

**MINUTES**

**JUNE 18, 2002**  
**NEWPORT NEWS, VA 23607**

The regular Monthly meeting of the Marine Resources Commission was held on June 18, 2002 with the following present:

William A. Pruitt )	Commissioner
Gordon M. Birkett )	
S. Lake Cowart, Jr. )	
Laura Belle Gordy )	Members of the Commission
Henry Lane Hull )	
F. Wayne McLeskey )	
John W. White )	
Kenneth W. Williams )	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Adviser
Stephanie Montgomery CPS	Recording Secretary
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. Randy Widgeon	Eastern Shore Area Supervisor
Capt. Kenny Oliver	Southern Area Supervisor
1 <sup>st</sup> Sergeant Dana H. Mise, Jr.	Middle Area
M.P.O. David R. Drummond	Marine Patrol Officer
M.P.O. David R. Lumgair	Marine Patrol Officer
Virginia Institute of Marine Science:	
Thomas Barnard, Jr.	Dr. Eugene Burreson
Lyle Varnell	
Jack Travelstead	Chief-Fisheries Management
Rob O'Reilly	Deputy Chief-Fisheries Management
Dr. James Wesson	Head-Conservation & Replenishment
Roy Insley	Head-Plans and Statistics
Chad Boyce	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist

**COMMISSION MEETING**

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**JUNE 18, 2002**

Tony Watkinson  
Gerry Showalter  
Hank Badger  
Kevin Curling  
Mark Eversole  
Chip Neikirk  
Randy Owen  
Ben Stagg  
Tracy West

Acting 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.

Nate Custer  
Scott Harper

WTKR-TV  
Virginian Pilot

others present included:

Joseph Green  
Howard Lockett  
Esther Lockett  
Robert Bodine  
Robert Beshak  
Eileen Knox  
Joseph Knox  
Anthony Sacco  
James Adams  
Linda Dotson  
Bill Duncanson  
George Jacobs  
Ed Rasmussen  
Bob Pinner  
Russell Harris  
Betty Waring  
James Cawley  
W. C. Tice  
Alan Horton

Vincent Montagnino  
Joan Baumbach  
Garland Sterling  
George Sterling  
Barbara Semkler  
Martha Cole  
Thomas Cole  
Allen Hamilton  
Cliff Harris  
Brian Rheinhart  
Harry Cockey  
Robert Lawson  
Craig Seltzer  
Forrest Parker  
Tom Powers  
Michelle Newman  
Mike Major  
Don Trotta

Commissioner Pruitt called the June 18, 2002 meeting to order at 9:30 a.m. Associate Members present were: Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams.

Associate Member Hull gave the Invocation and Associate Member White 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**

**Associate Member Hull moved to approve the Agenda as distributed. Associate Member Birkett seconded the motion; motion carried unanimously, 7-0.**

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**1. APPROVAL OF MINUTES – May 28, 2002**

**Associate Member White moved to approve the Minutes of the May 28, 2002 Commission Meeting as distributed. Associate Member Gordy seconded the motion; motion carried unanimously, 7-0.**

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

Mr. Tony Watkinson, Acting Chief-Habitat Management, briefed the Commission on the following Page Two items:

**2A. RICHMOND YACHT BASIN, #00-1752**, requests authorization to modify a Commission decision from the February 27, 2002, meeting to allow a six-month extension for the fulfillment of special conditions set out for completion by June 30, 2002.

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

**2B. ARMY CORPS OF ENGINEERS, #94-0035**, requests authorization to modify a previously authorized project to allow installation of a 20-inch diameter water main and a 20-inch diameter force main and a six-inch diameter steel gas main over 167 linear feet of the Southern Branch of the Elizabeth River on concrete pile bents rather than their permitted method of trenching and backfilling in the City of Chesapeake.

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

**2C. MEADWESTVACO CORPORATION, #02-0633**, requests authorization to install 206 linear feet of new 42-inch diameter cooling water pipeline attached to an existing bridge over the Jackson River in Allegheny County.

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PERMIT FEE.....	\$100.00
ROYALTIES.....	\$206.00

**2D. ARMY TRANSPORTATION CENTER, #02-0378,** requests authorization to remove an existing timber and concrete pier and replace with a new 85-foot by 720-foot concrete pier to include a 100-foot by 237-foot L-head and numerous mooring dolphins to create five (5) wet slips upon State-owned subaqueous bottomland adjacent to the Fort Eustis Third Port facility in Skiffes Creek in the City of Newport News.

