

MINUTES

**NOVEMBER 27, 2001
NEWPORT NEWS, VA 23607**

The regular Monthly meeting of the Marine Resources Commission was held on November 27, 2001 with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
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
Erik Barth		Head-IT
Andy McNeil		Programmer Analyst, Sr.
Bob Craft		Chief-Finance & Administration
Steve Bowman		Chief-Law Enforcement
Randy Widgeon		Eastern Shore Supervisor
Dana Mise		Middle Area 1st Sergeant
Ray Jewell		Northern Area Supervisor
Kenny Oliver		Southern Area Supervisor
Mike Dobson		Marine Patrol Officer
Jimmy Rose		Marine Patrol Officer

Virginia Institute of Marine Science:
Lyle Varnell Tom Barnard
Jacques van Montfrans

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Jack Travelstead	Chief-Fisheries Management
Rob O'Reilly	Deputy Chief-Fisheries Management
Roy Insley	Head-Plans and Statistics
Stephanie Iverson	Fishery Management Specialist, Sr.
Cory Routh	Fishery Management Specialist, Sr.
Chad Boyce	Fishery Management Specialist
Ellen Cosby	Fishery Management Specialist
Lewis Gillingham	Fishery Management Specialist
Bob Grabb	Chief-Habitat Management
Tony Watkinson	Deputy Chief-Habitat Management
Hank Badger	Environmental Engineer, Sr.
Kevin Curling	Environmental Engineer, Sr.
Mark Eversole	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Chip Neikirk	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Lisa Williams	Office Services Specialist

others present included:

Ian Frost
 Douglas Jenkins
 C. J. Lindemann, P.E.
 Steve Thacker, and others.

Commissioner Pruitt called the November meeting at 9:30 a.m. Associate Members present were: Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, White and Williams.

Commissioner Pruitt established that there was a quorum. Associate Member Cowart 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.

Commissioner Pruitt stated that the Agency has two new employees and he called upon Mr. Bob Grabb, Chief of the Habitat Management, to introduce Miss Lisa Williams, Office Services Specialist for the Habitat Management Division. Col. Steve Bowman, Chief of the Law Enforcement Division, introduced Ms. Stephanie Montgomery, Executive Secretary for the Law Enforcement Division and Commission Secretary. Commissioner Pruitt also

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recognized Mr. Grabb for his recent active duty service with the Coast Guard.

1. MINUTES of the October 23, 2001 meeting.

Associate Member White moved to accept the Minutes as distributed; Associate Member Hull seconded the motion which carried, 7-0. Associate Member Cowart abstained because he was not present for the October 23, 2001 meeting.

**** APPROVAL OF AGENDA**

Mr. Jack Travelstead, Chief of Fisheries Management, requested the addition of Item No. 12 to the Agenda, Public Hearing: Rappahannock River Oyster Dredge Area, possible need for an emergency regulation.

Mr. Grabb made a request to defer Item No. 3, John F. Sloan, #01-1589, until the Commission's December 18, 2001 meeting, based upon a request received from the applicant. Associate Member Hull moved to continue Item No. 3, John F. Sloan, #01-1589, to the Commission's December meeting; Associate Member White seconded the motion which carried, 8-0.

Associate Member Hull moved to adopt the Agenda with the deletion of Item No. 3 and the addition of Item 12 as requested by staff; Associate Member Williams seconded the motion which carried, 8-0.

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

Mr. Grabb briefed the Commission on the following Page Two items for projects over \$50,000.00 with no objections and with staff recommendation for approval.

- 2A. VIRGINIA DEPARTMENT OF CORRECTIONS, #01-1720**, requests authorization to replace an existing deteriorated rock fill and concrete dam with a 110-foot long concrete dam spanning Kimberling Creek in Bland County. Approximately 23 cubic yards of material will be removed from the creek bed to facilitate installation, the up-and down-stream sides of the structure will be armored with a total of 80 linear feet of riprap, and 35 linear feet of riprap will be installed to

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protect the existing raw water intake structure. Recommend approval with partial removal of the existing dam and our standard instream construction conditions.

PERMIT FEE..... N/A

2B. CITY OF NORFOLK, #01-1943, requests authorization to extend an existing breakwater by 120 linear feet and to place 3,100 cubic yards of sand for beach nourishment in a 220' x 50' area behind an existing breakwater adjacent to their property situated along the Chesapeake Bay.

PERMIT FEE.....\$100.00

2C. SEA SEA AND COMPANY, ET AL, #01-0471-20, requests authorization to widen the existing timber boardwalk at Riverwalk from 6 feet to 12 feet in width, to construct a 12-foot wide boardwalk from Riverwalk to the Mamie Davis Park Wharf, and to construct a 15-foot wide boardwalk from the Mamie Davis Park Wharf to the channelward end of an existing rock jetty situated along the Occoquan River in the Town of Occoquan, Prince William County.

