

**MINUTES****Commission Meeting****March 25, 2003  
Newport News, Virginia**

The March 25, 2003 meeting of the Marine Resources Commission was held with the following present:

William A. Pruitt )	Commissioner
Chadwick Ballard, Jr. )	
Gordon M. Birkett )	
Russell Garrison )	Members of the Commission
Laura Belle Gordy )	
F. Wayne McLeskey )	
K. Wayne Williams )	
Cynthia M. Jones )	
S. Lake Cowart, Jr. )	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine V. Leonard	Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jane McCroskey	Deputy Chief, Admin-Finance
Jack Travelstead	Chief, Fisheries Management
Rob O'Reilly	Deputy Chief, Fisheries Management
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Roy Insley	Head-Plans and Statistics Dept.
Miriam Tejeda	Administrative and Program Specialist
Stephanie Iverson	Head-Statistics Section
Tracy Patton	Fisheries Management Specialist
Kelly Anderson	Fisheries Management Specialist
Nancy Smith	Fisheries Management Specialist
Col. Steve Bowman	Chief, Law Enforcement
Robin Stippich	Administrative and Program Specialist
Capt. Warner Rhodes	Supervisor, Middle Area
Capt. Ray Jewell	Supervisor, Northern Area

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1<sup>st</sup> Sgt. Bruce Ballard  
Capt. Kenny Oliver  
MPO John Miller  
MPO Chris Miller

Assist. Supervisor, Eastern Shore Area  
Supervisor, Southern Area  
Marine Police Officer  
Marine Police Officer

Tony Watkinson  
Chip Neikirk  
Hank Badger  
Kevin Curling  
Mark Eversole  
Jeff Madden  
Randy Owen  
Jay Woodward  
Benny Stag

Acting Chief, Habitat Management  
Acting Deputy Chief, Habitat Management  
Environmental Engineer Sr.  
Environmental Engineer Sr.  
Environmental Engineer Sr.  
Environmental Engineer Sr.  
Environmental Engineer Sr.  
Environmental Engineer Sr.  
Environmental Engineer Sr.

**Virginia Institute of Marine Science (VIMS):**

Thomas Barnard, Jr.  
Lyle Varnell  
David O'Brien

Other present included:

Arthur L. Russnow  
Daniel Yoder  
John Lain  
Jonathan Rich  
Rachel Morrison  
Jane Bunce  
Cindy Hall  
Carter Wellford  
John Munick  
Eulalia Hunter  
Neil Lowenstein  
Bruce Arnette  
Susan Gaston  
Lee R. Smith

John Matthews  
Avis Sigmon  
Sharon Bowers  
Andrea Griffith  
Maranda Hall  
Jeff Chidesfer  
Kevin DuBois  
Kristin Brennan  
Bill Hunter  
Shirley Hunter  
Juan S. Crofton  
Miriam Pizzani  
Robert Jensen  
Kelly Place

Michael Ewing  
Hugh A. Delauney  
J. T. Glaze  
Lauren Wilson  
Kendall Bunce  
William D. Paint  
Richard Burnette  
Percy Bean  
Margie Krug  
Bob Derby  
Alan Bradshaw  
Eddy Pizzani  
Wilson Hatter

and others.

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Commissioner Pruitt called the meeting to order at 9:32 a.m.

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

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The minutes of the December 3, 2002 and February 25, 2003 Commission meetings were approved as circulated. **Associate Member Ballard made the motion to approve both sets of minutes, which was seconded by Associate Member Birkett. The motion carried. Associate Member Gordy abstained from voting on the February 25, 2003 minutes, as she was absent from the meeting.**

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Tony Watkinson, Acting Chief-Habitat Management, informed the Commission that Item 2E, County of York, was pulled from the agenda as some issues needed to be resolved by the County before it could be brought to the Commission for consideration. He also explained that the Commission needed to discuss a request by Delegate Harvey Morgan to hold a second hearing in King William County for the proposed reservoir project.

Associate Member Garrison requested some time to discuss a social gathering for the members of the Commission.

The agenda of the meeting was approved. **Associate Member Ballard moved to approve the agenda, with the changes. Associate Member Williams seconded the motion. The motion carried, 8-0.**

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

\* \* \* \* \*

Tony Watkinson, Acting Chief-Habitat Management, gave the presentation on Page two items A through D and his comments are a part of the verbatim record. Page two items are projects that cost \$50,000 or more with staff recommendation for approval.

No one was present at the hearing to comment.

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In response to a question from the Commission, Tony Watkinson stated that Norfolk Shipbuilding and Drydock Corporation had elected to take the \$5,000 one-time permit fee instead of the assessment of encroachment royalties, which was allowed by Code.

Associate Member McLeskey asked staff about the reason for the extension of time requested by the City of Virginia Beach. Randy Owen, Environmental Engineer, Sr., explained that the request was made because the project was delayed during the Corps of Engineers permit review process and that this would be for this one time, after that the normal time frame would be followed.

**Associate Member Ballard moved to approve Page 2 projects, A through D, as presented by staff. Associate Member McLeskey seconded the motion. The motion carried, 8-0.**

**2A. CITY OF VIRGINIA BEACH, #96-0083**, requested a one-time extension of their current time-of-year dredging restriction to allow for maintenance dredging of the *Lynnhaven Boat Ramp and Beach Facility* municipal channel between April 1 and July 1, 2003. The current permit precludes dredging during the period of March 1 through September 30 to protect shellfish spawning periods and juvenile summer flounder recruitment.

Fees Not Applicable

**2B. DEPARTMENT OF THE NAVY, #02-2441**, requested authorization to construct a 32-foot by 90-foot crane hard point and fender pile system, install 8 dolphins and install approximately 620 linear feet of 8" articulated block mat to facilitate repairs to an existing lift slip and Pier 55 at NAVPHIBASE Little Creek in Virginia Beach.

Permit Fee.....\$100.00

**2C. NORFOLK SHIPBUILDING AND DRYDOCK CORPORATION, #03-0411**, requested a permit to install a service spud and enlarge an existing ramp stop to accommodate the Old Dominion, a new 122' by 555' floating dry-dock at their facility situated along the Southern Branch of the Elizabeth River in Norfolk. Recommend approval with a one-time permit fee of \$5,000.00 in lieu of the assessment of encroachment royalties pursuant to Section 28.2-1206.B of the Code of Virginia.