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

**2E. MARINE RESOURCES COMMISSION, #02-0524,** Fisheries Management Division requests reauthorization of an existing artificial fishing reef constructed of environmentally compatible concrete construction materials, designed concrete habitat structures, environmentally prepared steel hulled vessels, military vehicles, and subway cars, maintaining a minimum clearance of 15 feet from mean low water in the Atlantic Ocean approximately four (4) nautical miles southeast of Wachapreague Inlet near the three-mile limit in Accomack County. The reef is centered at 37° 33' 15" N Latitude, 75° 32' 29" W Longitude. Marked in accordance with all applicable U. S. Coast Guard requirements.

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

**2F. ARMY CORPS OF ENGINEERS, #92-0616,** requests authorization to modify their existing permit to place up to 175,000 cubic yards of material dredged from the Swash Bay/White Trout Creek Channel portion of the Waterway on the Coast of Virginia (WCV). All dredged material will be pumped to the existing overboard placement site in Swash Bay. Recommend a one-time change in condition #16, which imposes a time-of-year restriction from July 1 through September 30, be lifted between July 1 and July 21, to accommodate the upcoming dredging.

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

**2G. CITY OF LYNCHBURG, #02-0736,** requests authorization to install three (3) 20-foot wide culvert structures to replace an existing smaller deteriorating structure, across Fishing Creek at Campbell County. Recommend standard instream construction conditions.

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

With respect to Item 2E., Marine Resources Commission, #02-0524, Commissioner Pruitt inquired as to whether VMRC has received full environmental clearance for the subway cars to be utilized for the project; Mr. Watkinson stated that he understood clearance had been granted.

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 White moved for approval of the Page 2 Items -- (2A.) Richmond Yacht Basin, #00-1752, (2B.) Army Corps of Engineers, #94-0035, (2C.) MEADWESTVAC Corporation, #02-0633, (2D.) Army Transportation Center, #02-0378, (2E.) Marine Resources Commission, #02-0524, (2F.) Army Corps of Engineers, #92-0616, and (2G.) City of Lynchburg, #02-0736 -- as recommended by staff. Associate Member Hull seconded the motion; motion carried unanimously, 7-0.**

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- 3. **DEPARTMENT OF GAME AND INLAND FISHERIES, #02-0170**, requests authorization to remove an existing, deteriorating public boat ramp and tending pier and to construct a new 16-foot wide concrete boat ramp extending 60 feet channelward of mean low water, and a 6-foot wide by 80-foot long tending pier extending 60 feet channelward of mean low water. The project is located at the Simonson Boat Landing on Morattico Creek in Richmond County. The project is protested by a nearby property owner.

Mark Eversole, Environmental Engineer Sr., provided a computer-generated overview of the project consisting of drawings and photos. He stated that the Simonson Public Boat Landing is one of three public landings in Richmond County, operated by the Department of Game and Inland Fisheries (DGIF). Carters Wharf Landing is located at the extreme upper boundary of Westmoreland and Richmond Counties, and Totuskey Creek Landing is located in the central portion of the County just east of the town of Warsaw. Simonson Landing is located at the extreme lower boundary of the County, serving citizens from Richmond and Lancaster Counties. Carters Wharf and Simonson, by virtue of their locations, provide almost immediate access to the Rappahannock River.

Mr. Eversole noted that Simonson Boat Landing was closed in 2001 due to its deteriorating condition. DGIF has developed plans to rebuild the ramp to meet current States Organization of Boating Access (SOBA) standards, requiring a wider (16 foot minimum) and longer ramp

to meet the recommended maximum slope of 15%. The channelward end and sides of the ramp are to be flanked with riprap to prevent scour adjacent to the ramp. Additional upland improvements include drainage, road, and parking lot improvements, as well as the addition of a handicapped parking space adjacent to the ramp.

Mr. Eversole stated that the application was received on February 4, 2002. Adjacent property owners were notified and a public notice was placed in the "Northern Neck News." A letter of protest was received from a group of adjacent and nearby property owners, represented by Mr. Harold Hinson. Their protest centered on "use issues" such as, insufficient monitoring and enforcement of hours of operation. Through meetings with DGIF staff and Game Wardens, as well as representatives of the Richmond County Board of Supervisors, these issues were resolved and Mr. Hinson withdrew the group's protest.

