

## MINUTES

SEPTEMBER 24, 2002  
NEWPORT NEWS, VA 23607

The regular Monthly meeting of the Marine Resources Commission was held on September 24, 2002 with the following present:

William A. Pruitt )	Commissioner
Chadwick Ballard, Jr. )	
Gordon M. Birkett )	
S. Lake Cowart, Jr. )	
Russell Garrison )	
Laura Belle Gordy )	Members of the Commission
Cynthia M. Jones )	
F. Wayne McLeskey )	
Kenneth W. Williams )	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
Jane McCroskey	Deputy Chief, Administration and Finance
Erik Barth	Director, MIS
Andy McNeil	Programmer Analyst Sr.
Col. Steve Bowman	Chief-Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief-Law Enforcement
Capt. M. Ray Jewell	Northern Area Supervisor
Capt. Warner Rhodes	Middle Area Supervisor
Capt. Kenny Oliver	Southern Area Supervisor
Capt. Randy Widgeon	Eastern Shore Area
M.P.O. Chris Miller	Marine Police Officer
M.P.O. Tim Litz	Marine Police Officer
Virginia Institute of Marine Science:	
Thomas Barnard, Jr.	Dr. Eugene Bureson
Lyle Varnell	Dr. Robert Orth
Lisa Calvo	Mark Luckenbach

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Jack Travelstead  
 Rob O'Reilly  
 Cory Routh  
 Mike Meier  
 Roy Insley  
 Ellen Cosby  
 Dr. James Wesson

Chief-Fisheries Management  
 Deputy Chief-Fisheries Management  
 Fisheries Management Specialist  
 Artificial Marine Habitat  
 Head-Plans and Statistics  
 Fisheries Management Specialist  
 Head-Conservation & Replenishment

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

Chief-Habitat Management  
 Deputy Chief-Habitat Management  
 Head-Engineering/Surveying  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.  
 Environmental Engineer Sr.

Scott Harper

Virginian Pilot

others present included:

Ricky Edgerton  
 William Morris  
 Curtis Hand  
 C. D. Morris  
 Ed Nealon  
 Jane Speegle  
 Amy Moore  
 Peggy Morris  
 Carla Brittle  
 Vincent Grocki  
 Barbara Grocki  
 Harold Cate  
 Dimitri Mavriplis  
 Andy Cockrell  
 Margaret Miller  
 Stephen Miller  
 Isabel Atlee  
 Michael Woolson

Eileen Ankers  
 Bruce Arkemai  
 Tom Evelyn  
 George Junkin  
 Steve Powell  
 Terry Getchell  
 Mark Hudginsnski  
 Gregg Williams  
 Chris Turner  
 Steve Radcliffe  
 Margaret Radcliffe  
 Bob Winstead  
 Colden Baxter  
 Jack Whetstone  
 Craig Zinter  
 Ben Brown  
 Kal Knickerbocker  
 William Matelyan

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Paul Tubach  
Ray Ankers  
Dan Dise  
Ralph Elston  
Mike McGee  
Tony d'Eustachio  
J. Petrie  
S. Roberts  
Bob Tinon  
Bo Lusk  
Charles Lewis  
Mark Heath  
Tommy Clark  
Tom Watkins  
Tom Gallivan  
Bob Brambaugh  
Donnie Starks  
Michael Pratt  
Kelly Place

Rudy Cashwell  
Jim Haydon  
N. McGee  
Douglas Jenkins  
Thomas Kelley  
Russell Gaskin  
Roger Parks  
Peter Nixon  
Hank Jones  
Tommy Mason  
Ken Webb  
Joe Peirson  
Tom O'Connor  
Peter Custanzo  
Don Reich  
George Washington  
Tom Powers  
Pete Terry

Commissioner Pruitt called the September 24, 2002 meeting to order at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Garrison, Gordy, Jones, McLeskey, and Williams.

Rev. Gerry Showalter gave the Invocation and Commissioner Pruitt led the Pledge of Allegiance. Commissioner Pruitt swore in the staff and those representatives of the Virginia Institute of Marine Science (VIMS) who were expected to testify at the meeting.

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**\*\* APPROVAL OF AGENDA**

Commissioner Pruitt called for changes/deletions to the proposed Agenda. There being none, **Associate Member Gordy moved for approval of the Agenda as distributed. Associate Member Cowart seconded the motion; motion carried unanimously, 8-0.**

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**1. APPROVAL OF MINUTES – August 27, 2002**

**Associate Member Williams moved to approve the Minutes of the August 27, 2002 Commission Meeting as distributed. Associate Member Ballard seconded the motion;**

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

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**2. PERMITS** (Projects over \$50,000.00 with no objections and with staff recommendation for approval).

Mr. Robert Grabb, Chief-Habitat Management, briefed the Commission on the following Page Two items:

**2A. BROAD BAY CANAL ASSOCIATION, #02-1280**, requests authorization to maintenance dredge approximately 1,725 cubic yards of bottom material, on an annual basis, to restore maximum navigable depths of minus four feet (-4.0') at mean low water at their properties situated along Broad Bay in Virginia Beach. Recommend all dredged material be removed to an approved upland area and suitably contained in such a manner as to prevent its re-entry into State waters.

PERMIT FEE.....\$100.00  
ROYALTIES.....N/A

**2B. COLONIAL NATIONAL HISTORIC PARK, #02-0932**, requests authorization to install a series of breakwater and sill structures consisting of Class II and Class III graded riprap with associated fill and wetland plantings impacting up to 29,436 square feet of State-owned subaqueous bottomland within Powhatan Creek, Back River, The Thorofare, and the James River adjacent to Jamestown Island and Colonial Parkway in James City County. The project purpose is to stabilize and protect eroding shorelines that are impacting, or have the potential to impact, significant archaeological sites. Recommend a time-of-year restriction from December 15 to July 15 of each year for any work proposed within 1,300 feet of an active bald eagle nesting site as identified by the Department of Game and Inland Fisheries.

PERMIT FEE.....\$100.00  
ROYALTIES.....N/A

**2C. MARINE RESOURCES COMMISSION, #97-1807**. Fisheries Management Division requests to modify their existing permit authorizing the construction of a circular reef within a 1,000-foot radius of Newport News Middle Ground Light, in the lower James River. Specifically requested is an alteration of the requirement for a 5-foot maximum profile height for all reef structures. Instead, they request a condition to require the maintenance of a minimum 12-foot clearance between mean low water and the top of the reef material.

PERMIT FEE.....N/A  
ROYALTIES.....N/A

**2D. COCKRELL’S MARINE RAILWAY, #02-0940**, requests authorization to upgrade an existing 30-slip commercial marina to accommodate 139 wetslips and 30 dry slips by constructing a new 610-foot long pier and a 346-foot long pier, extending two (2) existing piers, erecting a 145-foot long by 94-foot wide closed-ended boathouse, install 150 linear feet of toe scour riprap revetment at the base of a failing bulkhead, install 220 linear feet of marsh toe stabilization, and dredge 1,100 cubic yards of State-owned submerged lands adjacent to their property situated along the Little Wicomico River in Northumberland county. Staff recommends a royalty in the amount of \$495.00 for the new dredging at \$0.45 per cubic yard, and an annual royalty of \$1,316.70 for the encroachment over 26,334 square feet of State-owned subaqueous land at a rate of \$0.05 per square foot.

PERMIT FEE.....	\$100.00
ROYALTIES.....	\$1,316.00

**2E. ROANOKE GAS COMPANY, #02-1198**, requests authorization to install, by the directional drill method, 107 linear feet of natural gas pipeline beneath the Roanoke River in Roanoke County. Recommend a royalty in the amount of \$107.00 for the encroachment under State-owned subaqueous land at a rate of \$1.00 per linear foot.

PERMIT FEE.....	\$100.00
ROYALTIES.....	\$107.00

**2F. U. S. ARMY CORPS OF ENGINEERS, #02-1280**, requests authorization to place up to 150,000 cubic yards of suitable sandy dredged material annually in an unconfined manner on the downdrift beach lying north of Rudee Inlet in Virginia Beach.

PERMIT FEE.....	\$100.00
ROYALTIES.....	N/A

Commissioner Pruitt asked for comments from the audience, pro or con, on the proposed Page Two items. There being no comments offered, Commissioner Pruitt placed the items before the Commission for consideration.

**Associate Member Cowart moved for approval of the Page 2 Items -- (2A.) Broad Bay Canal Association, #02-1280, (2B.) Colonial National Historic Park, #02-0932, (2C.) Marine Resources Commission, #97-1807, (2E.) Roanoke Gas Company, #02-1198, and (2F.) U. S. Army Corps of Engineers, #02-1280 -- as recommended by staff. Associate Member Garrison seconded the motion; motion carried, 7-0. Associate Member McLeskey was not present for the vote.**

**Associate Member Birkett moved for approval of the Page 2 Item -- (2D.) Cockrell's Marine Railway, #02-0940 -- as recommended by staff. Associate Member Gordy seconded the motion; motion carried, 6-0.** Citing a conflict of interest, Associate Member Cowart abstained from the vote. Associate Member McLeskey was not present for the vote.

