

## MINUTES

**Commission Meeting**

**May 25, 2004**  
**Newport News, VA**

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

William A. Pruitt )	Commissioner
Gordon M. Birkett )	
Ernest N. Bowden, Jr. )	
S. Lake Cowart )	
Russell Garrison )	Associate Members
J. T. Holland )	
Cynthia Jones )	
F. Wayne McLeskey )	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Jane McCroskey	Chief, Admin/Finance Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Chad Boyce	Fisheries Management Specialist, Sr.
Lewis Gillingham	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Ron Owens	Fisheries Management Specialist, Sr.
Colleen Newberg	Fisheries Management Technician
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
MPO Lisa Gruber	Marine Police Officer
MPO Trevor Johnson	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.

**Commission Meeting**

**12772  
May 25, 2004**

Jeff Madden  
Jay Woodward  
Benny Stagg  
Tracy West  
Justin Worrell  
Randy Owen  
Hank Badger  
Doris Bianchini

Environmental Engineer, Sr.  
Temporary Legal Secretary

Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
Tom Barnard

Other present included:

Frank C. Stewart  
M. T. Haywood  
Hugh McCrory  
Lee Rosenberg  
Paul Peterson  
Scott Groelbunt, Jr.  
W. S. Rochels, Jr.  
Jim Grady  
Tom Wilson  
Cheryl Sonderman  
Jonathan Kirk

Jack Clarkson  
Ray Haywood  
William McDonough  
Jim Noonan  
Keith Dayton  
David L. Morris  
Bob Bos  
Bill Laffoon  
Susan Gaston  
Tom Powers  
Bill Culpepper

Keith Lockwood  
Robert Condrey  
Ronald J. Primm  
Jim Pimblett  
Scott Groelbunt  
W. Riply  
Scott Farr  
J. E. V--, Jr.  
Joseph Mabey  
Willis Kirk

and others

\* \* \* \* \*

Commissioner Pruitt called the meeting to order at approximately 9:35 a.m. with Associate Members Ballard absent and Cowart and Jones arriving after the meeting started at later times.

\* \* \* \* \*

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

Associate Member Garrison addressed the Commission by reading an inspirational writing by Jerry Clouder.

\* \* \* \* \*

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

\* \* \* \* \*

**Approval of Agenda:** Commissioner Pruitt asked if there were any changes to the agenda. There were no changes. **Associate Member McLeskey moved to approve the agenda. Associate Member Birkett seconded the motion. The motion carried, 5-0.**

\* \* \* \* \*

1. **MINUTES:** Commissioner Pruitt asked for a motion regarding the minutes. There were no changes. **Associate Member Holland moved to approve the minutes for the April 27, 2004 Commission meeting. Associate Member Birkett seconded the motion. The motion carried, 5-0.**

\* \* \* \* \*

2. **PERMITS:** Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items, A through J, and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unprotected, and staff is recommending approval.

Associate Member Jones arrived to the meeting at approximately 9:42 a.m.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con. There was no one present to comment.

After some discussion, Associate Member Holland moved to approve Page Two items, A through J, as presented by staff. Associate Member Garrison seconded the motion. The motion carried, 6-0.

**2A. ARMY CORPS OF ENGINEERS, #04-0038,** requests authorization to hydraulically place approximately 7,500 cubic yards of sandy dredged material, per dredge cycle, from the Narrows channel in Virginia Beach, on a previously used site along 1,000 linear feet of the First Landing Seashore State Park shoreline in Virginia Beach.

Permit Fee.....\$100.00

**2B. NORFOLK SOUTHERN RAILWAY, #04-0333,** requests authorization to reconstruct four (4) railroad trestle crossings of the North Fork Clinch River to increase stream channel openings and eliminate track washouts near the community of Jasper in Lee County. Recommend standard in-stream permit conditions and an encroachment royalty of \$448.00 for the encroachment over 448 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot.

Permit Fee.....\$100.00  
Royalty Fee (Encroachment on 448 linear ft. @\$1.00/linear ft.)\$448.00  
Total Fees.....\$558.00

**2C. HENRY COUNTY PUBLIC SERVICE AUTHORITY, #03-2332,** requests authorization to install a sanitary sewer line beneath Blackberry Creek and its tributaries at 39 locations in Henry County. Recommend our standard in-stream construction conditions.

Permit Fee.....\$100.00

**2D. VIRGINIA DEPARTMENT OF TRANSPORTATION, #03-1612,** requests authorization to modify an existing permit to bury 220 feet of electric cables and a 2-inch waterline beneath the Pamunkey River between the proposed opening bridge piers; replace two (2) proposed mooring buoys with four (4) 7-pile mooring dolphins located in the Pamunkey River and replace one (1) proposed mooring buoy with four (4) 7-pile mooring dolphins located in the Mattaponi River; remove an existing culvert and restore West Point Creek to existing contours; bury a 12-inch water main and a 20-inch sewer force main beneath West Point Creek and relocate an existing submerged sewer outfall to be located 215 feet from the shoreline in the Mattaponi River.

No applicable fees permit modification.

**2E. COUNTY OF ALLEGHANY, #04-0960**, requests authorization to install, by trenching, a new 120 foot long sewer force main crossing under the Jackson River in Alleghany County. Recommends our standard in-stream construction conditions.

Permit Fee.....\$100.00

**2F. CITY OF NORFOLK, #04-0356**, request authorization to modify their previously Commission authorized permit to include the dredging of 550,000 cubic yards of State-owned submerged lands from the Thimble Shoals Federal Navigation Channel to maximum depths of -58 feet below mean low water for the purposes of obtaining material for beach nourishment purposes in Norfolk. Recommended that a post dredge bathymetric survey be required.

No applicable fees-permit modification and government exemption

**2G. VIRGINIA DEPARTMENT OF TRANSPORTATION, #00-0899**, requests a modification to an existing permit to authorize the temporary placement of 140 Submerged Aquatic Vegetation (SAV) seed deployment buoys on 25-foot centers within a previously authorized two-acre mitigation area in Judith Sound in Northumberland County. The buoys (i.e. crab pot floats) will be in place for a maximum of four (4) weeks and are intended to satisfy the Department of Environmental Quality and Army Corps of Engineers SAV compensation requirements associated with the Woodrow Wilson Bridge replacement project in the City of Alexandria.

No applicable fees-permit modification

**2H. HENRICO COUNTY DIVISION OF RECREATION AND PARKS, #03-2572**, requests authorization to install a 36-inch by 30-foot long concrete culvert, two pedestrian bridges, and to remove three derelict vessels at an unnamed tributary of, and along the James River, at Osborne Park in Henrico County. Staff recommends a time-of-year restriction on any work within the James River between February 15 through June 30 to protect anadromous fish species.