Permit Fee (28.2-1206B, Code of Virginia).....\$5,000.00

**2D. GIANT YORKTOWN, INC., #02-2389**, requested authorization to dredge 76,000 cubic yards of subaqueous material to a depth of minus forty (-40) feet at mean low water adjacent to their oil unloading pier facility situated along the York River in York County. The dredged material will be pumped directly to an approved upland disposal area.

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Recommend a dredging royalty in the amount of \$34,200 for the dredging of 76,000 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard.

Royalty Fee (76,000 cu. yds. @\$0.45/cu. yd.).....	\$34,200.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$34,300.00

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**4. HUGH DELAUNEY.** Commission review on appeal of the Norfolk Wetlands Board’s February 12, 2003, restoration order pertaining to a coastal primary sand dune situated along the Chesapeake Bay in the East Ocean View section of Norfolk.

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

Mr. Owen explained that the City of Norfolk Wetlands Board, at its September 11, 2002 hearing, initially considered Mr. Delauney's role involving violations of the Coastal Primary Sand Dune and Beaches Ordinance on three adjacent properties in the East Ocean View section of Norfolk. He said that Mr. Delauney’s property was located at 2808 East Ocean View Avenue, between the Estate of Mary Evans and the property of Mary Craven/Patricia and Robert Nicholson. He explained that all three properties front on East Ocean View Avenue and are bounded by Bay View Avenue, a paper street, to the north. He said that a coastal primary sand dune exists on each of the three properties and within the Bay View Avenue right-of-way.

Mr. Owen explained that at the initial hearing, Mr. Delauney’s counsel, Mr. Neil Lowenstein, had requested a deferral in order to prepare for the restoration hearing. He said that the Board reconsidered the matter during a special restoration hearing held on September 26, 2002. He said that the three properties were treated as separate violations. He explained that two of the three property owners had agreed to the restoration order as presented by the Board. He said that only the property owner in the center, Mr. Delauney, had chosen to appeal the decision of the Board.

Mr. Owen explained that the Commission considered that appeal at its November 26, 2002, meeting. He said that a request to open the record for the purpose of challenging the jurisdictional call made by the Board's staff and the Virginia Institute of Marine Science was denied. He explained that the matter was unanimously remanded by the Commission to the Wetlands Board for reconsideration of the existing record and for the consideration of any new information deemed acceptable by the Board chairman.

Mr. Owen stated that the Wetlands Board reconsidered the matter, on remand, at its

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February 12, 2003, meeting.

Mr. Owen said that Mr. Kevin DuBois, Wetlands Board staff, briefed the Board on the Commission hearing and reiterated staff's position on the existing violation. He explained that Mr. Dubois summarized the new evidence submitted by the appellant and concluded that his original jurisdictional determination still stood.

Mr. Owen explained that the Chairman next heard from Mr. Lowenstein, who argued that Mr. Dubois' jurisdictional determination made on-site was not based on scientific evidence and that the Virginia Code definition of a coastal primary sand dune was inflexible. He said that Mr. Lowenstein concluded, based on excerpts taken from a Department of Environmental Quality document, that this definition fell short of protecting dunes in general and that the dune on his client's property was a secondary, non-jurisdictional dune.

Mr. Owen explained that Mr. Matthews summarized two exhibits put forth in support of his argument that the dune in question was not a jurisdictional coastal primary sand dune. Mr. Owen stated that Mr. Matthews' first exhibit, a geological soils report, determined that the soils on-site were consolidated. He explained that secondly, Mr. Matthews had reviewed a topographic survey, which suggested that the 10 percent slope break, used to determine the lateral and landward limits of a primary dune, occurred north of Mr. Delauney's lot. He said that Mr. Matthews concluded that this data collectively demonstrated that the dune in question was not jurisdictional.

Mr. Owen said that Mr. Tom Barnard from VIMS was asked to comment on the jurisdictional determinations made by the Board's staff and Mr. Matthews. He said Mr. Barnard confirmed the jurisdictional call made by Mr. Dubois and that of his staff.

Mr. Owen said that following the closing of the public hearing, the Board reaffirmed by unanimous vote their September 26, 2002, decision, finding that a violation of the Coastal Primary Sand Dune and Beaches Ordinance had occurred. He said that additionally, the original restoration order was reaffirmed along with the assessment of a \$1,500.00 civil charge to be paid within 30 days.

Mr. Owen said that Mr. Delauney's second notice of appeal, had been submitted within the ten days required by Code and that staff considered the appeal to be timely.

Mr. Owen said that Mr. Lowenstein lists six reasons for Mr. Delauney's appeal of the decision of the Norfolk Wetlands Board. He stated that these include that the Board erred procedurally because they:

- placed time restrictions and evidentiary limitations upon the appellant;
- refused to conduct a site visit prior to rendering a decision;

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concluded the dune area was jurisdictional;  
did not allow cross-examination of the Board's staff and VIMS;  
believed that Mr. Delauney's activities on the property required a permit; and  
concluded that the activities violated any law or ordinance, caused ecological impact,  
or altered the contour of the dune in question.

Mr. Owen stated that based on staff's review of the information that was before the Norfolk Wetlands Board on September 26, 2002, and again on February 12, 2003, staff was unable to conclude that the Board erred procedurally in their review of this matter or that the appellant rights were prejudiced, as alleged. He explained that it was clear that the Board determined that the excavation, removal of vegetation, and resulting dune destabilization took place on a jurisdictional dune, and that a substantial violation of the Coastal Primary Sand Dunes and Beaches Ordinance had occurred.

Mr. Owen said that VIMS had reaffirmed the jurisdictional determination made by the Wetland Board staff. He said that further, in a letter dated February 3, 2003, from Mr. Barnard to Mr. Matthews, VIMS concluded that Mr. Matthew's interpretation of a coastal primary sand dune was too narrowly focused and did not give appropriate consideration to each of the dunes components when applying that definition in the field. He stated that as such, it appeared that the Board's decision on this matter was appropriate and staff recommended that the February 12, 2003, restoration order of the Norfolk Wetlands Board be upheld. He said further, staff must point out that the Board's assessment of the \$1,500.00 civil charge was voluntary and, therefore, not before the Commission on appeal. In light of the appellant's non-consent to this charge, the City may wish to pursue civil penalties in Norfolk Circuit Court not to exceed \$25,000.00 for each day of the violation pursuant to Virginia Code §28.2-1420.A.