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**EXECUTIVE SESSION**

**Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to Agenda Item 11. The motion was seconded by Associate Member Birkett and carried unanimously, 8-0.**

**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 White seconded the motion. Commissioner Pruitt held a Roll Call vote:**

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

**NAYS: None**

**ABSENT DURING VOTE: None**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: None**

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

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Commission Secretary  
Virginia Marine Resources Commission

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3. **RICKY EDGERTON, #02-0452**, requests authorization to construct a 42-foot long by 16-foot wide private, non-commercial, open-sided boathouse adjacent to his property situated along Chisman Creek in York County. The project is protested by an adjoining property owner and nearby residents.

Ms. Traycie West, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. She stated that the project is located in a cove off Chisman Creek in York County. There are several small piers within the waterway and one previously authorized boathouse across the creek from Mr. Edgerton's property. Ms. West noted that the Speegle's pier and boathouse were authorized under VMRC permit #91-0633. No protest letters were received during the processing of the Speegle's pier and boathouse application.

Ms. West stated that Mr. Edgerton currently has a smaller pier at his property. He proposes to remove this structure and construct a new open-pile pier that would extend approximately 76 feet (measured from mean low water), and a 42-foot long by 16-foot wide open-sided boathouse that would be surrounded by catwalks. The entire structure would extend approximately 93 feet from mean low water and a total of 122 feet from the adjacent upland. Ms. West noted that only the boathouse is under Commission jurisdiction since the pier was statutorily authorized by the provisions of §28.2-1203 of the Code of Virginia.

Ms. West reported that the project was protested by Ms. Isabel Atlee, an adjacent property owner. Ms. Atlee expressed concerns that the proposed boathouse would block her view of the cove and the surrounding homes, adversely affect the use and enjoyment of her land, diminish her privacy, and reduce her land value. The project was also protested by seven other property owners in the immediate vicinity. Their concerns include restrictions to navigation, impacts to the view, impacts to wildlife, and a reduction in property values. In

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addition, several of the protestants believe that the structure appears to be oversized.

Ms. West stated that the creek is an average of 300 feet wide at the Edgerton property. Staff estimates that there would still be 100 feet of waterway between Mr. Edgerton's proposed structure and Mr. Speegle's existing pier and boathouse.

In summary, Ms. West stated that while the boathouse would represent a new structure within the creek, it would also qualify for the statutory authorization set out under §28.2-1203 of the Code of Virginia were it not for the protest by the adjacent property owner, Ms. Atlee. While the structure would no doubt be seen by other residents along the creek and the view from some of the properties would be affected, it does not appear that the structure would impact boating access within the waterway. There appears to be adequate navigational area between the proposed structure and the Speegle's boathouse. Ms. West stated that staff recommends approval of the project as proposed.

Commissioner Pruitt called for questions from the Commission. There being no questions, the Commissioner swore in those individuals wishing to speak in support of and/or opposition to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Ricky Edgerton**, applicant, assured the Commission that he had given a lot of thought to the project, thereby, selecting a location which would result in the least impact on the adjacent property owners.

**Dimitri Mavriplis**, nearby property owner, spoke to the Commission with regard to the large size of the projected boathouse. Speaking on behalf of a number of property owners, he presented slides illustrating why they felt the boathouse would be out of proportion to the waterway and would have an adverse affect on navigation and aesthetics of the creek. Mr. Mavriplis read into the record two additional letters of protest, copies of which are filed with the permanent record of this meeting.

Associate Member Birkett inquired of Mr. Mavriplis as to whether the property owners would object to the pier if the boathouse were not included in the project. Mr. Mavriplis stated that the pier would be acceptable if it did not take up more than 1/3 of the waterway.

**Amy Moore**, nearby property owner, raised objections to the proposed project which would greatly obscure the view of the creek from her property. She stressed that the wants of one resident should not dictate what would affect those living nearby.

**Harold Cate**, nearby property owner, stated that the proposed project would completely block his view of the creek.



**Isabel Atlee**, adjacent property owner, addressed the Commission as to the value and enjoyment in owning waterfront property. She provided a diagram illustrating the proximity of Mr. Edgerton's proposed project to those residents whose properties are along the cove.

In response to Commissioner Pruitt's inquiry, Ms. Atlee stated that York County is considering the permitting of future boathouses. The particular requirements are not known at this time. Ms. Atlee's comments prompted a brief discussion as to the current navigation of the creek and the potential navigation hazards should the project be constructed.

**Ricky Edgerton**, applicant, responded to the comments and discussions presented. He stressed that the creek is currently designated as a "No Wake Zone" which requires careful navigation of the cove at all times.

Associate Member Ballard inquired as to whether the Commission could infer that the project would not violate a navigation or private pier line as established by the U. S. Army Corps of Engineers if the Corps has issued a permit in this regard. Robert Grabb, Chief, Habitat Management, stated that he was not aware that the Corps had established a navigation or pier head line for Chrisman Creek.

The Commissioner placed the matter before the Commission for consideration and action. Associate Member Cowart stated that having considered staff's position and testimony given by the protestants, he respectfully disagreed with staff's recommendation and referenced Section 28.2-1205 of the Code of Virginia which addresses impacts on adjacent or nearby properties. He noted that because of the size and design of the creek, as well as the way the lands lay, the proposed boathouse would not be in the best interest of the adjacent properties. **Associate Member Cowart moved to deny the application of Ricky Edgerton, #02-0452; Associate Member Garrison seconded the motion.** Associate Member Ballard stated that Mr. Cowart had balanced both the public and private benefits as provided in the Code with the motion. **When put to a vote, the motion was approved, 6-2. Associate Members Gordy and Birkett voted against the motion.**

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4. **M. BLANTON WHITLOW, #02-0893**, requests after-the-fact authorization to retain and complete a 170-foot long by 8-foot wide and 4-foot high riprap marsh toe stabilization revetment adjacent to his property situated along Dividing Creek in Northumberland County. Approximately 3,000 square feet of subaqueous bottom will be backfilled and planted with Spartina alterniflora plugs.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the applicant's property is located approximately 4½ miles northeast of the town of Kilmarnock

along the southern shore of Dividing Creek. The property is oriented such that portions of the property possess a fetch directly into Dividing Creek and the Chesapeake Bay to the northeast.

Mr. Madden reported that according to the applicant, the purpose of the proposed revetment was to save a 200+-year-old oak tree located at the edge of the bank along the shoreline. A riprap revetment was installed in front of the tree along the bank in 1997. At the base of the revetment is a vegetated fringe marsh that is eroding.

In an attempt to save the tree, Mr. Madden stated that the applicant sought the advice of an arborist. To minimize saltwater uptake by the root system, the arborist recommended that the area under the tree, out to the drip line, be filled. As a result, Mr. Whitlow proposed to install a marsh toe revetment and fill the intertidal and subtidal area between the existing revetment and the new structure. The fill material would be trucked in and graded to the elevation of the adjacent marsh and then the area would be planted with suitable marsh vegetation.

Mr. Madden noted that upon questioning, Mr. Whitlow stated that he mistakenly presumed that a letter he had received from DEQ stating that no permit was required, constituted the State authorization he had been awaiting. Based on the letter from DEQ construction began. Commission staff reiterated the need for a permit from VMRC and recommended that any further construction be suspended until that authorization had been secured.

Mr. Madden stated that in an attempt to prevent potential impacts to SAV in the vicinity of the project and further reduce the subaqueous impacts, staff requested that the riprap in the area upstream of the tree canopy be repositioned and realigned closer to the existing marsh. The applicant agreed and revised drawings were submitted which depicted one section of the revetment being pulled closer to the shoreline requiring relocation of a portion of the existing riprap. Based on the revised drawings, a permit for the modified structure was prepared. Mr. Whitlow subsequently signed that document, and the permit was executed by Commission staff.

Mr. Madden stated that upon further reflection, however, Mr. Whitlow decided that he did not wish to relocate the structure, based in part on his belief that the structure would be more stable and less likely to trap debris as it was originally proposed.

Mr. Madden reported that in their initial Shoreline Application Report, VIMS stated that due to the orientation of the property along a high-energy shoreline, it would be difficult to restore the tidal marsh at the project location without a marsh toe revetment. To minimize the potential for adverse impacts, VIMS recommended installing the toe of the revetment no further channelward than the alignment proposed. VIMS further recommended that monitoring of the planted marsh be conducted to determine the effectiveness of the reestablishment efforts. Thus far, VMRC has not received objections to the project from any

other party or State agency.

In summary, Mr. Madden stated that upon further review and discussion, Commission staff agrees that the original alignment of the marsh toe revetment would be less likely to collect debris and less likely to be scattered by a severe storm. It would also seem to better serve the applicant’s intended purpose. Mr. Madden stated that staff recommends approval of an after-the-fact permit based on the original alignment using the riprap materials already onsite. Due to the after-the-fact nature of the request, however, staff recommends that the Commission consider a civil charge based on a minimal degree of environmental impact and a moderate degree of non-compliance.

