounded on the north by an oyster ground lease in the name of W.T. Nottingham (Plat File #17494); east by vacant bottom; south by vacant bottom and on the west by their oyster ground lease (Plat File #17690). This was the same area that was protested by the Arlington Plantation homeowners in the original application. The channel had moved to the southeast and the applicant felt there was new room for clam aquaculture to occur. The Arlington Plantation homeowners again protested the project. The application was administratively denied and subsequently withdrawn on January 24, 2002.

Mr. Badger stated that staff received another application from Mr. Asal and Mr. Scott on April 14, 2003 (#03-027). This oyster ground application was for 5 acres in the same area that had been previously denied on January 24, 2002, (#01-091). Mr. Asal and Mr. Scott also asked that their application be heard by the full Commission.

Mr. Badger said that on June 13, 2002, staff received an application for oyster planting ground from D. S. Long and L. H. Long for 7 acres (#02-053). That application was bounded on the north by vacant bottom (now the Cox Application); east by mean low water along the beach in front of the Arlington Plantation subdivision.; south by an oyster ground lease in the name of Patrick Hand (Plat File #18079) and on the west by vacant bottom.

Mr. Badger stated that staff received several letters from the Arlington Plantation Homeowner's Association and nearby homeowners on the south side of Plantation Creek protesting the three (3) oyster ground applications. They had concerns that the leases would adversely impact the shallow channel leading into Plantation Creek. The channel was very narrow and almost non-existent as it crosses the sand bars into the bay. They also indicated that clamming activity in this area would limit the use of their beachfront property.

Mr. Badger explained that the Virginia Institute Of Marine Science had reviewed the lease applications and stated that SAV had been present in the mouth of Old Plantation Creek since the early 1980's. Their most recent photography, taken in June 2003, showed dense beds at the mouth of the Creek as well as north and south of the mouth. The photography also showed clam aquaculture areas along the north shore with SAV present in all the areas surrounding the beds. During the winter months, while some areas may have no aboveground leaves, they will re-vegetate from buried rhizomes and seed in the spring. The movement of sand along this shoreline and the shoaling of Old Plantation Creek had been a historical problem. At present, it was difficult for small boats to enter the creek at low water. With the addition of three more oyster ground leases, navigating the restrictive channel could become even more of a challenge. Additionally, VIMS had documented the presence of SAV throughout the area. VMRC, Regulation 4 VAC 20-335-30-F Pertaining To On-Bottom Shellfish Aquaculture Activities requires that no new structures be placed on existing stands of submerged aquatic vegetation (SAV). This includes clam nets.

Mr. Badger stated that based on the above, staff recommended all three Oyster Ground Applications be denied. Furthermore, staff recommended that the area be set aside for a minimum of ten (10) years as shown on the oyster ground map to prevent further applications during that period. In general the set aside area would be bounded on the north by Griffith (P.F. #17617), Asal/Scott (P.F. #17690) and Nottingham Enterprises (P.F. #17494); east by Vacant Bottom, Parson (P.F. #12055) and mean low water along the Arlington Plantation subdivision; south by Hand (P.F. #18079) and west by vacant bottom.

Otis Asal, co-applicant, was present and his comments are a part of the verbatim record. Mr. Asal stated that he had faxed a letter to the Commission number the day before, requesting a continuation because his counsel was unable to attend the meeting. He further explained that his counsel was also representing Mr. Scott. Robert A. Scott, the co-applicant, was present.

Mr. Badger explained that he had talked with the Longs and they concurred with staff's recommendation to set the area aside.

Marvin Milton, resident and President of the Arlington Plantation Homeowner's Associate, was present and his comments are a part of the verbatim record. He explained that these leases severely affect the channel and could cause silting. He urged the Commission to deny the requests based on Mr. Badger's testimony. He further explained that a continuance was not justified. He said the area is over-leased and there was a need retain some open space.