Associate Member McLeskey requested a definition for a primary sand dune. Mr. Owen read the dune act in the Code (§28.2-1400, Definitions), which says, "a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: (he stated that he would not say the names of plants)...For the purposes of this chapter, "coastal primary sand dune" or "dune" shall not include any mound of sand, sandy soil, or dredged spoil deposited by any person for the purpose of temporary storage, beach replenishment or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune". He also referred to Tom Barnard's letter, Item 5D, which says, "...it is my opinion that you are too narrowly focused in your interpretation and do not give appropriate consideration to each of its components when applying the definition in the field. Your interpretation does not effectively take into consideration the entire "mound of sand" that constitutes the dune. Dunes can be and usually are highly dynamic, varied features that cannot always be defined in absolute terms. The Virginia dune definition was so crafted in

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order to encompass this dynamism".

Tom Barnard, representative of the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. He responded to Mr. McLeskey's question regarding what is a primary sand dune and if it was the closest to the water? He explained that the Code defines what you must decide from and he did not think that where it was located was in the code, specifically.

Neil Lowenstein, Attorney for Mr. Delauney, was present and his comments are a part of the verbatim record. He stated that in regards to the review process and the rights of the appellant, there was lack of due process, lack of jurisdiction, and lack of violation. He explained that Mr. DuBois of the Wetlands Board Staff had not done a survey, analysis, soil study, etc. He said that they were given time restraints and couldn't address the board properly. He also said that as far as jurisdiction, the board failed to follow statutory restrictions, VMRC guidelines and regulations. He said that the City of Norfolk applied their definition to create jurisdiction.

He stated that the primary sand dune needed to be discussed, not the secondary or field dune. He said VMRC staff was wrong and the statute, not biology, governed the definition by the General Assembly, which was absolute and inflexible. He further explained that in the Delauney case it was non-jurisdictional: it failed the geology definition and was unconsolidated soil; topography failed the definition; and vegetation test.

John Matthews, representative for the applicant, was present and his comments are a part of the verbatim record. He stated that VIMS and the Wetlands Board used an incorrect interpretation, which was made by them. He said that 2 of 3 components failed and a primary sand dune does not exist. He explained a soil report Mr. Delauney had done and he explained that this had been presented to the Wetlands Board also. He also referred to various sections of the Wetlands Board hearing minutes and discussed them. He also said that Mr. Delauney and his representatives were not allowed to question staff at the wetlands hearing.

Associate Member Ballard explained to Mr. Mathews that what was before the Commission was whether the Wetlands Board erred in its handling of the case pursuant to the Code of Virginia. Commissioner Pruitt said that the Commission would not resolve the dispute at this hearing and could only decide if the Wetlands Board followed procedures according to the Code. He further explained that the Commission could only look at whether due process was followed, all information was considered, and that the board allowed expert input.

Hugh Delauney, Appellant, was present and his comments are a part of the verbatim record. Mr. Delauney said the area involved in the violation was only 200-300 square feet. He said he did not feel he had done anything wrong and only moved debris, not sand. He said he had a permit, landscape permit, and a site plan approval that were all processed before he did anything. He explained that the house was originally in bad shape. He said he had trees and



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shrubbery removed because the City had told him to clean the area or be in violation, so he did. He said the retaining wall was about 60 years old.

Cindy Hall, Attorney representing the City of Norfolk, was present and her comments are part of the verbatim record. She explained that there was ample information in the record and sufficient information to support whether the board acted correctly. She said the board was not required to do a site visit, but they did go out. She said time and evidence restriction when remanded by the VMRC did limit testimony to the record and new information heard by VMRC. She stated that the appellant was allowed to give testimony. She said that the Code established by the General Assembly directed the Virginia Marine Resources Commission and the Virginia Institute of Marine Science to provide guidelines. She also referred to Tom Barnard's letter to Mr. Mathews and his comments about the appellant being too narrowly focused...and the need to look at the total picture, not a tiny piece of the primary sand dune. She said if the soil was unconsolidated, then why was it noted at the September meeting that the area had been planted, sprigged, and fenced, Mr. Delauney had responded it was put there to keep the sand from moving with the weather conditions. She said when Mr. Delauney removed the trees, he destabilized the dune. She said also that even though he had obtained the site plan approval, he still was required to obtain other permits by law. She asked the Commission to uphold the board's decision.

Kevin DuBois, Wetlands Board Staff Representative, was present and his comments are a part of the verbatim record. He said that the Wetlands Board only wanted proper restoration to stabilize the dune and that the board did allow removal of trash in the original permit. He also said that there was a joint site visit by the Virginia Institute of Marine Science, the Virginia Marine Resources Commission, and the City.

In answer to Associate Member McLeskey's questions about a city order to remove trash, Mr. DuBois said that the initial investigation did call for removal, but it was to remove big piles of trash, which were not in the rear of the property.

Associate Member McLeskey asked about the old fence and if the city wanted it removed. Ms. Hall responded that it was only decorative and there was no discussion on that. Mr. Dubois responded there was never a requirement to remove the fence.

Associate Member McLeskey continued to express his concern about what defined a primary sand dune. Carl Josephson, Assistant Attorney General and Counsel for VMRC, stated that the statutory definition was clear as to what the words are, but what it means was interpreted by the Guidelines and defined on a case by case basis. He said that this was done because dunes were known to be dynamic and to change over time. He explained that on the issue of cross examination the General Assembly thinks cross-examination was required in a formal hearing but not in an informal one. He said that the due process was found in Chapter 14, §28.2-1403(7B) and there was nothing about cross-examinations. His comments are a

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part of the verbatim record.

Associate Member Ballard stated that in the case of Hugh Delauney, having considered the information in the packet, comments from the staff, applicant and his representatives, and City's representatives, Chapter 14, Section 28.2-1403(D), paragraphs 9 and 10 and Section 28.2-1413 of the Code of Virginia, he concluded that the Board did not fail in its duties. **Associate Member Ballard moved to affirm the Norfolk Wetlands Board decision. Associate Member Garrison seconded the motion. The motion carried, 5-4. Associate Members McLeskey, Birkett, Williams, and Gordy voted no. Commissioner Pruitt voted yes.**

Fees Not Applicable

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**5. DOMINION POWER, #02-2003**, requested authorization to install, adjacent to an existing cable, by embedding plow, 9,700 feet of electric cable, a minimum of four (4) feet beneath the existing bottom of the Rappahannock River between a point near the mouth of Piscataway Creek at Island Farm in Essex County to a point at the mouth of Little Carter Creek in Richmond County. The project is protested by an adjoining property owner.

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

Mr. Curling explained that Dominion Power was proposing to replace the existing cable between Tappahannock and Warsaw that was buried in the Rappahannock River bottom in 1962. He said that the cable and support structures were aging and beginning to fail.