Commissioner Pruitt called for questions from the Commission. Associate Member Ballard inquired as to the ruling of the Wetlands Board with regard to the filling of the marshland. Mr. Madden stated that the Wetlands Board felt that planting and monitoring the fill material would increase the wetlands. There being no further questions, the Commissioner swore in those individuals wishing to speak in support of and/or opposition to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Blanton Whitlow**, applicant, complimented Mr. Madden on his presentation and noted his acceptance of Mr. Madden’s recommendations in this regard. Mr. Whitlow stated that there was no malice intended in doing the project, and he requested some relief from any civil charge that may be levied.

Commissioner Pruitt called for anyone wishing to speak in opposition to the project. There being none, the Commissioner then placed the matter before the Commission for consideration and action. **Associate Member Gordy moved to approve the application of M. Blanton Whitlow, #02-0893, as recommended by staff, to include a \$600.00 civil charge and a royalty of \$0.05 per square foot for the 3,000 square feet of subaqueous bottomland being filled. Associate Member Birkett seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

ROYALTY FEE.....	\$150.00
PERMIT FEE.....	\$100.00
TOTAL FEES.....	\$250.00

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- 5. **LEE DALE SHORES PROPERTY OWNERS ASSOCIATION, #02-0990**, requests authorization to construct a 42-foot long, by 6-foot wide, L-head extension and install three (3) associated mooring piles onto an existing 190-foot long, open-pile, timber, community pier adjacent to their property situated along Barrett's Creek in Northumberland County. The project is protested by Dr. Stephen Radcliffe, an

adjacent property owner.

Mr. Jeff Madden, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that the Lee Dale Shores subdivision is located approximately three (3) miles west of Reedville at the confluence of Barrett Creek and the Great Wicomico River. The community pier is located along Barrett Creek which is approximately 725 feet wide at the project site. The pier has two (2) 14 foot-long finger piers, and accommodates four (4) vessels, a boatlift, and a small floating raft section tied to the pier.

Mr. Madden stated that the subdivision was established in 1957 and consists of 24 lots. Ten lots are located along Barrett Creek, each with its own riparian access. Twelve lots have frontage along the Great Wicomico River, with the remaining two lots located inland. The Association covenants, established in 1958 by the original developer, contain a restriction forbidding the construction of private piers by the owners of the 12 lots along the Great Wicomico River. As a result, in 1959 the Association constructed a community pier to serve the lot owners whose riparian access was denied by covenant. Presently there are six (6) slips at the community pier.

Mr. Madden stated that Mr. Ray Ankers, owner of lot #22 along the Great Wicomico, has requested the Association allow him to moor his 48-foot long, sailboat, with a draft of seven (7) feet, outboard of the proposed pier extension. The extension and the additional piles are needed to securely moor the sailboat in water deep enough to allow the vessel to float at low tide. The extension and the mooring piles would extend only 24 feet further out into Barrett Creek and no further east than the existing mooring piles.

The existing pier is offset 40 feet from the property line the applicant shares with Mr. Reisner, the owner of lot # 10. The pier is 85 feet from the property line adjacent to lot #9, owned by Dr. Stephen Radcliffe.

Mr. Madden reported that the project was protested by Dr. Stephen Radcliffe. In his letter, Dr. Radcliffe objects to the extension and what he believes would be the inevitable expansion of the community pier to accommodate future property owners. He also believes that the proposed pier should be reconfigured into a 40-foot T-head. Mr. Madden distributed copies of the Association Chairman's letter written to Dr. Radcliffe in response to his objections. A copy of this letter is filed with the permanent record of this meeting.

Mr. Madden stated that on August 17, 2002, Commission staff received correspondence from Mr. Bill Morris of the Dock Committee containing 13 letters of support for the project. Mr. Reisner, owner of lot #10, immediately adjacent and to the west of the community pier has offered no comment on the proposed expansion.

Mr. Madden noted that VIMS has stated that the cumulative adverse impacts resulting from this activity would be minimal, and no other agency has expressed any objection to the project.

In summary, Mr. Madden stated that while staff is aware that the applicant may request further expansion in the future, the proposed extension of an existing community pier is consistent with the Commission's policy of encouraging the expansion of community facilities rather than the construction of individual piers. He noted that the new construction would not encroach any further toward the protestant's property than that which already exists. Due to the orientation of Dr. Radcliffe's wet slip, it is unlikely that the proposed extension would interfere with his navigational access. In this case, the encroachment seems to be minimized to the greatest extent possible considering each adjacent property owner. As a result, Mr. Madden reported that staff recommended approval of the project as proposed.

Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Ray Ankers**, homeowner on the Great Wicomico River, complimented Mr. Madden on his assistance with and presentation of the proposed project. Mr. Ankers recognized those members of the Association who were present and in support of the project. He reviewed the process and rationale followed by the Association to arrive at the proposed project.

**William Morris**, property owner, noted Dr. Radcliffe's concern for continual expansion of the dock and stated that the dock has sufficed for the boating needs since its development. He also expressed the Association's concern for the possibility of a reduction in property values for waterfront homes should the dock become insufficient for future boating needs.

**Dr. Stephen Radcliffe**, adjacent property owner, reviewed his opposition to the project before the Commission. He stated that a T-head with shorter finger piers, much like what currently exists on the site, should be considered for future expansion.

**Margaret Radcliffe**, adjacent property owner, concurred with her husband's comments and asked that the Commission consider in their deliberations the needs for future expansion of the dock.

The Commissioner called for questions from the Commission. Associate Member Cowart inquired of Mr. Madden as to whether any compromise had been considered in the matter. Mr. Madden reviewed proposed changes to the project following its original submission.

**Ray Ankers** responded to the protestants' comments, noting the need for the length and location of the dock extension in order to provide the maximum access. Upon inquiry of

Commissioner Pruitt, Mr. Ankers briefly reviewed the possible needs for future expansion as discussed by the Association in its planning stages for the proposed project.

**William Morris** reviewed the long-range plan for the dock as developed by the Property Owners' Association. He noted that the plan suggested by the protestants would not provide for boats 40 feet and larger.

There being no further comments, the Commissioner then placed the matter before the Commission for consideration and action.

**Associate Member Garrison moved to approve the application of Lee Dale Shores Property Owners Association, #02-0990, as recommended by staff. Associate Member Gordy seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

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6. **TOM EVELYN, #00-0519**, requests after-the-fact authorization to retain a previously constructed and unauthorized 11-foot by 25-foot roof/deck, with railing and stairs over the applicant's existing private, non-commercial, open-pile pier, as well as a request to extend a previously authorized and constructed concrete boat ramp an additional 15 feet channelward, at the applicant's property situated along the Pamunkey River in New Kent County.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Mr. Evelyn's property is situated along the Pamunkey River in the White House area of New Kent County directly across from the Pamunkey Indian Reservation.

Mr. Stagg reported that staff conducted a routine compliance check of the permitted ramp structure. As constructed, the boat ramp dimensions were found to be 14 feet by 100 feet, however, the additional length was landward of mean low water and the subaqueous encroachment was consistent with the permit. The constructed pier was found to be 6 feet wide by 72 feet long with a 15.5-foot by 24.5-foot "T" head and a 4-foot by 22-foot section along the west side of the pier. Additionally, a 10.5-foot by 24.5-foot roof/deck with stair access had been constructed over a portion of the pier T-head.

Mr. Stagg stated that a follow-up site visit was conducted with Mr. Evelyn and his agent; Mr. George Junkin, of American Land Concepts. Additionally, Ms. Courtney Jones of the New Kent County Wetlands Board, was also present. The agent for the project indicated that he obtained the permit for the pier structure as originally requested. The applicant indicated that the changes in the original pier alignment, dimensions of the T-head and addition of the roof/deck were made after both the permit issuance and VMRC letter of authorization for the

pier. He further indicated that he believed, based upon VMRC correspondence thus, no additional authorization was required for the changes to the pier to include the roof/deck structure.

Mr. Stagg noted that a Sworn Complaint and a Notice to Comply were issued on May 22, 2002, directing removal of the roofed structure within 30 days of receipt of the notice. In lieu of removal, however, the applicant was informed at the joint site visit that no further enforcement action would commence pending a review of an after-the-fact application with new drawings that accurately reflected the actual work performed and the submission of adjoining property acknowledgement forms. In addition, Mr. Stagg reported that the Notice to Comply requested that statements be provided from the applicant, agent and/or contractor explaining who performed the work and why the work was conducted without the necessary authorization and permit.