Permit Fee.....\$100.00

**2I. VIRGINIA BEACH FISHING PIER, #00-2079**, requests reactivation and extension of their permit which authorized the construction of a 200-foot long by 21-foot wide extension to an existing commercial fishing pier situated along the oceanfront at 15th Street in Virginia Beach.

No applicable fees permit reactivation

**Commission Meeting**

**2J. VIRGINIA INSTITUTE OF MARINE SCIENCE, #04-1155,** requests authorization to conduct experimental submerged aquatic vegetation restoration projects in the Piankatank River and on the seaside of the Eastern Shore in South Bay and Cobb Bay. Four-foot long mesh bags, containing eelgrass reproductive shoots, will be tied to anchored floats at a density of approximately 30 bags per acre (about 33 feet apart) and located in waters less than three (3) feet deep at mean low water. The bags will be deployed at three (3) sites in the Piankatank River totaling 30 acres. Two (2) sites are along the southern shoreline between Queens Creek and Burtons Point and between Iron Point and Cobbs Creek in Mathews County. A third Piankatank River site is located on the northern shore between Healy Creek and Fishing Bay in Middlesex County. A similar number of bags will be deployed on six (6) five-acre areas in South Bay and Cobbs Bay on the Seaside of the Eastern Shore in Northampton County. The Burton’s Pointe site will be located on additional Public Ground (§ 28.2-642). The Eastern Shore sites will be located on Public Ground 13 and 26 and within an area set aside by the Commission in 2003 for VIMS’ SAV restoration activities. The bags and associated anchored floats are to be deployed approximately June 1 and will remain in the water between three (3) and four (4) weeks to allow for the seeds to be released from the shoots. Recommend approval pending expiration of the public comment period on June 1, 2004.

Permit Fee.....\$100.00

\*\*\*\*\*

**3. CLOSED SESSION** (Held session at end of meeting, waited for the arrival of Associate Member Cowart)

\*\*\*\*\*

**4. WILLIAM McDONOUGH, #02-1839.** Restoration hearing to consider the unauthorized construction of 83 linear feet of replacement vinyl bulkhead aligned up to five and one-half (5.5) feet channelward of an existing bulkhead and three and one-half (3.5) feet farther than that permitted at his property situated along Chincoteague Channel. The VMRC permit authorized the construction of a 64-foot long vinyl replacement bulkhead, aligned a maximum of two (2) feet channelward of the deteriorating bulkhead.

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

Mr. Badger stated that on September 26, 2003, staff conducted a compliance inspection based on a complaint from Mr. McDonough’s neighbor, Mrs. Janice Griffith. During that inspection staff found that an 83-foot long vinyl bulkhead had been built, aligned up to

five and one half (5.5) feet channelward of an existing bulkhead. Mr. McDonough's VMRC permit authorized the construction of a 64-foot long vinyl replacement bulkhead, aligned a maximum of two feet channelward of the deteriorating bulkhead.

Mr. Badger explained that a Notice to Comply was issued which Mr. William McDonough received on November 26, 2003. The Notice directed removal, within 60 days, of that portion of the bulkhead that was not in compliance with Mr. McDonough's permit. The Notice also stated that the bulkhead could be reconstructed in accordance with the previously issued permit. Failure to accomplish the corrective actions within the time frame specified would result in this matter being placed before the full Marine Resources Commission as an enforcement action.

Mr. Badger said that Mr. McDonough's representative, Mr. Michael Zuppa, requested that the hearing be postponed until the May Commission meeting, in an attempt to resolve the dispute with the neighboring property owner and to identify the extent of encroachment into the adjacent property owner's riparian area.

In response to Mr. Zuppa's request a formal notification letter was sent to Mr. McDonough on February 26, 2004, requesting his attendance at the Commission's regularly scheduled meeting on May 25, 2004, and to show cause why he should not be found in violation of Section 28.2-1212 (D) of the Code of Virginia. To date, the illegal structure has not been removed.

Mr. Badger said that a permit was issued by VMRC in February 2003 for the construction of a 64-foot long bulkhead, aligned within two feet of the existing bulkhead, in February 2003. Condition number two (2) of that permit stated that the permit granted no authority to encroach upon the property rights, including riparian rights, of others. The adjacent property owner, Ms. Griffith, protested the location of the unauthorized bulkhead. She believes the bulkhead infringes on her riparian area.

Mr. Badger went on to say that in addition, Condition #13 of Mr. McDonough's permit and bold type on the permit cover sheet, state that the permittee agrees to comply with all of the terms and conditions set forth in the permit and that the project shall be accomplished within the boundaries outlined in the plans attached hereto. Any encroachment beyond the limits of the permit constitutes a Class 1 misdemeanor.

Mr. Badger explained that Mr. McDonough stated that, contrary to his intention, he could not remove the existing concrete riprap that lay adjacent to his deteriorating bulkhead. Therefore, he took it on himself to construct the bulkhead channelward of the existing riprap. His permit drawings clearly state the riprap will be removed.

Mr. Badger stated that according to the Virginia Institute of Marine Science the (as built) structure had resulted in the loss of an additional 50 square feet of marine habitat. While

this is a relatively small impact, it was totally avoidable and was an unnecessary impact to the habitat in the Chincoteague Channel area.

Mr. Badger said that in most cases, when a violation was discovered, the property owner was given the option of applying for an after-the-fact permit or voluntarily restoring the area to preconstruction conditions. In this case, it was unlikely that staff would have been able to recommend approval of a bulkhead alignment channelward of the permitted two feet, since the adjacent property owner had questioned the structure's encroachment into her riparian area. Ms. Griffith maintains her opposition to the illegal bulkhead alignment. In light of her objection, restoration appears to be the only acceptable alternative. While there may be some impacts associated with the removal and reconstruction of the bulkhead, staff believes these impacts will be relatively short-term.

Accordingly, staff recommended the Commission order the removal of that portion of the bulkhead that was not in compliance with Mr. McDonough's permit and that he be required to restore the area to pre-existing conditions. If Mr. McDonough wished to reconstruct the bulkhead, it should be aligned a maximum of two feet channelward of the deteriorating bulkhead as permitted.

William C. McDonough, applicant was present and his comments are a part of the verbatim record. Mr. McDonough explained that he thought he could keep the old bulkhead, but when he removed the concrete it collapsed. He explained that he had not been able to speak directly with the protestant. He further explained that he had spoken with the son and he seemed satisfied. He told the Commission that he tried to stay as close to where the old bulkhead was when using a front loader, but everything shifted. He said that what was done had benefited the protestant as well. He explained that if he had to remove the bulkhead, he would, but it would not benefit the environment. He said that he had a survey done and he agreed with Hank that he was across the property line. He explained, when questioned by Commissioner Pruitt about the length of the bulkhead, that he had miscalculated what was needed and was not trying to take her property. He explained that he felt that the objections by the protestant were really a result of his protest to some construction that she had wanted to do on her upland property in the past.