However, Mr. Eversole stated that a second protest was registered by Mr. and Mrs. Daniel Dotson, owners of property in the vicinity of the boat landing. Their objections are based on the parking facilities being located within the Chesapeake Bay Preservation Act 100-foot buffer, as well as a lack of sanitary facilities, water, and electricity at the boat ramp. The Hinsons also raise questions as to the safety of a boat landing being located on such a narrow roadway, and in a residential area.

The Departments of Conservation and Recreation, Health (Wastewater Engineering) and Environmental Quality, as well as VIMS, have all stated that the project is acceptable. In addition, Richmond County is in support of the project.

Mr. Eversole noted that when reviewing proposals to build over State-owned submerged lands, the Commission's "Subaqueous Guidelines" direct staff to consider, among other things, the water dependency and the necessity for a proposed structure. Furthermore, §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. Eversole reported that Simonson Public Boat Landing has been utilized by the citizens of the Northern Neck for many years prior to its closing last fall. The DGIF, as well as officials and staff of Richmond County recognize its value to the community and favor its renovation. Impacts to wetlands and State-owned submerged lands related to this project are minimal and temporary in nature. Mr. Eversole stated that staff recommends approval of the project, finding that its public and private benefits outweigh any potential public or private detriments.

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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.

**Mr. James Adams**, Capital Program Director, Department of Game and Inland Fisheries, spoke in support of the project, noting the benefits in renovating the facilities for the enjoyment of Virginia boaters and recreational fishermen.

**Mr. William Duncanson**, Richmond County Administrator, spoke in support of the project on behalf of Richmond County. He added that the citizens of the County have shown their support for the project by donating funds totaling \$18,935.00 toward the project. Associate member Birkett inquired as to how far it was to the next public ramp, downstream. Mr. Duncanson stated that it would be Belle Isle State Park, 15 to 16 miles by land. Mr. Birkett then inquired as to whether the Department of Transportation (VDOT) has included a widening of Simonson Road in its Six-Year Plan. Mr. Duncanson stated that VDOT does not have plans to widen the road. Associate Member Gordy asked for clarification on whether Simonson Road is a "dead-end" road; Mr. Duncanson stated that it is. Associate Member Hull inquired as to whether there is any history of traffic accidents relating to the existing ramp. Mr. Duncanson stated that to his knowledge, there is not. Mr. Hull asked if complaints pertaining to "rowdy behavior" have been received by the County; Mr. Duncanson stated that he knew of one complaint in the past four years.

**Mrs. Linda Dotson**, property owner, addressed the Commission in opposition. She distributed copies of a letter of protest written by Mr. and Mrs. Harold T. Hinson, Sr., as well as pictures of the Simonson Road site, all of which are filed with the permanent record of this meeting. Commissioner Pruitt noted that many of Mrs. Dotson's concerns should be addressed by the Richmond County Board of Supervisors.

**Mr. Robert Pinner**, property owner, addressed the Commission in support of the proposed project.

**Mr. James Adams** stated that the DGIF operate 226 boat ramps within the Commonwealth, noting that it is very rare for an accident to occur. VDOT standards will be applied to the road-through, as well as the land owned adjacent to the roadway.

With no further comments offered, the matter was placed before the Commission for action. **Associate Member Hull moved to approve the application of the Department of Game and Inland Fisheries, #02-0170, as recommended by staff. Associate Member Birkett seconded the motion.** Associate Member McLeskey suggested trimming the trees along Simonson Road to reduce the chance of accidents. **When put to a vote, the motion carried unanimously, 7-0.**

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4. **CITY OF FREDERICKSBURG, ET AL, #01-0353**, requests authorization to construct a temporary stone causeway and bridge structure across the Rappahannock River immediately upstream of the Embry Dam structure. The project is associated with the Army Corps of Engineers Embry Dam Removal project in the City of Fredericksburg and Stafford County. The project is protested by adjacent property owners.