Mr. Grabb noted that this project was approved by the Commission as a Page 2 item at the September 25, 2001 Commission Meeting, however, a portion of the boardwalk was incorrectly described as 12 feet in width. The purpose of this item is to clarify the project description rather than request an expansion of the project.

PERMIT FEE..... N/A

2D. COLONNA YACHTS, #01-1391, requests authorization to dredge, by clamshell method, approximately 87,000 cubic yards of maintenance material and 10,800 of new State-owned subaqueous bottom to a maximum depth of -20 feet below mean low water adjacent to their facility situated along the Eastern Branch of the Elizabeth River in Norfolk. All materials will be disposed of at the Craney Island Disposal Facility.

PERMIT FEE.....\$100.00

There being no comments, pro or con, Commissioner Pruitt placed the Page Two items before the Commission. Associate Member Williams moved to approve the Page Two items as presented. Associate Member Gordy seconded the motion which carried, 8-0.

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3. **JOHN F. SLOAN, #01-1589**, requests authorization to dredge approximately 465 cubic yards of subaqueous material to create a 292-foot long by 30-foot wide channel possessing depths of minus six (-6) feet at mean low water adjacent to his property at the mouth of Moran Creek in Lancaster County. The project is protested by the oyster planting ground leaseholder at the site.

By motion of the Commission, this item is deferred to the December 18, 2001 Commission Meeting.

EXECUTIVE SESSION

Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to Agenda Item 4. The motion was seconded by Associate Member Birkett and carried, 8-0.

Associate Member Ballard moved for the following:

CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION

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

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

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

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

were heard, discussed or considered in the closed meeting by the Commission.

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

AYES: Ballard, Birkett, Cowart, Gordy, Hull, McLeskey, Pruitt, White, Williams

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried unanimously.

Commissioner
Virginia Marine Resources Commission

4. **THOMAS A. DINGLEDINE, #01-1262**, requests authorization to construct a 12-foot by 10-foot covered porch located 73 feet channelward of mean low water on an existing pier situated along Horn Harbor in Mathews County. The project was continued from the October 23, 2001, hearing, at the request of the applicant.

Mr. Kevin Curling, Environmental Engineer, Sr., stated that Mr. Dingledine had advised him that he would not be able to attend today's meeting. Mr. Dingledine indicated that he would transmit an email to that effect to Mr. Curling, and that Mrs. Dingledine might possibly attend the meeting. Mr. Curling noted that he did not receive a transmittal from Mr. Dingledine. Commissioner Pruitt asked if anyone was present to represent Mr. Dingledine to which no one replied. Commissioner Pruitt asked if Mr. Dingledine objected to the Commission hearing his case in his absence. Mr. Curling stated that Mr. Dingledine appeared to be uncomfortable in requesting a further continuance as he would not be able to attend the Commission's December meeting as well. Commissioner Pruitt then recommended that the Commission hear the case on its merits at this time. When asked, Mr. Josephson concurred with the Commissioner's recommendation.

Mr. Curling began the staff presentation by stating that Horn Harbor is a major tributary to Chesapeake Bay in Mathews County. The surrounding area is primarily rural with many properties having older piers. While Mr. Dingledine's property is located within a small cove along Horn Harbor, it views directly onto the Chesapeake Bay.

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Mr. Dingledine had an existing 73-foot pier. He had requested authorization to extend that pier an additional 120 feet to reach navigable water. He also proposed to construct a 12-foot by 10-foot covered porch located at the end of the existing pier. On August 8, 2001, Mr. Dingledine was informed that the pier extension met the statutory exemption for private piers provided in § 28.2-120(A)(5) of the Code of Virginia, but that the covered porch would require a permit.

Mr. Curling noted that in response to an inquiry from staff concerning the need for the proposed structure, Mr. Dingledine stated that the primary use would be to, *"keep kayaks covered to protect them from sun damage."* The kayaks and other gear would be stored in the rafters or in a seat box. Additionally, Mr. Dingledine stated that his wife had sensitive skin and her doctor had recommended that she stay out of the sun.

The project is not protested and no State agencies have commented on the proposal. The project does encroach onto a leased oyster ground, however, the leaseholder did not respond to staff's notification.

Mr. Curling stated 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 the proposed structure. Furthermore, when considering authorization for such structures for private use, § 28.2-1205 of the Code of Virginia stipulates that, *"In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."*

Although the covered porch is not protested and the environmental impacts associated with it may be minimal, the structure appears larger than necessary for the intended use and given the portability of kayaks, staff does not consider it to be water dependent. Staff believes it would be more appropriate for Mr. Dingledine to construct a similar structure that would provide storage for kayaks landward of mean low water. In addition to limiting the encroachment over State-owned submerged land, locating the structure landward minimizes the potential for the building materials to enter the waterway during storm events or when the structures fall into a state of disrepair. Also, Mrs. Dingledine could use a temporary covering when she wishes to remain on the pier. Accordingly, staff was unable to recommend approval for the construction of the covered porch over State-owned submerged land.