Commissioner Pruitt asked if the protestant was present? Mr. Badger responded no, but that her letter of protest was in the Commission's packet.

Commissioner Pruitt asked Mr. Josephson for his comments. Carl Josephson, Assistant Attorney General and counsel for VMRC explained that he could not tell about the neighbor's apportionment, but he was concerned with the backfilling, which encroached upon the neighbor's riparian rights without her consent.

Commissioner Pruitt agreed that the environmental impact was probably correct, but it all could have been avoided and this was the 2<sup>nd</sup> time a violation had occurred without a permit. He requested a motion from the Commission.

After further discussion between the board and the applicant, Associate Member Holland moved to table the matter until the next meeting so that the applicant could have the opportunity to meet with the protestant and possibly resolve the problem between the two. Associate Member Garrison seconded the motion. Mr. Garrison stated that the protestant needed to talk with staff or come to the meeting to make sure she had seen and understood the project. Commissioner Pruitt stated that he was opposed to the motion. Associate Member Holland stated that the violation would still be considered at that time. **Motion carried, 5-1. Associate Member Jones voted no.**

\* \* \* \* \*

5. **NORFOLK YACHT AND COUNTRY CLUB, #03-2469**, requests authorization to construct a 51-foot long by 15-foot wide open-pile commercial pier with a 78-foot by 78-foot pier head to support a 58-foot by 58-foot, 8,668 square foot two-story building over State-owned subaqueous bottom for use as a sailing center at their property situated along the Lafayette River in Norfolk.

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

Ms. West explained that the Norfolk Yacht and Country Club was located adjacent to the Hampton Boulevard Bridge on the Lafayette River in the City of Norfolk. The Club was requesting authorization to construct a two-story 8,668 square foot building over State-owned submerged lands in the Lafayette River. The building was proposed to be a harbor safety and junior sailing center and would include restrooms on both floors, a chart room, two large meeting spaces, a dock master's office, janitor's closet, as well as a large second story balcony, elevator and air-conditioning.

Ms. West explained further that according to the applicant, the structure would allow an increased measure of staff oversight of children participating in the various sailing programs and use by the Harbormaster. As further rationale, the applicant stated that the Club had no practical upland location for the building that was not already used for parking or existing structures.

Ms. West said that when evaluating the water dependency of a project, staff utilized the criteria that was developed by the Habitat Management Advisory Committee and approved by the Commission at its July 2003 Commission meeting. Those criteria required staff to consider the definition of water dependency approved by the Commission, as well as two specific questions regarding the project being considered.

Ms. West said that the approved definition stated “Water dependent means those structures and activities that must be located in, on or over State-owned submerged lands.” In reviewing a project proposal, staff was directed to consider the following - 1) Was it necessary that the structure be located over water? and 2) Was it necessary that the activity associated with the structure be over the water? Both questions must be answered in the affirmative in order for a project to be considered water dependent.

Mr. West explained that using these criteria, staff concluded that the construction of a private two-story building on public property was not consistent with the Commission’s definition of water dependency. It was not necessary for the structure to be placed over the water and all of the activities proposed within the building could be accommodated on the adjacent upland.

Ms. West said that furthermore, the argument that a private facility should be placed over State-owned submerged lands just because the Club elected to not utilize existing upland parking and other areas was inconsistent with the requirement that the public and private benefits outweigh the public and private detriments for the use of State-owned submerged lands. The Commission’s duty was to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth that are held in trust by it for the benefit of all the people in keeping with the Public Trust Doctrine and the Constitution of Virginia. As outlined in the recently released Oceans Report, the Public Trust Doctrine obligated government to protect the interests of the general public as opposed to the narrow interests of specific users or any particular group. While public interests had traditionally included navigation, fishing, and commerce, the public more recently also expected government to protect their interests in recreation, environmental protection, research and preservation of scenic beauty and cultural heritage.

Ms. West stated that the Virginia Institute of Marine Science had stated that the preferred location for the structure was on the adjacent uplands.

Ms. West stated that the project proposal failed the Commission’s test of water dependency. Activities proposed to be housed in the two-story structure could, and should, be accommodated on the adjacent upland. The dockmaster currently has an office adjacent to the piers on the upland. Reading charts and conducting meetings could take place in other facilities already existing at the Club. Certainly, rest rooms, elevators, air conditioning, and a janitor’s storage closet were not water dependent activities.

Ms. West said that it appeared that achieving height over existing infrastructure and moored vessels was the vital element for observation of children participating in the various sailing programs offered by the Club. As such, an observation tower constructed on the adjacent upland would meet the needs of the staff operating the sailing programs. As an alternative, since the elimination of available parking areas was a concern to the Club, it would seem that a new building constructed on the adjacent upland could be designed such that it incorporated or provided comparable ground level parking.

Ms. West stated that given that the proposal failed to qualify as a water dependent structure, appeared to be inconsistent with the ideal where the benefits outweighed the detriments, and did not appear to be supported by the responsibilities of government as set out in the Public Trust Doctrine, staff recommended denial of the project as proposed.

Mr. Tim Hayes, attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Hayes stated that it was the applicant's position that the project was water dependent. He said there were other individuals from the club present at the meeting. He said that Mr. McCrory was president of the club and had served as vice-chairman for the Norfolk Wetlands Board, so he had knowledge of environmental management. He explained that the safety of the children was the chief concern with this project.

Associate Member Garrison stated that the public trust would be violated and it would set a precedence. Associate Member Jones explained that she had two concerns. She said she did not see safety as a motivation because of the high praise of past safety history. She explained that secondly, how do we remain consistent over what should be over state-owned bottom. She said she did not think this project was directly related to water use. She also said that usually they only allow fisheries related projects or when there was no other alternative. Associate Member Garrison asked if they had considered building over a parking facility or other alternatives?

Mr. Hayes explained that he did not think the public trust doctrine intended to prohibit use of state lands. Although the detriments must outweigh the benefits, that included use of state waters. He said this way allowed the public to use the state waters safely and they were not asking for an exception or that any precedent be set. He explained that there was a difference, building for sailing needs, and it was more water related than to just put a building over the water for personal use. He said the club was responding to the needs of the public. He said that the Commission's consistency was important and in his time on the board it was also a concern.

Mr. Walter Hugh McCrory, Jr., applicant and President of the Norfolk Yacht Club, was present and his comments are a part of the verbatim record. Mr. McCrory, said that cost wise it was the same over state-owned bottom versus on their upland property, but it was more ideal to be located with the marina. He said that the building as a whole was water dependent.

Mr. Hayes asked for a delay in further discussion because of the questions raised. He asked for an opportunity to discuss them with staff and to come back after meeting with the staff and continue the discussion with the Commission.