Allen Houghter, resident and protestant, was present and his comments are a part of the verbatim record. Mr. Houghter said he was concerned that the mission of VMRC was to

consider only commercial interests. He explained that he had been there a long time and at that time there was only Cherrystone.

Bob Grabb, Chief, Habitat Management, stated that while the applications were briefed together, they should be considered separately. Carl Josephson said that it should be done in order to provide an opportunity for all to address the Commission. Mr. Grabb suggested starting with Mr. Cox, then Mr. Asal's continuance request, and followed by the application by the Longs.

Marshall B. Cox, Sr., applicant, was present and his comments are a part of the verbatim record. He said he would do whatever it took to get a lease in this area. He explained that the area where he was requesting did not have any eelgrass in it. He provided pictures of the area and stated that clam beds benefit all fisheries in the area. He said that he was just as concerned with there being access to the creek because it also benefited him.

Associate Member Holland asked Hank to address Mr. Cox's comments regarding the submerged aquatic vegetation (SAV) in this area. Mr. Badger explained that even if they were to split the lease in half, it would still be in the SAV. He said that it would be hard to find an area without SAV. Associate Member Cowart asked for confirmation that staff had previously denied the three applications administratively. Mr. Badger responded, yes. Associate Member Garrison asked for confirmation that SAV was present in the location requested. Mr. Badger stated that it would be hard to find an area without SAV, except in the channel itself.

Commissioner Pruitt asked for a motion on Mr. Cox's application. **Associate Member Cowart made the motion to deny the application for lease by MARSHALL B. COX, SR. (#03-061S) because of the existence of SAV in the requested area. Associate Member Holland asked if Mr. Cowart wanted to include setting the area aside. Associate Member Cowart said he wanted to wait until the Commission had dealt with all three requests. Associate Member Garrison seconded the motion. The motion carried, 6-0-1. Associate Member Ballard abstained from voting because of business conflicts.**

Associate Member Cowart asked if the Long application was being withdrawn. Mr. Badger explained that the applicants were willing to go along with staff recommendation to set the area aside. **Associate Member Cowart moved to deny the application for lease by D.S. LONG AND L.H. LONG, (#02-053S), as recommended by staff. Associate Member Birkett seconded the motion. The motion carried, 6-0-1. Associate Member Ballard abstained from voting because of business conflicts.**

**Associate Member Cowart moved to continue the case of OTIS P. ASAL AND ROBERT A. SCOTT, Application for Lease (#03-027S), as requested by Mr. Asal and to make a decision about setting the areas aside at the February meeting.**

**Associate Member Birkett seconded the motion. The motion carried, 6-0-1. Associate Member Ballard abstained from voting because of business conflicts.**

No fees applicable.

\* \* \* \* \*

**14. Repeat Offenders: (All of the defendants were sworn in at the same time.)**

Lt. Col. Jones, Deputy Chief, Law Enforcement, presented the following cases to the Commission.

**Bryan W. Greene (DOB-9/27/79)**

September 12, 2002, guilty, taking crabs during unlawful time period; April 11, 2003, guilty, no crab pot license; and June 11, 2003, guilty, taking crabs during unlawful time period. Commissioner Pruitt asked Mr. Greene if he had gone to court on the above matters and Mr. Greene responded, yes.

**Associate Member Ballard moved that in accordance with the guidelines, Mr. Greene be put on 12-month probation. Associate Member Birkett seconded the motion. Associate Member Garrison asked if Mr. Greene had the consequences explained to him. Lt. Col. Jones responded, yes. Motion carried, 7-0.**

**Andrew Ray Parks, Sr. (DOB-4/8/42)**

April 16, 2002, guilty, obstructed cull rings; November 5, 2002, guilty, possession of undersized crabs; May 9, 2003, guilty bait peeler pots; and June 18, 2003, guilty, culled undersized crabs. Last time before the Commission was 12 years ago. Commissioner Pruitt asked Mr. Parks if he had gone to court on the above matters and Mr. Parks responded, no.