Mr. Stagg stated that on May 22, 2002, VMRC received a request from Mr. Junkin to retain the roof structure and to extend the concrete boat ramp an additional 15 feet channelward, along with revised drawings depicting both requests. Additionally, Mr. Junkin indicated that there was confusion over the interpretation of previous correspondence from VMRC as to the original pier request that stated no additional authorization was required for the pier construction. Additional correspondence to include adjoining property owner forms and a letter from Charlotte Evelyn Woodall, the applicant's sister, were received on June 11, 2002. Mrs. Woodall noted that the pier was built with family members in mind, a number of whom require handicap access. Based upon a phone conversation with Mr. Junkin, he stated that he believed the pier and roof/deck structure were built by Mr. Chuck Leftwich, a family friend.

Mr. Stagg stated that the applicant's after-the-fact request had been subjected to a public interest review. No other parties or agencies expressed any opposition to the structure.

In summary, Mr. Stagg stated that when reviewing proposals to build over State-owned submerged lands the Commission's Subaqueous Guidelines direct staff to consider, among other factors, the water dependency and necessity of the proposed structure. Furthermore, when considering authorization for such structures for private use, §28.2-1205 of the Code of Virginia stipulates that, *"In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to §1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."*

Mr. Stagg noted that the applicant and/or agent were well aware that permits for encroachment over State-owned subaqueous lands were required since a permit was issued

for the boat ramp. Additionally, the structures, as built, do not conform to the original drawings and contain larger and additional structures than that which were originally requested. In this case, the covered roof/deck structure represented an unauthorized encroachment over State-owned submerged lands and was not necessary for use of the pier or access to the river. Accordingly, Mr. Stagg reported that staff recommended denial of the covered roof/deck structure and direction that it be removed within 30-60 days. Staff recommended approval of the boat ramp extension. The remaining pier structures, while larger than those originally proposed, appear to be authorized by statute. Mr. Stagg added that in the event the Commission elected to approve the after-the-fact roof/deck structure, however, staff would recommend an appropriate civil charge be considered based upon minimal environmental impact and significant degree of deviation or non-compliance.

Commissioner Pruitt called for questions from the Commission. Associate Member Ballard inquired as to the handicap access issue with regard to the application. Mr. Stagg stated that there was alteration on the pier construction at the landward end to include a ramp, but that was apparently not an issue with regard to the second story structure. There being no further questions, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Bruce Arkemai**, attorney for the applicant, addressed the Commission in this regard and submitted photographs for the record which are filed with the permanent record of this meeting. Mr. Arkemai presented photos of structures in comparison to that which his client proposed, noting the need for such covering by elderly and handicapped members of his family. He stressed that he, the applicant and the applicant's agent interpreted the letter from the VMRC all in the same way, and added he had difficulty in locating the Code section which addressed such permits and approvals.

Associate Member Cowart inquired as to who the contractor was for the project. **Tom Evelyn**, applicant, stated that he was his own contractor. Commissioner Pruitt noted that some of the structures depicted in the photographs appeared to be new construction along the waterfront. Mr. Evelyn added that it was not his intention to build without the proper permit.

Commissioner Pruitt called for comments in opposition to the project. There being none, the Commissioner placed the matter before the Commission for consideration and action. Associate Member Garrison asked for clarification from Mr. Arkemai with regard to his attempt to gain information in this regard. Associate Member Ballard requested from Mr. Stagg a clarification on the VMRC letter sent to Mr. Evelyn referencing permits. Mr. Stagg noted that the pier's second story was not contained in the original application.

Associate Member Ballard stressed the need for the Board to evaluate such projects in light of the responsibilities placed upon them as trustees of public lands. He cautioned that the Commission should not become an architectural review board, but rather, should evaluate



projects on their water dependency. **Associate Member Ballard moved to adopt staff's recommendation in the matter of Tom Evelyn, #00-0519, to deny the covered roof/deck structure and direct that it be removed within 30-60 days; and approve the boat ramp expansion. Associate Member Garrison seconded the motion. When put to a vote, the motion carried, 7-1.**

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The Commission recessed for lunch at 11:50 p.m. and reconvened at 12:45 p.m.

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7. **LARRY BRYANT, #02-1643**, requests after-the-fact authorization to retain a previously constructed 19-foot by 19-foot roof structure over the channelward T-head of the applicant's non-commercial, private, open-pile pier at his property situated along the James River in the City of Suffolk.

Mr. Ben Stagg, Environmental Engineer Sr., provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that on May 30, 2001, the applicant submitted a Joint Permit Application (VMRC#01-0974) seeking authorization to install 100 feet of riprap revetment landward of mean low water. On July 26, 2001, an additional request to modify the application was received. The modification included the construction of a 6-foot wide by 150-foot long open pile private pier, a 16-foot by 16-foot T- head, and the associated piles for two (2) boat lifts. Since the riprap was landward of mean low water it did not require a permit from VMRC as noted in our letter to the applicant dated June 5, 2001. The applicant did receive approval from the City of Suffolk Wetlands Board, however, for the riprap at their July 19, 2001 meeting. The pier also appeared to meet the requirements for statutory authorization for permit exemption contained in State Code and the applicant was notified by letter on August 1, 2001. No roofed structure was requested in the previous application or modification request.

Mr. Stagg noted that based upon a phone complaint, staff contacted the applicant and arranged to conduct a compliance visit on May 23, 2002. During that meeting it was determined that the pier was 6 feet wide by 150 feet long, but that a 19-foot by 19-foot T-head and a 19-foot by 19-foot roof had been constructed over the pier. The applicant stated that he had constructed the roof structure himself and that he was unaware that additional authorization was required. As a follow-up, staff subsequently contacted the agent/contractor Mr. Walter W. Hodges of Hodges and Hodges Enterprises, Ltd. Mr. Hodges acknowledged that he installed the riprap and constructed the pier and one boat lift, but he did not construct the roof structure.

Mr. Stagg reported that a Sworn Complaint and a Notice to Comply were issued on May 31,

2002, directing removal of the roofed structure within 30 days of receipt of the notice. In lieu of removal, however, the applicant, was advised, that no further enforcement action would commence pending a review of his after-the-fact application request provided new drawings reflecting the actual work performed and adjoining property acknowledgement forms were submitted. Additionally, the Notice to Comply requested statements from the applicant, agent and/or contractor explaining who performed the work and why the work was conducted without the necessary authorization and permit.

Mr. Stagg stated that on August 20, 2002, VMRC received a new Joint Permit Application from the applicant requesting after-the-fact authorization to retain the roof structure. Waterfront Consulting, Inc., was listed as the agent for the current request. Mr. Bryant stated in a letter dated July 20, 2002, that the roof over the pier was built by him to meet the special needs of his 80-year old mother who was confined to a wheel chair and had numerous skin problems which did not allow her to be exposed to direct sunlight. Additionally, Mr. Bryant provided letters from numerous nearby residents requesting Commission approval of the roof structure. If approved, staff also suspects they will receive several other requests for similar gazebos and roofed structures. Mr. Stagg noted that the applicant's request had been subjected to a public interest review; no other agencies expressed opposition to the structure.

Mr. Stagg noted that the applicant should have been well aware that permits for encroachment over State-owned lands were required since he applied for a permit for both the pier and riprap. Additionally, Mr. Bryant retained an agent/contractor who could have advised him on such matters. The roof structure represents an unauthorized encroachment over State-owned submerged lands and is not necessary for use of the pier or access to the river, and as such, staff recommends denial of the roof structure and that the Commission direct removal within 30 to 60 days. In the event that the Commission chose to approve the after-the-fact roof structure, staff recommends an appropriate civil charge based upon minimal environmental impact and a significant degree of deviation or non-compliance.

Commissioner Pruitt called for questions from the Commission and comments from the applicant. Associate Member Ballard inquired as to whether investigation of this case was the result of a complaint. Mr. Stagg stated that he was called by a contractor in this regard. There being no further questions, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Robert Simon**, Waterfront Consulting, addressed the Commission as to Mr. Bryant's decision to construct the roof structure over the pier. He noted that Section 28.2 of the Code of Virginia does not prohibit the construction of such structures, but rather requires that a permit be issued for their construction. Mr. Simon distributed copies of neighboring property owners who were in support of the project, copies of which are filed with the permanent record of this meeting.

**Commission Meeting**

Commissioner Pruitt called for comments in opposition to the after-the-fact application. There being none, the Commissioner then placed the matter before the Commission for consideration and action.

In reiterating his previous comments with regard to the Commission's trusteeship over public lands, **Associate Member Ballard moved to adopt staff's recommendation in the matter of Larry Bryant, #02-0519, to deny approval of the roof structure and direct its removal**

**within the next 30 to 60 days. Associate Member Garrison seconded the motion. When put to a vote, the motion carried, 7-1. Associate Member Birkett did not vote in support of the motion.**

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- 8. JAMES CITY COUNTY DIVISION OF PARKS AND RECREATION, #02-1176**, requests authorization to construct one (1) 8-foot by 12-foot open pile pier; one (1) 10-foot by 12-foot open pile pier; two (2) 6-foot by 10-foot open pile piers; one (1) 8-foot by 16-foot open pile tending pier and to construct a 20-foot by 24-foot tiered canoe and kayak boat ramp launch at the Powhatan Creek Water Access Park. The project is protested by a number of local residents.