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Associate Member Birkett asked for a clarification on the size of the proposed covered porch to which Mr. Curling stated it would be 12-foot by 10-foot. At the request of the Commissioner, Mr. Curling reviewed the positioning of the existing pier in its proximity to the proposed pier extension and porch.

Commissioner Pruitt then asked if anyone in attendance wished to speak to this matter, pro or con. With no response from those in attendance, the Commissioner placed the case before the Commission. Associate Member Williams moved to deny the project based on staff recommendations; Associate Member Hull seconded the motion. Associate Member Ballard noted his objections to the project being, (1) under the public trust document, it would be an inappropriate use of the State-owned land to build the proposed structure; and, (2) the stated purpose to store kayaks was not necessary as kayaks do not require such an obtuse structure for storage. The motion to deny the project based on staff recommendations carried, 7-1.

5. **STEVE THACKER, #01-0354**, requests after-the-fact authorization to retain riprap revetment and to complete the partial construction of a dual slip open-sided boathouse and a marginal wharf adjacent to his property situated along Diascund Creek, a tributary to the Chickahominy River in James City County.

Ben Stagg, Environmental Engineer, Sr., presented the following evaluation with the assistance of photographs and drawings of the proposed project. Mr. Stagg stated that the project site was located in the Lanexa area of James City County along Diascund Creek, a tributary to the Chickahominy River. Mr. Stagg stated that there were numerous homes along this section of the creek, many with piers and boathouses. Most of the lots are protected by bulkheads or riprap.

Mr. Thacker, through his agent, Waterfront Piers and Bulkheads, submitted a Joint Permit Application, on March 1, 2001, requesting authorization to place riprap against a failing bulkhead and to remove and reconstruct a pier at the site. James City County determined that the project did not require a wetlands permit as all the proposed activity would be channelward of mean low water. Commission staff sent a letter, dated March 14, 2001, to Mr. Wilber Jordan of Waterfront Piers and Bulkheads to clarify deficiencies in the original drawings, and to verify the amount of riprap that would be within VMRC jurisdiction. On March 27, 2001, Mr. Jordan called to address these issues. During this conversation, staff informed Mr. Jordan that since this project would require a permit from VMRC, and since he had indicated that the adjoining property owners had been notified, completed adjacent property owner acknowledgement forms were needed. Mr. Jordan stated that he was still working on obtaining the forms and would be forwarding them in the near future.

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Mr. Stagg noted that on August 29, 2001, Commission staff received a phone call from James City County staff indicating that considerable work was under way at the Thacker property and it did not appear to be in conformance with the plan originally submitted in the Joint Permit Application. On September 21, 2001, staff visited the site with James City County staff, and again on September 27, 2001, with Don Hicks of Waterfront Piers and Bulkheads. The original application requested placement of riprap against the existing bulkhead and construction of a single slip open-sided boathouse. Mr. Hicks stated that the placement of the riprap, as originally proposed, was found to be impossible based upon the depth of the creek immediately channelward of the old bulkhead. Therefore, they proceeded to remove the bulkhead and grade the adjoining bank and place riprap along the slope. Additionally, construction was begun on a dual slip open-sided boathouse. Mr. Hicks stated that he thought Mr. Jordan had obtained the necessary permits to proceed.

Based upon the work already done at the site, the County determined that violations of both the Wetlands Ordinance and the Chesapeake Bay Preservation Act, as well as, unauthorized land disturbance had occurred at the site. The County issued a Stop Work Order on October 2, 2001.

On October 3, 2001, a Notice to Comply was issued by VMRC to Mr. Thacker directing removal of the riprap channelward of mean low water and removal of the partially constructed boathouse within 60 days. Alternatively, the applicant was given the option to submit a written request to modify the previously submitted permit application to retain the existing riprap and boathouse construction. Staff requested the submittal of new drawings reflecting the actual work already performed, as well as, drawings depicting the proposed project, submission of adjacent property owner forms and explanation why the work was performed without the necessary authorization.

On October 4, 2001, VMRC received revised drawings for the project. These drawings depicted a dual slip open-sided boathouse instead of a single slip open-sided boathouse, as originally proposed. On October 18, 2001, VMRC received a revised Joint Permit Application. Another site visit occurred on October 19, 2001, with the applicant, his agent, James City staff, a VIMS representative and VMRC staff. One additional drawing, depicting a proposed floating dock was received on November 8, 2001.