**Associate Member Ballard moved that in accordance with the guidelines, Mr. Parks be put on 12-month probation. Associate Member Bowden seconded the motion. The motion carried, 7-0.**

**Newman T. Scott, Jr. (DOB-6/24/70)**

June 2, 2003, guilty, obstructed cull rings; August 8, 2003, guilty, possession of uncultured crabs; and August 11, 2003, guilty, possession of uncultured crabs. Commissioner Pruitt asked if gone to court. Mr. Scott responded, yes.

**Associate Member Ballard moved that in accordance with the guidelines, Mr. Scott be put on 12-month probation. Associate Member Birkett seconded the motion. The motion carried, 7-0.**

**Willie F. Shiflette, Jr. (DOB-11/24/47)**

Lt. Col. Lewis Jones, Deputy Chief, Law Enforcement, requested that this matter be continued until next month. **No action was taken.**

**Eric Shawn Turner (DOB-6/15/71)**

August 28, 2003, guilty, possession of undersized crabs; September 2, 2003, guilty, possession of undersized crabs; and September 22, 2003, guilty, failure to display crab pot ID. This was his first time before the Commission. Mr. Turner explained that the two undersized crab charges were for possession not harvesting, he bought the crabs. He further explained that the crabs were dropped off and he didn't realize that they were undersized. Commissioner Pruitt asked if his cases had gone to court. Mr. Turner responded, yes.

**Associate Member Ballard moved that in accordance with the guidelines, Mr. Turner be put on 12-month probation. Associate Member Birkett seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**CLOSED SESSION:**

**Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:**

A discussion, regarding an actual litigation matter pertaining to the City of Newport News versus the Virginia Marine Resources Commission, with the VMRC legal counsel.

**The motion was seconded by Associate Member Bowden. The motion carried, 7-0.**

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

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

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

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

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

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

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

**AYES: Ballard, Birkett, Bowden, Cowart, Garrison, Holland, Jones, and Pruitt**

**NAYS: None**

**ABSENT DURING VOTE: Associate Member McLeskey**

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

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

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**Recording Secretary  
Virginia Marine Resources Commission**

**No further action was taken by the Commission on this matter.**

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Upon their return from the Closed Session, Commissioner Pruitt announced a lunch break at approximately 12 Noon. The meeting reconvened at approximately 12:50 p.m.

\* \* \* \* \*

**Upon returning from the lunch break, Commissioner Pruitt asked Wilford Kale, Senior Staff Advisor, to brief the Commission on the legislation issues before the 2004 General Assembly session, while waiting for some of the public attendants to return. Mr. Kale explained the following bills to the Commission:**

HB 182, Patron, Glen Oder, proposed to remove shipyards from paying royalty fees for encroachment on State-owned bottom, thereby, taking from the Commission its authority to assess royalties for use of State-owned bottoms.

HB 446, proposed that the Commission prepare a Menhaden Fishery Management Plan and take over regulating the fishery.

HB 489, proposed that the local wetlands boards appoint 1 to 3 alternate members to serve when there are absentees. The House had passed the measure by a vote of 96-0 and it was currently under consideration by the Senate.

HB 797, proposed a property conveyance and a permanent easement be granted to the City of Newport News for the intake structure, approximately 1.9 acres. This bill is currently in committee.

HB 949, proposed a property conveyance and a permanent easement be granted to the City of Norfolk in the Elizabeth River. Senate Bill passed 94-0.

HB 992, proposed to allow retired Marine Police Officers to have a license for a concealed hand gun. The Chief of Law Enforcement would have to approve. All other enforcement agencies already allow this license.

HB 1024, proposed to allow the Commission to set the fees for saltwater recreation fishing licenses and commercial fishing licenses. This proposed legislation resulted from the recommendations of the Roundtable Committee established in 2003, which met on numerous occasions.

HB 1278, proposed to make the theft of oysters/clams from private leases a larceny charge.

SB 109, proposed to allow a subaqueous bottomland permit exception, thereby, removing the Commission authority when a Water Protection Permit has been issued.