Carl Josephson, Assistant Attorney General and counsel for VMRC, to clarify, explained that the sailing vessels were to be tied up and stored at facility and the actual activity proposed was further to the east from the upland classes. Mr. McCrory agreed with the

observation. Mr. Josephson continued by saying that the students would be taken out by boat for the water activity.

No one in opposition was present to comment.

**At the request of the applicant's attorney, Mr. Hayes, the Commissioner agreed to allow the applicant, the applicant's representatives, and VMRC staff to meet to discuss the concerns of the Commission and staff. He explained that after the meeting all parties would return to the meeting to continue the discussion. He allowed the participants access to the 1<sup>st</sup> floor conference room for this meeting.**

\* \* \* \* \*

**6. STAFFORD COUNTY BOARD OF SUPERVISORS, #99-2064, requests authorization to install a 40 mgd water intake structure that will impact up to 3,750 square feet of State-owned subaqueous bottomland within the Rappahannock River in Stafford County.**

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

Mr. Stagg explained that the proposed project was located within the Rappahannock River in Stafford County approximately 6.3 miles upstream of the I-95 bridge over the Rappahannock River. While the reservoir itself was authorized by statute and did not require a permit from the Commission, the intake structure required approval from VMRC. The intake structure, as originally proposed, consisted of twelve (12) tee assemblies running 250 feet parallel to the riverbank; an upstream floating debris deflector boom; and riprap bank stabilization at either end of the intake structure.

Mr. Stagg further explained that the Joint Permit Application covering this project was originally submitted in November of 1999. Normally, water intake structures in non-tidal waterways present few problems from our perspective, provided they are not protested and agencies such as the Department of Game and Inland Fisheries and the Department of Conservation and Recreation express no concerns. In this case, however, the Embury Dam has recently been breached. As a result, the non-tidal portions of the Rappahannock are once again available as spawning habitat for anadromous species for the first time in many years. Staff was endeavoring to ensure that there would be no significant adverse impact to these species in the future.

Mr. Stagg said that while the project did receive one objection, that concerned road access issues directly related to the dam, not the intake. The Department of Environmental Quality also had concerns about the withdrawal amounts sought. Their permit, which was issued on December 5, 2003, restricted the maximum withdrawal from the river to 40

million gallons per day (mgd). The applicant had requested up to a maximum of 60 mgd. Additional withdrawal restrictions are set based on river flow rates.

Mr. Stagg said that, as noted above, DEQ issued their Virginia Water Protection Permit (VWPP) on December 5, 2003. In addition to the maximum withdrawal limitations noted above, additional permit requirements from DEQ included a requirement that Stafford County evaluate three (3) alternative configurations of water withdrawal and pumping facilities to include:

- A. Installation of an "intake pool" off the main stem of the river, fed by a channel through the riverbank, with intake and pumping facilities located as far from the river as practical.
- B. Installation of intake pipes under the riverbank with the use of submerged intake screens in the river channel. Construction of a submersible style pumping station with the principal structure constructed at and below the existing grade, to include restoration of the riverbank.
- C. Installation of a "conventional" rivers edge intake and above grade pumping station.

Mr. Stagg said that the Department of Health had stated that the project would have no impact on their programs. The Department of Conservation and Recreation stated that they had not yet received any application for a Construction Permit for the Rocky Pen Run Reservoir Dam structure and that no Base Flood Plain information was listed in this area. Therefore a map revision must still be completed and forwarded to FEMA with revised floodplain elevations. The U. S. Army Corps of Engineers issued their permit for this project on January 26, 2004.

Mr. Stagg said that in a March 27, 2003, letter to DEQ, DGIF stated that their minimum instream flow recommendations were designed to provide adequate habitat for both resident and anadromous species when the Embry Dam was removed. Those recommendations were reflected in the DEQ permit limiting withdrawal amounts to a maximum of 40 mgd and other withdrawal restrictions. Additionally, DGIF recommended time-of-year restrictions and what amounts to our standard instream construction conditions. In a February 27, 2003 letter to the Army Corps of Engineers, DGIF provided additional comments and recommendations to include a recommended maximum withdrawal of 40 mgd. They also commented on releases from the reservoir itself into Rocky Pen Run for river herring and other anadromous fish once the Embry Dam was removed. In response to the County's proposal for a 1 mm mesh opening and 0.50 fps through screen intake velocity, DGIF stated that such a proposed intake velocity would be 5 to 10 times the sustained swimming velocities of larval fish in Virginia. Even three inches from the screen, the approach velocity would be 0.15 fps, which exceeded the sustained swimming velocity of these fish. Higher spot velocities were also

anticipated due to screen clogging and fouling. DGIF recommended a 1-mm mesh size and 0.25 fps intake velocity to provide the maximum protection from impingement and entrainment of early life history stages of fish. They subsequently amended their recommendation and agreed to support the proposed intake design (1-mm and 0.50 fps through screen intake velocity) provided the applicant monitored the intake to assess impingement and entrainment impacts to eggs, and larval fish.

Mr. Stagg explained that the DGIF monitoring plan included the following:

- A. A three-year monitoring period with a possible two-year extension, but without any condition on who would approve the extension and based on what criteria.
- B. A weekly sampling regimen from March 1 through June 30 to assess entrainment and exclusion.
- C. The applicant must develop a method to assess impingement of fish too large to pass through the 1-mm opening but which are unable to escape the intake velocity.

Mr. Stagg further explained that there was no indication of how the collected data would be used or what actions or response, if any, would be taken or required based on the monitoring results.

Mr. Stagg stated that the Virginia Institute of Marine Science (VIMS) indicated that while they anticipated only short-term impacts to aquatic habitats, flora and fauna in the Rappahannock River from the construction of the intake, the longer term impacts to the local habitat and fish community were more difficult to evaluate. While noting that breaching the Embury Dam would add significantly to the available critical spawning and nursery habitat for anadromous Bay species, VIMS stated that there was no current data to support an assessment of the magnitude of impact that the proposed intake could have on the recovery and expansion of Rappahannock River anadromous fish stocks. VIMS indicated that while the 1-mm intake screen mesh size was consistent with that proposed for the King William Reservoir, the maximum velocity of 0.50 fps for the Rocky Pen Run Reservoir intake was significantly greater than the 0.25 fps intake proposed for the King William Reservoir. Considering that the cross-sectional area of the Rappahannock River at the site of this proposed intake was much less than the cross-sectional area of the Mattaponi River at the proposed King William reservoir take, the percent of area of vulnerability in the Rappahannock River was also greater than that proposed in the Mattaponi River. In the absence of empirical data demonstrating that the 0.50 fps withdrawal velocity was protective of eggs, larvae, and juveniles VIMS recommended that the withdrawal be no greater than 0.25 fps in velocity.