At their meeting on November 14, 2001, the James City County Wetlands Board reviewed the modified permit request for the riprap placement and approved the new location. The Board then reviewed the wetlands violation and voted to impose a civil charge of \$4,000.00, which was agreed upon by Mr. Thacker, to require that the applicant provide a landscape plan, acceptable to County staff, and to replant appropriate vegetation within the Resource Protection Area (RPA) as required by the Chesapeake Bay Preservation Act. The

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County staff noted that no additional enforcement action would be taken for the Chesapeake Bay Act or the erosion and sedimentation violations pending payment of the civil charge and acceptance of the landscape plan.

A new VMRC Public Notice was published on November 1, 2001, to include both the revised riprap location and dual slip open-sided boathouse.

Mr. Stagg stated that the adjoining property owners to the northeast, the Todd's, submitted a letter dated October 7, 2001, in which they expressed concerns over the project. While their objections were directed at upland impacts by the agent/contractor, and that they would like to see the project completed, they were skeptical of signing the adjoining property acknowledgement form without full disclosure of all plans and permits for the project. Upon receipt of the final drawings, staff sent the plans to the Todd's requesting their comments on or before November 20, 2001. As of this date, no additional comments had been received from the Todd's.

Mr. Stagg stated that clearly, the agent for this project was aware that a permit was required from VMRC. In fact, Mr. Hicks indicated at the September 27, 2001 meeting on site that they had started the project without the necessary authorization. While it appears that Mr. Thacker had requested the contractor begin construction on the project, it also appears that Mr. Thacker was unaware that the proper authorization had not been obtained.

VIMS originally stated that while the impacts from a marine environmental viewpoint would be minimal, they questioned the need to extend the riprap 16 feet channelward of the existing bulkhead and recommended the encroachment be limited to the standard 2:1 slope unless there were compelling reasons why this would not be feasible. The project was re-evaluated by VIMS on November 5, 2001; VIMS stated that the revised proposal would result in minimal individual and cumulative adverse impacts. No other agencies had commented on the project.

Mr. Stagg noted that the modified location of the riprap resulted in less subaqueous encroachment and was a preferred alignment from an environmental viewpoint. As such, staff was recommending approval of the modified request for the riprap and approval of the dual slip boathouse to include a triple permit fee. However, staff also believed that this project represented a serious degree of non-compliance with the permitting process. Accordingly, if approved, staff suggested that the Commission might wish to consider an appropriate civil charge for the applicant as well as the agent/contractor in lieu of further enforcement actions.

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Associate Member Ballard questioned whether Mr. Thacker was aware of the necessary permits. Mr. Stagg reiterated Mr. Thacker's statement before the Wetlands Board Meeting in which he indicated his belief that the contractor was responsible for obtaining all permits needed for the project. Commissioner Pruitt questioned Mr. Stagg as to whether the Wetlands Board had originally required a permit for the project. Mr. Stagg stated that based on the original application, the project was landward of the wetlands and did not require a permit. Associate Member Cowart asked whether the application contained the agent authorization form in which the contractor accepts responsibility for a project and the required permits. Mr. Stagg stated that this form was executed and was a part of Mr. Thacker's application. Associate Member Ballard asked if the named contractor, Waterfront Piers and Bulkheads, was generally involved in building permitted structures. Mr. Stagg stated that they were and had been doing so for approximately 15 years.

Commissioner Pruitt then swore in Mr. Thacker. Mr. Thacker provided a brief overview of his process for purchasing the home and contracting with Waterfront Piers and Bulkheads. He noted that the project began in August and by telephone, the contractor was notified on September 6, 2001 by VMRC to stop work. Mr. Thacker received notices from James City County and VMRC in October with regard to the project and necessary permits. After two meetings with the James City County Wetlands Board and a closer inspection of the contractor's fulfillment of his responsibilities, Mr. Thacker stated that he felt the problem was attributable to the fact that he was working with a contractor who, "*had an aversion to paperwork.*" Mr. Thacker assured the Commission that there was no intention to avert wetlands issues and hide work. With a previous fine levied by the Wetlands Board and landscaping work yet to be done, Mr. Thacker stated that the project was becoming very expensive for him. He requested that the Commission approve the project based on the most current application, which he personally prepared.

Commissioner Pruitt asked if anyone in attendance wished to speak to this matter, pro or con. With no response from those in attendance, the Commissioner placed the case before the Commission. Associate Member Cowart noted a previous discussion by the Commission with regard to imposing performance criteria or license agreements on agents/contractors in order to prevent such future cases. Associate Member Ballard reported that the Habitat Management Committee had discussed the issue and decided it would be impractical to try to separately permit contractors/business agents or separately license contractors through the Agency. However, the Committee did review § 28.2-1213(D) of the Code of Virginia, and he cited the Code as follows:

"Without limiting the remedies which may be obtained under this chapter, [Chapter 12, Submerged Lands] and with the consent of any person who has violated any provision of this chapter..." Associate Member Ballard stated that the term "any person" can include

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the contractor, the homeowner, the upland property owner and/or a combination thereof. The Habitat Management Committee interpreted this section of the Code as allowing the Commission to assess a civil charge against the contractor, with his consent. Associate Member Hull asked Mr. Thacker if his contract specifically stated that the contractor was responsible for obtaining all permits. Mr. Thacker stated that that was correct, adding that he, Mr. Thacker, was responsible for the fees, the contractor was responsible for all of the paperwork.