Mr. Mark Eversole, Environmental Engineer Sr., provided a computer-generated overview of the project consisting of drawings and photos. He stated that Embry Dam is located near the fall line of the Rappahannock River, in the City of Fredericksburg. It was built between 1908 and 1910 by the Fredericksburg Water Power Company, which provided hydroelectricity to the Fredericksburg region in the early 1900's. The Virginia Electric And Power Company (VEPCO) acquired the dam in 1926 and continued to operate the power plant until the 1960's. VEPCO sold the dam to the city of Fredericksburg in 1968 and ceased its hydropower production. The Army Corps of Engineers efforts to remove the dam structure are part of a plan to restore the Rappahannock River in the Fredericksburg area to its historic, free-flowing condition. The Corps Environmental Assessment estimates that removal of the dam will provide approximately 700 to 1,000 miles of previously unavailable upstream mainstem and tributary habitat to a variety of fish species.

Mr. Eversole stated that the complete project, in addition to removing the Embry Dam, involves the removal of an associated upstream crib dam structure; the dredging and disposal of approximately 300,000 cubic yards of accumulated sediments; the construction of a temporary bridge and causeway immediately upstream of the Embry Dam to provide access to the dam structure; and the installation of an intake structure to provide water to the historic Fredericksburg Canal. Much of this work does not require authorization from VMRC, since the dredging is being undertaken by a Federal agency, or it occurs within man-made portions of the canal. The construction of the temporary stone causeway and bridge structure is within the VMRC jurisdiction.

Mr. Eversole noted that the proposed stone causeway would be built of Class I and II stone to resist the effects of river velocity during high water events. The top of the causeway would be covered in smaller #57 stone, to create a driving surface to allow large trucks and construction equipment access to the entire Embry Dam structure. The entire causeway, as a stone structure, would be built of non-erodible materials, and is to be completely removed at the end of the project.

A 200-foot span bailey bridge would connect the two halves of the stone causeway, and is proposed as a means of passing high water flows more efficiently than a series of culverts in the causeway.



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Mr. Eversole stated that the application was received February 28, 2002. The Stafford County Wetlands Board approved a portion of the project involving tidal wetlands on April 15, 2002. Adjacent property owners were notified and a public notice was placed in the "Free Lance Star." Several letters were received from adjacent property owners in protest of certain portions of the project. These protests include upland issues such as construction easements, restoration of private property, possible damage to foundations from any blasting associated with the removal of the dam, and property issues involving the man-made Fredericksburg Canal. The Corps of Engineers and the City of Fredericksburg have been in contact with the protestants in an attempt to resolve their objections. There have been no protests registered against the actual removal of the dam.

The Department of Environmental Quality (DEQ) is in the process of issuing its Water Protection Permit. The Departments of Conservation and Recreation, Health (Wastewater Engineering), Historic Resources, Game and Inland Fisheries, as well as VIMS, have all stated that the project is acceptable. The Department of Conservation and Recreation has coordinated with the Rappahannock Scenic River Advisory Board (SRAB) and reports that the SRAB finds the project acceptable and recommends VMRC approval.

Mr. Eversole reported that staff has been involved in planning meetings for this project for the past several years. The plan to restore access of the upper Rappahannock River to anadromous fish, as well as the restoration of a portion of this scenic river to its natural state, is in keeping with VMRC's charge of protection and preservation of the Commonwealth's submerged and aquatic resources.

In summary, Mr. Eversole stated that the objections received from adjacent property owners center on access to, and restoration of temporary easements, as well as the actual methods of the dam removal. While these types of issues are out of the jurisdiction of the Commission, staff has followed the correspondence between the protestants and both the Corps and the City of Fredericksburg. Staff feels confident that the applicants will continue to work with the public to resolve the issues. Mr. Eversole stated that staff recommends approval of the application finding that its public and private benefits outweigh any potential public or private detriments.

In the brief absence of Commissioner Pruitt, Associate Member White called for questions of the Commission in this matter. There being none offered, Mr. White called for comments from the audience, pro or con. He swore in those individuals wishing to speak to this matter and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Brian Rheinhart**, Project Manager for the Embury Dan Removal Project, spoke in support of the application. He noted that the project is in support of the Ecosystem Restoration.

There being no further comments in this regard, Associate Member White placed the matter before the Commission for action. **Associate Member Williams moved to approve the application of the City of Fredericksburg, et al, #01-0353, as recommended by staff. Associate Member McLeskey seconded the motion; the motion carried unanimously, 6-0.**

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5. **ROBERT LEE LAWSON, III, #2001-064.** Protested Oyster Planting Ground Application for 25 Acres in Nandua Creek, near Cedar View Beach, in Accomack County.