SB 420, duplicate of HB 182.

SB 432, proposed to not allow reapplication for a bottomland permit for one year, when a project had been denied by the Commission.

SB 605, proposed leasing of the water column, allowing for leasing for aquaculture.

SB 606, duplicate of HB 182.

**No action taken by the Commission.**

\* \* \* \* \*

**9. PUBLIC COMMENTS**

**Freddie Linton and other petitioners requested that 8 public oyster rocks in the Pocomoke Sound be opened to public oyster harvest and the oyster dredging season in the Pocomoke-Tangier Sounds Management Area be extended by one month.**

Mr. Linton presented a petition of approximately 38-40 names of individuals who wanted these oyster rocks opened to harvest by dredge. He explained that this area had been closed for pollution purposes by the Health Department and they had recently re-opened this area.

James Wesson, Dept. Head, Conservation and Replenishment, explained that the area in question was outside of the Pocomoke-Tangier Sound Management Area and in the Saxis area. He explained that this area had been opened before for harvest by hand tong. He further explained that the oyster rocks were small and it was not good to allow the big dredges to work there. He said he recommended that the watermen be allowed to use small hand scrapes only. He stated that this area had not been surveyed in some time, but a small amount of oysters were found in this area, like the area in the James River that was opened for the 2003-2004 season to harvest by hand scrape.

**Associate Member Bowden moved to open the area by emergency action.** Associate Member Cowart questioned whether Mr. Bowden meant to allow harvest with the hand scrape and an 8-bushel limit and if there was any opposition. Mr. Linton indicated that there was no opposition and no one was present in opposition. **Associate Member Ballard seconded the motion.** Associate Member Cowart asked if consideration was being given to leaseholders and whether marking these leases had been maintained since the area was closed for such a long period. Commissioner Pruitt asked Hank Badger if there were leases in this area. Mr. Badger responded that most of the leases were Vernon Drewes's and he was not sure of other leases, but most of the area was leased. Associate Member Ballard suggested, that instead of an emergency action being taken, the Commission should advertise for a public hearing at the February meeting. **Associate Member Bowden said he would withdraw his motion.**

**Associate Member Bowden moved to advertise for public hearing to discuss the opening of this area to harvest in Pocomoke Sound and extending the public oyster harvest season in the Pocomoke-Tangier Sounds Management Area. Associate Member Ballard seconded the motion. The motion carried, 7-0.**

**Kenneth Wayne Williams - Requested the Return of His Ocean Striped Bass Fishery Tags**

Kenneth Wayne Williams requested that he be given ocean striped bass tags as he was left out for lack of records to show that he met the poundage requirement. He explained that he could not find his records that for various personal reasons they were thrown away in error. He said that he had provided affidavits to staff from individuals, he had sold his fish to in the past, to confirm his active participation in the ocean fishery. His comments are a part of the verbatim record.

Jack Travelstead explained that a separate ocean quota was allowed last year and criteria were established to qualify fishermen who landed 1,000 pounds in the Ocean fishery in one or more years during 1993 through 1997. He said that in January the ASMFCA raised the quota for the Ocean Fishery and the Commission had allowed additional fishermen at that time. He explained that records show Mr. Williams handled 1,000 pounds of catch in the Rappahannock and James but not in the Ocean. He said that two affidavits were received by staff showing that the fish were caught in the ocean, and had the staff known, Mr. Williams would have qualified. He explained that currently exceptions are not allowed by regulation. He said that at the time the quota was raised, an individual came forward that had reported late and had not been issued a permit, and at that time, the Commission allowed the exception requested. Commissioner Pruitt said that Mr. Williams contacted him about the incident. Mr. Travelstead went on to explain that the tags had already been divided up and were now ready to be distributed. He said, if an exception was allowed, the 40 people now in the fishery would get less tags.

Commissioner Pruitt asked Mr. Josephson to address this matter. Carl Josephson, VMRC Counsel, said that if this were not a limited entry fishery there would be no problem. He said that it is a limited entry fishery so therefore you would take away from those who qualified. He said that the regulation does not allow for an exception and this needed to be changed. He also said that the criteria should allow for incorrect data submission.