Associate Member Ballard then moved to approve the modified request for the riprap and the dual slip boathouse to include a triple permit fee, and conditioned upon the acceptance and payment of a civil charge by the home owner, Mr. Thacker, in the amount of \$600.00, and payment of a civil charge by the contractor, Waterfront Piers and Bulkheads, in the amount of \$1,800.00. The motion was seconded by Associate Member Birkett. Associate Member Ballard noted his concern over non-compliance with the law by both the upland property owner and, principally, the contractor. He noted that his recommendations for the civil charges were based upon the Commission's civil charge matrix, dated May 25, 1999. When brought to a vote, the motion carried, 8-0.

Commissioner Pruitt then instructed Mr. Stagg to explain to Mr. Thacker the process for payment of the civil charges and for appeal in this matter.

6. PUBLIC COMMENTS

Commissioner Pruitt asked those in attendance wishing to address the Commission may do so at this time. There were no comments made by the public.

7. RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD (RFAB)

Mr. Cory Routh, Fishery Management Specialist, Sr., presented to the Commission a sample sign and vinyl decal to be displayed at all projects funded by the Virginia Saltwater Recreational Fishing Development Fund.

In presenting the following projects recommended for funding by the RFAB, Mr. Routh reported that the RFAB completed its five-month review of pending applications on November 13, 2001. He noted that each project was subjected to a staff review, professional peer review and public hearing.

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- A. The Viking Hook-Up** (After School Fishing Program), Huntington Middle School -- Wendy Harvey -- \$1,138.86. (Program wishes to retain the unused \$1,104.13 from Last year's program to be towards this project.)
Vote: Unanimous to recommend.
- B. Virginia Game Fish Tagging Program** (Year 8), VIMS and VSWFT -- John Lucy and Claude Bain -- \$57,408.00.
Vote: Unanimous to recommend.
- C. Hampton Roads Kids Fishing Day 2002**, CCA of Virginia/Tidewater Chapter -- Bill Dieffenbach -- \$6,000.00.
Vote: Unanimous to recommend.
- D. 2002 Children's Fishing Clinic**, Denbigh Rotary Club/Coastal Conservation Association -- Rob Cowling -- \$6,000.00.
Vote: Unanimous to recommend.
- F. Sunshine Children's Fishing Program**, Portsmouth Anglers' Club -- Denise Harrell And Denny Dobbins -- \$4,300.00.
Vote: Unanimous to recommend.
- H. 2002 Deployment Funding for Chesapeake Bay Artificial Reef Sites**, VMRC -- Mike Meier -- \$200,000.00.
Vote: Unanimous to recommend.
- J. Virginia Saltwater Fishing License Fund Website**, VMRC -- Cory Routh -- \$6,200.00.
Vote: Unanimous to recommend.
- L. Saxis Fishing Pier Youth Fishing Tournament**, Eastern Shore Anglers' Club -- John Conquest -- \$600.00.
Vote: Unanimous to recommend.
- M. Morley's Wharf Youth Fishing Tournament**, Eastern Shore Anglers' Club -- John Conquest -- \$600.00.
Vote: Unanimous to recommend.

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N. Covert and Undercover Funds for the Virginia Marine Patrol's Special Investigative Unit (SIU), Virginia Marine Patrol -- Special Agent John E. Croft -- \$22,000.00.

Vote: Unanimous to recommend.

Mr. Routh presented the following projects not recommended for funding by the RFAB:

E. Pinpointing the Seagrass Habitat that Optimizes Survival for Spotted Seatrout In Virginia (Year 2), ODU -- C. M. Jones and J. van Montfrans -- \$81,136.00.

Vote: Four members voted not to recommend; three members voted to recommend.

G. Virginia Reef Ball Coalition; Artificial Reef Education and Construction Program, Reef Ball Coalition, Inc. -- Lena Jankowsky -- \$214,000.00.

Vote: Unanimous not to recommend.

I. Messick Point Boat Launching Facility Improvement, City of Poquoson -- John Gill -- \$413,970.00.

Vote: Six members voted not to recommend; one member voted to recommend.

K. Powhatan Creek Park Improvement Project, James City County -- Carla Brittle -- \$39,753.00.

Vote: Unanimous not to recommend.