Mr. Curling said that the cable would be installed by the directional drill method from the upland out into the river; therefore, no wetlands would be disturbed and no wetlands permits were required. He explained that the cable would be installed in the river bottom by embedding plow. He stated that weather permitting the installation of the cable across the river would be accomplished in less than one week.

Mr. Curling stated that Mr. Carter Wellford, the property owner in Richmond County, objected to the proposed replacement. He said that Mr. Wellford posed several technical questions concerning the design and placement of the cable, including the removal of the existing cable and rerouting it to the towers located about three miles downstream. He said Mr. Wellford also questioned the effect of the support structures on the erosion of his land.

Mr. Curling stated that Mr. Bruce Arnette, Lead Project Designer, and Mr. Alexander Smith, External Affairs Manager for Dominion Power, had met with Mr. Wellford at his property on

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January 15, 2003. He explained that at this meeting, Mr. Wellford pointed out the erosion that he believed was caused by the structures and suggested that Dominion Power should compensate him by placing riprap along the bank. He said that Mr. Wellford also believed that the Phragmites growing in the small pocket marsh nearby were caused by the disturbance of maintenance work.

Mr. Curling said that the agent, both Dominion Power representatives, Karen Duhring of VIMS and VMRC staff had again met with Mr. Wellford on February 11, 2003. He explained that after discussing all of Mr. Wellford's concerns, and the jurisdictional limits of the Marine Resources Commission, Mr. Wellford did not wish to withdraw his protest, and had requested a public hearing.

Mr. Curling said that the Corps of Engineers and US Fish and Wildlife Service did have some concerns with Bald Eagles in the area. He explained that these issues were resolved during an on-site meeting with the agent on February 4, 2003.

Mr. Curling explained that the Virginia Institute of Marine Science had determined that the impacts to the marine environment resulting from this activity would be minimal. He said that VIMS recommended taking precautions to avoid any disturbances to the vegetated wetlands or existing shoreline, revegetating any areas that may be disturbed, and removing any unnecessary support structures; if it can be accomplished without excessive disturbance to the existing vegetation or shoreline.

Mr. Curling said that no other State or federal agencies had commented on the project.

Mr. Curling said that the conditions observed along Mr. Wellford's shoreline were consistent with erosion along the Rappahannock River. He explained that the shoreline had eroded since the original installation in 1962, to a point where the support anchors have become exposed in the bank. He further explained that these anchors were then abandoned and left in place. He stated that once they became exposed, they may have caused some erosion along the top of the bank. He said that, however, the bottom of the bank, which was eroded by wave action, appeared to be consistent with the remaining shoreline. He stated also that the Phragmites was also consistent with other stands in the area. He said that it should be noted that Mr. Wellford had a very active Phragmites eradication program on other parts of his property.

Mr. Curling said that the issues concerning the right-of-way across Mr. Wellford's property were outside the jurisdiction of the Commission. He said, furthermore, the impacts associated with the installation of the cable and support structures, which would consist of the buried cable and any pilings needed for the warning sign, were minimal. He said that the piling for the warning sign could be removed from the intertidal area by placing the warning sign on the upland, within the cable easement, but would have to be large enough to be

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visible from its new position.

Mr. Curling said that the public and private benefits of this activity include reliable electrical service to the citizens of Essex and Richmond Counties. He said that staff does not anticipate that the project would interfere with other reasonable uses of state waters, marine fisheries, tidal wetlands, water quality or submerged aquatic vegetation.

Mr. Curling explained that, therefore, staff recommended approval with a royalty of \$9,700 for the encroachment beneath the State-owned subaqueous bottom of the Rappahannock River at \$1.00 per linear foot.

In response to Mr. Garrison's question about whether a directional bore could be used, Mr. Curling said that it was an option, but was not necessary due to minimal impacts. He said it could be done to avoid oyster ground but there was nothing there.

Mr. Curling explained that he had spoken with Dr. James Wesson and he said that no one works in this area.

Juan Crofton, representative for Dominion Virginia Power, was present and his comments are a part of the verbatim record. In response to Mr. Garrison's question about whether a directional bore could be used, Mr. Crofton said this was very restrictive and costly, necessitating the installation of one large conduit for 4 single conductors.

Alan Bradshaw and Bruce Arnette, representatives for Dominion Virginia Power, were present.

Associate Member Birkett asked for further questions of staff and Mr. Crofton. There being none, he swore in Mr. Wellford, protestant.

Carter Wellford, Richmond County property owner and protestant, was present and his comments are a part of the verbatim record. Mr. Wellford explained that he was concerned that shoreline erosion would occur as a result of the project and he felt shoreline stabilization measures should be taken to prevent it.

**Associate Member Gordy moved to approve the application for permit, #02-2003. Associate Member Birkett seconded the motion.**

Associate Member Cowart stated that the concerns about erosion were good, not wrong and suggested that the Commission consider requiring rip-rap work where the cable goes ashore. Commissioner Pruitt stated that it needs to conform with other stabilization efforts previously made on the other parts of the shoreline. Mr. Watkinson explained that rip-rap was an option, but would require a hearing of the Wetlands Board as this would involve wetlands

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and what was being decided on now did not require a wetlands permit.

Associate Member Birkett commented that the poles originally were not in the water, but over time the shoreline had changed bringing the water to the poles. He further stated that Dominion Virginia Power cannot be blamed for the erosion problems and that the directional bore would be well back from the shoreline. He suggested adding to the motion that a stipulation be added to the permit that if in the future erosion were caused by DVP action, DVP would be responsible.

**The motion carried as originally made, 5-3. Associate Members Cowart, Ballard, and Garrison voted no.**

Royalty Fee (9,700 sq. ft. @\$1.00/sq. foot).....	\$9,700.00
Permit Fee.....	\$100.00
Total Fees.....	\$9,800.00

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Benny Stagg indicated that Mr. Munick (Item 6) had left for a business lunch meeting and requested the Commission wait until his return to hear his case. The Commission agreed to the request and skipped ahead to Item 7, Eddy Pizanni.

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**7. EDDY PIZANNI, #02-2369**, requested authorization to construct a 30-foot by 15-foot open-sided boathouse adjacent to his existing private pier situated along Goose Creek in York County. An adjoining property owner protested the project. The property is located along Goose Creek, a tributary of Chisman Creek in York County. The creek is approximately 500 feet wide at the project site and the stated mean low water depth at the end of the pier is minus three (-3) feet. The development along the creek is primarily residential and there are other boathouses in the immediate vicinity.