Before beginning his presentation, Mr. Ben Stagg, Environmental Engineer Sr., distributed a letter received from the Friends of the Powhatan Creek Watershed extending overall support of the project while requesting removal of the pier furthest from the ramp from the site plan. (A copy of the letter is filed with the permanent record of this meeting.) Mr. Stagg then provided an overview of the project using a computer-generated presentation consisting of drawings and photos. He stated that Powhatan Creek Water Access Park is located immediately adjacent to Jamestown Road (State Route 31) along Powhatan Creek near Jamestown Island. The creek in this area is approximately 121 feet wide from mean low water to mean low water and the Jamestown 1607 residential subdivision is located directly across the creek. The intertidal and subaqueous area along the park side of the creek is primarily mud flat with old concrete rubble along the lower portion of the park near the existing boat ramp. Upland vegetation consists of a mix of wetland vegetation, bald cypress, maple and other hardwoods.

Mr. Stagg stated that the purpose of the project would be to provide improved water access and environmental educational opportunities while minimizing impacts to the site and creek.

While the existing dirt ramp allows access for small, motorized watercraft, the current proposal would eliminate the dirt ramp and replace it with a step-down concrete tier ramp that will provide access for hand-carried watercraft only.

Mr. Stagg added that impacts associated with the project upon State-owned bottomland

include the encroachment of 2-4 feet channelward of mean low water for each pier structure (for a total of 138 square feet) and 120 square feet for the boat ramp, as well as the removal of approximately 6 cubic yards of State-owned bottomland for the ramp installation. The applicant has also proposed to remove some of the large concrete rubble that is dumped along the shoreline and replant the areas with appropriate wetland vegetation.

Mr. Stagg stated that VMRC has received eight letters of protest concerning this project from numerous local residents and from the Friends of the Powhatan Creek Watershed. The objections include potential loss of wetland vegetation, adverse environmental impacts to the creek, Resource Protection Area (RPA) impacts, water quality impacts, stream morphology and hydrology impacts, water run-off, conflict with James City Counties Powhatan Creek Watershed Management Plan, historic resources, wetland board jurisdiction, and navigational concerns.

Mr. Stagg stated that the Department of Environmental Quality has indicated that no Virginia Water Protection Permit would be required for the project as proposed. The Department of Conservation and Recreation states that they do not anticipate this project would adversely impact any natural heritage resources within the area, any endangered plant and insect species, any planned recreational facilities, or any streams on the National Park Service Nationwide Inventory, Final Lists of Rivers, potential Scenic Rivers or existing or potential State Scenic Byways. Additionally, the Department of Historic Resources has stated that no historic properties would be affected by the proposed improvements.

Mr. Stagg noted that since the project, as proposed, would be on land owned by James City County, no wetlands permit is required. No other agencies or interested parties have commented on the proposal.

In summary, Mr. Stagg stated that James City County Division of Parks and Recreation has responded to the protests by reducing the length of the tending pier from 24 feet to 16 feet. Additionally, they have proposed to drive piles from a barge to minimize damage to existing vegetation, to construct the access paths with mulch with little or no grading to minimize clearing of vegetation, as well as bypass existing clusters of bald cypress and red maple. The proposed ramp was specifically designed as a concrete structure to reduce the need for continual maintenance and the proposed step-down tiered design was proposed to discourage the use of motorized watercraft that had been adversely impacting the shoreline along the park. The applicant also proposes to use a cofferdam during the construction of the boat ramp.

Mr. Stagg stated that based on the County's response to the protest, and since this project should provide substantial public benefits with minimal environmental impacts, staff recommends approval of the project as proposed. However, staff endorses the requirement to use a cofferdam during construction of the concrete canoe/kayak boat ramp.

Commissioner Pruitt called for questions from the Commission. Associate Member Ballard inquired as to whether James City County had commented on the recent correspondence received from the Friends of the Powhatan Creek Watershed. Mr. Stagg stated that they were prepared to respond to the letter. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Carla Brittle**, representing James City County, addressed the Commission as to the issues raised by the Friends of the Powhatan Creek Watershed. Ms. Brittle noted that the proposed project best represents a balance between the recreational needs of the County's citizens while preserving the water-access park that currently exists. Associate Member Ballard inquired as to whether the County wishes to remove the "Environmental Observation" pier from the site plan. Ms. Brittle stated that the County does not wish to remove the pier as it will offer the best access to the creek for the various groups who will utilize it.

**Mike Wilson**, James City County Environmental Division, stated that the fifth pier in question would result in a minimal impact to the existing path while providing maximum access to the shoreline.

Commissioner Pruitt called for comments in opposition to the application. There being none, the Commissioner then placed the matter before the Commission for consideration and action.

**In the matter of James City County, Division of Parks and Recreation, #02-1176, Wayne K. Taylor, #01-2142, Associate Member Garrison moved to approve the project, as recommended by staff. Associate Member Williams seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

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9. **DISCUSSION:** Request by Ebb Tide Nursery and Waters Edge Nursery to harvest Spartina alterniflora seed heads from State-owned marshes in the Great Gap and Middle Gap areas of Upshur Bay, southeast of the Town of Quinby in Accomack County. The seeds will be used to generate plants used in shoreline stabilization and mitigation/compensation projects.

Mr. Hank Badger, Environmental Engineer Sr., provided an overview of the request using a computer-generated photo presentation. He stated that EbbTide and Water's Edge are small nurseries located in Cordova and Federalsburg, Maryland, respectively. The two nurseries have requested authorization to harvest up to thirteen, 50-gallon trash bags of seed that would produce approximately 300,000 plants. The applicants propose to harvest the seed during the

month of October by clipping the stems just below the seed head and collecting them in trash bags.

Mr. Badger stated that since the nurseries are Maryland companies, staff queried them as to why this collection was not occurring in Maryland. Scott Haschen, President of Water's Edge, indicated that the density and acreage of *Spartina* marshes are much less in Maryland than on Virginia's Eastern Shore seaside marshes, and that it would take a week or more to harvest the same amount that could be harvested in one day from the marsh near Quinby.

Mr. Haschen also indicated that the State-owned marshes on the seaside are farther away from the mainland, making them less accessible to insects than the marshes in Maryland. Mr. Badger added that there is some indication that this out-of-state harvesting practice may have been going on since the early 1980's by other nurseries.

Mr. Badger stated that the Virginia Coastal Land Management Advisory Council met at The Nature Conservancy's Cobb Island Station near the Town of Oyster on August 28, 2002 to discuss these requests. The Council consists of six members appointed by the Governor. Although there were only two members present at the meeting, the members reviewed all documents and considered the information provided by Commission staff. After careful deliberation, the members present recommended the Commission approve the project with the condition that permission be granted for one year only and that the harvested area be re-evaluated by VIMS in the late spring for any discernible impacts.

Mr. Badger noted that this recommendation was based on VIMS indicating there should be no significant environmental impacts; and the authorization contained in the Wetlands Zoning Ordinance, Chapter 13, Article 2, Section 28.2-1302-(3) of the Code of Virginia. This section of the Code authorizes grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products if otherwise permitted by law. The members did, however, express concern with the removal of a State resource by private, out-of-state nurseries since the ungranted land is a commons for the people of the Commonwealth.

Mr. Badger stated that as a follow up, he inquired whether this practice is permissible in the state of Maryland. Mr. Robert Cuthbertson, a tidal wetlands engineer with the Maryland Department of the Environment, indicated the activity is permissible and does not require a permit in Maryland.

Mr. Badger added that VIMS indicates the proposed seed harvesting of *Spartina alterniflora* should have no significant effects on the surrounding marshes or the adjacent marina environment.

Mr. Badger stated that since this activity would have been authorized under Chapter 13, Article 2, Section 28.2-1302-(3) of the Code of Virginia, for privately owned land, staff

recommends approval of the project as proposed. However, staff recommends approval for one year only and that the harvested area be evaluated by VIMS in late spring of 2003. Furthermore, the Virginia Coastal Land Management Advisory Council should monitor the possible proliferation of such requests in the future.

Mr. Badger stated that should the Commission vote to approve the project, the activity would be authorized by letter from Commission staff for the harvest of the seed from State land. Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Craig Zinter**, EbbTide Nursery, Inc., presented *Spartina alterniflora* samples to illustrate grasshopper damage that can occur to the seed heads under nursery conditions. He described the process used in identifying the areas for gathering seed, and reiterated discussions held with the Virginia Coastal Land Management Advisory Council. Associate Member Garrison inquired as to what amount of acreage would the cut seeds cover. Mr. Zinter stated that the cuttings would be approximately 43,000 per acre. Associate Member Birkett asked what affect there is on an existing plant when the seed head is cut. Mr. Zinter stated that the seed heads are mature and would fall into the water if not harvested; the plant itself is a perennial. Associate Member Garrison asked what method would be used in the process; Mr. Zinter stated that he would use hand shears.