O. Tidewater Environmental Program, Norfolk Marine Institute -- Thomas E. Pace -- \$13,271.00.

Vote: Unanimous not to recommend.

P. The Reproductive Biology and Population Dynamics of Black Sea Bass, VIMS -- John A. Musick -- \$30,989.00.

Vote: Unanimous not to recommend.

Mr. Routh stated that the RFAB has \$720,591.00 available for the next round of projects. The current recommended projects total \$304,246.86, leaving approximately \$416,000.00 in the fund should those projects be approved.

Associate Member Hull inquired as to the debate over Item E., "...Survival for Spotted Seatrout in Virginia." Mr. Routh stated that the RFAB was concerned with multi-year projects and the likelihood that they would not be followed through as projected. The seatrout project is a two-year project. Associate Member Hull noted that undertaking a two-year project which is scientifically geared for that period of time and then cutting it in half

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would seem to reduce the value of the first year. He added that if the RFAB wishes to take the position of not funding multi-year projects, the time would be now. Mr. Routh concurred with Associate Member Hull's comments. Upon inquiry, Mr. Routh stated that all public comments on the project have been positive. There were no negative comments on the peer reviews for the project. Mr. Bowman commented that he had attended the RFAB Meeting and found the consensus to be that there was not enough integration of the scientific knowledge gained by the project to benefit the recreational fishermen at large.

Commissioner Pruitt asked if anyone in attendance wished to speak to any of the projects, pro or con. Mr. Jenkins stated that he would like a copy of the project list for review. Mr. Cory noted that Mr. Jenkins would be added to the RFAB mailing list, effective immediately. There being no further comments, the Commissioner placed the projects before the Commission for action.

Associate Member Hull moved to approve those projects recommended as well as Item E., Pinpointing the Seagrass Habitat that Optimizes Survival for Spotted Seatrout In Virginia. Associate Member Ballard seconded the motion; the motion carried, 8-0.

8. **PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-620-10 et seq., Pertaining to Summer Flounder, to adjust the fourth quarter commercial harvest trip limits.

In presenting this matter to the Commission, Mr. Lewis Gillingham, Fishery Management Specialist, stated that at the Commission's October meeting, members of the Summer Flounder Industry requested emergency action and consideration of an amendment of Regulation 4 VAC 20-620-10 et. seq., "Pertaining to Summer Flounder," in time for the opening of the Fourth Quarter, November 1. Subsequently, the Commission adopted Emergency Regulation 4 VAC 20-620-10 et. seq. which established consecutive 10-day landing "windows," a maximum of two landings during any 10-day period and a cumulative possession limit of 7,500 pounds for the Fourth Quarter. This is similar to the landing scheme that was established last season for the First Quarter period and has met with general approval by the Summer Flounder Industry.

Mr. Gillingham noted that the Summer Flounder fishery is a quota-based management system and despite limited entry and possession limits, this system encourages a "gold rush" amongst participants during the open season. As a consequence, vessels race to reach their unloading site, where flounder are quickly unloaded, the vessel is re-supplied and refueled, as the crew attempts to return to the fishing grounds while quota remains

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available. Additionally, fishermen will take bad weather risks to harvest flounder during winter while the quota clock is ticking. Allowing a set amount of summer flounder to be landed within a generous "window" of time allows the crew additional rest and more flexibility with regards to weather. Another consideration, bad weather or equipment problems can force a vessel into port with less than a possession limit. By allowing a vessel up to two landings and a cumulative possession limit of 7,500 pounds of Summer Flounder in a set 10-day period, safety of the vessel and crew is improved. Other benefits include spreading the harvest over a longer period of time which should create an improved market for the fresh product.

Opponents (especially owners of larger vessels), may argue that a 10-day landing window requires them to remain at dockside for periods of time when they otherwise could be working. However, records from past seasons indicate few vessels make more than one trip in a one-week period during the winter seasons (First and Fourth quarters).

Mr. Gillingham stated that staff recommends adoption of the proposed amendments contained in Emergency Regulation 4 VAC 20-620-10 et seq., which are located in 4 VAC 20-620-40, Commercial Vessel Possession Limitations, subsection E., page 4 of draft Regulation 4 VAC 20-620-10 et seq., "Pertaining to Summer Flounder."

Commissioner Pruitt opened the Public Hearing, asking if anyone in attendance wished to address the Commission on this matter, pro or con. There being no comments, the Commissioner placed the matter before the Commission for action.

Associate Member Ballard moved to adopt the proposed amendments to Regulation 4 VAC 20-620-10 et seq. as proposed by staff; Associate Member Hull seconded the motion. The motion carried, 8-0.

9. **PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-610-10 et seq., Pertaining to Commercial Fishing and Mandatory Harvest Reporting to require reporting of certain offshore catches.