Associate Member White noted that the matters of Robert Lee Lawson, III, #2001-064 and Thomas L. Rasmussen, #2001-066 would be presented and discussed simultaneously. Motions to approve/disapprove would be voted upon separately.

Mr. Gerry Showalter, Head-Engineering/Surveying, reported that the Cedar View Beach Association and Davis S. Hay, attorney for several residents of Cedar View Beach, have requested that these cases be postponed until the July Commission Meeting. Mr. Showalter noted that staff has fully prepared a presentation, and that the applicants and protestors are present. **Associate Member Gordy moved to hear pro and con remarks from both sides of each case in order to determine whether to move forward with today's hearing. Associate Member McLeskey seconded the motion; the motion carried unanimously, 6-0.**

Upon the return of Commissioner Pruitt, a discussion ensued as to whether to move forward with the hearing in these matters. Commissioner Pruitt noted that the applicants have not requested a continuance; Mrs. Esther Luckett, Vice President of the Cedar View Beach Association, stated that the Association is prepared to move forward. Based on this information, Commissioner Pruitt determined that the hearing would continue.

Mr. Showalter provided a computer-generated overview of the project consisting of drawings and photos. He reported that staff has set the stakes in place for the leased areas, providing an accurate means for locating the sites. The stakes were set 100 yards from the bulkhead, avoiding the beach area and leaving an area between leases.

Mr. Showalter explained that each application was for 25 acres in Nandua Creek, Accomack County. Both leases will reach the drop-off line of the creek, but will not be located in the channel. He noted that the original applications were requesting 100 feet out from low water; staff has relocated the leases to 100 yards (plus) out from the bulkheads. Mr. Showalter stated that 100 feet between the leases has been allowed for ingress and egress.

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Mr. Showalter stated that Mr. Lawson is planning to grow aquaculture clams; Mr. Rasmussen has stated that he wishes to grow oysters and/or clams. The protests are general protests against aquaculture uses. Staff has met with some of the protestants, some of whom were satisfied when it was agreed to move the leased areas approximately 300 feet offshore, with no area in front of the Cedar View Beach boat ramp area, and an unleased area between the leases to allow unobstructed passage to the shore and docks. Mr. Showalter concluded his presentation by recommending that the oyster grounds be leased as surveyed in order to reach a compromise with the applicants and protestants.

Associate Member Cowart discussed with Mr. Showalter the locations of the proposed leasing grounds and the amount of acreage that has been staked by VMRC. Mr. Showalter noted that both applicants' initial requests were for 25 acres; staff has reduced Mr. Lawson's acreage to 15.8 and Mr. Rasmussen's to 15.10. Both areas are firm, sandy bottoms for planting clams.

Commissioner Pruitt called for comments from the audience, pro or con. He swore in those wishing to speak and whose remarks are recorded verbatim on the permanent record of this meeting.

**Mr. Robert Lee Lawson, III**, and **Mr. Thomas L. Rasmussen**, applicants, requested that the Commission approve their applications to lease the ground for aquaculture plantings. At the inquiry of the Commissioner, the applicants briefly reviewed the process for planting and harvesting the clams. In answer to questions posed by Associate Members Williams and Birkett, Mr. Rasmussen described the net to be laid over the clams, and noted that the in-shore depth of the grounds is waist-high at high tide, approximately three feet. He expressed concern for boaters running over the nets in low tide and noted the distance between the two areas for boaters to use in travel.

Associate Member Birkett inquired of Counsel as to whether or not the water running over top the leased areas was water for public use. Mr. Josephson stated that the water remains for the public to use for boating and fishing. Mr. Birkett expressed his concern for the public destroying the planted clam beds. Mr. Lawson and Mr. Rasmussen stated that they understood the risk involved and were willing to take their chances in this regard.

Associate Member Cowart inquired as to whether the applicants would be willing to accept less than 15 acres for the leases. Mr. Lawson stated that they would not be willing to do so if the acreage would be pushed out further into the channel. Mr. Rasmussen noted his previous compromise with the protestors.

**Mrs. Esther Luckett**, Vice President of the Cedar View Beach Association, addressed the Commission in opposition to the applications. She noted the adverse impact that the grounds will have on the water activities and real estate enjoyed by the Cedar View residents.