Chip Niekirk, Acting Deputy Chief-Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Niekirk said that the proposed open-sided boathouse would to be constructed along the north side of a recently constructed 110-foot private pier. He said the new pier, which was located near the northern property line, would be built to replace a pier, which had been located near the southern property line. He said the proposed boathouse would be located approximately 28 feet from the extended northern property line.

Mr. Neikirk said Ms. Eulalia M. Hunter, an adjoining property owner, protested the project.

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He said she shared the northern property line with the applicant. He explained that Ms. Hunter's primary concern was the impact the boathouse would have on her view down the creek. He said Ms. Hunter stated in her letter that Mr. Pizanni had assured her when he proposed the new pier that he would not construct a boathouse.

Mr. Neikirk said that no State agencies had commented on the proposal and the boathouse would not encroach over any public or privately leased oyster grounds.

Mr. Neikirk said that had the adjacent property owner not objected to the open-sided boathouse, it would have qualified for the exemption contained in §28.2-1203 (A)(5) of the Virginia Code. He explained that staff did not believe the structure would adversely affect navigation, but believed the boathouse could be relocated to reduce its affect on Ms. Hunter's view. He explained that accordingly, staff recommended approval of the project provided the boathouse was constructed on the southern side of the applicant's pier.

Mariam Pizzani, applicant, was present and her comments are a part of the verbatim record. She provided the Commission with photographs of her pier and the protestant's pier. She stated that both her pier and the proposed boathouse are smaller than Ms. Hunter's pier and boathouse.

Bill Hunter, representative for the protestant, was present and his comments are a part of the verbatim record. He provided some pictures from the Hunter property for the Commission. He explained that the objection was related to the location proposed; it would block Mrs. Hunter's view. He stated that the pier was a larger intrusion than they thought it would be and asked that the boathouse not be approved for either side of the pier.

**Associate Member Gordy moved to approve the open-sided boathouse as requested. Associate Member Garrison seconded the motion. Associate Member McLeskey suggested that the pitch of the roof on the boathouse be reduced, which would help with Mrs. Hunter's view. Mr. Neikirk suggested reducing the roof pitch ratio from 6:12 to 4:12. Associate Members Gordy and Garrison agreed to the suggested change. The motion carried, 8-0.**

Permit Fee.....\$25.00

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The Commission adjourned the meeting for the lunch hour at 12:56 p.m. Commissioner Pruitt did not immediately return from the lunch break and Associate Member Birkett chaired in the interim.

Associate Member Gordy left the meeting for the rest of the day immediately upon returning from the lunch break.

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**6. JOHN A. MUNICK, JR., #02-0417**, requests authorization to construct a 10-foot by 30-foot stone breakwater adjacent to his property situated along the James River in the City of Newport News. An adjoining property owner protests the project.

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 at the confluence of Fishers Creek and the James River just south of Deep Creek in the city of Newport News.

Mr. Stagg said that the applicant originally applied, seeking authorization to construct the breakwater and to enhance an old groin type structure adjacent to his property. He stated that due to concerns of adjoining property owners as to the potential impact of enhancing the groin on the entrance channel to Fishers Creek, Mr. Munick agreed to delete that portion of his request.

Mr. Stagg said that a permit for dredging the mouth of Fishers Creek was issued on December 16, 2002, which included authorization to place some of the sandy dredge material upon and adjacent to Mr. Munick's property. He explained that while the dredging has been permitted, staff was currently uncertain of the time-table for the dredging activity and therefore could not determine when the beach nourishment material would be available. He said that Mr. Munick had indicated that he continues to experience erosion at the site and seeks authorization to proceed with installation of the breakwater with the addition of beach nourishment from the dredging project when it becomes available. He stated that the adjacent property owner (Mr. Kane) to the north of Mr. Munick had received a permit to install two breakwaters and one groin with 200 cubic yards of beach nourishment on June 20, 2002. He said those structures were currently under construction.

Mr. Stagg explained that Mr. and Mrs. Goodrich, adjacent property owners to the south, originally objected to the proposal to enhance an existing groin feature while supporting the construction of the breakwater.

Mr. Stagg said that Mr. Munick deleted that portion of his request and subsequently, the Goodrich's objected to the construction of the breakwater without simultaneous placement of beach nourishment indicating that without the beach nourishment, they believe the breakwater may contribute to the continued shoaling of the Fishers Creek entrance channel. He said that the Goodrichs would prefer the breakwater not be constructed until the dredging

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commenced to assure beach nourishment would be available.

Mr. Stagg said that VIMS, in their Shoreline Permit Report, stated that the proposal would have a minimal environmental effect on the immediate area. He said, however, they do state that nourishment should be provided within a reasonable amount of time after construction of the breakwater from either the Fishers Creek dredging project or from another suitable upland source. He explained that the project as currently proposed does not require a wetlands permit from the City of Newport News. He stated that no other agencies had commented on the project.

Mr. Stagg said the shoaling of the mouth of Fishers Creek had been a historical problem. He explained that, in fact, a permit was previously issued to dredge the channel in 1994, but the project was never completed. He said that based upon available information, staff believed this project would have minimal effect on the ongoing shoaling problems at the mouth of the creek either with or without the beach nourishment. He explained, accordingly, since the breakwater should help to minimize shoreline erosion, staff recommended approval of the project as proposed.

John Munick, applicant was present and his comments are a part of the verbatim record. He explained that in the last 4-6 months there had been a loss of sand and grass. He said there were jetties on the other end of his property, because the sand does move north.

No one was present at the hearing in opposition to the project.

**Associate Member Cowart moved to approve the permit as recommended by staff. Associate Member Ballard seconded the motion. Motion carried, 5-0.**

Permit Fee.....\$25.00

\* \* \* \* \*

**8. TIDEWATER QUARRIES, #02-2295**, requests after-the-fact authorization to retain an unauthorized and previously constructed 16-foot by 16-foot winch deck with a shed at their Sandy Point sand and gravel loading facility at Riverside Farm, Inc., within the James River in Charles City County. An adjoining property owner protested the after-the-fact request.

Ben Stagg gave the presentation with slides. His comments are a part of the verbatim record. He said that the protestant was not present at the hearing and had requested that both letters from their attorney be reviewed by the Commission

Mr. Stagg said that the project was located at Sandy Point along the James River within Riverside Farm in Charles City County. He said the facility operated as a sand and gravel



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mining operation with a conveyor barge off loading site along the James River. He explained that Tidewater Quarries had taken over the operation of the site in 2000 and had proceeded with repairs to include dolphin repair and removal of a 16-foot by 16-foot deteriorated, wooden platform at the end of the conveyor system.