Mr. Stagg said that, at this point, no data existed to either document or forecast the importance of the intake area as a spawning area for shad or other anadromous fish species as a result of the breach of the Embry Dam. In an ideal situation, staff would recommend that any decision on the withdrawal structure be deferred until that data were available. In that way, the Commission could entertain a pumping hiatus or some other tailored mitigation strategy, in an attempt to offset a balance of the withdrawal's impact on aquatic resources to the maximum extent practicable. Presuming that such a time consuming approach was unacceptable to the applicant, however, staff was left to consider the project as proposed, and based on the information available.

Mr. Stagg said that, as proposed, the project was inconsistent with the published study data, which recommended a 1.0-mm mesh screen size and an intake velocity of no greater than 0.25 fps. VIMS also recommended consistency, considering the similar nature of the proposed structure to that proposed for the King William Reservoir. In light of the Embry Dam breach, which was specifically designed to allow migration of anadromous fish species upstream, Staff must assume that the area would become an important shad-spawning habitat.

Mr. Stagg said that should the Commission deem that the project warranted approval, staff recommended a through screen intake velocity no greater than 0.25 fps. Staff would remind the Commission that while the Army Corps and DEQ permits allow for a maximum intake screen velocity of 0.50, and that the approval of an intake velocity of no greater than 0.25 fps may necessitate more intake structures, but not necessarily more than the twelve T-assemblies currently proposed, they would all still be below the water and would have no impact on the scenic vista of the river at this location. Regardless of the intake velocity, if approved, staff recommended that the applicant be required to conduct a thorough study to be completed at least one (1) year prior to the initiation of pumping that would document the density of eggs, larvae and juveniles in the stream at the site of the intake. If approved, and if study results indicate heavy shad utilization, staff recommended that the applicant pre-agree to a reduced pumping schedule and frequency during the spawning period, to be established in consultation with VMRC and VIMS using the results of the study. Staff would also recommend a time-of-year restriction for construction be imposed from March 15 through June 30 and the implementation of our standard instream construction conditions. Finally, staff recommended that in conjunction with the permit requirement of DEQ pursuant to the State Scenic River status of the Rappahannock River concerning the evaluation of three alternative configurations of water withdrawal that alternative "A" concerning an "intake pool " off the main channel also include consideration of a "flow-through intake pool" consisting of both an intake channel and an outfall channel, which could result in the elimination of the requirement for any VMRC permit.

Mr. Stagg informed the Commission that the applicant's representatives and agent were both present. There were no questions of staff from the Commission.

**Commission Meeting**

Commissioner Pruitt swore in all five (5) Stafford County representatives.

Commissioner Pruitt left the meeting at approximately 11:13 a.m. and Associate Member Birkett assumed his duties as chairman.

Keith Dayton, Project Manager for the county, was present and his comments are a part of the verbatim record. Mr. Dayton explained that the area growth rate had been rapid because of their close proximity to the Washington DC area. He said that a study was done, which showed that utilizing the Rappahannock for pumping to a reservoir was necessary to satisfy their long-term needs. He said the environmental study had been conducted by Malcolm-Pirnie. He said that they had met with various State, federal and local agencies and knew when the dam was breached, that anadromous species would move upstream. He said the mean flow would be 100% or better before pumping would be allowed. He said they had discussed other conditions that have been required and have agreed with them. And he said they also had concurred with other conditions that might be required. He explained that by 2010 the safe water supply would be used up. He said they have been working with local groups, organizations and governments, such as the Rappahannock Basin group. He said the staff's conditions had been discussed and it had been determined that they could comply with the screen requirement and do the fishing study. He said they have been very comfortable working with the VMRC staff. He said that as the demands for drinking water increased, a study would be done on the flow through the channel.

Associate Member Birkett asked for questions from the Commission.

Associate Member Jones stated that the project was like the King William Reservoir project, but not the same. She asked if there was a mitigation plan? Mr. Dayton said that was built into the permit in the conditions.

Associate Member Holland asked if staff had met with the applicant and come back with the recommendations. Bob Grabb said that the staff's recommendations were what the applicant had agreed to. Associate Member Jones asked who would be reporting on the results of the study. Mr. Grabb said that they would report directly to VMRC and then both VIMS and VMRC would evaluate the results of the study.

No one was present in opposition to comment.

Associate Member Birkett asked for a motion from the Commission. **Associate Member McLeskey moved to approve the project as recommended by staff. Associate Member Bowden seconded the motion. The motion carried, 6-0. Associate Member Birkett, acting chair, voted on this item.**

Permit Fee.....\$100.00

\* \* \* \* \*

7. **TOWN OF COLONIAL BEACH, ET AL, #02-1950**, requests after-the-fact authorization to retain an open-pile pier with a 27-foot by 10-foot L-head, extending 35 feet channelward of mean high water adjacent to Monroe Bay for the exclusive private, noncommercial use of the property owners of 912 Monroe Bay Avenue in the Town of Colonial Beach.

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

Mr. Neikirk explained that the Town's property associated with this project was located between Monroe Bay Avenue and Monroe Bay. This narrow strip of land separated Mr. Robert Ellrott's highland property at 912 Monroe Bay Avenue from the water. Accordingly, although Mr. Ellrott's property was near Monroe Bay, he was not a riparian property owner and his private, non-commercial pier was not statutorily authorized. A VMRC permit was, therefore, required.

Mr. Neikirk said that development along this shoreline consisted of a mixture of private and commercial properties and there were numerous piers and boathouses in the immediate vicinity. The pier extended approximately 35 feet channelward of mean low water and Mr. Ellrott stated in his application that the mean low water depth at the channelward end of the pier was minus four (-4) feet. There were longer piers on both adjoining lots.

Mr. Neikirk said that the Town had a procedure to lease portions of their property to allow property owners like Mr. Ellrott to gain private access to Monroe Bay. VMRC had also issued permits to the Town of Colonial Beach (as the riparian property owner) for similar piers in the past. In previous cases, the Town and the leaseholder had jointly submitted permit applications and the permits had been issued to the Town, as the property owner, authorizing the construction of a private pier for the specific nearby lot. The Town Council approved a request by Mr. Ellrott for such a lease during their May 11, 2002, meeting. Since the shoreline was already congested, their approval contained special conditions.

Mr. Neikirk explained that according to Mr. Ellrott, Mr. Charlie Phillips, his contractor, completed construction of the pier on August 17, 2002. A VMRC permit was never issued to the Town for the construction of this particular pier. Mr. Ellrott stated that Mr. Phillips was supposed to secure all necessary permits and when he noticed there was no building permit, he contacted the Town. The Town apparently instructed Mr. Ellrott to submit an after-the-fact permit application, which VMRC received on October 3, 2002.