**Mr. Joe Knox**, Cedar View resident, expressed his concerns for possible damages to his boat and possible devaluation to this property due to the location of the proposed oyster grounds.

**Mr. Joe Green**, Cedar View resident, addressed the Commission in opposition of the leasing grounds. He raised concern for the use of reinforcement rods impeding navigation, and the possible result of blight such as which exists in Plantation Creek.

**Mr. Alan Horton**, Plantation Creek Homeowners Association, spoke in support of the residents' protesting the applications. He described the unsightly stakes, netting and other problems associated with the grounds used for aquaculture plantings in the creek. Mr. Horton stressed the need for VMRC to monitor the ground lease areas.

**Mr. Anthony Sacco**, resident of Capeville, spoke in opposition of the applications, citing the natural environment and resources currently existing on the creek and surrounding areas. He expressed his concerns for the PVC stakes used in the leased areas.

**Mr. Thomas Cole**, potential property owner and real estate agent, noted the right to "quiet enjoyment" of one's property, and stated that he felt the lease applications would impinge on this right.

**Mr. Vincent Montagnino**, Cedar View resident, spoke in opposition of leasing grounds for any type of seafood farming.

In rebuttal to the opposing comments given, Mr. Rasmussen noted that he is one individual rather than a conglomerate planning to farm the grounds. He stated that he is hoping to plant the Asian oyster. Mr. Lawson stated he is a waterfront property owner at Willis Wharf. A brief discussion ensued concerning the netting that finds its way to the shores of property owners. It was agreed that approximately 20% of those farming on leased grounds are responsible for the problems associated with debris.

The Commissioner placed the matter before the Commission for action. Associate Member Cowart stated that there are approximately 240,000 acres of water in the Commonwealth that are available for public planting of oysters and clams; a small percentage of which is suitable for production of product. The remainder of the acreage is available for leasing which the Virginia statutes allow, with an even smaller percentage of those waters suitable for such planting. He noted his concern for the members of industry that do not properly maintain their beds; VMRC should take action to alleviate this problem. Mr. Cowart noted that while the residents of the community have expressed their appreciation for the aesthetics of the waterfront, the applicants are known to be good watermen and are entitled to earn a living in the same waters. He suggested a reduction in the acreage and provisions for the lease.

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Associate Member Gordy noted that she understood both sides of this issue, and also suggested a reduction in the acreage to be leased. Associate Member Williams commended staff for the preparation in these matters. Associate Member Hull noted that the land is available for leasing and the applicants have followed the required process for such a lease. Commissioner Pruitt noted that until recently, most leases have been for oysters in deeper waters. Clam beds in shallow water are an issue that will continue to be brought before the Commission.

**Associate Member Cowart moved to approve the application of Robert Lee Lawson, III, #2001-064, to include the following provisions:**

- **reduce the acreage to a maximum of ten (10) acres;**
- **establish a 300-foot separation area between this lease and that of Mr. Thomas L. Rasmussen;**
- **should the ten-acre area exceed the separation, footage is to be taken off the outside of the lease;**
- **nets are to be secured with sand bags or pebble bags, no reinforcement rods;**
- **all nets are to be removed after the clams are raised; and,**
- **no excessive PVC pipe is to be used.**

**Violation of any of the above-noted restrictions shall constitute termination of the lease.**

Mr. Cowart stated that under the Code of Virginia, the Commission has the authority to grant such a lease as it is a reasonable, permissible use of State waters. The marine fisheries in the Commonwealth would benefit greatly from the water-cleaning abilities of the clams and oysters; adjacent properties would enjoy enhanced water quality; and, there does not appear to be any SAV to be adversely impacted. **Associate Member Hull seconded the motion; the motion carried unanimously, 7-0.**

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- 6. THOMAS L. RASMUSSEN, #2001-066.** Protested Oyster Planting Ground Application for 25 Acres in Nandua Creek, in the area of Cedar View Beach, in Accomack County.

With this matter having been presented and discussed simultaneously with the application of Robert Lee Lawson, III, #2001-064, the following motion was offered for consideration by the Commission:

**Associate Member Cowart moved to approve the application of Thomas L. Rasmussen, #2001-066, to include the following provisions:**

- reduce the acreage to a maximum of ten (10) acres;
- establish a 300-foot separation area between this lease and that of Mr. Robert Lee Lawson, III;
- should the ten-acre area exceed the separation, footage is to be taken off the outside of the lease;
- nets are to be secured with sand bags or pebble bags, no reinforcement rods;
- all nets are to be removed after the clams are raised; and,
- no excessive PVC pipe is to be used.