Mr. Stagg stated that in 2002, staff received a phone call from a local resident noting recent construction activity at the site and questioned if any new permits had been issued. He said on September 30, 2002, staff noted new construction at the conveyor site while conducting a compliance check at an adjoining property.

Mr. Stagg said that staff contacted Tidewater Quarries and conducted a site visit on October 2, 2002, with representatives of Tidewater Quarries present. He stated that Mr. Jim Hesoun, Plant Manager, of Tidewater Quarries told him that the deck had indeed been reconstructed and a shed constructed in the footprint of an existing deck. He explained, that additionally, Mr. Hesoun told him that the mooring dolphins had been repaired. He said that in a letter to Tidewater Quarries, dated October 9, 2002, staff noted that the original permit (VMRC#86-1197) for the conveyor and dolphins at the site did not depict any equipment platform or shed and that the said structures must be considered unauthorized. He said that staff further directed submission of a Joint Permit Application requesting after-the-fact authorization if they wished to retain the structures.

Mr. Stagg explained that on November 27, 2002, VMRC received a Joint Permit Application requesting after-the-fact authorization to retain the 16-foot by 16-foot winch deck with shed. He said that the applicant stated that the platform was in existence when they took over operation of the facility. He stated that as part of upgrading the facility, they had proceeded to remove the deteriorated decking, reconstructed the deck and constructed a small shed to house the winch machinery and to provide protection for the conveyor operator in inclement weather conditions. He said that in subsequent conversations with the contractor, Mr. Bobby Patterson of Cedarcrest Marine, Inc., said he also believed that since the platform was already in existence he could reconstruct it within the same footprint.

Mr. Stagg said the project was protested by Ms. Lucy Sydnor, who was apparently a principal of D. P. Properties, an adjacent property owner. He said that staff received a phone call from Ms. Sydnor on January 2, 2003 indicating she may have objections to the project and requested additional time to formulate a response. He stated that in a letter dated January 22, 2003, from Mr. S. M. Franck, representing Ms. Sydnor, he conveyed her concerns related to this proposal. He said that the letter outlined previous concerns related to the original permit application for the mining operation to include lengthy litigation and attorneys fees spent to establish adequate regulation of the operation. He said that while Mr. Franck indicated that the operation had proceeded without substantial objection from the neighbors, he indicated that Ms. Sydnor believed that due to the cost and damage previously suffered by both she and her neighbors that she opposed any unauthorized additions or structures.

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Mr. Stagg said that VIMS, in their Shoreline Permit Report, stated that the project, from a marine environmental viewpoint, would result in minimal individual and cumulative adverse impacts . He further stated that the Department of Environmental Quality indicates the project did not require a general or individual Virginia Water Protection permit. He said that the Department of Conservation and Recreation found the project acceptable. He stated the Department of Health had approved a plan for sanitary facilities at the site and finds the project acceptable. He explained the project did not require a wetlands permit from Charles City County. He said that no other agencies had commented on the project.

Mr. Stagg said that while staff acknowledged the controversial nature of the original request and subsequent approval of a sand mining operation at this site, staff felt the current applicant believed construction of the winch deck and shed, within the existing footprint of a previously constructed deck, was within the scope of maintenance and repair. He said that in addition, since this is an existing facility that had fallen into a state of disrepair, the upgrade removed potential adverse impacts of the neglected infrastructure and, therefore, staff recommended after-the-fact approval. He said should the Commission wish to consider a civil charge the project represented both minimal environmental and non-compliance impacts.

John Lane, of McGuire Woods, representative for Tidewater Quarries was present and his comments are a part of the verbatim record. Mr. Lane said he didn't have much to add. He explained that they had bought the property with the problems and didn't realize it was not permitted.

**Associate Member Garrison moved to approve the project as staff recommended. Associate Member Cowart seconded the motion. The motion carried, 6-0.**

Royalty Fee (256 sq. ft. @ \$1.00/sq. foot).....	\$256.00
Permit Fee.....	\$100.00
Total Fees.....	\$356.00

\* \* \* \* \*

**9. WILLIAM PAYNE, #02-1838**, requested after-the-fact authorization to retain a 48-foot long bulkhead installed two (2) feet channelward of a deteriorated bulkhead, situated along Chincoteague Channel, adjacent to his property at 3565 Main Street in the Town of Chincoteague, Accomack County.

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

Mr. Badger explained that staff first received a Joint Permit Application from Mr. Payne

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(VMRC #02-1295) on June 28, 2002. He said that Mr. Raymond Britton was listed as the agent, however, the application was not signed by Mr. Payne. He stated that during a telephone conversation with Mr. Britton to request additional information and Mr. Payne's signature, Mr. Britton stated that he had not received a contract from Mr. Payne and asked that the application be withdrawn. He said that a letter inactivating the application was sent to Mr. Payne in care of Mr. Britton and a copy was sent to the address for Mr. Payne stated on the application. He said that the letter to Mr. Payne was returned as undeliverable.

Mr. Badger said that on September 19, 2002, staff received a new application from Mr. Payne requesting authorization to construct a 48-foot long timber replacement bulkhead, two feet channelward of a deteriorated bulkhead, adjacent to his property in the Town of Chincoteague. He explained that the application was identical to the one withdrawn by Mr. Britton with the exception that Mr. Payne had signed it as the applicant.

Mr. Badger said that on October 2, 2002, staff conducted a routine field inspection of the proposed project. He explained that while on the site visit, staff noted that bulkhead work requested in the application had already been completed.

Mr. Badger said that a Notice to Comply was issued to Mr. Payne on November 12, 2002, directing removal of the illegal bulkhead and restoration of the area to preexisting conditions within 30 days. He said, however, that since Mr. Payne indicated to staff that he would like the Marine Resources Commission to consider his now "after the fact" application, staff agreed to withhold further enforcement, pending Commission review and action on his application.

Mr. Badger said that Mr. Payne stated that his agent, Mr. Britton, had informed him that he could start construction. He explained that the applicant also stated that he had used a local contractor's equipment, but constructed the bulkhead himself. He said that the applicant did not elaborate on who owned the equipment.

Mr. Badger explained that Mr. Payne's current application identifies Mr. Raymond Britton as the agent and Mr. Britton's company, BIC, Inc., as the contractor. He said that Mr. Britton informed staff, however, that he submitted the application for Mr. Payne but did not receive the contract to build the bulkhead. He explained that Mr. Britton also stated that the equipment used was not BIC's, and he did not tell Mr. Payne to start construction. He said that the Virginia Institute of Marine Science had stated that the anticipated individual and cumulative adverse impacts resulting from the bulkhead would be minimal. The project was not protested, and no other State agencies had commented on the project.