Commissioner Pruitt called for comments in opposition to the request. There being none, the Commissioner then placed the matter before the Commission for consideration and action. Associate Member Gordy inquired as to the likelihood of seed germination when the mature seeds fall from the plant. Mr. Zinter stated that a small amount of seed would germinate. Associate Member Jones asked what the difference is between germination by the nursery versus that of nature. Mr. Zinter stated that the seed is treated in cold salt water over the winter. In answer to Dr. Jones' further inquiry, he stated that the percentage rate of germination using this method in comparison to that seed in nature is unknown. Associate Member Garrison asked in what areas the seeds are sold; Mr. Zinter stated that they are sold up and down the East Coast.

**Associate Member Garrison moved to adopt staff's recommendation to authorize under Section 28.2-1302-(03), Article 2, Chapter 13 of the Code of Virginia approval of the project for one year only with the stipulation that the harvested area be evaluated by VIMS in late Spring of 2003 and direction that the Virginia Coastal Land Management Advisory Council monitor the possible proliferation of such requests in the future. Associate Member McLeskey seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

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**SPECIAL PRESENTATION**

Commissioner Pruitt presented a *Certificate of Dedicated Service* to John (Jack) W. White, former Associate Member, for his eight years of public service with the Commission Board.

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10. **DISCUSSION:** Request from the Rappahannock Preservation Society to retrieve an "oyster reef module," previously deployed at the Steamer Rock artificial oyster reef on Public Ground near Mosquito Point along the Rappahannock River. The stated reasons for the request are to obtain an accurate count of oyster and oyster spat set, the removal of 10 oysters for disease testing, and to determine the cost and feasibility of using the reef site as an "oyster reef module inoculation facility."

In the absence of Robert Jensen, Mr. Chip Neikirk, Environmental Engineer Sr., stated that Mr. Jensen was requesting permission to remove an "oyster reef module" for the purpose of testing and evaluation. Mr. Neikirk noted that Mr. Jensen was seeking permission from the Commission because the reef is located on Baylor Ground and is designated as public ground that is not to be harvested. Mr. Neikirk stated that staff does not have a problem with Mr. Jensen's request.

Commissioner Pruitt called for questions from the Commission. Associate Member Williams inquired as to whether any VMRC staff would be present during the removal. Mr. Neikirk stated that there would be. Commissioner Pruitt called for comments, pro or con, on this matter. There being none, the Commissioner placed the matter before the Commission for consideration and action.

**Associate Member Cowart moved that the Rappahannock Preservation Society be allowed to retrieve their "oyster reef module" from Steamer Rock, and that a member of the VMRC Fisheries staff be present throughout the removal. Associate Member Gordy seconded the motion. When put to a vote, the motion carried unanimously, 8-0.**

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11. **OYSTER GROUND:** Request by David Ira Smith, Sr., that the Commission grant his application for 40 acres of oyster planting ground in Hog Island Bay, on the seaside of the Eastern Shore.

Gerry Showalter, Head-Engineering/Surveying Department, called the Commission's attention to the presence of Edward Bender who suffers from a severe hearing loss and was seated in the front to compensate for his handicap.



Mr. Showalter stated that Mr. Smith had requested a formal hearing on the staff's decision to deny his application. He noted that the ground is situated in Hog Island Bay, East of Public Ground 13 and north of that leased by John Farlow, Sr., with vacant or unleased bottom to the North and East of the application.

Mr. Showalter stated that he has discussed this application extensively with staff who felt that the area should not be dredged, especially if there had been no planting since receiving the lease. Mr. Showalter stated that the first communication he received from Mr. Smith stated that he wanted to dredge for wild clams and that he might later plant clams. Mr. Showalter noted that the area is shallow, between one and three feet at low water, and adjoins the Baylor Ground. He stated that he responded to Mr. Smith's letter by stating the reasons that he felt he could not support the leasing of 40 acres to simply dredge for clams.

Mr. Showalter stated that in March of 1997, 20.4 acres south of Parchaby Tump were assigned to Mr. Smith. In 2001, Mr. Smith made application for additional acreage. After waiting to be sure that Mr. Smith had planted clams as he stated he would do, staff surveyed and assigned 28.08 additional acres, totaling 41.48 acres in that tract leased to Mr. Smith.

Mr. Showalter reported that Mr. Smith has a history of dredging leases for wild clams and has been cited a number of times for dredging outside of leased ground and on Baylor.

Mr. Showalter stated that he was not aware of any clam aquaculture in the immediate area at this time. The area of this application is shallow and is a good prospective area for more aquaculture. According to Dr. Robert Orth of VIMS, the general area is also planned as part of a larger sea grass planting effort. Mr. Showalter added that any dredging could cause a mud flume or sediment wave that would damage grasses or any clam beds in the area. Furthermore, if a dredge strayed into a grass bed or an aquaculture bed, there would be extensive damage in a short amount of time.

Mr. Showalter stated that although large leases have been granted in the past for dredging of natural wild stock clams, it is not now considered to be an ecologically sound practice. This is especially true since grasses and possible scallop introduction are being considered, per Dr. Orth.

In the past, Mr. Showalter stated that when oysters were grown on large leases and screw bores were a problem, watermen tried to get rid of every oyster before planting more in order to eliminate the screw bores. Clams were dredged as a by-product of that effort and were sold to pay for the dredging while gathering up all the remaining oysters. To exclusively clean up all the wild clams in an area, simply by renting a lease and cleaning up all the clams, is not considered a good management practice. Therefore, staff does not feel that this area should be leased in large tracts, such that it would lend itself to exclusive dredging.

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Commissioner Pruitt called for questions from the Commission. There being none, the Commissioner swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**David Ira Smith**, applicant, stated that he was not very knowledgeable as to the laws governing the oyster leases. He stated that he had dredged 40+ leases and was not aware of any destroying of the land. Mr. Smith stressed the need for the lease to contribute to his

livelihood. In response to questions by the Commissioner, Mr. Smith stated that he currently leases 240 acres of ground of which he has dredged 200 acres for several years and which needs to lay out for a period of time. Mr. Smith stated that he has planted seed clams on the remaining 40 acres.

As a proponent to Mr. Smith's application, **Edward Bender**, friend of the applicant, submitted a written statement to the Commission, a copy of which is filed with the permanent record of this meeting. Mr. Bender's statement consisted of a review of the application process followed by Mr. Smith, and Mr. Bender's objections to the manner in which Mr. Showalter carried out his responsibilities with regard to due process in this matter.

**Dr. Robert Orth**, VIMS Professor of Marine Science, made a presentation on sea grass work currently being performed in the seaside coastal bays. The primary objective of the work is to restore the levels of sea grass to those of the 1930's, and to seed the area with bay scallops in order to bring the scallop population back to the coastal bays.

In citing Section 28.2-607(1) of the Code of Virginia, Commissioner Pruitt called upon **Capt. Randy Widgeon**, Marine Police Area Supervisor-Eastern Shore, to report on Mr. Smith's infractions of the law related to dredging activities on leased ground since 1991. Commissioner Pruitt noted that although there may not have been opposition to Mr. Smith's request, the information presented by Dr. Orth and Capt. Widgeon was shared with the Commission due to its relevance to the issue.

Commissioner Pruitt called for comments in opposition to the request. There being none, the Commissioner placed the matter before the Commission for consideration and action. **Associate Member Cowart moved to deny the application of David Ira Smith, Sr., for a 40+ acre oyster ground assignment in Hog Island Bay. Associate Member Garrison seconded the motion. When put to a vote, the motion carried, 7-0.** Associate Member Ballard abstained from the vote.

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**12. PUBLIC COMMENTS**

Commissioner Pruitt opened the floor for public comments. The following individuals addressed the Commission; their remarks are recorded verbatim on the permanent record of this meeting.

**William Matelyan**, waterman, requested reinstatement of his commercial crabbing licenses.

**Tom Powers**, Coastal Conservation Association, requested consideration by the Commission to consider means to more fairly distribute the new 98,000-pound coastal quota among the participants in the striped bass fishery. Associate Member Williams noted the need to arrive at a compromise to benefit both the commercial and recreational fisheries in this matter. Commissioner Pruitt stated that the solution must also satisfy the ASMFC in order to maintain the fishery.

**Dan Dise**, Tangier Watermen's Association, requested the Commission reconsider the law on the Tangier/Pocomoke oyster side which states that a waterman must lose his license for one year when receiving one summons.

There being no further comments, Commissioner Pruitt closed the Public Comments portion of the meeting.

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**13. PUBLIC HEARING:** Proposed Amendments to Regulation 4 VAC 20-720-10 et seq., "*Pertaining to Restrictions on Oyster Harvest*" to establish oyster harvest areas, catch limits, times, and seasons for 2002-2003.