**Violation of any of the above-noted restrictions shall constitute termination of the lease. Associate Member Hull seconded the motion; motion carried unanimously, 7-0.**

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7. **ALLEN R. CAISON and HARRY S. COCKEY, #2001-086.** Protested Oyster Planting Ground Application for 15 Acres in Nandua Creek, in Accomack County.

Mr. Gerry Showalter, Head-Engineering/Surveying, provided a computer-generated overview of the project consisting of drawings and photos. He stated that the lease application is situated in Nandua Creek upstream of the Cedar View Beach area.

Mr. Showalter noted that originally, many of the neighbors and/or landowners protested this application, however, the applicants have contacted some of the protestors and have resolved much of the misunderstandings. The area requested has been adjusted and is adjacent to the applicants' own highland property. The adjustment has resulted in some of the protests being rescinded; however, there continue to be some protests.

Mr. Showalter stated that staff recommends the lease be granted as surveyed, and that the lessees be cautioned that the surrounding area is to be kept free of discarded nets, stakes and/or equipment.

Commissioner Pruitt called for comments from the audience. He swore in **Mr. Harry Cockey**, applicant whose remarks are recorded verbatim on the permanent record of this meeting. Mr. Cockey spoke in support of his application, stating that Mr. Caison planted clams adjacent to the area over a year ago; the clams appear to be doing well. If the Commission approves this application, the applicants will plant approximately 40,000 clams in three or four different locations.

Commissioner Pruitt called for anyone wishing to speak in opposition to the application. There being none, the Commissioner placed the matter before the Commission for action.

**Associate Member Cowart moved to approve the application of Allen R. Caison and Harry S. Cockey, #2001-086, to include the following provisions:**

- **nets are to be secured with sand bags or pebble bags, no reinforcement rods;**
- **all nets are to be removed after the clams are raised; and,**
- **no excessive PVC pipe is to be used.**

**Violation of any of the above-noted restrictions shall constitute termination of the lease.**

**Associate Member Hull seconded the motion; motion carried unanimously, 7-0.**

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The Commission recessed for lunch at Noon. Associate Member McLeskey was excused from the meeting at this point. Commissioner Pruitt reconvened the meeting at 1:00 p.m.

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## **8. PUBLIC COMMENTS**

Commissioner Pruitt opened the floor for public comments. **Mr. Tom Powers**, Coastal Conservation Association, addressed the Commission with regard to recreational crabbing regulations. Mr. Powers noted that Regulation 4 VAC 20-670-30 contains language meaning that the eight-hour work day also applies to the two pot recreational crabber. Mr. Powers requested that the Commission consider modifying the language in order to legalize an unlimited work day for recreational crabbers.

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

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- 9. PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-252, "Pertaining to Striped Bass," to establish a 98,000 pound commercial harvest quota for coastal areas. This regulation was adopted as an Emergency Regulation on May 28, 2002.

Mr. Jack Travelstead, Chief-Fisheries Management, stated that the Commission is being asked to permanently adopt Regulation VAC 20-252 as it was amended under an Emergency Regulation on May 28, 2002. Mr. Travelstead distributed the proposed revised Regulation, a copy of which is filed with the permanent record of this meeting. The effect of the adoption would be to establish a 98,000-pound commercial harvest quota of striped bass for the coastal areas. Also, since the fishery has already harvested the 98,000 pounds, the effect would be to close those areas to striped bass harvest until the fishery opens in 2003; the fishery has been closed for the last month.

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Mr. Travelstead noted that staff would be working with the Advisory Committee to determine appropriate methods for managing the quota in the future. Regulations to monitor and enforce the quota would need to be developed.

Mr. Travelstead briefly reviewed the amended Regulation, noting the separate quotas for two separate geographic areas. He stated that when either of those quotas is harvested, then only that geographic area is closed. Mr. Travelstead noted that no written comments have been received since the Commission's enactment of the Emergency Regulation on May 28, 2002.