Mr. Neikirk said that the application was originally submitted and signed only by Mr. Ellrott. In keeping with our past policy to issue permits to the Town, as the property owner, we asked Mr. Ellrott to have the Town sign the application as the property owner and as a co-applicant. The Town agreed to sign the application.

Mr. Neikirk said that in accordance with a letter from Mr. Brian E. Hooten, Colonial Beach Town Manager, the as-built pier was in compliance with the resolution adopted by the Town Council on May 11, 2002. Mr. Hooten requested that we place this matter before the Commission for a decision. He was aware that an after-the-fact permit would have to be issued to the Town and he was also aware that any approval could be contingent on the Town's willingness to agree to a civil charge.

Mr. Neikirk said that given the short length of the pier, staff did not believe the pier would adversely affect navigation and the environmental impacts would be minimal and similar to other private, non-commercial piers that in many cases are statutorily exempt. The project would not encroach on any public or privately leased oyster ground and no state agencies had commented on the project.

Mr. Neikirk said that staff was always concerned with after-the-fact projects. In this case the environmental impacts associated with the project were minimal and staff would likely have administratively approved the request had the application been properly submitted prior to the construction of the pier. Accordingly, staff recommended approval of the after-the-fact request with the assessment of a triple permit fee. Furthermore, staff recommended the Commission consider conditioning approval on the applicant's agreement to pay a civil charge in lieu of further enforcement action. Staff believed the amount of the civil charge should be determined with the Commission's revised civil charge matrix, based on a minimal environmental impact and a minor degree of deviation or non-compliance associated with the project.

No one was present in opposition to comment.

Associate Member Jones asked if the owner thought the contractor had obtained the permits. Mr. Niekirk responded that the contractor obtained the lease, but not the permits and the applicant notified the county when he realized the project was in violation. **Associate Member Jones moved to accept staff recommendations and to impose a civil charge of \$600.00. Associate Member McLeskey seconded the motion. Associate Member Garrison questioned whether triple fees were to be imposed? Associate Member Jones responded, yes. The motion carried, 6-0.**

Permit fee (ATF tripled fees).....	\$75.00
Civil Charge (ATF).....	\$600.00
Total Fees.....	\$675.00

\*\*\*\*\*

**8. PUBLIC COMMENTS:** Associate Member Birkett asked for any comments during this period. There was no one present to comment.

\*\*\*\*\*

Associate Member Birkett announced a 10-minute break.

\*\*\*\*\*

Commissioner Pruitt upon his return at approximately 11:39 a.m., asked about the lunch break. Carl Josephson, Assistant Attorney General and Counsel for VMRC, explained that the Norfolk Yacht parties had not returned to complete the hearing on that case and that needed to be acted on first.

\*\*\*\*\*

Item 5 was continued after a meeting with the applicant, the applicant's representatives and VMRC staff was concluded and all parties had returned to the meeting.

**5. NORFOLK YACHT AND COUNTRY CLUB, #03-2469,** requests authorization to construct a 51-foot long by 15-foot wide open-pile commercial pier with a 78-foot by 78-foot pier head to support a 58-foot by 58-foot, 8,668 square foot two-story building over State-owned subaqueous bottom for use as a sailing center at their property situated along the Lafayette River in Norfolk.

Tim Hayes, attorney for Norfolk Yacht and Country Club, said that the applicant would agree to a 25% reduction by eliminating the items that were not water dependent. He also explained that they would agree to pull back 10' closer to the shore as they needed to provide access for the handicapped. He said only construction of items necessary for safety and classes would be needed and he felt staff seemed more comfortable with that. He said the applicant was asking for approval of the project conditioned upon the staff and the applicant agreeing to what was to be allowed to ensure minimal impacts on the environment.

Tony Watkinson, Deputy Chief, Habitat Management, was present and his comments are a part of the verbatim record. Mr. Watkinson thanked the applicant and his representatives for their cooperation in coming to this solution. He explained that on the staff level they did not think the facility passed the water dependency test, but if the Commission agreed with the applicant, then the impacts would be reduced as much as possible.

Commissioner Pruitt explained that he had always allowed staff its opinion, but the chair would vote how he felt was appropriate if it became necessary to break a tie vote.

**Commission Meeting**

Associate Member Birkett said that water dependency was the question being looked at, but an exception in this case could be made in order for the young people to have the opportunity available to them that would be good for them.

**Associate Member Garrison moved to approve the project, but the applicant was to work with staff to get the 25% reduction eliminating the non-water dependent items to minimize the impacts. Associate Member Birkett seconded the motion. The motion carried, 5-1. Associate Member Jones voted no.**

Permit Fee.....	\$100.00
Royalty Fees.....	TBD
Total Fees.....	TBD

\*\*\*\*\*

Bob Grabb, Chief, Habitat Management, announced that Kevin Curling would be leaving VMRC to start his own environmental consulting firm utilizing what he had learned at VMRC. Mr. Grabb said that in his 3 years with the Commission, Kevin had proven to be an asset and would be missed. Commissioner Pruitt congratulated him on his business venture.

\*\*\*\*\*

Commissioner Pruitt announced the lunch break at approximately 11:59 a.m. The Commission returned from the lunch break at approximately 1:00 p.m.

Associate Member Cowart arrived to the meeting at approximately 1:00 p.m.

\*\*\*\*\*

**Commissioner Pruitt re-opened the Public Comment Period.** There was still no one present wishing to address the Commission.

\*\*\*\*\*

- 9. **PUBLIC HEARING:** Request to incorporate emergency amendments that adjusted 2004 trip limits for spiny dogfish into Regulation 4 VAC 20-490-10 Et Seq.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. Mr. Gillingham explained that in order to be in compliance with federal requirements the Commission needed to permanently amend regulation 4VAC 20-490-10. He said the proposed amendments would reduce the possession limit from 4,000 pounds to 600 pounds from May 1 through October 30; allow

300 pounds for period II, November 1 through April 30; eliminate the 500,000 pound state quota; and no longer require dealers to report spiny dogfish landings to VMRC daily. He said that staff recommended that the Commission approve the amended regulation as presented by staff. He said it seemed that all the harvesters would be playing from an even field.

In response to concerns expressed at the meeting last month, Mr. Gillingham explained the status of East Coast States' compliance by establishing trip limits:

- Massachusetts, as of May 5<sup>th</sup> established a 600- pound trip limit
- North Carolina, closed by proclamation
- New Hampshire, in the process of putting limits in place
- Rhode Island, had a 6 trip limit in place
- Virginia, emergency action taken in April

Commissioner Pruitt opened the public hearing. No one was present to offer any comments, pro or con, on this matter.