Dr. James Wesson, Head-Conservation & Replenishment, presented statistics and standing stocks for oyster ground production in Virginia. He stated that the reported oyster harvest during 2001-2002 was very low, but similar overall to the previous year. The public harvest increased somewhat due to harvest in the Rappahannock River and Tangier Sound, but private production declined. Drought conditions and high salinities have increased the prevalence and intensity of oyster diseases and this has resulted in lower oyster standing stocks throughout the State. Harvesting at such low levels is having only a minimal impact in comparison to the impacts of the oyster diseases.

Dr. Wesson noted that there is currently little information on this year's spatset or current estimates of standing stocks. Staff has begun the fall surveys; all information will be complete in late November. Staff generally advertises the oyster season regulations in August to allow for a public hearing in September, and a public oyster season that begins October 1. Most of the harvest regulations are the same. A new handscrape area has been

described and is recommended for the Rappahannock River near Drumming Ground; a new dredge area is suggested for the Deep Rock area near Gwynn's Island; and the harvest area in Tangier has been enlarged.

Dr. Wesson stated that there would be very few oysters Baywide this year, so the few Virginia oysters that are harvested will be extremely valuable for the packing industry, especially if some are available for the entire season from October through March. Staff is recommending that some of the areas throughout the Bay open at various times from October, November, December, and January and have closing dates that are similarly staggered. Based on comments at the last Commission meeting, the date for the opening and closing the seasons in the Rappahannock River appears to be the only area of contention. Staff suggested that the opening and closing of areas in the Rappahannock be staggered with the Rappahannock River Hand Scrape area, open from October 1 through December 31 and the Drumming Ground Hand Scrape Area open from November 1 through January 31. Industry representatives suggested simultaneous openings from October 1 through December 31, 2002. The staggered season would give a longer overall season, which should maximize the value for the few oysters that are available for harvest.

Dr. Wesson stated that either season would have the same biological effect. There are only small quantities of market oysters and three months of harvest would easily catch those that are available.

In summary, Dr. Wesson stated that staff recommends all the other seasons remain the same. A dredge season for Tangier and Pocomoke is set for December. A dredge season for the new area at Deep Rock is recommended from January 1 through March 31, 2003. Staff recommends adoption of Regulation 4 VAC 20-720-10 et seq. as drafted, for the 2002-2003 Public Oyster Harvest Season.

At the suggestion of Associate Member Williams, Commissioner Pruitt appointed an *ad hoc committee* consisting of watermen and staff that convened to discuss and recommend openings and closings for the areas relating to the 2002-2003 oyster season.

Upon the return of the *ad hoc committee*, Commissioner Pruitt opened the Public Hearing on the matter. The following individuals addressed the Commission; their remarks are recorded verbatim on the permanent record of this meeting.

**George Washington**, President of the Virginia Watermen's Association, addressed the Commission on behalf of the *ad hoc committee* appointed by Commissioner Pruitt. He reported the recommendations agreed upon the committee:

1. Seasons - Deep Rock: open February and March only;  
Rappahannock River : October 15, 2002 for 90 day;

Tangier: December to January, 2002.

2. Areas - Rappahannock River: Open from Norris Bridge up to Russell Rock on both sides of the river, all at the same time, on October 15, 2002

Tangier: Tangier Light up, including Tangier and Pocomoke Sounds, December 2002 – January 2003

3. Open the whole state, all oyster rocks that are opened, to power dredging - both the tributaries of the Potomac and the Rappahannock River on down.
4. Increase in bushel limit from six to eight.

**Dr. James Wesson** responded to the watermen's requests as follows:

1. Seasons: The dates requested for 90-day seasons are fine.
2. Area: There is a problem with opening everything north of the Norris Bridge, up to Russell Rock; need to review last year's harvest statistics before opening the southern area just above the bridge.
3. Limit: Increase to eight bushels will take up oysters sooner.
4. State-wide open to hand scraping is unacceptable due to studies currently taking place on various rocks.

The Commissioner closed the Public Hearing and placed the matter before the Commission for discussion and consideration. **Associate Member Williams moved for the adoption of the following amendments to Regulation 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" to establish oyster harvest areas, catch limits, times, and seasons for 2002-2003:**

1. **Deep Rock dredge area, season from February 1 to March 31;**
2. **Rappahannock River hand dredge area, season from October 15 to January 15, from Norris Bridge to Morratico Bar with the exception of Temple's Bay;**
3. **Tangier Island hand dredge area, season from December 1 to January 31;**
4. **The Virginia tributaries of the Potomac River hand dredge area, season October 15 to January 15.**
5. **Eight bushel limit.**

**Associate Member Cowart seconded the motion. When put to a vote, the motion carried, 7-1.**

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14. **PUBLIC HEARING:** Proposed Amendments to Regulation 4 VAC 20-430-10 et seq., "Pertaining to the Marking and Minimum Mesh Size of Gill Nets."

**Commission Meeting****September 24, 2002**

Ms. Ellen Cosby, Fisheries Management Specialist, stated that last month the Commission was briefed on a problem identified by the Finfish Advisory Management Committee (FMAC) with regard to the loss of end-marker flags and floating balls. The FMAC recommendation was to do away with the requirement of matching numbers or symbols on gill net end-marker flags and balls. In accordance with 4 VAC 20-430-55, the fisherman's last four Commercial Registration License identification number is required to be on the gill net end-marker buoys, and no change is intended for that.

Ms. Cosby reported that no public comment on the issue has been received to date. Staff is recommending adoption of amended Regulation 4 VAC 20-430-10 et seq., with the deletion of language pertaining to the gill net end-marker matching numbers and symbols requirement.

Commissioner Pruitt opened the Public Hearing on the matter. The following individual addressed the Commission; his remarks are recorded verbatim on the permanent record of this meeting.

**Peter Nixon**, President, Lower Chesapeake Watermen's Association, stated that his association requested this change during the July meeting of FMAC. He cited reasons for requesting the change being the expense of carrying and maintaining numerous sets of flags, balls and buoys that become lost due to the water conditions. He also requested that the word "*identical*" on Page 2 of the Regulation be changed to "*similar*" due to the fading problems with the flags and balls.

Commissioner closed the Public Hearing and placed the matter before the Commission for discussion and consideration. Colonel Steven Bowman, Chief, Law Enforcement, noted that the term "*similar*" could be ambiguous whereas the word "*identical*" would be a more specific term for Law Enforcement in enforcing the law. Colonel Bowman stated that he is in favor of the proposed amendments to the Regulation. Commissioner Pruitt noted that the Commission must act only on the proposed amendments before the Commission at this time.

**Associate Member Williams moved for the adoption of proposed amendments to Regulation 4 VAC 20-430-10 et seq., "*Pertaining to the Marking and Minimum Mesh Size of Gill Nets*" as recommended by staff. Associate Member McLeskey seconded the motion; motion carried, 7-0.** Associate Member Jones was not present for the vote.

**Associate Member McLeskey moved to advertise for a Public Hearing to be held during the October 22, 2002 Commission Meeting, with regard to the request to change the wording related to the color of the flag buoys as noted in Regulation 4 VAC 20-430-20, Item 4. Associate Member Williams seconded the motion; motion carried, 7-0.** Associate Member Jones was not present for the vote.

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

Commissioner Pruitt called upon Eugene Burreson of VIMS for an update on the discussions held during the August Commission meeting pertaining to the importation of clams. Mr. Burreson stated that he recently met with Jack Travelstead and Rob O'Reilly of the VMRC, and Mike Osterling, Lisa Calvo and Mark Camerra of VIMS to discuss the ban on importing hard clam seed. Mr. Burreson gave a presentation on the biological aspects of the Hawaiian clam seed and the southern clam seed. The primary issues with the Hawaiian clam seed are the disease introduction and the "hitchhiker," the importation of a disease agent and the possible importation of a nuisance species coming in with the clams.

Mr. Burreson reported on specific testing of recently imported Hawaiian clam seeds; all seeds tested clean. He stated that the primary question is whether the benefit of importation to Virginia is worth the risk of an unwanted introduction of a disease agent or nuisance species. The evidence, to date, suggests that the risk is very low but, it is not zero and never will be. Mr. Burreson stated that VIMS recommends a 30-day written notification for each importation from the West Coast and/or Hawaii, the requirement of a health certificate, the requirement of the shipper to disinfect the shipment before shipping in a chlorine dip, and the presence of an MPO to observe the opening of a shipment and to observe a second disinfectant dip. In response to Associate Member Jones' inquiry, Mr. Burreson stated that these recommendations apply only to the Hawaiian hatchery currently being used and tested. Associate Member Gordy asked if the risk to disease could ever be zero; Mr. Burreson stated it could not, there is always a risk. A brief discussion ensued with regard to testing for infected organisms and clam seed.

Mr. Burreson then reviewed the VIMS study on QPX (Quahog Parasite Unknown) susceptibility in hard clams. QPX is a protistan parasite of hard clams that has caused significant mortalities of cultured clams in Virginia. Hatcheries are an unlikely source of QPX as the clams normally pick this up from the environment after being planted. Mr. Burreson stated that the results of the study agree with anecdotal and published evidence that suggests that clams of southern origin are more susceptible to QPX than local Virginia. He noted that the levels of severity appear to be Florida (79%), South Carolina (52%) and Virginia (35%.) Mr. Burreson stated that QPX is now wide-spread along the East Coast and importation continues to infect local stocks. He stated that VIMS recommends prohibiting importation of clam seed with any South Carolina or Florida parentage.