Counselor Josephson advised that the language in the Regulation Preamble be revised to read: *"This regulation amends, and re-adopts as amended, previous Regulation..."*

Commissioner Pruitt opened the Public Hearing on the matter. With no comments offered, the Commissioner closed the Public hearing and placed the matter before the Commission for discussion and action.

**Associate Member Hull moved for adoption of amended Regulation 4 VAC 20-252, "Pertaining to Striped Bass," to establish a 98,000 pound commercial harvest quota for coastal areas, to include the revision of the Regulation Preamble as recommended by Counsel. Associate Member White seconded the motion; motion carried, 5-0.** Associate Member Cowart was not present for this vote.

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- 10. PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-620, "Pertaining to Summer Flounder," to establish a 17 ½ inch minimum size limit and 8 fish possession limit, with no additional closed fishing days for the remainder of 2002. This regulation was adopted as an Emergency Regulation on May 28, 2002.

Mr. Rob O'Reilly, Deputy Chief-Fisheries Management, stated that this item is also a request to permanently adopt Regulation VAC 20-620 as it was amended under an Emergency Regulation on May 28, 2002. He noted that the Public Hearing in this matter has been advertised as required.

Mr. O'Reilly reviewed with the Commission the effects of this year's management measures on the potential for reaching the target of 734,000 summer flounder. It is projected that there will be a 39.3% reduction in the 2001 landings for the 2002 fishery. This means that there could potentially be a 14% overage of the target. Mr. O'Reilly stated that staff is recommending adoption of permanent Regulation 4 VAC 20-620-10 et seq., with an effective date of June 19, 2002.



Commissioner Pruitt opened the Public Hearing on the matter. With no comments offered, the Commissioner closed the Public hearing and placed the matter before the Commission for discussion and action.

**Associate Member Gordy moved for adoption of amended Regulation 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder," to establish a 17 ½-inch minimum size limit and 8 fish possession limit, with no additional closed fishing days for the remainder of 2002, and with an effective date of June 19, 2002. Associate Member Hull seconded the motion; motion carried, 5-0.** Associate Member Cowart was not present for this vote.

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#### **11. REQUEST FOR AMENDMENT TO REGULATION 4 VAC 20-670-30.**

Mr. Jack Travelstead, Chief-Fisheries Management, stated that there has been a rule on the books for years which states that any rule that applies to the use of commercial gear also applies to recreational uses of the gear. Anytime a regulation is established on the commercial gear, by default, it automatically applies to recreational users of that same gear. Although it was not the intent of the Commission, the rule that now applies to the eight-hour workday pertaining to commercial gear now affects the recreational crabbers.

Colonel Steven Bowman, Chief-Law Enforcement, stated that this law is currently on the books and is enforceable. He suggested that an Emergency Regulation be adopted and a Public Hearing be advertised in this matter, in order to preclude enforcement of the existing law.

Counselor Josephson stated that if it was not the intention of the Commission for the eight-hour workday to apply to recreational crabbers, an Emergency Regulation should be adopted and a Public Hearing advertised to amend the Regulation. Mr. Travelstead encouraged the Commission to adopt an Emergency Regulation which clarifies only that the eight-hour workday does not apply to recreational crabbers and direct staff to advertise a Public Hearing that addresses the broader issue of the rules.

A lengthy discussion ensued with regard to Law Enforcement's ability to distinguish between the licensed and non-licensed recreational crab pots, and the requirement of Law Enforcement to ticket crabbers along the lower Chesapeake Bay crab sanctuary.

**Associate Member Williams moved to direct the Fisheries Management staff to develop a recommendation for consideration by the Crab Management Advisory Committee and/or the Commission in the matter of Regulation 4 VAC 20-670-30.** Commissioner Pruitt stated that process would not address the emergency at hand. **Motion died for lack of a second.**

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**Associate Member Cowart moved to adopt Emergency Regulation 4 VAC 20-670-30 to exempt recreational crabbing from the eight-hour workday, to direct the Fisheries Management staff to develop further recommendations in this regard, and to advertise for a Public Hearing to be held on July 23, 2002. Associate Member Williams seconded the motion; motion carried unanimously, 6-0.**

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**\*\* DATE OF NEXT COMMISSION MEETING: JULY 23, 2002**

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**\*\* ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 1:40 p.m.

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William A. Pruitt, Commissioner

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Stephanie Montgomery CPS, Recording Secretary