Mr. Badger said that staff believed Mr. Payne was at fault for not obtaining proper authorization for the bulkhead prior to its construction. He said that had the applicant waited for the necessary application review process to be completed, staff believed the bulkhead

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would have been permitted as proposed.

Mr. Badger said that as such, staff recommended approval of the project, but with the assessment of triple permit fees and royalties as provided by 28.2-1205 (D) of the Code of Virginia. Staff also suggested a civil charge may be appropriate in lieu of restoration or any further enforcement action based on minimal impact and moderate degree of non-compliance.

Associate Member Birkett asked if there were any questions for staff. He then swore in the applicant, William Payne.

Commissioner Pruitt returned to the meeting.

William Payne, applicant, was present and his comments are a part of the verbatim record. He explained that he had installed the bulkhead because Mr. Britton had given him the permit number and told him it was okay to go ahead. He said that he built his bulkhead first so Mr. Britton could build his and connect it to Mr. Payne's bulkhead.

No one in opposition was present at the hearing.

Associate Member Ballard asked if Raymond Britton of BIC, Inc., agent for Mr. Payne, was present. Mr. Badger responded no.

**Associate Member Ballard moved to adopt staff recommendation, which included a civil charge be paid in lieu of further enforcement action or restoration in the amount of \$1,200.00. Associate Member Cowart seconded the motion. The motion carried, 6-0.**

Royalty Fee (288 sq. feet @\$3.00/sq. foot (Triple Fees))..	\$288.00
Civil Charge.....	\$1,200.00
Permit Fee (Triple Fees).....	\$75.00
Total Fees.....	\$1,563.00

\* \* \* \* \*

**9A. Request** by Delegate Morgan to hold a second public hearing on the King William Reservoir project.

Tony Watkinson, Acting Chief-Habitat Management, explained that the Commission needed to discuss a request by Delegate Harvey Morgan to hold a second hearing in the King William County area.

Carl Josephson, Counsel for VMRC, asked what the process desired was, 1 or 2 and a

**Commission Meeting**

possible 3<sup>rd</sup> hearing to make a decision? Mr. Watkinson said that's what was up for debate.

Associate Member Ballard suggested that a hearing officer could provide excerpts from the meeting. Commissioner Pruitt said that was suggested for the Patrick County case and vetoed. Mr. Josephson expressed his concern in relying on a hearing officer to hear it all and provide a recommendation to the Commission.

Associate Member Garrison stated that the proximity of the hearing in Newport News should not be a problem for the people in King William County.

Associate Member Cowart stated that Delegate Morgan's same request had already been considered when a decision was made to hold the hearing on April 22<sup>nd</sup>.

Commissioner Pruitt asked what the Commission wanted to do? **Associate Member Garrison moved to hold one public hearing in Newport News. Associate Member Cowart seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**10. Adoption** of Emergency Regulations 4 VAC 20-1050-10 and 4 VAC 20-1060-10 and Request for Public Hearings to establish permanent regulations establishing a restricted area in proximity to the Dominion Power Surry Nuclear Power Station and the Northrup Grumman/Newport News Shipbuilding Company.

Colonel Steve Bowman, Chief-Law Enforcement, gave the presentation. Colonel Bowman explained that on March 16, 2003, Governor Mark Warner signed into law Senate Bill 1186, which authorized the Commission (or Commissioner) to establish restricted areas in the interest of public safety. He explained that as a result of significant developments that made the protection of these facilities paramount, the Law Enforcement Division requested the immediate adoption of an emergency regulation that prevents incursion into the waters that surround these two facilities. He said the emergency regulation delineates the identical areas already restricted by current federal regulation. He explained that the adoption of these regulations simply afforded the Virginia Marine Police the authority to enforce Virginia law that prohibited entrance into the restricted areas. He said that Colonel Hansen of the Army Corps of Engineers, and Captain Larry Brooks, of the United States Coast Guard had been consulted and concurred. He explained that the staff requested adoption of Emergency Regulation 4VAC 20-1050-10 and 4VAC 20-1060-10 and approval to advertise for public hearing the permanent establishment of the regulations. He said that he had spoken with individuals of the public and media and indicated to them that emergency action would be taken and that a public hearing would be held to make the regulations permanent. His comments are a part of the verbatim record.

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Carl Josephson, Assistant Attorney General and Counsel for VMRC, stated that the Commission did not have to adopt the emergency regulations, did not have to hold a public hearing and could adopt the regulations as permanent at the hearing today. Commissioner Pruitt suggested that if the law allowed the Commission to make them permanent without a public hearing, then anyone that needed to be, could be notified of this action.

No one was present pro or con to the matter before the Commission.

**Associate Member Ballard moved to approve regulations 4VAC 20-1050-10 and 4VAC 20-1060-10 and make them permanent. Associate Member Cowart seconded the motion. The motion carried, 7-0.**

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**11. PUBLIC COMMENTS:**

**Robert Jensen** was present and made comments to the Commission that are a part of the verbatim record. He announced plans he had for a new program for the year 2007.

**Colonel Steve Bowman** said that two watermen were present to request a review of repeat offenses and to request reinstatement of his license. Neither had been scheduled for consideration at this meeting. His comments are a part of the verbatim record.

**Daniel E. Yoder**, 3 violations; all guilty; no ID on crab pots; illegal undersized crabs; undersized peelers; paid fines; and not previously before the Commission.

Daniel Yoder was present and his comments are a part of the verbatim record.

**Associate Member Ballard moved to follow the Commission policy and impose a 12-month probation period on Mr. Yoder. Associate Member Birkett seconded the motion. The motion carried, 7-0.**

**Wilson Hatter**, before the Commission 18 months ago; undercover-24 separate violations of untagged rockfish; \$8,000 in fines; and the Virginia Marine Resources Commission had revoked his license indefinitely.

Mr. Hatter stated that he was requesting that his license be reinstated, he admitted that he was guilty, was tried, and convicted, but still had all of his equipment. Commissioner Pruitt explained that if he were to come back again before the Commission, the maximum penalty would be imposed. He asked Mr. Hatter if he had learned from this experience? Mr. Hatter responded, yes.