Ms. Stephanie Iverson, Fishery Management Specialist, Sr., presented to the Commission in this matter, stating that Regulation 4 VAC 20-610-10 et seq., "Pertaining to Commercial Fishing and Mandatory Harvest Reporting," describes the procedures for registration as a commercial fisherman, the requirements and procedures associated with mandatory harvest reporting by commercial fishermen and others, and exceptions to the registration process and two-year delay requirements, as specified in § 28.2-241 of the Code of Virginia.

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Ms. Iverson noted that in 1995 there was a concerted effort by Atlantic coastal fishery managers to standardize data collection amongst jurisdictions. The ACCSP was launched, and a Memorandum of Understanding (MOU) was signed in November 1995 by twenty-three (23) Atlantic coast jurisdictions. The signatures signified their intent to develop and implement a coastal collection program.

Fishery Management Plans (FMP) often develop regional quotas based on data from a jurisdiction's catch and effort, biological and recreational collection program. The data from these varied collection programs in each jurisdiction are not always compatible. Analyzing and comparing data from multiple jurisdictions, which lack consistency in collection methods, has been the challenge of fishery managers. One goal of the ACCSP is to make each jurisdiction's data more compatible. The first of several ACCSP modules in the program design "Commercial and Recreational Catch and Effort" has been approved. All "partner jurisdictions" have committed to implementing these program standards. All coastal jurisdictions have a data collection program that either meets, is being developed to meet, or is being augmented to meet ACCSP standards.

Virginia is in a unique situation in that our data collection program was one of the models used to frame the ACCSP "Commercial Catch and Effort" module. Virginia has been collecting trip-level mandatory data since 1993. This puts us in a better position than most coastal jurisdictions that are currently in the process of implementing these types of programs to meet ACCSP standards.

Additionally, Ms. Iverson stated that only three states (Virginia, North Carolina, and Florida) had already begun implementation of a mandatory trip-level data collection program, at the inception of ACCSP. Consequently, Virginia does not have to make many changes to be compatible with the approved program design. However, there are a few changes needed to our program to provide more accurate and precise information on Virginia fisheries harvest and landings.

Virginia's commercial catch and effort data is collected through the Mandatory Reporting Program (Regulation 4 VAC 20-610-10 et. seq.) The current program has jurisdiction over Virginia tidal waters, from in-river fall lines to 3 miles from shore. The National Marine Fishery Service-Northeast Region Office (NMFS-NERO) has jurisdiction over fisheries from beyond three miles to 200 miles offshore (federal waters or the Exclusive Economic Zone (EEZ)). A Memorandum of Understanding (MOU), concerning the data collection and handling process, between the two jurisdictions has been in effect since 1992. The MOU was established for several reasons. Mainly, the MOU sought to develop and implement fishery data collection procedures, in order to provide timely and accurate data, while minimizing reporting requirements on the public, in the most cost effective manner.

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Consequently, commercially registered Virginia watermen working in federal waters have not previously been asked to submit monthly mandatory harvest reporting forms, to avoid duplicating data collection efforts by the NMFS. After review of both the NMFS' and our collection programs, we have discovered fisheries data deficiencies, explained below that need to be addressed through amending our current Regulation 4 VAC 20-610-10, et seq.

Ms. Iverson stated that Harvesting in federal waters by Virginia Commercial Registration License (CRL) holders who fish on non-federally permitted species and do not sell to a federally permitted dealer are not currently reporting to VMRC as landings and are often not recorded by NMFS. Currently, there are thirty federally permitted dealers in Virginia, and the ten federally permitted species as described in Table 1 below.

Table 1. Federally vs. Non-Federally Permitted Species	
Federally Permitted Species	Non-Federally Permitted Species
Summer Flounder	Horseshoe crabs
Scup	Spadefish
Black Sea Bass	Cobia
Atlantic Sea-Scallop	Grey Trout
Monkfish	American Shad
Squid	Black Drum
Atlantic Mackerel	Red Drum
Butterfish	Speckled Trout
Spiny Dogfish	Tautog
Blue fish	Conch
	Channeled Whelk
	Knobbed Whelk
	Atlantic Croaker
	Spot
	Spanish Mackerel
	Dogfish, unclassified
	Dogfish, Smooth

Ms. Iverson stated that the problem could be more extensive if federally permitted dealers were not required to submit data for **all** the species they purchase. She added that Channeled Whelk is a good example of unrecorded harvest data. It is not federally permitted, and it does not have to be marketed through a federally permitted dealer. In fact, the only way we can currently monitor the Virginia landings of this important species is by asking cooperative buyers for sales records. (See Table 1 for additional important Virginia species harvested in federal waters.)