**Associate Member Bowden moved to make the emergency actions for regulation 4VAC 20-490-10 permanent for this year.** He further stated that should it be found out that other states do not comply then one of our state representatives should bring it to the attention of the full ASMFC. **Associate Member Birkett seconded the motion. The motion carried, 6-0-1. Associate Member Jones was not present during the voting.**

\* \* \* \* \*

Ronald Owens, Fisheries Management Specialist, Sr., introduced a new fisheries employee, Colleen Newberg, who was hired to fill the Fisheries Technician position vacancy in the Stock Assessment Program.

\* \* \* \* \*

- 10. Additional discussion and recommendations from the CMAC on replacing the current ban on possessing dark-colored (late-stage) sponge crabs with a short-term ban on the possession of any sponge crabs.** A public hearing was held last month.

Associate Member Jones returned to the meeting at this time.

Rob O'Reilly, Deputy Chief, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly said that the Commission had referred this matter for further work to the Crab Management Advisory Committee. He explained that in comparing the current regulation and a ban on sponge crabs, all things equal, it would take an 8-week ban on all sponge crabs to achieve the effects of the current regulation. He said that although there were only 7 members in attendance at the CMAC meeting,

they were interested in alternatives to the ban on dark-colored sponge crabs. He explained that the CMAC had asked for a sponge mortality study, and staff had met with VIMS to set up a course of study to get an idea of the handling mortality of sponges and time crabs are exposed to on-board conditions. He explained that staff recommended that the Commission not take any action at the present time to modify current restrictions on possession of dark-colored sponge crabs but to wait for the results of the handling mortality study and finalization of the VIMS proposed changes to the spawning sanctuary. He explained that the CMAC requested the results come first to them for review before being brought to the Commission. He said VIMS personnel were scheduled to be on the vessels in mid-June and mid-July.

**Commissioner Pruitt stated that this matter would be returned to the CMAC and that no action would be taken at this time as recommended by staff.**

\* \* \* \* \*

**11. DISCUSSION:** Review of FMAC recommendations on allowing exceptions to limited fisheries.

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

Mr. O'Reilly said that this item was not just for FMAC, but CMAC should have been in the item description. He explained that CMAC discussed Mr. Holland's request for a medical exemption and alternate work time for an individual. He said they were opposed to this exemption from the 8-hour workday as this would open up other areas for exemptions to be requested. He explained that the committees were looking at limited entry fisheries and exceptions could be handled for fisheries such as black drum with an overall quota, but the striped bass fishery could not be handled so easily because of the individual quota. He further explained that unless the quota was increased those approved for exception would have to be put on a waiting list. He said the committees were looking at a review board similar to the Crab Dredge committee. He said they recommended that one Commission Member be selected to serve on the committee and that the other members be appointed by the Commissioner. He said this committee could handle the requests on a case-by-case basis, with input from the Fisheries staff. He stated that, with the Commission's approval, staff would develop a process and regulations for these exemptions, which would take several months, and later in the year bring it back to Commission.

Associate Member Holland stated he was concerned with having to wait several months and that there was a definite need for a medical exemption and suggested that the Commissioner make a recommendation on a medical hardship.

Mr. O'Reilly explained this commercial fisheries was an agent system, whereby others could use the license for the licensee. He further explained that FMAC was concerned that allowing the exemptions would result in an increase in the effort on the fishery.

Commissioner Pruitt asked Mr. Holland to give an example of what he was requesting. Associate Member Holland explained that there was an individual who needed to work in the afternoon versus morning because of illness requiring him to take medication in the morning. He said that the medication would make the individual dizzy where he could not work until the afternoon. He further explained that he agreed that the Commission would have to consider these medical exemptions on a case-by-case basis. Commissioner Pruitt explained that he believed that Mr. Holland was requesting a change in the 8-hour day requirement for medical reasons only. Mr. O'Reilly explained that this could be made a part of the exception board responsibility. Associate Member Garrison stated that a doctor's certificate would have to be required.

Lewis Jones, Deputy Chief, Law Enforcement, explained that there would be a need to incorporate a term for a disabled person in the regulation, because now in the Code, a disabled person cannot be gainfully employed. Carl Josephson, Assistant Attorney General and counsel for VMRC, explained that the same word could be used as the Commission was not bound by other definitions and they could establish their own definition.

Associate Member Holland suggested that the Commissioner could issue a letter with a stipulation that the individual have the letter in his possession when out harvesting seafood.

Associate Member Cowart explained that the CMAC had discussed the 8-hour workday, but they was concerned that more requests would result and there would be a problem defining disabled as pointed by Lt. Col. Jones earlier.

Commissioner Pruitt stated that a disabled individual was allowed to go hunting, but if they go to work, they would lose their disability status. He said that the request made by Mr. Holland was simple, but was being made complicated by discussing limited entry and quotas. He said that the committees needed to concentrate on the medical exemption.

Rob O'Reilly stated that staff needed some guidance. He stated that if the medical exemption was considered as one regulation it would be less complicating. Commissioner Pruitt explained that there was a need to change the 8-hour workday. Mr. O'Reilly explained this would involve several regulations and that if an umbrella regulation was established then the Commission could discuss this issue next month and hold a public hearing the following month for a change in the 8-hour workday. He further explained that it was possible to have an overall exception process and regulations developed for limited-entry fisheries by the late fall for the Commission's review.

Commissioner Pruitt stated that he felt that the staff was on track. **No action was taken at this time.**

\* \* \* \* \*

**12. Recommendations of the Recreational Fishing Advisory Board.**

Associate Member Jones announced that she would be abstaining on this matter because Old Dominion University received funding for projects from the Recreational Fishing License Fund. She left the meeting at this point.

Chad Boyce, Fisheries Management Specialist, Sr., gave the presentation and reviewed the evaluation with all of the Recreational Board's recommendations. He further explained that items P & I were incorrectly listed and should be interchanged

Mr. Boyce stated that the Recreational Fishing Advisory Board (RFAB) completed its reviews of pending applications on May 10, 2004 and developed their final recommendations for funding.

Mr. Boyce said that some Projects have secured additional funding from NOAA and the Virginia Marine Improvement Fund; therefore, some funding requests have been reduced. These include Projects D and H.

Mr. Boyce explained that each of the projects submitted during this review cycle was subjected to a staff review, a professional peer review, and an RFAB public hearing. Written comments received from the public were included in the Commission's notebooks.