**Commission Meeting**

**Associate Member Williams moved to reinstate Mr. Hatter's license. Associate Member Garrison seconded the motion. The motion carried, 6-1. Associate Member Ballard voted no.**

**Roy Insley**, Head-Plan and Statistics, introduced 3 new employees in his department: Miriam Tejada, Kelly Anderson, and Nancy Smith.

**Colonel Bowman** introduced the new secretary in the Law Enforcement Division who had started the day of the meeting: Robin Stippich.

**Associate Member Williams** explained that he had been asked if crab pot licenses are transferable. Jack Travelstead, Chief-Fisheries Management, answered his question and said that transfers are allowed by regulation.

\* \* \* \* \*

**12. Spiny Dogfish:** Request for public hearing for consideration of an amendment to Regulation 4 VAC 20-490-10 et seq. to implement provisions of the Interstate Fishery Management Plan.

Lewis Gillingham, Fisheries Management Specialist, in response to Commissioner's Pruitt inquiry said it was a request for a public hearing. His comments are a part of the verbatim record.

Commissioner Pruitt said that since it was just a request for a hearing, he asked for a motion from the Commission.

**Associate Member Birkett moved to approve the request for a public hearing to be held at the May 27, 2003 meeting. Associate Member Williams seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**13. Consideration** of requests for exceptions for black drum fishing permits.

Tracy Patton, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record.

She explained that Regulation 4VAC 20-320-10 ET. Seq., "Pertaining to the Taking of Black Drum", established a 120,000 pound commercial harvest quota and limited entry in the commercial fishery. She said that commercial harvest permits were required to participate in the commercial Black Drum Fishery and are only issued to applicants meeting the following

**Commission Meeting**

criteria:

1. The applicant shall be a registered commercial fisherman and shall have held a Black Drum Permit in at least one year from 1988 to 1993;
2. The applicant shall have documented catch of black drum in at least one year for which a Black Drum Permit was held from 1988 to 1993;
3. The applicant shall have reported, in accordance with this regulation, any black drum fishery activity in 1992 and 1993, if a Black Drum Permit was held in those years.

She explained that the Marine Resources Commission may grant exceptions to the limited entry in the Black Drum Fishery, based on scientific, economic, biological, sociological, and hardship factors. She also explained that any person making a request had to provide in writing an explanation for an exception and include all pertinent information relating to the criteria.

She stated that in 1994, the Commission established the three eligibility requirements in order to prevent overcapitalization and improve economic benefits to full-time participants in the fishery. She said that only 62 fishermen were eligible to receive Black Drum permits in 1994. Between 1995 and in 2002 nine more fishermen obtained black drum permits and there are currently 71 permitted fishermen in the black drum fishery. She said that out of those 71 fishermen, an average of 35 had been active each year.

She explained that the commercial harvest quota of 120,000 lbs was established in 1992. She said that an average of 61,000 lbs. of black drum had been harvested annually since 1995. She said that the quota had not been exceeded since 1994 when 153,202 lbs. were harvested.

She explained that in light of this information, staff would like to discuss with the Finfish Advisory Committee the possibility of allowing a limited number of new permittees into the black drum fishery. She said that the recommendations of FMAC would be presented to the Commission in time for next season.

She said that the following requests for permit transfers had been received for the Commission's consideration, for the year 2003:

- **LEE R SMITH                      CRL#7521196-4073                      HAMPTON, VA**

Mr. Lee Smith would like an exception into the black drum fishery. Although he does not target black drum, a black drum permit would allow him to keep the black drum that get caught in his nets as a by-catch.



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She explained that in previous years the Commission had denied similar requests on the basis of the limited entry provisions. She said that staff recommended denying Mr. Smith's request based on failure to meet the required criteria of the regulation.

- **LEE R CARSON IV CRL# 416393-0770 CRISFIELD, MD**

Mr. Andrew Bunce is getting out of the black drum fishery and will no longer be using his black drum harvester permit, therefore, would like to transfer the permit to Lee R Carson IV.

She explained that in previous years the Commission had approved similar requests, on the basis of a one in one out situation. She said that staff recommended approval of Mr. Carson's request because it was a transfer and could be treated as one-in, one-out situation.

**Lee R. Smith** was present and his comments are a part of the verbatim record. Mr. Smith stated that he couldn't meet the criteria to get into the fishery because he was still in high school during the time period requirement and did not start working on the water until after he had graduated. He further explained that he could not help not being old enough.

**Commissioner Pruitt explained that the Commission could not help Mr. Smith, because he did not meet the criteria requirements. He explained that the Finfish Advisory Committee would be considering a change in the regulation at a future time. No action was taken.**

**Lee R. Carson** was not present.

**Since it was a one-in, one-out transfer, Associate Member Williams moved to approve the exception for Mr. Carson. Associate Member Ballard seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

### **13. Consideration of a clam harvest season extension.**

Chad Boyce, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. Mr. Boyce explained that the excessive rainfall and runoff had resulted in a closure of the James River, which was established by the Health Department, resulting in the fishery losing 13 workdays. He said that the James River had been reopened on March 21, 2003 by the Health Department. He said that staff did not know at the time the briefing was written about the reopening of the James and recommended a 13-work day extension from March 26, through April 11.

**Commission Meeting**

Associate Member Williams said that the Clam Committee had met, but did not have a quorum in attendance.

Carl Josephson, Counsel for VMRC, asked if there was an existing regulation. Mr. Boyce explained that there was a regulation for all management areas, but not for this specific season.

No one was present either pro or con to the extension.

**Associate Member Williams moved to approve staff recommendation and adopt the emergency regulation, extending the clam harvest season for the 13 workdays requested, March 26 through April 11. Associate Member Birkett seconded the motion. The motion carried, 7-0.**

\* \* \* \* \*

**14. Review of the Chincoteague Bay Submerged Aquatic Vegetation (SAV) Sanctuary.**

Dr. Robert Orth, representative from the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Dr. Orth gave a report on the status of eelgrass in the Chincoteague Bay on the Seaside of Eastern Shore.

Commissioner Pruitt thanked Dr. Orth for his report.

\* \* \* \* \*

Associate Member Garrison stated that he felt it was important for the members to get together socially and ask Mr. McLeskey to work with him and with Wilford's help something could be arranged for late May or early June. Associate Member McLeskey said he supported the idea. Commissioner Pruitt stated that they would look into the matter.

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The meeting adjourned at 3:03 p.m. The next meeting will be held on Tuesday, April 22, 2003.

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**Commission Meeting**

**12333**  
**March 25, 2003**

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William A. Pruitt, Commissioner

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Katherine V. Leonard, Recording Secretary