In response to Associate Member Jones' inquiry, Dr. Stan Allen of VIMS stated that if susceptible stocks were to appear in the bay and they were to breed with native stocks, the rate at which the ability of the native stocks to withstand disease would diminish is dependent

upon the persistence of the infectious source.

Commissioner Pruitt opened the Public Hearing on the matter. The following individuals addressed the Commission and their remarks are recorded verbatim on the permanent record of this meeting.

**Hank Jones**, full-time clam farmer and part-time insurance adjuster for a clam pilot insurance program, presents facts and figures on insured and uninsured seed clams being planted on the Eastern Shore. Mr. Jones stated that importation of northern stock with a valid paper trail, to be either spawned or nurseried in the southern states should not be prohibited.

**Jack Whetstone**, Extension Aquaculture Specialist for the South Carolina Sea Grant Extension Program and Associate Professor in the Department of Aquaculture Fisheries and

Wildlife at Clemson University, distributed a copy of the study results published from the "Eastern United States Interstate Shellfish Seed Transport Workshop" held in Charleston, South Carolina, February 21-22, 2002. He also distributed a copy of Title 50, Chapter 5 of the South Carolina Code of Laws, copies of both documents are filed with the permanent record of this meeting. Mr. Whetstone asked the Commission to consider not restricting the industry in South Carolina if the state is able to follow guidelines submitted by the VMRC with regard to furnishing clam seed to Virginia.

**Cal Knickerbocker**, Florida State Department of Agriculture – Aquaculture Division, described the certification and documentation process currently being used in Florida. He noted that Florida wants to work with all of the states concerned in order to develop new markets and help the industry grow. In response to inquiries of Associate Member Jones, Mr. Knickerbocker stated that getting the certification process in place took approximately ten years. Once the law went into effect, it took about 18 months to get the program implemented and rules in place. The cost to the grower is sharing information and a \$50.00 fee. Agency costs were assumed from within, thus, the exact cost is unknown. The process has been effective and the industry is growing in Florida.

**Tom Gallivan**, independent clam farmer on the Eastern Shore, urged the Commission to halt the importation of clam seed to Virginia waters pending further scientific investigation on the effects to the industry. He stated that there are a number of Virginia hatcheries available to provide clam seed to the growers.

**Coleman Battie**, Operations Manager for Island Fresh Seafood in South Carolina, requested that the Commission consider a provision for the importation of northern broodstock coming from southern states.



**Tom Walker**, J.C. Walker Brothers, stressed his concern for unregulated clam seed importation possibly leading to the infection and demise of the Virginia clam industry. He requested that the Commission halt the importation of Mercenaria seed to Virginia waters until further information can be gathered on the effects to the industry's future. Mr. Walker responded to questions from Associate Members Jones and Williams, citing suggestions for certifying and documenting the cultivation and importation of clam seed and concurring with Mr. Gallivan's recommendation to utilize Virginia hatcheries.

**Mike McGee**, Chincoteague Shellfish Farms, Inc., reiterated documentation provided in his letter to the Commission dated September 11, 2002 in which he offers support for the Hawaiian hatchery. Associate Member Jones asked what it was that the Hawaiians do and Virginia should do to make the clams so much better for growing. Mr. McGee stated that he would defer to Dr. Ralph Elston and Mr. John Petrie for the scientific explanations.

**Dr. Ralph Elston**, AquaTechnics in the state of Washington, addressed the concept of producing clams in Hawaii and importing back to Virginia waters. He noted the steps and protocols in place to transport Virginia broodstock to Hawaii, produce seed stock, and then bring the seeds back to Virginia disease-free.

**John Petrie**, President of Coast Seafoods Co. in Hawaii, stated that his company entered the clam seed business at the request of Mr. McGee. Mr. Petrie was requested to produce a quality clam seed from genetic Virginia broodstock that could be planted from March to October. With Dr. Elston's assistance, the trials of the process were begun and the company has been producing clam seed that is certified to be disease-free for the past 25 years.

Mr. Jack Travelstead, Head-Fisheries Management, distributed copies of a draft amendment to Regulation 4 VAC 20-754-10, a copy of which is filed with the permanent record of this meeting. He noted that this draft contained rewordings for clarification of grammar; the draft does not address the issues currently before the Commission. Mr. Travelstead stated that the Commission needs to determine whether it would be best to continue the 180-day ban enacted last month, allow the ban to lapse, or modify the ban in some way.

In choosing to modify the ban on imported clam seeds, Mr. Travelstead stated that the Commission must consider the following four issues:

1. Hawaiian Clams – give 30 days' notice to the Commissioner, importations are reviewed on a case-by-case basis, and the decision to allow the importation would be the Commissioner's.
2. Pacific Coast States – 180-day ban should be continued per the VIMS recommendation.
3. Northern Broodstock Parentage – VIMS recommends allowing certified, disease-free clam seed with proper paper trail; trust is an issue. Staff and VIMS are of the opinion

- that a paper trail could be developed.
4. Southern Broodstock – VIMS recommends a permanent ban; such would require a public hearing.

Mr. Travelstead addressed the possible economic impact of a ban on southern broodstock. There does not appear to a current dependency on southern broodstock clams and, therefore, staff recommends the continuance of the 180-day ban.

Commissioner Pruitt noted that the Commission cannot enact any permanent changes to the regulation at this time. He then announced the formation of an *ad hoc committee* to further study the issues of broodstock clam importation. Associate Member Jones will serve as Committee Chair and Associate Member Williams will represent the Commission Board.

Mr. Travelstead stated that the drafted amendment to Regulation 4 VAC 20-754-10 et seq. does not direct staff with regard to the four issues presented; a motion is needed from the Commission to draft the amended regulation as needed.

The Commissioner closed the Public Hearing and placed the matter before the Commission for discussion and consideration. **Associate Member Cowart moved for the adoption of the following amendments to Regulation 4 VAC 20-754-10 et seq., “Pertaining to Importation of Fish, Shellfish or Crustacea”:**

1. **Hawaiian Clams – with 30-day approval by the Commissioner.**
2. **Pacific Coast States – continue the 180-day ban of clam seed.**
3. **Southern Broodstock - permanent ban on importation of southern broodstock unless certification of northern parentage can be established.**
4. **Northern Broodstock – continue to permit importation of clam seed from northern hatcheries with 30-day approval by the Commissioner.**

**Associate Member Garrison seconded the motion; motion carried, 7-0.** Associate Member Ballard abstained from the vote.

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## 16. **RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD**

Cory Routh, Fisheries Management Specialist, stated that the Commission approved several projects that were recommended for funding by the Recreational Fishing Advisory Board (RFAB) in May 2002. However, some boating and fishing access projects did not receive final approval due to pending Habitat Division permit approvals. One project, The Elizabeth River Boat Landing, still has a permit pending. The Crane’s Creek Boat Landing has been

permitted and is presented to the Commission for final approval of funding.

Mr. Routh stated that staff recommends approval of a \$7,000.00 expenditure from the Saltwater Recreational Fishing Development to Northumberland County for the Crane's Creek Boat Landing, as recommended by the RFAB.

Commissioner Pruitt called for comments, pro or con, from the public on this matter. There being none offered, the Commissioner placed the matter before the Commission for consideration and action. **Associate Member Ballard moved to adopt the recommendation of the Recreational Fishing Advisory Board to approve an expenditure of \$7,000.00 from the Saltwater Recreational Fishing Development to Northumberland County. Associate Member Garrison seconded the motion; motion carried unanimously, 8-0.**

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**17. REQUEST OF WILLIAM MATELYAN TO REINSTATE LICENSE**

Commission Pruitt suggested that Law Enforcement and Fisheries Management report to the Commissioner with a recommendation in this regard prior to the October 22, 2002.

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**18. REQUEST TO MORE EQUALLY DISTRIBUTE STRIPED BASS QUOTA BETWEEN COMMERCIAL AND RECREATIONAL FISHERIES**

Commissioner Pruitt referred this matter to the Finfish Management Advisory Committee.

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**19. REQUEST TO AMEND TO REGULATION 4 VAC 20-720-80**

Commissioner Pruitt that this section pertains to violations affecting the Tangier watermen. **Associate Member McLeskey moved to advertise for a Public Hearing to be held at the October 22, 2002 Commission Meeting to amend Regulation 4 VAC 20-720-80. Associate Member Williams seconded the motion; motion carried unanimously, 8-0.**

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**\*\* DATE OF NEXT COMMISSION MEETING: OCTOBER 22, 2002**

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**Commission Meeting**

**12103  
September 24, 2002**

**\*\* ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 5:45 p.m.

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William A. Pruitt, Commissioner

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Stephanie Montgomery CPS, Recording Secretary