Mr. Boyce said that projects F, K, M and Q were withdrawn from this funding cycle by the respective applicants. These projects are listed below:

- F. MRFSS Study Update. Rob O'Reilly, VMRC. \$100,000.**
- K. Paradise Creek Park Development. Richard Hartman, City of Portsmouth. \$233,000.**
- M. Norview Marina Ramp Lease. Randy Stevens, Norview Marina. \$28,600 annually, \$15,000 start-up.**
- Q. Wishart's Point Landing Project. Keith Bull, County of Accomack. \$321,926.**

Mr. Boyce reviewed the following items that were recommended by RFAB for the Commission to approve. The projects are listed below:

- A. **Capital District Kiwanis Club Children's Fishing Clinic 2004. (Year 3) Wesley Brown. \$5,270. Vote: Unanimous**
- B. **2004 Wallop-Breaux Match. Jack Travelstead, VMRC. \$154,662. Vote: Unanimous**
- C. **2004 Funding Support for Virginia's Artificial Reef Program, Mike Meier, VMRC. \$200,000. Vote: Unanimous.**
- D. **Monitoring Relative Abundance of Young-of-Year American Eel, in the Virginia Tributaries of the Chesapeake Bay. (Year 2) Marcel M. Montane, VIMS. \$12,127. Vote: Unanimous (Originally \$24,254; 50% of this project will be funded by the Saltwater Recreational Fishing Development Fund and 50% by the Marine Improvement Fund.)**
- E. **Establishment of a Chesapeake Bay Trophic Interaction Laboratory Services Program. Christopher Bonzek, VIMS. \$95,000. Vote: Unanimous**
- H. **Enhancing Submerged Aquatic Vegetation (SAV) Habitat: Research and Education for Restoration. (Year 10) Dr. Robert Orth, VIMS. \$25,000. Vote: Unanimous (Original request was \$97,080, but applicant reduced VSRFDF request in anticipation of securing additional NOAA funding)**
- P. **VDGIF Saltwater Fishing Access Improvements. Phil Lownes, VDGIF. \$67,000. Vote: Unanimous.**

Mr. Boyce said that the following projects were recommended by the RFAB, contingent upon the applicant securing the appropriate habitat permits from the VMRC.

- O. **Mill Creek Landing, Phil Lownes, VDGIF. \$94,500. Vote: Unanimous.**
- I. **Smith Landing Waterfront Improvements Project, Cheryl Sonderman, York County. \$309,985. Vote Unanimous (RFAB only recommended funding for the boat ramp construction and associated piers)**

Commissioner Pruitt requested that instead of having Mr. Boyce review each of the following projects, the Commission members asked questions on those they were interested in discussing.

**Projects that were not recommended by the RFAB.**

- J. **Cultured Cobia as a Tool for Life History Studies and Potential Stock Enhancement Projects. Michael Oesterling, VIMS. \$90,139. No Motion**

- L. Effects of Longnose Gar on Local Juvenile Gamefish Populations. Patrick McGrath, VIMS. \$9,724.00. No Motion**
- N. Buckroe Park Fishing Pier. Cindy Martel, City of Hampton. \$182,626. Vote: Tabled. Unanimous.**
- R. Morley's Wharf Youth Fishing Tournament 2004. (Year 3) Eastern Shore Angler's Club. Allen Evans. \$1000.00 Vote: 6 to 1.**
- S. Saxis Fishing Pier Youth Fishing Tournament 2004 (Year 3) Eastern Shore Angler's Club. Allen Evans \$1000.00 Vote: 6 to 1.**
- T. Sunshine Program Children's Day Challenge 2004. (Year3) Portsmouth Anglers Club. Denny Dobbins. \$3,954.00 Vote: 5 to 2.**

In response to Mr. Holland asking about items R & S, Mr. Boyce explained those two projects had received funding in the past and the only reason that they were not recommended by RFAB was because the applications were received after the deadline, which the advisory board felt needed to be adhered to, and it had nothing to do with the validity of the projects. He further explained that item T was the same situation.

Associate Member Holland stated that items R & S were two youth projects on the Eastern Shore that were needed and it was bad that they had not been recommended. Commissioner Pruitt reminded the members that the recreational board was an advisory board and the Commission could approve projects that were not recommended by the RFAB.

Commissioner Pruitt opened the hearing for public discussion.

Tom Powers, representing himself was present and his comments are a part of the verbatim record. Mr. Powers explained that the advisory board did want the youth projects to come back to the next funding cycle. Mr. Powers said he had one suggestion regarding the DGIF saltwater ramp improvements funds, that staff be directed to write all localities and let them know that DGIF is there to help them maintain those ramps and have the localities copy VMRC on correspondence relating to such projects.

As no one else was present to comment, Commissioner Pruitt closed the public hearing and asked for a motion from the Commission.

**Associate Member Garrison moved to accept the report as given by staff to include items P & I interchanged and with items R & S being added and approved. Associate Member Holland seconded the motion.** Someone asked if the funding was available for the added items. Associate Member Garrison responded that the funds were

there. **The motion carried, 6-0-1. Associate Member Jones abstained from voting and had not returned to the meeting.**

\*\*\*\*\*

Commissioner Pruitt announced that Jack Travelstead and Colonel Bowman were attending the ASMFC meeting and not present at the hearing.

Bob Grabb informed the Commission that the King William Reservoir packet, requested by them at the last month's meeting, had been provided in the white notebook and any additional information would be forwarded to them as it was received.

Commissioner Pruitt announced that the King William Reservoir supplemental meeting would be held at Lafayette High School in James City County in August 2004.

\*\*\*\*\*

Wilford Kale briefed the Commission on the status of budget and legislation issues. His comments are a part of the verbatim record.

\*\*\*\*\*

Associate Member Jones returned to the meeting at approximately 1:50 p.m. and participated in the Closed Session.

\*\*\*\*\*

**CLOSED SESSION:**

**Associate Member Garrison 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:**

The requests for procedural rights to be allowed for other groups and individuals interested in participating in the King Williams Reservoir Project supplemental meeting.

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

**Associate Member Garrison 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: Birkett, Bowden, Cowart, Garrison, Holland, Jones, McLeskey, and Pruitt**

**NAYS: None**

**ABSENT DURING VOTE: Associate Member Ballard**

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

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

---

**Recording Secretary  
Virginia Marine Resources Commission**

Upon returning from the Closed Session, **Associate Member Garrison made a motion, which was as follows:**

**"I move that the Commission deny the requests, on behalf of the Mattaponi Indian Tribe and Mr. Warren Mountcastle and Mr. Ray Watson, to participate as parties or be provided the same procedural rights as the City of Newport News at the Commission's supplemental hearing on the King William Reservoir Project. Consistent with the Commission's standard procedures, the applicant is the only party in the hearings under Chapter 12 of Title 28.2. The settlement agreement with the City was crafted to provide the public with ample opportunity to make their**

**views and comments known to the Commission and there is no reason to vary from our normal practice. I also move that the Commissioner is authorized to respond on our behalf, in writing, to the requesters and advise them that we will not accede to their request.”**

**Associate Member Holland seconded the motion. The motion carried, 7-0.**

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

There was no further business, the meeting adjourned at approximately 2:30 p.m.

---

William A. Pruitt, Commissioner

---

Katherine Leonard, Recording Secretary