Associate Member Garrison asked what the consequences would be when there was a mistake such as this and the Commission agreed to give the tags back. Mr. Travelstead explained that if the Commission gave the tags back and did not adjust the number of tags to be given to the other fishermen, the State could go over the quota. He explained, if there were an overage on the quota for the year, the following year the State would lose quota and everyone would get less tags.

Associate Member Cowart stated, if we do grant the tags, the Commission would need to consider others. He suggested a 30-day period be advertised to allow others to come forward to see if they qualify to curve more watermen from coming forward later. Mr. Josephson said that legally, yes, the Commission could do this, but he suggested advertising for this in 2005. Mr. Travelstead said that it could not be done and expressed his concerns about how the Commission would judge if the information presented by these individuals was factual or not. He said that anyone could make the same claim. He said that dozens upon dozens, if not hundreds, could come forward.

After further discussion regarding this matter, Mr. Williams stated that he would withdraw his request so as not to cause problems for the Commission. His comments are a part of the verbatim record.

Commissioner Pruitt said that even though Mr. Williams is withdrawing his request he still saw a problem. He explained that there was no recourse established for when there were human issues or hardships. **He stated that the Commission would refer this matter to the Finfish Management Advisory Committee (FMAC). No further action was taken.**

**Douglas Jenkins, Sr.**

Douglas Jenkins, Sr., President, Twin River Waterman Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that there should not be 2 fisheries, bay and coastal. He said that the bay fishery was not being treated fairly. He said that this separation was causing the river fishermen to lose income. He said that tags needed to be taken from the Ocean Fishery and given to the Bay Fishery. His comments are a part of the verbatim record.

Associate Member Ballard said that the separate fishery was done to solve the problem caused by larger fish being targeted in the Ocean Fishery and the increased poundage cutting into the number of tags for everyone.

Associate Member Bowden explained that the ASMFC made the separate fisheries because when a State was out of compliance they close all the fisheries. He said that equal shares addressed today only involved two fisheries, Bay and Coastal, and there are four other fisheries. He further stated that the only way to be really fair was to do the same thing to all groups.

Commissioner Pruitt stated that the Finfish Management Advisory Committee was looking into the matter of a poundage system versus the tag system.

**No action was taken.**

**Commissioner Pruitt closed the Public Comment Period.**

\* \* \* \* \*

10. **PUBLIC HEARING:** Proposed amendment to Regulation 4VAC20-20-50, providing, relief to pound net fishermen.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. Mr. O'Reilly explained that the fishermen were delayed because of damages caused by Hurricane Isabel. He said that changes were made on page 3 and that Section D on Page 5 and 6 set forth the 1-year waiver for 2004. He stated that staff recommended the adoption of the proposed amendments to the regulation.

Commissioner Pruitt left the meeting at this point and Associate Member Birkett took over as chairman.

Associate Member Birkett asked if there were questions and for public comments. There were none.

**Associate Member Bowden moved to adopt the amended regulation. Associate Member Holland seconded the motion. Associate Member Ballard asked if the data would be presented before taking a vote. Mr. O'Reilly responded, no. The motion carried, 6-0.**

Mr. O'Reilly went on to explain some of the restrictions established by NMFS over the last few years affecting the pound netters. He said in 2001 restrictions were placed on the mesh size of nets used in the territorial sea. He further stated that in 2001 because of concerns with the pound net fishery a rule was adopted requiring net mesh sizes above 8". He said that in 2002, NMFS canvassed the fishery and because of concerns for endangered species made the mesh size greater than 12 inches and prohibited the use of leaders. He explained that pound net fishermen did not comply with this new rule because it was published late. He told the Commission that in May and June of 2003 the leaders being 12" or greater was enforced and 12 violations were cited. He said in 2002 and 2003 that NMFS did a comprehensive monitoring. He said that at a meeting on September 5<sup>th</sup> they established even stricter restrictions for 2004, but were going to work with the industry and allow time for adjusting to the new rule. He also said that there are some specific areas where leaders will be prohibited in 2004. His comments regarding this matter are a part of the verbatim record.