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It is clear that a regulation change must be implemented to require all Commercial Registration License (CRL), and Seafood Landing License (SLL) holders, who harvest in federal waters, to report their data on a monthly basis to the VMRC, when the harvested species is not federally permitted nor sold to a federally permitted dealer. Again, CRL holders who harvest in federal waters have not previously been required to submit the mandatory reporting harvest monthly forms because we did not want duplication of effort with the NMFS. The Virginia Landings not accounted for by VMRC and NMFS should be recorded by VMRC.

Also, additional data elements must be added to include those that the ACCSP "program design" has designated as data elements we do not currently capture: 1) number of hours; watermen worked; 2) number of crew; and, 3) vessel identification information (name and ID# - Coast Guard documentation number, hull number, or VA State License #).

Ms. Iverson stated that one of the ACCSP goals is "timely reporting", which is critical to good management. Currently, a waterman not harvesting for a full year need only report 'no activity' one time for that year by February of the next year. It is very difficult for staff to distinguish between a "delinquent" reporter and one with "no activity." Also, a blank CRL holder's field can connote either. To avoid this confusion and potential for non-reporting of harvest, staff requests that CRL holders report their lack of harvesting activity on postage paid postal cards (provided by VMRC) or call-in on the toll free telephone line, on a monthly basis.

Ms. Iverson added that no public comments have been received on the proposed amendments.

Ms. Iverson stated that to more fully conform Virginia's data collection program to the model designed by the Atlantic Coastal Cooperative Statistics Program, staff recommends adoption of amended Regulation 4 VAC 20-610-10 et. seq., to be effective January 1, 2002.

Commissioner Pruitt opened the Public Hearing, asking if anyone in attendance wished to address the Commission on this matter, pro or con. There being no comments, the Commissioner placed the matter before the Commission.

Associate Member Cowart moved to adopt the proposed amendments to Regulation 4 VAC20-610-10 et seq. as proposed by staff; Associate Member Hull seconded the motion. Associate Member Hull moved to amend the motion to include the following changes in the language of the Regulation:

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4 VAC 20-610-60. MANDATORY HARVEST REPORTING.

- C. *“All registered commercial fishermen and all holders of a Seafood Landing License shall complete a daily form **accurately and legibly** describing that day’s harvest from Virginia tidal and federal waters...”*
- E. *“...Any information on the price paid for the catch may be **provided voluntarily**.”*

Associate Member Cowart seconded the amendment to the motion. The motion carried, 8-0, as amended.

10. CRAB DREDGE LICENSE EXEMPTION REQUESTS

Mr. Travelstead addressed the Commission with regard to two applications for Crab Dredge License Exemption.

Ernie Bowden - Mr. Bowden requests his license be reinstated because of medical complications he suffered last winter which prevented him from meeting the requirements of the regulation. Mr. Bowden did not attend the Crab Dredge License Exemption Panel meeting due to a miscommunication with staff. Staff recommends granting Mr. Bowden’s exemption.

Robert Bates Taylor, Sr. – Mr. Taylor did not attend the Crab Dredge License Exemption Panel meeting. He requests an exemption on the basis that he could not afford to rig his new boat for crab dredging. Regulation 4 VAC 20-750-40 specifically states, *“Under no circumstances will an exception be granted solely on the basis of economic hardship.”* Since this is the only reason Mr. Taylor has identified, staff recommends denial of his application.

Commissioner Pruitt stated that Mr. Taylor was caulking, and could not caulk and crab dredge at the same time. Commissioner Pruitt recommended approval of both applications. Members of the Commission noted the need to inform applicants of the Agency’s process and as well as the applicant’s responsibilities in licensing matters.

Associate Member Williams moved to approve the Crab Dredge License Exemption applications submitted by Mr. Ernie Bowden and Mr. Robert Bates Taylor, Sr.; Associate Member McLeskey seconded the motion. The motion carried, 7-0. Associate Member Gordy abstained from the vote.

11. REPORT OF THE STRIPED BASS TASK FORCE

Mr. Travelstead stated that the Striped Bass Task Force would meet December 17, 2001 at 4:30 p.m. and that no report would be made at this time.

12. PUBLIC HEARING: Rappahannock River Oyster Dredge Area.

Associate Member Cowart stated that he has been made aware of the fact that watermen working in the Rappahannock Hand Scrape Area above the bridge have been able to catch their oyster limit by 11:00 a.m. The area appears to be very resourceful at this time and it has been requested that the season be extended beyond the December 31, 2001 date.

Associate Member Cowart moved for the Commission to advertise for Public Hearing on December 18, 2001 to review the activity and season length the in Rappahannock River Hand Scrape Area, and to take action at the regular meeting of the Commission to consider opening the area in January, 2002. Associate Member Hull seconded the motion; the motion carried, 8-0.

There being no further business before the Commission, the meeting was adjourned at 1:50 p.m.

William A. Pruitt, Commissioner

Stephanie Montgomery CPS, Recording Secretary