Commissioner Pruitt returned to the meeting.

Associate Member Cowart asked if the Commission had any say in the matter. Mr. O'Reilly explained that VIMS and VMRC were given a chance to comment through DEQ. Associate Member Cowart asked if a regulation was needed. Mr. O'Reilly

explained that it was already beyond that stage. Associate Member Holland asked about who enforced these restrictions. Mr. O'Reilly responded NMFS does. Commissioner Pruitt asked about holding a public hearing. Mr. O'Reilly responded he would be updating the Commission at next month's meeting, as the Rule would have been published at that time.

**No further action was taken.**

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**11. Approval of procurement procedures for the 2004 Shad Restoration Program.**

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

He explained that annually, the Commission must approve the procurement procedures for obtaining the services of watermen to participate in the American Shad Restoration Program.

**Associate Member Garrison moved to approve the project and the procurement procedures. Associate Member Birkett seconded the motion. The motion carried, 6-0.**

Notice to be circulated and posted advertising the following:

The procurement of services for the 2004 American Shad Restoration Project has been approved by the Commission, using its authority under Section 28.2-550 of the Code of Virginia.

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

For fishing days during the March 8 through mid-May, 2004 period, permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a

case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 1st at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

EVALUATION CRITERIA

1. You must have participated in one or more of the 1992 through 2003 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.
3. You must be available to fish for shad during most of the days between mid-March and mid-May.
4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

\* \* \* \* \*

12. **Discussion and request for public hearing:** Vessel permit transfers in the Summer Flounder fishery; Regulation 4VAC20-920-40.

Jack Travelstead gave the presentation and his comments are a part of the verbatim record. He explained that this was a request for public hearing.

**Associate Member Birkett moved to advertise for a public hearing in February. Associate Member Holland seconded the motion. The motion carried, 6-0.**

\* \* \* \* \*

**Request for Transit Permits for Hydraulic Dredges.**

Jack Travelstead explained that he had received two requests for Transit Permits from individuals from the State of Maryland. He further explained that 8 requests were approved last year. He said that staff was asking for authority to provide these transit permits to the same individuals, provided there were no problems. He said the individuals issued permits last year were:

Derrick Hoy  
John Paul Jones  
Bryan Piercy  
Stanley Pritchett

Gary Pruitt  
William I. Ryan  
David Tedford  
Edward Bell

Associate Member Holland asked if there was a permit fee. Mr. Travelstead responded, no.

**Associate Member Bowden moved to allow staff to issue the renewals. Associate Member Birkett seconded the motion. The motion carried, 6-0.**

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**13. BRIEFING:** Virginia Saltwater Sport Fishing Tournament.

Claude Bain, Head-Virginia Saltwater Sport Fishing Tournament Program, gave a powerpoint presentation.

Mr. Bain explained some of the activities and responsibilities of the program. He said there were various programs, such as, Citation Program; Expert/Master Angler Program; Junior Angler Program; and the Game Fish Tagging Program. He said they were responsible for the distribution of publications for recreational regulations and special projects, such as the Angler Guide. He said that he represented the agency at clubs, shows, civic groups, etc. He explained that they were involved in promotional activities and provided promotional tools. He presented graphs and data relating to the recreational fishery and tournament program.

**No action was necessary by the Commission.**

\* \* \* \* \*

**14. REPEAT OFFENDERS** (this item was heard earlier in the meeting, see page 12652)

\* \* \* \* \*

Roy Insley, Head, Plans and Statistics Department, introduced a new Plans/Statistics employee, Carter Shackelford.

\* \* \* \* \*

There was no further business, the meeting adjourned at approximately 2:47 p.m. The next meeting will be held Tuesday, February 24, 2004.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary