

MINUTES

Commission Meeting

September 22, 2009

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin and Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Fishing Tournament
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program
Rick Lauderman	Chief, Law Enforcement
Ed Guy	LE Training Officer
Zack Widgeon	Marine Police Officer
Steve Bennis	Marine Police Officer

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Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Ben McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
 Carl Hershner
 Rom Lipcius
 Gene Burreson

Other present included:

Mark Friedemann	Ken Kidwell	Jeff Seay	Charles Duke
Richard Hall	Carl Eason	Bob Simon	Kevin Sims
Pete Crin	Dave Waddell	Dave Gohsims	Stewart Hall
Parker Johnson	Matt Overton	Pete Peterson	John Veneziano
Ted Hemmert	John Dufton	Martha Cummings	Jo Turek
Gary Bunch	Roger Belvin	Ellis W. James	Heather Mantz
Bill Bradley	Joe Shelton	Bob Reep	Skip Feller
Cory Nestor	Ken Smith	Roger Parks	Keith Miller
W. C. Tice	Frank Kearney	Robert Jensen	Mark Swingle

and others.

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. All Associate Members were present.

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At the request of Commissioner Bowman, Associate Member Schick gave the invocation and Bob Grabb, Chief Habitat Management, led the pledge of allegiance.

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Commissioner Bowman announced that Associate Members Fox and Robins had been reappointed by the Governor for another term on the Board.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda.

Bob Grabb, Chief, Habitat Management, stated that Item 11 was pulled from the agenda because the protest had now been resolved and the item could be handled administratively by staff. He also said that for Item 10 the applicant was requesting that it be continued, a letter of request was provided with alternate dates. The document was read into the record by Commissioner Bowman, who determined that it would be continued until the November 24, 2009 meeting.

Commissioner Bowman explained that Item 13, would be heard later in the meeting in order to allow Carl Josephson to make some minor corrections to the documents that were prepared by others.

Jack Travelstead, Chief, Fisheries Management, said staff requested removal from the agenda of Item 17, the public hearing regarding actions by the ASMFC for the recreational fishery for Black Sea Bass, as staff was told by NMFS not to take any action at this time.

Commissioner Bowman asked for a motion to approve the continuance that had been requested. **Associate Member Tankard moved to approve the requested continuance for Item 11 until November 24, 2009. Associate Member Holland seconded the motion. Association Member Schick stated his concerns that they were not providing the information requested and not being more cooperative. The motion carried, 9-0. The Chair voted yes.**

Commissioner Bowman asked for a motion to approve the agenda, as amended. **Associate Member Laine moved to approve the agenda, as amended. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman requested a motion for approval of the July 2009 Commission meeting minutes, if there were no corrections or changes. **Associate Robins moved to approve the minutes, as circulated. Associate Member McConaugh**

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seconded the motion. The motion carried, 8-0-1. Associate Member Tankard abstained, as he was absent from the meeting.

Commissioner Bowman requested a motion for approval of the August 2009 Commission meeting minutes, if there were no corrections or changes. **Associate Robins moved to approve the minutes as circulated. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. Associate Member Fox abstained, as he was absent from the meeting.**

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

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2. PERMITS (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief, Habitat Management Division, summarized the eight page two items, 2A through 2H, for the Board. His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked if these were project over \$50,000.00, why was 2B on the agenda? Mr. Grabb explained this project was in public oyster ground that was set aside by the Commission and not the Constitution. Because the request involved a private use of these public grounds, it had to be brought to the Board. Associate Member Fox asked if this was an active oyster ground. Mr. Grabb stated that use by the public would not be stopped because of this project. Associate Member Fox asked if it interfered with public harvest. Mr. Grabb explained that inshore the depth of the water was too shallow for any commercial activity. He said that no public comments in opposition were received for it.

There being no further questions, Commissioner Bowman opened the public hearing. There were no public comments and the public hearing was closed. He asked for action by the Board.

Associate Member Robins moved to accept the staff recommendations for the eight items, 2A through 2H. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

2A. ACCOMACK COUNTY, #09-0730, requests authorization to dredge on an as needed basis 150 cubic yards of subaqueous bottom, replace the northern of the three boat ramp tending piers and the attached breakwater within the existing foot

print situated adjacent to the Johnsons Landing County Facility along Hunting Creek near the Town of Hopkins in Accomack County. The applicant also requests authorization to retain the two 14-foot wide concrete boat ramps, the two other 4-foot wide tending piers with attached breakwaters and the 180-foot long by 12-foot wide County pier which includes a 36-foot by 12-foot T-head. The County facility has existed in some form or another for over 100 years.

Permit Fee.....	\$100.00
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2B. JOSEPHINE CASALE, #09-0866, requests authorization to install a private, noncommercial, riparian mooring buoy at 37° 30' 14" North Latitude, 76° 18' 32" West Longitude, approximately 2,000 feet channelward of her property situated along the Piankatank River at 997 Old Ferry Road on Gwynns Island in Mathews County. The mooring will encroach on "Additional Public Ground."

Permit Fee.....	\$ 25.00
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2C. HAMPTON DEPARTMENT OF PUBLIC WORKS, #09-0417, requests authorization to mechanically dredge approximately 42,910 cubic yards of State-owned subaqueous bottom from the Hampton River main channel and eight ancillary channels to a maximum depth of minus five and a half (-5.5) feet below mean low water from the Booker T. Washington Bridge at Settler's Landing Road to Bromley Drive in Hampton. All dredged material will be taken by barge to Craney Island, or an approved alternate upland site, for disposal.

Permit Fee.....	\$100.00
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2D. HOPEWELL DEPARTMENT OF RECREATION AND PARKS, #08-2086, requests authorization to dredge up to 2,700 cubic yards of State-owned subaqueous bottomlands to a depth of -10 feet mean low water at the City of Hopewell marina facility situated along the Appomattox River and located at 100 West City Point Road.

Permit Fee.....	\$100.00
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2E. LYNCHBURG COLLEGE, #09-0912, requests authorization to construct a 12-foot wide by 45-foot long, concrete arch span bridge, crossing over approximately 25 linear feet of the Big Otter River at their Claytor Nature Facility property off Woods Road (Route 682) in Bedford County. Staff recommends the assessment of a royalty in the amount of \$600.00 for the encroachment over 300 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

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Royalty Fees (encroachment 300 sq. ft. @ \$2.00/sq. ft.....	\$ 600.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$ 700.00

2F. MEADWESTVACO CORPORATION, #09-0297, requests a modification to a previously authorized project to now replace an existing sanitary sewer line exposed in the streambed of Dunlap Creek by installing an aerial, three-inch diameter, double wall, sanitary sewer line supported by an approximately 5-foot 6-inch wide box frame truss crossing over approximately 85 feet of Dunlap Creek, a minimum of 27 feet 10 inches above ordinary high water, immediately upstream of the Jackson River at their Covington facility in Alleghany County. Staff recommends the assessment of a royalty in the amount of \$1,190.00 for the sewer line’s encroachment over 85 linear feet of State-owned subaqueous land at a rate of \$3.00 per linear foot and for the truss’ maximum encroachment over 467.5 square feet of State-owned subaqueous land at a rate of \$2.00 per square foot.

Royalty Fees (encroachment 85 lin. ft. @ \$3.00/ln. ft.....	\$ 255.00
Royalty Fees (encroachment 467.5 sq. ft. @ \$2.00/sq ft.....	\$ 935.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,290.00

2G. BEACH COVE VILLAS CONDO OWNERS ASSOCIATION, #09-0507, Requests authorization to construct two (2) 180-foot long, one (1) 80-foot long quarry stone breakwater and one (1) 50-foot long stone spur, extend and armor two (2) existing stone and concrete block groins, and place 2,800 cubic yards of beach-quality sand over 26,500 square feet of State-owned subaqueous bottom channelward of mean low water adjacent to their property on the Rappahannock River near Windmill Point in Lancaster County. Recommend approval with a royalty in the amount of \$1,325.00 for the placement of the sandy material channelward of low water at the rate of \$0.05 per square foot.

Royalty Fees (nourishment 26,500 sq. ft. @ \$2.00/sq. ft.....	\$1,325.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,425.00

2H. QWEST CONSTRUCTION, #09-1088, requests authorization to install by directional bore method, 15 linear feet of HDPE conduit and fiber optic cable beneath Hazel Run, and 550 linear feet of HPDE conduit and fiber optic cable that

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will be attached to, and cross over the Rappahannock Bridge in Fredericksburg. These fiber optic lines are part of the Terrapin South Project being constructed in Stafford and Prince William Counties. Recommend approval with a royalty of \$1695.00 for the crossing of 565 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 565 sq. ft. @ \$3.00/sq. ft.....	\$1,695.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,795.00

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- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board).
- 3A. **ELIZABETH JORDAN, #09-0329** requests after-the-fact authorization for the construction of a replacement vinyl bulkhead at her property situated along Sarah Creek in Gloucester County. The bulkhead was constructed prior to the execution of her VMRC permit, and it measures approximately 15 feet longer than that indicated in the application drawings. The contractor has accepted full responsibility for the violation and has agreed to the payment of a \$600.00 civil charge and triple permit fees of \$300.00 in lieu of further enforcement action.

Bob Grabb, Chief, Habitat Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb explained that Ms. Jordan submitted a Joint Permit Application on March 16, 2009, requesting authorization to construct a total of 128 linear feet of replacement vinyl bulkhead channelward of a deteriorated bulkhead and to construct a 4-foot by 20-foot open-pile pier and to rebuild a 14-foot by 32-foot enclosed private non-commercial boathouse adjacent to her property along the Northwest Branch of Sarah Creek. The Gloucester County Wetlands Board approved the project during their public hearing on April 8, 2009. After completing the public interest review, staff mailed copies of Ms. Jordan’s draft permit out for review and signature along with a request for payment of the necessary permit fees on May 26, 2009. This package was sent care of her agent, Mr. Charles Duke II of Waterfront Development Corporation.

Mr. Grabb said that on June 10, 2009, staff received an inquiry concerning the project from the adjoining property owner, Mr. Cruikshank. He was concerned that the project was not being constructed as permitted and may be encroaching on his property. As we

investigated the matter staff determined that the permit had never been finalized. Staff contacted Mr. Duke and met him at the project site on June 11, 2009. During the meeting staff determined that the channelward face of the nearly completed bulkhead was approximately 15 feet longer than that indicated in the application drawings. It was important to note that the application drawings depicted the proposed bulkhead as running from property line to property line, however, the linear dimension of the bulkhead was not properly calculated. The old boathouse had been removed, but construction of the requested replacement boathouse had not yet commenced.

Mr. Grabb stated that a "Notice to Comply" was sent to Ms. Jordan on June 17, 2009. The notice directed removal of the unauthorized bulkhead within 45 days or submittal of revised drawings and a request to retain all or a portion of the illegal structure within 15 days. On June 29, 2009, staff received a letter and revised drawings from Mr. Duke. He apologized and accepted full responsibility for the violation. He explained that he had miscalculated the length of the bulkhead and noted that the failure to finalize the permit was an oversight on his part. He also submitted a revised drawing and signed copies of the permits and a check to cover the permit fee and assessed royalty. The check was returned to Mr. Duke and staff explained that the after-the-fact request would be reviewed by the full Commission.

Mr. Grabb said that while staff had been reviewing the matter, Ms. Jordan had her shared property line with Mr. Cruikshank surveyed. Although the corner of the bulkhead was beyond mean low water, the survey indicated that the corner of the bulkhead extended approximately 8 inches over the imaginary straight extension of the shared property line. To resolve the apparent encroachment in front of Mr. Cruikshank's property, Ms. Jordan had Mr. Duke remove approximately 2 feet of the bulkhead to move the corner off the extended property line. Since this work would remove a portion of the unauthorized bulkhead and resolve a conflict with the adjoining property owner, staff informed Mr. Duke that he could complete this modification while staff continued to review the after-the-fact request.

Mr. Grabb explained that a full public interest review was completed, including adjoining property owner notifications and a newspaper advertisement, and no opposition was received. Mr. Cruikshank's concerns had been addressed by the relocation of the bulkhead corner. Given that the contractor had accepted full responsibility for the violation and had agreed to the payment of a triple permit fee of \$300.00 and a \$600.00 civil charge based on a minimal degree of environmental impact and a minor degree of non-compliance, staff recommended that the Commission endorse the consent agreement and grant after-the-fact approval of the project, as modified.

Commissioner Bowman asked if the applicant wished to comment. Charles Duke, Contractor, was sworn in and his comments are a part of the verbatim record. Mr. Duke corrected a misstatement by Mr. Grabb. He stated that he did not agree to remove 15 feet,

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just a 2-foot wall section. Chip Neikirk, Environmental Engineer, Sr., confirmed that he was correct. His comment is a part of the verbatim record.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to approve the project. Associate Member Fox seconded the motion. The motion carried, 9-0.

Royalty Fees (encroachment 90 sq. ft. @ \$1.00/sq. ft.....	\$ 90.00
Permit Fee (triple, a-t-f).....	\$ 300.00
Civil Charge.....	\$ 600.00
Total Fees.....	\$ 990.00

4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL. It was determined that a closed meeting was not necessary.

5. JOHN MUNICK, #09-0304. Commission review of the Newport News Wetland Board's August 17, 2009, decision to approve the construction of 30 linear feet of riprap in front of an existing bulkhead that will impact vegetated tidal wetlands at his property on Fisher's Creek in Newport News without any requirement for compensation.

Elizabeth Murphy, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Ms. Murphy stated that staff considered it appropriate to present orientation slides that were not a part of the record.

Ms. Murphy explained that the project is located at 40 Barclay Road on Fisher's Creek in Newport News. This was a residential area located at the confluence of Fisher's Creek and the James River.

Ms. Murphy stated that on March 11, 2009, the Marine Resources Commission received a Joint Permit Application from Mr. Munick requesting authorization to install three wooden jetties perpendicular to his existing bulkhead in order to address erosion along his property. After multiple site visits with VMRC, VIMS, and the Army Corps of Engineers, Mr. Munick's final proposal was received on August 11, 2009. In that, he proposed to install an 18-foot long wooden groin with a 6-foot T-head, install 117 linear feet of riprap adjacent to the existing bulkhead, and install a 34-foot long by

5-foot wide stone jetty at his property along Fisher's Creek and the James River. Since all of the work was proposed landward of mean low water and out of the Commission's jurisdiction, no permit was required from this agency.

Ms. Murphy said that the Newport News Wetlands Board, however, considered the application at a public hearing held on August 17, 2009. The Board listened to a brief description of the project from Mr. Richard Harr, staff to the Board, as well as a reading of the VIMS Shoreline Permit Application Report. The Board briefly asked questions of their staff including whether there were any impacts to wetlands. The staff response was that all impacts would be on sand and not grass.

Ms. Murphy explained that the VIMS Shoreline Permit Application Report, dated August 11, 2009, which was available to the Board and read into the record, estimated a permanent loss/fill of 200 square feet of vegetated tidal wetlands. In fairness, however, that report was written prior to Mr. Munick's JPA revision received on August 11, 2009 which reduced the impacts to vegetated wetlands to 68 square feet. This discrepancy in estimated area of permanent loss/fill in the VIMS report appeared to have led to some confusion by the Board's staff as to whether or not there were any impacts to vegetated wetlands. A revised VIMS report which was issued on August 25, 2009, after the hearing, was not available to the Board.

Ms. Murphy said it did not appear that all of the Board members visited the site and since no current site photos were shown at the meeting, it was difficult for the Board to know exactly where the riprap was proposed. While Mr. Munick did reduce the amount of riprap to be placed over vegetated wetlands, there was still a section where 68 square feet of vegetation would be filled.

Ms. Murphy stated that in the opinion of staff, the Newport News Wetlands Board, in this case, failed to fulfill their responsibilities under the Wetlands Zoning Ordinance and the Commission's Mitigation – Compensation Policy and Supplemental Guidelines by not carefully considering the request before them and not requiring compensation for 68 square feet of vegetated wetland impacts. In light of the fact that not all the Wetlands Board members had sufficient information to review when making their decision and the fact that the Board failed to require compensation for impacts to vegetated wetlands, and in accordance with §28.2-1313 (1) of the Code of Virginia, staff recommended that the Commission remand the decision back to the Newport News Wetlands Board for further review. Staff also recommended that Board members should make an effort to visit the project location, and if unable to do so request that their staff to provide photographs of the site for their review at the hearing and prior to rendering a decision.

No one was present to speak for the Newport News Wetlands Board or Mr. Munick.

Commissioner Bowman stated that the matter was before the Commission.

Associate Member Robins said he thought the Wetlands Board did not meet their requirements in hearing this matter and did not appropriately consider the wetlands mitigation requirements.

Associate Member Robins moved to remand the matter back to the Wetlands Board as they failed to meet their responsibilities in hearing this matter and did not appropriately consider the wetlands mitigation requirements. Associate Member Fox seconded the motion. The motion carried, 9-0.

No applicable fees - Wetlands Review

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- 6. **KEVIN SIMS, #08-1197**, requests authorization to dredge approximately 708 cubic yards of State-owned submerged bottom in an effort to obtain maximum depths of minus five (-05) feet mean low water for navigation adjacent to his property situated along the Narrows/Linkhorn Bay in Virginia Beach. The project is protested by the North Alanton Water Recreation Committee.

Justin Worrell, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Worrell stated that Thomas Dawson, the protestant, had called staff yesterday to inform him that he would not be present at the hearing today, but that he still protested the project.

Mr. Worrell explained that this application included a private pier request and a dredging proposal near the existing federal navigational channel known as the "Narrows." This waterway connects Broad Bay and Linkhorn Bay. First Landing State Park is located immediately to the north and the east.

Mr. Worrell said that the original application included a proposed 257-foot long private pier, extending out to the approximate nine-foot (-9' mean low water) contour, with a 15-foot by 26-foot open-sided gazebo and a 17-foot by 34-foot open-sided boathouse. Based on concerns expressed by neighbors, the U.S. Army Corps of Engineers (Corps), and staff, the pier proposal was reduced to 201 feet in length. It now only extends out to the approximate five-foot (-5' mlw) contour. In response to the neighbors' protests, the applicant also deleted both the proposed open-sided gazebo and the proposed open-sided boathouse roof structures.

Mr. Worrell stated that the applicant hoped to moor a future 60-foot boat with a five-foot draft at the private pier, in addition to the 18-foot and 30-foot boats that he currently owned. Once the pier was reduced in length and the proposed open-sided gazebo and boathouse roof structures were deleted, staff determined that the pier proposal met the statutory authorization contained in § 28.2-1203.A(5) of the Code of Virginia. Staff then notified the previous protestants, all of whom had initially expressed concerns over the

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pier's length. Staff explained that the modified pier proposal did not require a Commission permit as the pier was not considered to be a navigational hazard, nor did it exceed the size criteria set forth in the Code. Furthermore, staff informed the protestants that the dredging portion of the proposal would require a Commission permit, and any objections to the dredging should be forwarded to this office.

Mr. Worrell said that only the North Alanton Water Recreation Committee continued its objection stating that the dredging would have a negative impact on the natural shoaling in this area, and that it would impede boaters from accessing the North Alanton community boat dock. They also reiterated their previous concerns regarding the pier's proposed length.

Mr. Worrell said further that the Department of Environmental Quality did not require a permit, and the Corps determined that the pier proposal qualified for their Regional Permit 18 (RP-18) and the dredging portion satisfied the conditions of their Letter of Permission 2 (LOP-02). The City of Virginia Beach – Waterfront Operations Division, approved both the pier and the dredging, and the City's Chesapeake Bay Preservation Area Board approved the placement and use of the dredged spoils for the applicant's upland residential development. The pier and dredging also extended into privately leased oyster ground. After contacting the leaseholders, however, staff received no objections to the proposal.

Mr. Worrell explained that the Virginia Institute of Marine Science (VIMS) report recommended that the proposal avoid shallow water dredging as it would adversely affect benthic algae and aquatic fauna. VIMS ultimately recommended lengthening the pier to reach the desired navigable depths.

Mr. Worrell stated that staff was uncertain how the dredging would adversely impact the shoaling adjacent to, or near the North Alanton community pier, as the protestant had stated. Although the main concern of the protestant seemed to center around the length of the proposed pier, staff had previously determined that the pier proposal met the exemption criteria found in § 28.2-1203.A(5) of the Code.

Mr. Worrell said that staff found the dredging request reasonable but recommended approval with the condition that dredging not occur north of the pier's main stem, but only on the southern side where the large boat will be moored. To further limit the dredging impacts, staff recommended that the maximum depth of dredging be five feet (-5') at mean low water with the standard six-inch overdredge tolerance. A dredge depth of five feet (-5') at mean low water would tie into the existing five-foot contour shown on the plan-view drawings. Furthermore, if approved, staff recommended a royalty of \$0.60 per cubic yard of dredged material be assessed given that the applicant proposed to use the material for the upland development of his residential site.

Commissioner Bowman asked for questions of staff.

Associate Member Robins asked if dredging on the north side of the pier for a -4 feet depth. Mr. Worrell responded yes, 3 to 5 feet.

Associate Member Fox asked why was dredging necessary on the southern end. Mr. Worrell said that was being done so he could put a boat at the finger pier.

Associate Member Holland asked if 100% of the spoil was going overboard. Mr. Worrell responded no, none of it was. It was all going upland.

Associate Member Schick asked about the littoral drift. Mr. Worrell stated that this was a dynamic area and the Corps dredges there every two years. He also stated that they might need to maintenance dredge periodically.

Commissioner Bowman asked if VIMS could comment on their recommendation and how this being a dynamic area would affect it. Lyle Varnell, VIMS, was present and his comments are a part of the verbatim record. Mr. Varnell said it would depend on the depth and it was still a shallow depth. It would also depend on the bottom type and as it was mostly sandy area the dynamics did have an affect.

Commissioner Bowman asked if the applicant wished to comment.

Carl Eason, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Eason stated that the staff had dealt fairly with both the applicant and the protestants. He said the original proposed pier was for 257 feet as usually VIMS says No to dredging. He said this length resulted in protests and they modified the plan as recommended by staff, shortening it by 50 feet, VIMS now says to lengthen it. He said there was a 40-foot Oceans with a 3.4-foot draft that was left out, as he owns three vessels and is looking for a 60-foot boat. He said the 40-foot and 30-foot boats were already docked there with the 30-foot on a lift because of the sandy bottom. He said the sand bar required constant maintenance as the sand migrates to the south. He said the staff comments were not what he thought they were and he only found this out late yesterday. He explained the total project was 708 square feet and the wet slip had been eliminated. He explained also that the Chesapeake Bay Board, DEQ, COE, Wetlands Board were all on board and now the last step was getting VMRC approval and they were hoping for a reasonable final proposal. He said only one committee had objected and the aesthetics concern was not valid. He said Mr. Sims had modified his application to remove the impacts, such as the gazebo. He said Mr. Meekins and Mr. Dixon both approved the project and Mr. Sims was allowing the cages to be put under the pier for a project.

Commissioner Bowman asked for any questions.

Associate Member Fox asked him to explain why the dredging was necessary. Mr. Eason explained that it was because of the placement of the boats. He said dredging on the north side would allow for disembarkment of passengers from the 32-foot vessel and

allow for it to stay on a transient basis. He stated that in the front side there was enough depth, but not on the backside as this was a highly erodeable and dynamic area.

Associate Member Tankard asked about the sand bar and erosion and their plans for dredging the site. Mr. Eason said that there were no other piers and dredging in the area. He said the protestants said the dredging impacted the shoaling and they felt that what was being done would reduce the impact of the shoaling.

Commissioner Bowman asked about the Corps' dredging schedule for this area. Robert Simons, agent, was sworn in and his comments are a part of the verbatim record. Mr. Simons stated that they did it every 2 to 3 years, as needed.

Mr. Eason stated they hoped the Commission would approve the project, as submitted.

When Commissioner Bowman asked for discussion or action by the Board, Associate Member Holland said that the dock had been reduced, the boathouse and gazebo were eliminated and the applicant had been cooperative. He said the north end shoals would not allow him the use of the slip, therefore, he moved to approve the project, as proposed. Associate Member Schick seconded the motion. Associate Member Robins said that staff had commented that this was a dynamic area and there was shoaling; if there was no dredging what other recourse was there. Mr. Worrell explained that staff was concerned about future plans for maintenance dredging, as this was a dynamic area. He asked if the 6-inch over dredge tolerance was a part of the motion. Commissioner Bowman responded yes. He further said that there were short term effects of the dredging project and he knew about the concerns in regards to the boat slip as he had experience himself. He stated that he appreciated staff's being conservative in their recommendation. Associate Member Robins stated that the applicant had made a number of concessions and his mitigation with the protestants' concerns was appreciated. He stated also that he supported the motion. The motion carried, 9-0.

Royalty Fees (dredging 708 cu. yds. @ \$0.60/cu yd.....	\$ 424.80
Permit Fee.....	\$ 100.00
Total Fees.....	\$ 524.80

- 7. **HUNTON CREEK IMPROVEMENT ASSOCIATION, #06-0322**, requests authorization to modify their existing permit to allow the sandy material hydraulically dredged from the Hunton Creek entrance channel project to be placed in Geotubes[®] along the upper portion of the beach and dune located on the northwest side of the channel. The project requires both a Coastal Primary Sand Dune/Beach permit and a subaqueous permit modification.

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

Mr. Neikirk explained that the project site is located along the entrance channel to Hunton Creek, a tributary of the Rappahannock River in the Deltaville area of Middlesex County. The Hunton Creek Improvement Association had a valid permit to mechanically maintenance dredge the channel to a depth of minus four (-4') feet at mean low water and to place the sandy dredged material along the beach areas on both sides of the channel. The expiration date of that permit is currently April 30, 2012.

Mr. Neikirk said that the Association was seeking a modification to the permit that would allow the dredging to be conducted with a small hydraulic suction dredge and to allow the placement of a 50-foot long by 30-foot wide Geotube bag filled with a portion of the sandy dredged material to be placed along the upper portion of the beach and dune located on the northwest side of the channel on property owned by Mr. Todd Gehr. The bag would be covered with additional sandy dredged material and planted with appropriate dune vegetation in an attempt to restore a dune feature adjacent to the upstream channel jetty.

Mr. Neikirk stated that the placement of the Geotube bag would impact approximately 1,500 square feet of jurisdictional beach. Middlesex County had not yet adopted the beaches and dunes ordinance which had been made available to them by virtue of recent Code changes that were effective on July 1, 2008. As a result, the Commission was charged with acting as the local Dunes and Beaches Board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk also stated that the modification to allow all or a portion of the previously authorized dredging to be conducted with a small hydraulic suction dredge required a modification to their existing subaqueous permit pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk explained that the Association hoped that by restoring the dune feature adjacent to the channel jetty it would stop or slow the movement of sand between the existing dune and the jetty into the channel. A large spit of sand had developed on the upstream (south) end of the dredged channel. It was this spit that was proposed to be maintenance dredged and used to fill the Geotube® and restore the dune. The Geotube® bag should hold approximately 100 cubic yards of the sandy dredged material. The bag was proposed to be trenched into the beach with additional sand placed along both sides of the bag. The proposal called for planting the creek side of the bag with *Spartina patens*. While reviewing the application staff suggested to the agent, Ms. Michelle Meredith, that they should consider covering the entire bag with additional dredged sand and plant both sides and the top of the bag with *Spartina patens* or a mixture of other dune vegetation. Ms. Meredith indicated that they were receptive to that suggestion.

Mr. Neikirk said that no comments were received in response to the public notice and neither adjoining property owner indicated that they had any objection to the modification.

Mr. Neikirk noted that VIMS had provided comments on the modification request in a letter dated September 14, 2009. They noted that the area of proposed impact would be 750 square feet of jurisdictional beach. They stated their preference would be that the sand be placed directly on the beach, as previously permitted, but added that they had no strong environmental objections to the requested modification in this case and believed this approach was preferable to extending the timber jetty return for the purpose of trapping sand and preventing sand migration into the channel. They agreed that the entire bag should be covered with sand and planted with *Spartina patens*. They also recommended that the bag should be removed from the beach if it broke apart or otherwise failed. No other state agencies had commented on the proposed modification.

Mr. Neikirk said that staff believed the utilization of the Geotube as a core structure to restore the dune was appropriate at this location and should help to minimize the movement of sand from the beach into the channel, thereby reducing the frequency of maintenance dredging. Staff believed that covering the entire bag with sand and planting the entire structure with appropriate dune vegetation would further help to stabilize the feature while providing some habitat functions. In addition, covering the bag should prolong its life by minimizing ultraviolet exposure and deterioration. Should the bag fail or deteriorate, its removal would be required under the standard permit conditions.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1402(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that the entire Geotube be covered with sand and planted with appropriate dune vegetation within six (6) months of the placement of the structure.

Commissioner Bowman asked for questions of staff.

In response to Associate Member McConaugha's question, Mr. Neikirk explained the recent breach had been caused by storms and resulted in a lot of sand being put into the canal. He stated a lot of maintenance dredging was done in the canal.

Associate Member Fox asked about the geotube size. Mr. Neikirk stated that it was 1-1/2 feet above with 6 inches to 12 inches of sand on top of that. He said it was close to the existing dune system.

Associate Member Robins asked if there would be an opportunity to see the effects. Mr. Neikirk responded yes, that the dune features and small dredge area will all be sand, but other areas will clog up.

Associate Member Tankard asked about the long-term washover and if grass planting will be needed to maintain it. Mr. Neikirk stated that the placement of sand, fencing or replanting the grasses falls under the dunes ordinance.

Associate Member Holland stated it was a great idea to put the sand and grass over the tubes as he had seen the problems in Texas from people cutting the tubes; and, covering was a good idea.

Commissioner Bowman asked for a motion from the Board.

Associate Member Holland moved to approve the project. Associate Member Tankard seconded the motion. The motion carried, 9-0.

No applicable fees, Permit Modification/Dunes-Beach Permit

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8. **JACK T. STILLMAN, #02-1978**, requests authorization to modify his existing permit to allow his existing enclosed floating boathouse to be relocated from its currently authorized location to a private pier on his adjacent lot situated along Woodas Creek in Mathews County. The project is protested by a nearby property owner.

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

Mr. Neikirk explained that the project site is located along Woodas Creek, a tributary of the East River in Mathews County.

Mr. Neikirk further explained that on May 27, 2003, the Commission considered Mr. Stillman's original application to construct a 20-foot by 40-foot enclosed floating boathouse adjacent to his existing pier at his property situated along Woodas Creek at 2564 Glebe Road in Mathews County. The project was protested by Mr. and Mrs. Dutton, the owners of a parcel located across the creek from Mr. Stillman. After careful deliberation, the Commission voted 5-4 to approve the original project with several special conditions. One of the conditions specified that the structure was only authorized at the specified location adjacent to the Permittee's pier. A second special condition stated that the structure shall be removed if the present boat no longer existed. A third condition stated that the sale or transfer of the boathouse to another owner or relocation of the boathouse would void the permit.

Mr. Neikirk said that the special conditions were recommended in the staff evaluation due to the mobile nature of the floating boathouse. Staff was concerned that the floating boathouse could easily be moved from one location to another. Staff was also concerned

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that the floating boathouse could easily be sold to another party and redeployed to another location. Although staff felt that the enclosed boathouse was appropriate at the requested location for the specific purpose of protecting Mr. Stillman's wooden vessel, staff was concerned that the structure may not be appropriate at a different location or for a different use.

Mr. Neikirk stated that Mr. Stillman owned a lot with a smaller house and an existing pier on the lot adjacent to the permitted location of the boathouse. He was currently in the process of selling the property where the boathouse was presently located and he had requested authorization to modify his permit to allow the boathouse to be moved approximately 220 feet and secured to his pier on the adjacent lot. Mr. Stillman was aware he could not sell the boathouse with the property and that he still owned the wooden boat for which the boathouse was initially approved. He also explained that he lived part time in the smaller home and relocating the boat and boathouse would allow him to supervise repairs to his boat without having to travel to the adjacent lot. Mr. Stillman must use supplemental oxygen for health reasons and it was difficult for him to get to the other pier where the boathouse was currently permitted. Mr. Stillman was also aware that he could not sell the boathouse to another party without obtaining a permit modification and staff had informed him that the added protection needed for his wooden vessel was a primary factor in the Commission's decision to allow the enclosed boathouse. He was concerned that if he sold the house and this requested modification was not allowed, that he would have no alternative but to dismantle the boathouse.

Mr. Neikirk explained that Mr. and Mrs. Dutton objected to the original application and they objected to the proposed modifications for the same reasons as they did to the original proposal. They noted that they had an enclosed boathouse at their property, but they explained that their boathouse was constructed by a previous owner in the 1960s and most of the current residents along Woodas Creek bought their properties knowing that the boathouse existed. The Duttons said that one reason they purchased their property was the existence of the large enclosed boathouse since they believed that was the only way to obtain an enclosed boathouse under the current regulatory policies. The Duttons stated that Mr. Stillman's boathouse adversely affected the view of the creek from their property. They also noted in their recent letter that a recent real estate advertisement listing the Stillman property stated that the floating boathouse could be purchased separately. They believed this demonstrated a disregard of the VMRC permit. Mr. Dutton also called the Habitat office recently to notify them that Mr. Stillman had moved the boathouse to his adjacent property without authorization.

Mr. Neikirk stated that when staff contacted Mr. Stillman after hearing that he had moved the boathouse to his adjacent pier without prior authorization from the Commission, he apologized and said he had moved it because he had a potential buyer for the house and he knew it could not be sold with the house. Staff told him it needed to be returned to the permitted location and he had it moved back within a few days. Staff conducted a site visit on September 8th and confirmed that the boathouse was at the authorized location.

Mr. Neikirk noted that no other objections had been received in response to the public notice or notice sent to nearby property owners along the creek concerning the proposed modification.

Mr. Neikirk also noted that the project would not encroach on any public or privately leased oyster planting ground and no state agencies had commented on the proposed modification.

Mr. Neikirk said that although staff typically recommended that private boathouses be constructed with an open-sided design, when staff reviewed the original application several years ago they felt the enclosed boathouse was acceptable due to the need for some added protection for wooden vessels. Staff also felt that the construction of the boathouse on floats, that rise and fall with the tide, served to minimize the height requirement and somewhat mitigate the visual obstruction. The proposed new site was very close to the currently authorized location and Mr. Stillman still planned to use the boathouse to protect his wooden vessel. Therefore, staff believed that all of the factors that led to the staff's previous recommendation were essentially unchanged.

Mr. Neikirk stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the modification, as proposed. Staff recommended further that all other existing permit conditions remain in effect.

Commissioner Bowman asked for questions of staff. He asked staff to clarify the location of the Stillman property and residence as regards to the applicant's request to move the structure further away from his residence. Mr. Neikirk depicted on a staff slide the properties and site where the pier would be relocated.

Commissioner Bowman asked for comments from the applicant.

Gary Bunch, Marine Contractor for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bunch explained there was historical value of the boat because it had been built in the 60's by Edward Diggs. He said they needed to move the boathouse because of the applicant's health.

Commissioner Bowman asked for anyone in support or opposed of the project to make comments at this time.

John Dutton, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Dutton stated he had worked with Mr. Neikirk on other projects and he appreciated his work. He provided some handouts. He stated he was speaking for himself and his wife. He said that Martha Cummings was here with them.

Martha Cummings, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Cummings explained that she was the next door neighbor and she supported the Dutton's in their protest. She explained also that the new location would impact her view even more. She requested a staff slide in order to depict the location of her property and the project. She said she was aware of the applicant's health problems, but that he had a golf cart to go where he wanted to go.

Mr. Dutton stated that they objected to the boathouse in any location as it would impact their investment property. He said that he had respected and honored the earlier decision made at that time. He stated they hoped this would not be allowed permanently. He reminded the Commission of the applicant's disregard of the Commission's permit conditions #5 and #6. He said that the boathouse had been offered for sale separately and he wanted to install new pilings at the new location for the boathouse. He said the new location impacted the Cummings. He stated the new owners would want to keep it because it was already there and they would be paying good money. He said they requested that the proposed modification be denied. He said the antique boat can be stored at a marina, but if it were approved the Commission should enforce the permit conditions.

Commissioner Bowman asked for questions, there were none. He said the matter was before the Commission for discussion or action.

Associate Member Holland moved to adopt the staff recommendation. Associate Member Schick seconded the motion and recommended that the existing requirements of the previous permit be included. Associate Member Robins stated that the staff recommended that the existing permit stay in effect. Associate Member Fox asked staff about the current permit and what would happen in the case of death. Mr. Neikirk said that the permit conditions for the location and existence of boat must stay with the boathouse, he was not aware of the applicant's relatives. Associate Member Schick asked if he could sell the boat, boathouse and property. Mr. Neikirk stated he could sell it all, but the permit could not be transferred. A new permit would be required. Associate Member Fox stated that selling the boathouse separately was a condition of the permit and he would have to come to the Commission. Mr. Neikirk stated he had to come to us as he knows he cannot sell it with the property. Commissioner Bowman stated that the Dutton's did not like the structure and it would save time to weigh everything involved. He said he was concerned with the impact of the new location on Ms. Cummings. He said there is an existing permit and he said it should stay in the same location. Associate Member Tankard explained the Commission on May 27, 2003 considered this project and put specific conditions and he felt the stipulations being changed now he had misgivings about moving the boathouse. Associate Member Laine stated he felt the same as Mr. Tankard, that the applicant violated the existing permit and did not act in good faith, thereby impacting the neighbor. Associate Member Robins said the question was about the need for the covered boathouse and the modification

would just transfer it to another location. He stated he agreed with the staff recommendation and motion. Associate Member Fox stated that he agreed with Commissioner Bowman that this was a new view from the Cummings location as they could see the side of boathouse, which was more objectionable. He said if it were to be moved further towards the shore it would be hidden by the trees. Associate Member Schick asked for the slide of drawing plans. Mr. Neikirk said the slide showed the inboard side of the finger pier which was 90 feet from where it was now. Associate Member Holland said that the applicant came to the Commission to build the open-sided boathouse and it was built on as a floating pier, which made it not as high. He asked what would eventually happen to the boathouse. Commissioner Bowman answered that it would have to be disposed of or destroyed. Associate Member Holland stated that he should be granted permission to move it and he agreed with the original motion. The motion carried, 5-4. Associate Members Fox, Laine, and Tankard all voted no. The Chair voted no.

No application fees – Permit Modification

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9. **TED HEMMERT, #09-1155**, requests authorization to install 85 linear feet of Class II riprap revetment at his property situated at the confluence of Chisman Creek, the Poquoson River and the Chesapeake Bay in York County. A beaches and dunes permit is required.

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

Mr. Owen explained that the project is located at 130 York Point Road along the southwestern tip of York Point in the Seaford area of York County. York Point is located approximately 3.5 miles south of the York River at the confluence of Chisman Creek, the Poquoson River and the Chesapeake Bay.

Mr. Owen said that the applicant's property and the entire York Point shoreline had undergone significant changes in recent years in response to Hurricane Isabel, several northeasters and a 2009 spur and breakwater project permitted and completed by the adjacent property owner to the east.

Mr. Owen stated that the applicant was seeking authorization to construct 85 linear feet of Class II riprap revetment to stabilize his eroding shoreline. This portion of his shoreline was situated on the southwestern-most tip of York Point and had eroded approximately 15 feet landward since the fall of 2008.

Mr. Owen explained that the riprap, as proposed, would impact approximately 510 square feet of jurisdictional sandy beach habitat. The Commission was acting as the local

Beaches and Dunes Board for the proposed riprap since York County had not yet adopted the model ordinance contained within Virginia's Coastal Primary Sand Dune Protection Act. As such, Commission authorization was required for this portion of the project pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen noted that the Virginia Institute of Marine Science, in their Shoreline Permit Application Report dated September 10, 2009, advised that riprap was an appropriate shoreline treatment for this site. They concluded, however, that it might be more appropriate to align the toe of the structure landward of the jurisdictional sandy beach. No other State agencies had commented on the project.

Mr. Owen stated that no protest had been received for this project to date.

Mr. Owen said that, as proposed, the applicant's project would tie into a revetment recently completed by the adjacent property owner to the east and would terminate 85 feet westward with a riprap rubble feature. The shoreline was currently experiencing moderate to severe erosion rates. Adjacent properties had been similarly hardened and VIMS supported the proposed shoreline treatment.

Mr. Owen explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10) (B) of the Code of Virginia, staff recommended approval of the project, as submitted.

Ted Hemmert, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Hemmert said that his shoreline had eroded 15 to 20 feet since February and March. He said that since he had applied he had lost more of his shoreline.

Mr. Owen explained that after he advertised for this hearing two weeks ago, it looked like another wash had occurred. He said he suggested that the applicant wait on the pier because the erosion had moved more.

Commissioner Bowman asked if a VIMS representative wished to comment. Mr. Varnell responded that he could not comment as it was not fair to do so.

Commissioner Bowman stated that the Commission could act on what was here and keep with the spirit of the law, as it was a slippery slope considering what was here now. He suggested doing a conditional permit. Bob Grabb, Chief, Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb suggested acting on it now and staff should have VIMS comments later. Commissioner Bowman stated they would do what they could to help.

Commissioner Bowman asked for anyone in opposition to speak. There were none.

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Associate Member Schick asked if he had consulted with a Coastal Engineer. Mr. Hemmert said his contractor did and the State and local government had visited the site a number of times. He said now there was just about no beach and the tree was just about to go. Associate Member Schick stated that a Coastal Engineer could help and any hardening done to the shore would be impacted by a storm. He said he knew this from experience. He said a Coastal Engineer could help for the future. Mr. Hemmert stated that the construction of a seawall had changed the currents and caused the problems. He said that unless the Board approved it, he did not know what would happen.

Associate Member Holland moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0.

Associate Member Fox stated that now that this was approved could Mr. Hemmert ask for a modification. Mr. Grabb explained that it would have to be advertised for the 21-day comment period and then sent out a 10-day notice of the hearing. He said it would expedite it all if it were to be tabled and no advertisement would be required because the Commission would be considering the modifications and comments from the neighbors and VIMS. He said it could be heard in October. He said this would be the only way to do it.

Mr. Hemmert said if he waited he could not do anything and the work would be delayed for two months.

No applicable fees – Dune-Beach Permit

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- 10. **MARK CROSSLAND, #09-0548**, requests after-the-fact authorization to retain a 448 square foot flat-roofed boathouse, an 18-foot by 26-foot L-head and a 41-foot by 15-foot deck (1,085 square feet of deck) adjacent to his property at 18336 Possum Point Road, situated along Quantico Creek in Prince William County

Continued until the November 2009 Commission meeting – Request by Applicant.

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- 11. **BILL BARNES, #09-0033**, requests authorization to add an additional 1,316 square feet of marginal wharf decking to his existing private-use pier, and to construct a dual slip open-sided boathouse roof measuring 26.5 feet by 26.5 feet at his property situated along the James River in Chesterfield County. The project is protested by both adjoining property owners.

Pulled from the agenda – Protest Resolved - To be handled administratively.

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12. **ENFORCEMENT ACTION:** Commission review of information indicating a possible violation of Chapter 12 of Title 28.2 of the Code of Virginia, specifically unauthorized construction of rip rap groins and the removal of aquatic vegetation by Mr. Brad Martin at or near properties situated along Potomac Creek at 37 and 51 Louie Lane in Stafford County. Continued from the August 25, 2009, Commission meeting.

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

Mr. Bacon explained that the unauthorized work is located on and adjacent to three residential lots situated along a cove of Potomac Creek less than a half mile from the Creeks confluence with the Potomac River. The shoreline along this area was best characterized as a low energy environment with yellow pond lily bordering most of the shoreline. The five rip rap groins that had been constructed were approximately 15 feet in length and approximately four feet in width. Approximately 10,000 square feet of vegetation was removed from the intertidal and subaqueous areas.

Mr. Bacon said that on July 21, 2009, Commission staff received an e-mail with photos and a phone call from Stafford County staff that Mr. Martin had been working at 37, 51 and 55 Louie Lane without permits. Apparently, the work took place over the previous weekend, on July 18 and 19.

Mr. Bacon stated that after being informed of the alleged violations, staff set up a meeting with the owners of 37, 51, and 55 Louie Lane. Stafford County Wetlands staff, along with Commission staff conducted an on-site inspection on July 23, 2009. Mr. Martin was not present during the meeting. As a result of our meeting with the property owners, it was determined that Mr. Martin and his crew had installed the riprap groins and removed aquatic vegetation (yellow pond lily) from the shoreline and the waterway adjacent to the properties. Although photos from previous files indicated there may have been several small stone groin features along the shoreline, much larger stone was added to the groins and their footprint had been increased.

Mr. Bacon explained that during the meeting, the property owners indicated that they would submit after-the-fact applications for the work that was performed. As such, the riprap groins and removal of wetland vegetation would be considered by the Stafford County Wetlands Board at a future date. The applications would also be subjected to VMRC's standard public interest review for those portions involving State-owned submerged land.

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Mr. Bacon said that during the meeting, Commission staff and Stafford County staff were also informed by the land owners that Mr. Martin had told them that it was better to complete the work and then apply for the after-the-fact permit. Neither the groins nor the removal of any aquatic vegetation were authorized by the local or State governments.

Mr. Bacon stated that because of Mr. Martin's involvement in previous violations and due to the nature of this violation, staff sent Mr. Brad Martin a letter indicating that his role in this matter would be placed before the Commission for consideration at the meeting on August 25, 2009. This was not the first time that Mr. Martin had been requested to appear before the Commission. At the meeting on March 24, 2009, the Commission considered Mr. Martin's role in a violation involving the installation and backfilling of a vinyl bulkhead without the proper permits. At that meeting staff also reported that Mr. Martin had conducted work without proper permits at 15 and 19 Sunrise View Lane in Stafford County on two separate occasions. At the March meeting, Mr. Martin was clearly and unambiguously warned not to conduct any further work along tidal shorelines of the Commonwealth or on State-owned submerged land without the required permits. At that time, the Commission accepted a \$600 civil charge from Mr. Martin, in-lieu of pursuing any further enforcement action.

Mr. Bacon said that staff believed that the installation of the rip rap groins along with the removal of aquatic vegetation was a clear violation of Chapter 12 of Title 28.2 of the Code of Virginia. The Commission had previously warned Mr. Martin that any future incidents would result in enforcement action. In light of the current information, staff had no recourse but to recommend that the Commission find Mr. Martin in violation of §28.2-1203 of the Code of Virginia and that the matter be referred to both the Commonwealth's Attorney and Attorney General, respectively, for the appropriate criminal and civil enforcement action, and of the pursuit of civil penalties. Also, staff recommended the Commission file a formal complaint with the Department of Professional and Occupational Regulations (DPOR) to the Better Business Bureau (BBB) extent that Mr. Martin has a contractors or business license, for investigation and further enforcement action.

Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel, was present and his comments are a part of the verbatim record. Mr. Josephson asked if the location of the mean low water line was known. Mr. Bacon stated that the applicant was asked to apply so that it could be determined. Mr. Josephson asked what was the reason for establishing what was the State-owned bottom. Mr. Bacon answered that then the State's and Wetlands Board's area of jurisdiction would be known. Mr. Josephson asked if staff was certain that the area extended from his property meant that the groins were in violation. Mr. Bacon stated there was no basis, only assumptions of jurisdiction over the ground.

Bob Grabb, Chief, Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb explained that the General Assembly had said that the SAV

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in the area must be considered. He said that VIMS had projects where they removed seed and plant seed for harvest in order to save the SAV. He said removal required a permit and staff was taking the position that the removal of the SAV over State-owned bottom was without a permit, and therefore, a violation.

Commissioner Bowman asked staff how they delineated the mean low water. Mr. Bacon explained that staff needed to go out to the end of the groin at low tide and do a survey with a benchmark of 1 to 1-1/2 feet at a higher tide than is normal. Commissioner Bowman said it would be easier to just seek an after-the-fact approval, but would need the delineation of whether it was in the VMRC’s jurisdiction.

Associate Member Schick stated that Mr. Martin claimed he did not own the equipment involved and pictured, nor was it his crew installing the jetty. He said this needed to be determined and he was told that the owner would attest to him not doing the work and more than just the verbal word of the owner was needed. Mr. Bacon explained that in another case involving Mr. Martin, he was told by others that Mr. Martin had done the work. He said that when they were asked again a week later, they told him that Mr. Martin did not do it. He said when he asked them who did the work they stated they did not know.

Commissioner Bowman stated that there was a need to obtain written statements in order to take it to Court and confront them with the lie. He said that there is the burden of proof with a certainty. He said also if DPOR are contacted to request action be taken it would affect his livelihood. He said the MLW needed to be delineated so jurisdiction can be established.

Associate Member Holland asked if the matter should be tabled. Commissioner Bowman responded yes, as there was concern with other issues.

Associate Member Holland moved to table the matter. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.

Associate Member Fox said he had a question about an unrelated structure he noticed in the picture and asked if it were permitted. Mr. Bacon explained that he had been asked if he could just do some redecking and he told Mr. Martin that it was okay. Associate Member Schick asked that staff find out who owns the boats.

No applicable fees at this time – Tabled.

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- 13. VIRGINIA PORT AUTHORITY CONVEYANCE.** Commission adoption of Resolution and approval of Deed of Easement conveying a permanent easement and right-of-way to use 462.74 acres more or less, of State-owned subaqueous

lands lying in the Cities of Norfolk and Portsmouth, to the Virginia Port Authority, its successors and assigns, for the purpose of constructing the eastward expansion of Craney Island in accordance with Chapter 734, Acts of Assembly 2008.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, gave the presentation. Mr. Josephson explained that there were some minor problems with the documents.

Associate Member Fox asked if the matter should be deferred. Mr. Josephson responded no, that it needed to be on the agenda to allow the project to start.

Mr. Josephson explained the Deed was prepared because of a special Act of the General Assembly to remove the area from Baylor. He said an attorney had drafted it and prepared the map. He discussed all the corrections to be made, which are a part of the record. He said he did recommend going forward with the Deed and Resolution to be approved and adopted. The current documents just needed to be corrected, as he had indicated.

Associate Member Holland moved to adopt the resolution and Deed. Associate Member Robins seconded the motion. The motion carried, 9-0.

The following are the final, executed versions of the approved Resolution and Deed of Easement:

RESOLUTION OF THE VIRGINIA MARINE RESOURCES COMMISSION

Deed of Easement for Craney Island Eastward Expansion

Elizabeth River, Hampton Roads Harbor, Virginia

WHEREAS, Chapter 734 of the 2008 Virginia Acts of Assembly authorizes the Marine Resources Commission (“MRC”) to grant and convey unto the Virginia Port Authority (“VPA”), its successors and assigns, upon such terms and conditions as the MRC, with the approval of the Governor and the Attorney General, shall deem proper, permanent easements and rights-of-way and a temporary right-of-way of a reasonable width as needed for the eastward expansion of Craney Island for purposes of the construction of a new marine cargo terminal, the location of said easement area being situated along the Elizabeth River adjacent to the eastern side the Craney Island Disposal Area (“Craney Island”) operated by the U. S. Army Corps of Engineers, which Easement Area and new marine terminal will be situated partly within the City of Portsmouth and partly within the City of Norfolk; and

WHEREAS, the attached Deed of Easement has been prepared to grant and convey unto the Commonwealth of Virginia, Virginia Port Authority, permanent easements and rights-of-way pursuant to Chapter 734 of the 2008 Virginia Acts of Assembly; and

WHEREAS, a portion of the submerged lands to be conveyed by this Deed of Easement for purposes of a new marine cargo terminal are within areas formerly comprising public oyster grounds or beds (commonly known as Baylor Grounds under the 1894 Baylor survey of such public oyster grounds) which public oyster grounds are subject to certain protections under Article XI, Section 3, of the Constitution of Virginia; and

WHEREAS, the General Assembly has determined that none of the property authorized to be conveyed to the VPA pursuant to Section 1 of said Chapter 734 that lies within the area of the Baylor Survey shall be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth, which determination is authorized by Article XI, Section 3, of the Constitution of Virginia; and

WHEREAS, the metes and bounds description of the permanent easement to be granted and conveyed, which conforms to the metes and bounds as described in Chapter 734 of the 2008 Virginia Acts of Assembly, are described in the attached Deed of Easement and as follows:

ALL that certain area or parcel of submerged land, lying and being partly in the City of Portsmouth and partly in the City of Norfolk, Virginia, at the mouth of the Elizabeth River in Hampton Roads Harbor, containing 462.74 acres, more or less, which parcel is more particularly described as BEGINNING at a point in the Elizabeth River generally located north and east of the northeast corner of Craney Island having a latitude/longitude of 36° 55' 36" N, 76° 21' 07" W and Virginia State Plane South Coordinates of X (E) = 12110738.48028 and Y (N) = 3504066.33386. Thence from said point of beginning running nearly parallel to the east shore of Craney Island S 09° 07' 06" E a distance of 9749.03 feet to a point having a latitude/longitude of 36° 54' 01" N, 76° 20' 50" W and Virginia State Plane South Coordinates of X (E) = 12112283.46163 and Y (N) = 3494440.50575. Thence running away from Craney Island into the Elizabeth River N 78° 47' 46" E a distance of 2244.15 feet to a point having a latitude/longitude of 36° 54' 04" N, 76° 20' 23" W and Virginia State Plane South Coordinates of X (E) = 12114484.83888 and Y (N) = 3494876.54446. Thence turning nearly parallel to the east shore of Craney Island N 11° 14' 27" W a distance of 5919.59 feet to a point having a latitude/longitude of 36° 55' 02" N, 76° 20' 36" W and Virginia State Plane South Coordinates of X (E) =

Commission Meeting

12113330.90398 and Y (N) = 3500682.57319. Thence continuing nearly parallel to the east shore of Craney Island N 10° 30' 31" W a distance of 3781.26 feet to a point having a latitude/longitude of 36° 55' 39" N, 76° 20' 43" W and Virginia State Plane South Coordinates of X (E) = 12112641.26785 and Y (N) = 3504400.4148. Thence turning to Craney Island away from the Elizabeth River S 80° 02' 31" W a distance of 1931.89 feet to the point and place of beginning, containing an area of 462.74 acres, more or less, over, under, upon and across the subaqueous lands of the Grantor situated partly in the City of Portsmouth and partly in the City of Norfolk, Virginia, said right-of-way being shown on a plat or map prepared by Craney Island Design Partners (which includes Moffatt & Nichol, Engineers), dated August 27, 2007, revised September 21, 2009, entitled "Craney Island Eastward Expansion Bottom Lands; Expanded Dredged Material Management Area; Former Public Oyster Grounds," a copy of which is attached to this Deed of Easement as a part hereof, and is designated as Exhibit C, to which reference is hereby made for a more particular description of the easements and rights-of-way hereby granted; and, BEING a part of the submerged lands owned by the Commonwealth of Virginia.

WHEREAS, a copy of Exhibit C to the said Deed of Easement, which depicts the Easement Area being conveyed, is attached to this Resolution as a part hereof; and

WHEREAS, the Commission deems the terms and conditions set forth in the attached Deed of Easement to be proper;

* * * * *

NOW, THEREFORE, BE IT RESOLVED: That the Marine Resources Commission hereby approves the attached Deed of Easement and the conveyance of the easements and rights-of-way as therein specified, and further authorizes its Chairman, the Commissioner of the Virginia Marine Resources Commission, to execute the attached Deed of Easement, following and subject to the approval and the "approval as to form" of the Deed of Easement by the Attorney General and the approval of the Deed of Easement by the Governor.

The Commonwealth of Virginia is exempt from the payment of a Grantor's tax under § 58.1-802 of the Code of Virginia by virtue of § 58.1-811(C)(4) of said Code; from state recordation taxes under § 58.1-801 of the Code of Virginia by virtue of § 58.1-811 (A)(3) of said Code; and from the payment of any Clerk's fee by virtue of § 17.1-266 of the Code of Virginia.

DEED OF EASEMENT

This DEED OF EASEMENT, dated this _____ is by and between the COMMONWEALTH OF VIRGINIA, acting by and through its Marine Resources Commission (“MRC”), Grantor; and the COMMONWEALTH OF VIRGINIA, VIRGINIA PORT AUTHORITY (“VPA”), Grantee.

WITNESSETH:

WHEREAS, the VPA is planning to construct and operate a new marine cargo terminal to be located along and contiguous with, and that will lie immediately to the east of, the outer eastern boundary of certain submerged lands comprising a portion of the eastern side of the Craney Island Disposal Area (herein “Craney Island”), operated by the U.S. Army Corps of Engineers, at the mouth of the Elizabeth River in Hampton Roads Harbor, Virginia, and which new terminal will be situated partly within the jurisdictional limits of the City of Portsmouth (said Craney Island formerly being located within Norfolk County, Virginia) and partly within the City of Norfolk; and

WHEREAS, the lands or area comprising Craney Island were conveyed, in fee simple, to the United States of America by Deed from the Commonwealth of Virginia, dated June 19, 1948, and recorded December 2, 1948, in the Clerk’s Office of the Circuit Court of Norfolk County, Virginia, in Deed Book 932, page 283, which Deed refers to an unrecorded Map, dated January 22, 1946, entitled “Submerged Lands to be Acquired from the Commonwealth of Virginia in Connection with Proposed Disposal Area,” designated File No. CL-1-1-517 on file with the District Engineer for the Department of the Army at Norfolk, Virginia; and

WHEREAS, pursuant to Chapter 734 of the 2008 Virginia Acts of Assembly, the MRC was authorized to grant and convey to the VPA, its successors and assigns, upon such terms and conditions as the MRC, with the approval of the Governor and the Attorney General, shall deem proper, permanent easements and rights-of-way and a temporary right-of-way of a reasonable width as needed for the eastward expansion of Craney Island for purposes of the construction and operation of a new marine terminal, all as set forth and described in said Chapter 734, a copy of which is attached to this Deed of Easement as a part hereof, and is designated as Exhibit A, to which reference is hereby made; and

WHEREAS, the eastward expansion of Craney Island for purposes of a new marine terminal was further authorized by Chapter 38 of the 2009 Virginia Acts of Assembly, which amended § 62.1-132.20 of the Code of Virginia, a copy of which Chapter 38 is attached to this Deed of Easement as a part hereof, and is designated as Exhibit B, to which reference is hereby made; and

WHEREAS, a portion of the submerged lands to be conveyed by this Deed of Easement for purposes of a new marine cargo terminal are within areas formerly comprising public oyster grounds or beds (commonly known as Baylor Grounds under the 1894 Baylor survey of such public oyster grounds) which public oyster grounds are subject to certain protections under Article XI, Section 3, of the Constitution of Virginia; and

WHEREAS, the General Assembly has determined that none of the property authorized to be conveyed to the VPA pursuant to Section 1 of said Chapter 734 that lies within the area of the Baylor Survey shall be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth, which determination is authorized by Article XI, Section 3, of the Constitution of Virginia; and

WHEREAS, during, and as a part of, the construction of the new marine terminal, the area of eastward expansion will serve concurrently as a disposal area for dredged materials, thereby providing additional material disposal capacity for Craney Island; and

WHEREAS, as set forth in said Chapter 734 of the 2008 Acts of Assembly (Exhibit A to this Deed of Easement), the General Assembly has determined that the eastward expansion of Craney Island for purposes of a new marine terminal is an important public project that is in the public interest.

NOW, THEREFORE, FURTHER WITNESSETH:

That for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to Chapter 734 of the 2008 Virginia Acts of Assembly, the Grantor does hereby grant and convey unto the Commonwealth of Virginia, Virginia Port Authority, its successors and assigns, for the purposes set forth in said Chapter 734, a permanent easement along, over and across the following area or parcel of submerged land (the "Easement Area"):

ALL that certain area or parcel of submerged land, lying and being partly in the City of Portsmouth and partly in the City of Norfolk Virginia, at the mouth of the Elizabeth River in Hampton Roads Harbor, containing 462.74 acres, more or less, which parcel is more particularly described as BEGINNING at a point in the Elizabeth River generally located north and east of the northeast corner of Craney Island having a latitude/longitude of 36° 55' 36" N, 76° 21' 07" W and Virginia State Plane South Coordinates of X (E) = 12110738.48028 and Y (N) = 3504066.33386. Thence from said point of beginning running nearly parallel to the east shore of Craney Island S 09° 07' 06" E a distance of 9749.03 feet to a point having a latitude/longitude of 36° 54' 01" N, 76° 20' 50" W and Virginia State Plane South Coordinates of X (E) = 12112283.46163 and Y (N) = 3494440.50575. Thence running away from Craney Island into the Elizabeth River N 78° 47' 46" E a distance of 2244.15 feet to a point having a

latitude/longitude of 36° 54' 04" N, 76° 20' 23" W and Virginia State Plane South Coordinates of X (E) = 12114484.83888 and Y (N) = 3494876.54446. Thence turning nearly parallel to the east shore of Craney Island N 11° 14' 27" W a distance of 5919.59 feet to a point having a latitude/longitude of 36° 55' 02" N, 76° 20' 36" W and Virginia State Plane South Coordinates of X (E) = 12113330.90398 and Y (N) = 3500682.57319. Thence continuing nearly parallel to the east shore of Craney Island N 10° 30' 31" W a distance of 3781.26 feet to a point having a latitude/longitude of 36° 55' 39" N, 76° 20' 43" W and Virginia State Plane South Coordinates of X (E) = 12112641.26785 and Y (N) = 3504400.4148. Thence turning to Craney Island away from the Elizabeth River S 80° 02' 31" W a distance of 1931.89 feet to the point and place of beginning, containing an area of 462.74 acres, more or less, over, under, upon and across the subaqueous lands of the Grantor situated partly in the City of Portsmouth and partly in the City of Norfolk, Virginia, said right-of-way being shown on a plat or map prepared by Craney Island Design Partners (which includes Moffatt & Nichol, Engineers), dated August 27, 2007, revised September 21, 2009, entitled "Craney Island Eastward Expansion Bottom Lands; Expanded Dredged Material Management Area; Former Public Oyster Grounds," a copy of which is attached to this Deed of Easement as a part hereof, and is designated as Exhibit C, to which reference is hereby made for a more particular description of the easements and rights-of-way hereby granted; and, BEING a part of the submerged lands owned by the Commonwealth of Virginia.

This conveyance is made subject to any and all covenants, conditions, easements, restrictions and agreements of record insofar as they may be lawfully applicable to the easements and rights-of-way hereby conveyed; and, in addition, this conveyance is made subject to any and all covenants, conditions, easements, restrictions and agreements, whether or not of record, between the United States and the Commonwealth of Virginia, and/or between any of the Commonwealth's departments, agencies, authorities, or political subdivisions, pertaining to or governing the ownership, use, operation, construction, maintenance, expansion or preservation of that certain property of the United States of America commonly known as the Craney Island Disposal Area or Craney Island, including any applicable rights and easements to use, maintain, improve and/or operate any jetty or other improvements in conjunction with the dumping, holding and/or "rehandling" of dredge materials within the area of the easements and rights-of-way hereby conveyed (i.e. within the Easement Area).

This Deed of Easement was approved by a Resolution of the Marine Resources Commission duly adopted by the Commission during its regular meeting held on the 22nd day of September, 2009, at its offices in Newport News, Virginia. An attested copy of the Resolution, authorizing execution of the Deed of Easement by MRC's Commissioner, is attached to this Deed of Easement as a part hereof, and is designated as Exhibit D, to which Resolution reference is hereby made.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, and pursuant to the authorizations described herein, the Marine Resources Commission, on behalf of the Commonwealth of Virginia, has caused this instrument to be duly executed by its Commissioner.

COMMONWEALTH OF VIRGINIA,
Marine Resources Commission

Permit Fee.....	\$ 1.00
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The Commissioner called for a lunch break at 11:50 a.m. The meeting was reconvened at approximately 12:40 p.m.

Commissioner Bowman asked if the meeting dates for the holidays needed to be changed. He suggested that November remain the same and the December 22 meeting date be changed to December 15th.

Associate Member Fox moved to approve. Associate Member Schick seconded. The motion carried, 9-0.

* * * * *

14. PUBLIC COMMENTS:

Ellis W. James

Mr. James shared his thoughts about the recent article in the Virginian Pilot about “Shark Kills Man”. He said this man was killed while swimming in the late hours when sharks are known to be feeding. He said some individuals had never gotten the message that that you have to live in harmony with nature. He said the VMRC “Fisheries News” was doing an excellent job.

Commissioner Bowman thanked him and told him that many times he himself had told people to wear a life jacket and still some do not, but he felt that could not stop telling them.

Richard W. Hall

Ed Guy, Law Enforcement Training Officer, gave the presentation. His comments are a part of the verbatim record. He explained that Mr. Hall was summonsed on September 11, 2009 for failure to cover the oysters on his boat in accordance with Regulation 4VAC 20-720-106. He stated the records show he had no previous violations.

Commissioner Bowman explained the recent restrictions were done in coordination with the Health Department to prevent the spreading of disease. He stated Mr. Hall was here to get his license reinstated. He asked if he had been cooperative.

Mr. Guy responded that he had been cooperative.

Associate Member Fox asked where this was in the Code. Officer Guy responded it was Regulation 4VAC 20-720-106.

Associate Member Robins asked if only the tarp was required. Officer Guy read from the regulation Section 106, paragraph B into the record.

Mr. Hall stated he thought he was supposed to have them in the shade or into shore by 10 a.m. Commissioner Bowman stated it was the tarp all the time and in by 10 a.m. or refrigerated by 12 noon. Officer Guy also read Section 106, paragraph C into the record.

Commissioner Bowman reiterated that Mr. Hall was requesting the reinstatement of his license.

Associate Member Holland moved to reinstate his license. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

- 15. PUBLIC HEARING:** Consideration of Emergency Regulation 4VAC20-620, "Pertaining to Summer Flounder," to allow for the possession of certain summer flounder tagged by the Virginia Institute of Marine Science.

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

Mr. O'Reilly explained that the Commission had passed an emergency regulation last month. He said these fish would have data recording tags and approximately 260 tags had been placed in summer flounder. He said they were expecting some recaptures and asked that allowance be made for undersize fish and that it not be a part of the angler's possession limit.

Mr. O'Reilly stated that staff recommended incorporating this into the regulation under Section 75 and that it be made a permanent part of the regulation.

There were no questions. No one was present to comment from the public.

Commissioner Bowman asked for action by the Commission.

Associate Member Tankard moved to adopt the research exception. Associate Member Laine seconded the motion. The motion carried, 9-0. The Chair voted yes.

* * * * *

- 16. PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-720, "Pertaining to Restrictions on Oyster harvest," to establish the 2009/2010 oyster harvest rules.

Dr. Jim Wesson, Head, Conservation and Replenishment, gave the presentation with slides. He said that staff was now doing the fall survey.

Dr. Wesson said that the Rappahannock River Areas #3 was where the buyback program would be done and #5 included the Temples Bay area. He said there would be a normal season for Area #8, which included Morattico Bar. He said in the Pocomoke-Tangier area there was a two-year rotation plan and this year Area #1 should be open. He said Table 1 was the original proposal, but the Gulf area seasons did not open in October and changes had occurred in Texas and Louisiana and Mississippi had a closure and would not open until mid-November. He said the industry needs more areas open in October to get the products to meet the demands.

Dr. Wesson explained that at the SMAC meeting a motion was made to open all area and the western shore would be open from October 1 to March 31st. He said that staff did not support this motion. He said a second motion was made where the James River and Thomas Rock Hand Scrape Areas would open October 1 for 3 months, the same length of season as originally proposed and that area 5 in the Rappahannock River would open on October 1st for one month.

Dr. Wesson also explained that the stock assessment information was not yet available. He said when they looked at the Rappahannock there was no spat set for the last 3 or 4 years. He said staff suggested that it be added to the motion that if the catch is good in Area #5 that a public hearing to extend that season be held in November and then in November to ask for a public hearing for Area #3 in December.

Associate Member Robins stated that the first motion simply scuttled the rotation strategy. Dr. Wesson responded, yes.

Associate Member Fox explained that watermen's reason for opening everything was that harvest pressure would be everywhere as the grounds needed to be worked to clean the areas by removing the silt and exposing the shell for a spat set in the summer.

Commissioner Bowman opened the public hearing.

Ken Smith, President of the State Watermen Association, was present and his comments are a part of the verbatim record. Mr. Smith stated that Mr. Fox was partially right and when all areas are opened the rotation was stopped. He said when a watermen works in an area and cannot catch the 3-inch market size oyster, the bar will close itself and with the rotation gone they can catch them the next year, and before they die. He said that this would get optimum yield and the State needs to do the same. He read from the Code, Section 28.2-203(1) which said that...Conservation and management measures shall prevent overfishing while achieving optimum yield...the optimum yield...means the amount of shellfish which will provide the greatest benefit...to commercial fishing for food production....

Mr. Smith said the motion was made to open all the areas and carried with an 8 to1 vote. The Chesapeake Bay Foundation representative was the no vote. He stated that the Code was on the side of the watermen and there was no scientific evidence and no numbers for harvest and just a 'best guess' at what will happen. He said all the watermen agree with the opening.

There were no other comments, the public hearing was closed.

Commissioner Bowman asked for discussion by the Board.

Associate Member Fox said that the entire Committee all felt that the penalty for not reporting should be made more severe, such as a \$5,000 find.

Jack Travelstead, Chief, Fisheries Management was present and his comments are a part of the verbatim record. Mr. Travelstead said that it was a Class 1 misdemeanor which has a \$2,500 fine and or 12 months in jail. He said when it was handled by the Commission there was a two year revocation of the license. Commissioner Bowman stated that was if the waterman was convicted in court. Associate Member Fox stated that one of the committee members was willing to take this to the General Assembly.

Commissioner Bowman said that there were lots of laws with a Class 3 and Class 1, but there was a disparity in sentencing from Court to Court. He said after they hear trials for murders, etc. and then hear this, they don't take it as serious. He said that there was need to enforce the law and not give up.

Associate Member Robins asked staff about the management plan and the role of the rotational strategy. He said the Blue Ribbon Oyster Panel recommended the rotational

model. He asked staff about the effectiveness. Dr. Wesson stated that the theory was to get the optimum yield. He said staff was working with the partners, since they have provided the funding and their concerns with the investment to get oysters large enough to spawn. He said it was felt that the oysters on the sanctuary might develop resistance to disease and the rotational plan was based on disease. He said there was a need to wait to develop an ecological layer and a number of spawners before they die. He said the Lower Rappahannock had been opened again after an approximate 10-year closure and the agreement was to rotate and get the most before they do die. He stated that 2 years may be better than 3. Associate Member Robins asked how staff felt about Table 2 with the amendments. Dr. Wesson said that staff was comfortable with coming back and considering an extension.

Associate Member McConaugha said that reproduction was important to achieving the critical mass that was needed. He said that rotation for 2 or 3 years was to be determined and staff needed to stick with the 3 years.

Associate Member Holland asked if there was an advantage with the 3-inch oyster staying there? Dr. Wesson stated it was interesting looking at this, but staff was still learning. He said they assumed that the bigger ones were better and larger ones provide a higher number of spawn. He said when the big oysters were saved in the hatcheries it was found that the larger ones were too sick to spawn very well. He said that for the smaller ones many more were better spawners. He said this was a question for the Rotation Strategy and there was need to keep monitoring this situation.

Associate Member Bowden stated that the Lower Rappahannock River had been closed for many years, but the large oysters were weak and where it was worked above the bridge the number of large oysters was just as high if not higher. He said that the age 4 oysters were succumbing to disease and he did not think the rotation was working and whatever you leave is what you get. He explained that on Seaside Eastern Shore there is a spatset every year, but no increase in population. He stated he agreed with Ken Smith that nothing was being saved.

Dr. Wesson explained that the 4 year old was still young. Associate Member Bowden stated that the 4 year old used to be young, but now they were old. Dr. Wesson explained that the 6, 7, and 8 year old were the best spawners.

Associate Member Fox asked if a VIMS representative would comment. There were none.

Associate Member Schick said there were two sides to the oyster and the shell question he understood. He said flat areas needed to be worked. He said opening all the areas did not hold with science and the larger ones should be harvested before they die. He said he did not see the sense in taking all and to take all the market size oysters and the 2 inch

will provide for next year. He said the Federal government had said no to the non-native oyster being introduced.

Associate Member Bowden stated that another approach was necessary. He said they should not be allowed to grind and be allowed to die from disease. He suggested that more areas be opened, but for shorter period of times so that there is no waste of the resource. He said most watermen are conservation minded and the system is not working. Dr. Wesson stated that the areas where there are oysters are opened.

Associate Member Robins stated that good ideas had been raised. He said the catch per unit effort needed to be controlled and have a different management. He stated that optimal yield was a good question and the Blue Ribbon Oyster Panel did consider that and designed the plan for optimal yield, but there were ecological goals there as well. He said there were long-term objectives, but it was difficult with the low stocks. He said it would be wrong to abandon the rotation strategy now as it was early in the process. He said in the end if it did not work, then adapt. He said the rotational strategy for mollusks worked for other species. He stated that there was no simple solution. He said he supported the Committee's recommendation.

Associate Member McConaugha said that areas #3 and #5 were a way to find answers and they can be opened again. He said this would address what has been said as a perfect experiment.

Commissioner Bowman stated the matter was before the Commission.

Associate Member Bowden said he had no problem with some of the recommendation, but the stocks are so low and were not overharvested, it was disease. He said if the Lower Rappahannock River had not been closed for so long he would agree with the rotation strategy, but there was the same number of stocks in the upper and lower river. He said it was also clear that the rocks are silting over and there was erosion and accretion. He said that highland development had contributed to the problem.

Associate Member Bowden said he agreed with Ken Smith, but cannot do that. He said they needed to look at more areas to be opened for a smaller period of time. He stated the number of watermen was decreasing. He said this area had been closed for so long, but still had not improved. He said Mr. Smith was on the right track, as there was a need for something in-between.

Associate Member Robins moved to support the staff recommendation, Table 2. Associate Member Tankard seconded the motion. Associate Member Holland said that he supported the motion and the Commission should consider all that was talked about for next year. The motion carried, 9-0.

Dr. Wesson asked for a motion for the Replenishment Programs and the request to advertise for a public hearing to consider the amendments to Regulation 610.

Associate Member Tankard moved to approve the programs. Associate Member Holland seconded the motion. The motion carried, 9-0.

Associate Member Holland move to advertise for a public hearing. Associate Member Tankard seconded the motion. The motion carried, 9-0.

* * * * *

- 17. **PUBLIC HEARING:** Consideration of amendments to Regulation 4VAC20-950, "Pertaining to Black Sea Bass," to close the recreational black sea bass fishery until the end of the year

Pulled at the request of the Staff – no action to be taken at this time.

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- 18. **REQUEST FOR PUBLIC HEARING:** Pound net leader modifications to protect sea turtles and marine mammals.

Lewis Gillingham, Head, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham said the issue of modified pound net leaders came up during the March meeting, when the Commission was reviewing a request for two pound net sites near the CBBT. He said the Commission granted these two requests, but added stipulations to the approval requiring the use of the modified leaders. The Commission requested a review of modified pound net leaders for all pound nets located east of the CBBT once the final report from the Virginia Aquarium and Marine Science Center Foundation and the results and recommendations of the Bottlenose Dolphin Take Reduction Team were available. These results are now available and staff was here today requesting the advertisement of a public hearing on this matter.

Mr. Gillingham explained that staff was recommending advertising the establishment of mandatory use of a stringer system, for any pound net or pound net like gear, including but not limited to stop nets and fyke nets. He explained that the fyke nets could look identical to a pound net leader and is only limited by the same 1,200-foot overall length as a pound net. He said the recommendation included the May 6 through July 15 time period, established for turtles. He said for the bottlenose dolphin the stranding data suggests a May through September period, however, pound nets are typically in this area into at least October. He said the Bottlenose Dolphin Take Reduction Team had

recommended to the National Marine Fishery Service, a year round requirement for the modified leader system.

Commissioner Bowman stated that according to the study conducted by the Virginia Aquarium and Marine Science Center Foundation the modified leader was just as effective in terms of the catch of marketable fish as the nets using the unmodified leaders. Associate Member Bowden stated yes, even more so. Mr. Gillingham also responded, yes.

Commissioner Bowman asked for discussion or action by the Board.

Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing and advertise for a mandatory stringer system for pound nets to include other pound net like gear, such as stop nets and fyke nets, which also were fished in Virginia waters, east of the Chesapeake Bay Bridge Tunnel. Associate Member Bowden seconded the motion. He said he had worked with the Reduction Team and now was the appropriate time to do this. The motion carried, 9-0.

* * * * *

19. REQUEST FOR PUBLIC HEARING: Gill net and spiny dogfish limited fishery access proposals.

Joe Grist, Head, Plans and Statistics, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Grist explained that this was a request for a public hearing. He stated this was a complicated issue and he would try to keep the presentation brief.

Mr. Grist said as a little background information, a control date had been established as December 31, 2005 in Regulation 4 VAC 20-1190-10, et seq. He said this presentation was in response to an industry request as they were concerned about the increased gill net activity from non-residents, which would result in over-capitalization. He said there was specific discussion of non-resident harvest of the spiny dogfish by gill nets by non-residents.

Mr. Grist explained that there are two commercial gill net licenses available, one for a gill net up to 600 feet in length, and one for a gill net greater than 600 feet but not greater than 1,200 feet in length. He explained further that the sales of larger gill licenses have been increasing among Maryland residents.

Mr. Grist said that there had been a Gill Net Sub-Committee formed to discuss and describe issues and solutions to prevent overcapitalization of the gill net and spiny

dogfish fisheries. He said there were two classes of gill net permits recommended, Class A and Class B.

Mr. Grist explained that the Class "A" Resident Gill Net Licensees shall be current Virginia Commercial Fisherman Registration License holders who are Virginia state residents and have met any one of the following three provisions:

- 1) shall have been a VMRC gill net licensee prior to December 31, 2005, OR
- 2) shall have documented on VMRC Mandatory Harvest Reports gill net harvest, as a primary reporter or as a helper with a gill net license, for at least 100 days, in any one year, from 2006 through 2008, OR
- 3) shall have documented on VMRC Mandatory Harvest Reports gill net harvest, as a primary reporter or as a helper with a current gill net license, for at least 60 days, in any 2 years, from 2006 through 2008.

Mr. Grist said that Class "A" NON-Resident Gill Net Licensees shall be current Virginia Commercial Fisherman Registration License holders who are NON-Virginia state residents and have met any one of the following three provisions:

- 1) shall have been a VMRC gill net licensee prior to December 31, 2005, OR
- 2) shall have documented on VMRC Mandatory Harvest Reports gill net harvest, as a primary reporter or as a helper with a gill net license, for at least 100 days, in any one year, from 2006 through 2008, OR
- 3) shall have documented on VMRC Mandatory Harvest Reports gill net harvest, as a primary reporter or as a helper with a current gill net license, for at least 60 days, in any 2 years, from 2006 through 2008.

Mr. Grist stated that additional provisions developed by the sub-committee included transfers of Class "A" Resident Gill Net Licensees shall be only transferable between Virginia residents. Likewise, a Class "A" Non-Resident Gill net License shall only be only transferable between non-residents. No individual may possess both a Class "A" and Class "B" gill net license concurrently. He added that helpers that are included in the reporting by others will get equal shares.

Mr. Grist said that currently there were 1,488 resident harvesters, and 41 non-resident harvesters that qualify for the Class "A" licenses, as described above.

Mr. Grist explained that the Class "B" Gill Net Licensees shall be a current Virginia Commercial Fishing Registration License holders, resident or non-resident, who did not qualify for either Class "A" gill net licenses.

Mr. Grist stated that the Gill Net sub-committee also discussed creating a spiny dogfish limited entry fishery permit for Virginia. The sub-committee was concerned for the overcapitalization of this fishery and for impacts on future Federal restrictions when these

spiny dogfish were being taken back to another State and thus counting towards their quota. The sub-committee made the following recommendations:

Mr. Grist said to qualify to participate in the spiny dogfish limited entry fishery, individuals must be current Virginia Commercial Fisherman. Registration License holders, who meet one of the following two criteria:

- 1) shall have averaged 60 days of harvest by gill net, from 2006 through 2008, and shall have documented harvesting a minimum of 1 pound of spiny dogfish on VMRC Mandatory Harvest Reports at any time from 2006 through 2008;
- 2) OR, shall have documented harvesting more than 10,000 pounds of spiny dogfish on VMRC Mandatory Harvest Reports in any one year from 2006 through 2008.

Mr. Grist stated that staff recommended advertising for an October public hearing, recommendations creating limited entry for the gill net and spiny dogfish fisheries.

Associate Member Robins asked if limited access permits had been considered by staff. Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead explained that it would be no problem, if and when the Federal government were to impose a limited entry requirement. He said that he felt that Virginia was the leader in limiting entry, such as the Black Sea Bass fishery, which had proven to be successful. He said the Federal actions affect the State, but we still need to do what we think is right.

Associate Member Fox stated his concern that if the gill net limited entry were established there were 1,400 residents who fit the Class A and if they had 10 nets each at 1,200 feet long, that would mean there would be 14,000 gill nets. Mr. Grist said that it was looked at but the number purchased was not that high. He said the number of nets purchased were 600 to 1,200 nets and there were 1,500 purchased in 2008. Associate Member Fox said that he felt that it would be excessive to allow 10. Mr. Grist stated that just some go up to 10 generally and the majority were much lower, as they do enter other fisheries, such as crabbing. He said there were 1,500 nets in one year, which was a 10th of what it was thought it would be.

Associate Member Bowden said that right now there are 2,800 individuals that can buy unlimited numbers of licenses, but the majority got the 600 to 1,200 and lot of those fell in the 3 or less category. He said that those individuals just buy it to have it. He said this was discussed a lot by FMAC and they felt that 7 or less nets was the norm and 9 to 10 nets did not occur that much.

Associate Member Schick stated that they do set all their nets in one area, but in a number of areas. Associate Member Fox stated that some have different mesh sizes. Associate Member Bowden said that they do it different on the Seaside. He said he does not work both of his boats at the same time and has some nets on one and the rest on the other.

Associate Member Robins asked if there was a legal need to limit the transfers from non-resident to another non-resident. Mr. Grist stated that the Charter Boat fishery had set the precedence of resident to resident only transfers.

Commissioner Bowman asked for action by the Commission.

Associate Member Bowden moved to advertise for the public hearing. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

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20. REQUEST FOR PUBLIC HEARING: Proposed amendments to Regulation 4VAC20-490, "Pertaining to Sharks," to restrict the processing of smooth dogfish at sea.

Lewis Gillingham, Head, Saltwater Tournament, gave the presentation. His comments are a part of the verbatim record.

Mr. Gillingham said that this was a request for an October public hearing to discuss the establishment of seasonal at-sea processing requirements for smooth dogfish. He said the goal is to come into compliance with the Coastal Shark Management Addendum I for coastal sharks.

Associate Member Robins read from the 307 (P) Magnuson Act where it said...more fins kept than carcasses was a violation. He asked if this was an interim solution until it was revisited at the Atlantic States Fishery Commission. Mr. Gillingham stated that there was difference between fining, where the remainder of the body is discarded, and processing at-sea, where all have market value. The purpose of processing at-sea was to maintain a higher quality product.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 9-0. The Chair voted yes.

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21. RIVER HERRING: Discussion of response to ASMFC declaration of a moratorium on January 1, 2012.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead said this was in response to the ASMFC

declaration of a moratorium on January 1, 2012. He said the Atlantic States Marine Fisheries Commission had approved Amendment 2 to the Interstate Fisheries Management Plan for Shad and River Herring. He further said that this amendment required all coastal States to close their River Herring fisheries on January 1, 2012, unless the State can demonstrate that its fishery is sustainable and will not diminish potential stocks for the future. He stated that proving that Virginia's herring stocks are sustainable would be difficult. He said that there was only ten years of data available and the stocks were not healthy during that time. He said that now there were only a few hundred pounds harvested, not like it was in the 50's and 60's.

Commissioner Bowman stated that if there are not enough there, the effort is not there.

Mr. Travelstead said that at the request of the Upriver Watermen's Association staff met with them. He said those present were in consensus with the following plan:

Recreational Fishery

- 1) Require a license or permit
- 2) Limit harvest to 1 5-gallon bucket
- 3) Require mandatory reporting of harvest as well as trip information.

Commercial Fishery

- 1) Require a permit.
- 2) Require mandatory reporting.

Mr. Travelstead reiterated that it would be difficult to convince the ASMFC that the State can sustain the stocks. He said that staff believed that it should be limited to a bycatch fishery only. He said that staff felt it made sense to have some catch limit. He said they needed to look at 100 to 200 pounds of fish.

Mr. Travelstead explained that the Finfish Management Advisory Committee had considered and agreed with the bycatch fishery recommendation and were recommending the 200 pound bycatch limit or 10% of the total catch.

Mr. Travelstead said that staff was looking at the dataset and wanted to let the Commission know that staff was going to the ASMFC meeting because they would have to approve it. He said staff wanted to put the public on notice and did not think it was accepted by the ASMFC, as there would likely be a moratorium. He said no action was needed unless there was something else to be done other than what was present by staff.

Associate Member Robins raised two issues, 1) the bycatch fishery being significant and 2) it was more appropriate to have a commercial minimal tolerance to keep out of trouble or from having a moratorium. He said the stakeholders had talked about a tolerance

versus the bycatch fishery. Mr. Travelstead stated there was misinformation in the data and it could not be identified, as there were no pound netters at the meeting. He said staff could pursue this, but there was limited time to do so.

Commissioner Bowman asked how many fishermen were involved? Mr. Travelstead stated there were 60 plus pound netters with and there was no data on record for the recreational fishery. He said at the meeting someone spoke about river herring purchases and he suggests 100's, maybe even 1,000's of recreational herring fishermen. He said the 5-gallon bucket would be severely limiting for the recreational fishery.

Commissioner Bowman stated that we did not want to make it difficult for the commercial fishery during the decline and there was a need to maintain creditability when VMRC goes to the ASMFC to ask about the bycatch fishery. Mr. Travelstead said staff was here with this matter to see how the Board felt about it. He said Virginia could wait and see what others do, as we have from January 2010 to 2012 to submit a plan.

Associate Member Robins suggested considering an appropriate tolerance. Commissioner Bowman asked if that was by number of fish or weight. Associate Member Robins said that the unit of measure to be used was the one to be established. He said the bycatch could produce substantial landings and VMRC needed to figure out how to minimize it. He stated that four States already had moratoriums. He suggested doing some more work on possible tolerance measures. Mr. Travelstead stated he would take this matter up with FMAC.

Associate Member Holland wondered if watermen could tell with large catches in the nets whether there were herring in it. He asked, what was the penalty? He stated that a tolerance was needed. Commissioner Bowman said that we did not want to impact the commercial fishery and why have a tolerance when you are trying to save the species.

Commissioner Bowman asked for public comments. There were none.

No action was taken.

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22. STRIPED BASS: Discussion of proposal to open the ocean commercial fishery during January.

Joe Grist, Head, Plans and Statistics, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Grist said that the Atlantic State Marine Fisheries Commission recognized four separate stocks of striped bass, the Chesapeake, Delaware, Hudson, and Albermarle-Roanoke all of which occur in the Virginia Coastal Waters. He said currently that Coastal

Striped Bass quota is 184,853 pounds and there were 33 individuals who held permanent transferable quota shares. He said there are currently 14 individuals who have both Chesapeake and Coastal quotas.

Mr. Grist explained that staff had received 60 letters of comments on this issue, 3 from the CCA and the Virginia Charter Boat Association. He said that 56 additional comment letters opposed the opening of the commercial striped bass season in January.

Mr. Grist said that the Commission adopted the current season opening for the Chesapeake and Coastal striped bass fisheries at its November 1996 meeting, for the start of the 1997 season. He explained that when the Individual Transferable Quota (ITQ) program was created for the 1998 season, other dates were considered for the start of the commercial striped bass season. These dates ranged from January 1 through February 15. He said that due to the administrative time required to prepare for the new season, a February 1st was approved as the start date.

Mr. Grist reviewed the timeline provided by staff for administrative preparations for the start of the striped bass season. He said staff's workload had not lessened since the introduction of the ITQ system and opening the season before February 1 remained an administrative burden. He said the January 11 opening, recommended by the Finfish Management Advisory Committee (FMAC), would require an extensive overhaul of the staff's timeline to insure completion of the tasks that needed to be completed for the 2010 harvest season. He said that there were specified deadlines for harvesters set in order to quantify the previous season's harvest at the end of December and in the beginning of January to assist all harvesters with their harvest reports and missing tag issues. He said after that the staff must prepare for more than 450 individuals who need to receive their packages which include permits, quota allocations, tag allocations, forms and other information for distribution. He said distribution schedules must be established to get all of this to the fisherman prior to the February 1st start of the striped bass harvest season. He said there were other locations where the distributions were done and with the budget constraints and staffing limitations, there were plans to eliminate the Gloucester distribution site for 2010. He noted that the data entry contractor had lately announced their intent to close down at the end of September. He explained that after staff reviewed and corrected the many thousands of folders, the contractor did the data entry process which would now be required to be done by staff. He explained also that with the procurement process, it would be four months before that a new data entry vendor could be hired.

Mr. Grist said there are numerous take reduction plans for marine mammals and sea turtles that limit the use of large mesh gill nets, greater than 7 inches. He said these large mesh gill nets are the primary gear used to harvest striped bass in the Coastal waters. He explained that the Bottlenose Dolphin Plan prevented the use of large mesh gill nets from June 1 until January 15. He said it was the same with sea turtles, which prevented the use of the large mesh gill nets from April 1st through January 14th. He said the Harbor

Porpoise Plan prevents the use of large mesh gill nets from February 15th through March 15th, starting at the Chesapeake Bay Bridge Tunnel extending seaward out to the three mile limit. He said the Bottlenose Dolphin Plan and the Harbor Porpoise Plan mostly impacted the coastal fishery during the months of December and February.

Associate Member Bowden said that when the season came back after the moratorium the Ocean recreational fishery was closed in January also. Rob O'Reilly, Deputy Chief, Fisheries Management was present and his comments are a part of the verbatim record. Mr. O'Reilly said from 1990 to 1994 there was a 4-day weekend, from Thursday to Sunday everywhere. Associate Member Bowden stated that if the Federal government were to manage it, there would be a commercial fishery, but hardly any recreational fishery. He said in January historically almost no recreational harvest occurred and just a little commercial harvest. He said to favor one group was not fair to the other ones. He said the comment letters seem to be mostly form letters prepared by others. He said the Charter Boats get paid, whether they catch any fish or not. He said that FMAC would have separate regulations for the Bay and Ocean. He said in the Bay there was a problem, because of the fish concentrating at the mouth of the rivers. He said along the coast and bay there had been an explosion of striped bass and there was a need to do something. He said the number of commercial fishermen was decreasing all the time. He said he felt there was a need to hold a public hearing and to be fair and equal to all. He said that the Ocean fishery at one time was over their quota by a 1,000 pounds and it had to pay it back, while the recreational fishery was 1.3 million pounds over and they did not have pay it back. He noted that the recreational fishery was under quota one year and it was given back to that fishery.

Commissioner Bowman stated that it should all be considered for next year as we had started too late. He said the same conflicts exist and it did not make sense to hold a public hearing now for what should be for next year. He said that staff can look at this for a month of so, maybe even later. He said it was not worth the time to have a public hearing when there was no solution and later could mean better solutions. Associate Member Bowden stated that 'when the train stopped, it was hard to get it rolling again' and there was a need to move forward even without a public hearing.

Associate Member Robins said that on the protected species calendar, attachment 2B, where it said that the Sea Turtle Plan closed the season during January 1st through January 15th caused a burden for North Carolina, Wachapreague, and Chincoteague and with the January 11th date, there was a conflict with sea turtles in the area above Wachapreague. Mr. Grist responded, yes. Associate Member Robins stated that whether it was January 11th or 15th, it would be a difficult, high hurdle for staff. Mr. Grist stated it would be even without the data entry contractor problem.

Associate Member Holland said he agreed with some of the comments made by Associate Member Bowden and made a motion to hold off this discussion for 6 months for the 2011 Season. He said it was not fair to staff to try to do this sooner.

Associate Member Robins seconded the motion. Associate Member Schick said that putting staff issues aside they needed to do everything to help the watermen and still not reduce the biomass of rockfish. He said it was imperative that something be worked out and he supported waiting for next year. He said that there would always be gear conflicts. Commissioner Bowman said there could be a compromise here and suggested getting staff and members of recreational and commercial fisheries together for a workgroup to address these issues, whether it be alleged or real conflicts. Associate Member Bowden stated he supported the motion, as he felt maybe it had been started too late. He said that things had changed and there was a need to move forward. He said that something could be done, but it would still not eliminate the conflict. He said in the interim, the Commission could wait and have a hearing in six months. He said if there was an opportunity to start earlier, then it should be done earlier. The motion carried, 9-0.

Mr. Travelstead stated that staff did not usually raise administrative issues, but tried to accommodate and provide what was necessary for the watermen. He said that there had not been an increase in employees in Fisheries Management since 1984 and currently two positions had been frozen. He said he appreciated the Board's understanding.

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23. RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD AND COMMERCIAL FISHING ADVISORY BOARD

Jack Travelstead, Chief Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. Travelstead stated that as there had been agency budget cuts, some of the money in the fund was now directed to support agency operations. He stated that it was therefore determined that it was not necessary to hold two meetings of the Advisory Board this year. The amount of funds currently available for project allocation in the Recreational Fishing Development Fund was \$1.7 million. He said that he had explained the budgeting problems to the members of the Advisory Board. He further explained that they had given a priority rating to the projects recommended for approval just in case the Commission could not approve all of the projects. He said that there were originally 21 proposals. He explained that for various reasons such as projects being withdrawn and having other funding made available some of the projects were excluded. He stated that of the 14 proposals that remained, the Advisory Board recommended approval of 12. He stated that projects Q and S were not recommended. He said it had been explained to RFAB that it might be good if they did not expend the total amount of funds currently available and rather, held some of the funds until next year, as there may be other projects at that time they would want to fund. He said the total amount of funding, for the projects being recommended, was \$815,487, which left approximately \$900,000 available for

project allocation for next year. He provided a handout of a list of the prioritized projects.

I) The following 12 projects were recommended for approval by the RFAB in the funding priority ranking order listed:

K) 2010 Children's Fishing Clinic (Year 13). Rob Cowling, Newport News Rotary Club and Coastal Conservation Association-Peninsula. \$6,500. **Vote 8-0. Funding priority ranking of 1.**

L) 2010 Kiwanis Club Children's Fishing Clinic (Year 9). Wesley Brown, Capital District Kiwanis Club. \$6,500. **Vote 8-0. Funding priority ranking of 1.**

D) Federal Assistance (Wallop-Breaux) Matching Funds, Federal FY 2010. Jack Travelstead, VMRC. \$235,563. **Vote 8-0. Funding priority ranking of 2.**

F) 2009 Deployment of Artificial Reef Structure. Mike Meier, VMRC. \$100,000. **Vote 8-0. Funding priority ranking of 3.**

M) 2010 Virginia Game Fish Tagging (Year 16). J. Lucy, VIMS and L. Gillingham, VMRC. \$87,800. **Vote 8-0. Funding priority ranking of 4.**

N) 2010 Improving Stock Assessment of Weakfish - Year 3. Y. Jiao, D. Orth, VPI & SU, and R. O'Reilly, VMRC. \$111,356. **Vote 8-0. Funding priority ranking of 5.**

G) 2009 Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study) - Year 3. James Kirkley, VIMS. \$154,452. **Vote 8-0. Funding priority ranking of 6.**

E) 2009 Virginia Marine Sportfish Collection (Year 3). J. Grist, J. Cimino, VMRC. \$10,000. **Vote 8-0. Funding priority ranking of 7.**

P) 2009 Virginia Fishing Line Recycling Program. A. Nelson, J. Grist, VMRC. \$3,500. Vote 8-0. Funding priority ranking of 8.

U) 2010 Blueline and Golden Tilefish Population Dynamics Along the Virginian Continental Shelf, Year 1. J. Ballenger, C. Jones, ODURF. Modified to Tilefish/Grouper Wallop-Breaux State Match. \$18,200. **Vote 8-0. Funding priority ranking of 9.**

T) 2010 Connecting Productivity in Eelgrass Beds to Recreationally Important Finfishes in Chesapeake Bay: Forage Fishes as Trophic Conduits. R. Latour, K. Sobocinski, J. van Montfrans, J. E. Duffy, VIMS. \$58,329. **Vote 7-1. Funding priority ranking of 10.**

O) Jan.-Dec. 2010, Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 9). M. Fabrizio, T. Tuckey, VIMS. \$46,574. **VOTE: 8-0 for the amount of \$23,287. Funding priority ranking of 11.**

COMMENT: Provided that the Commercial Marine Fishing Improvement Fund provides a match of \$23,287.

The following projects were not recommended for approval by the RFAB:

Q) 2009 Trophic Position and Ecological Function of Juvenile Menhaden in Chesapeake Bay. C. Jones, J. Schaffler, ODURF. \$43,967. **This project died because of a lack of a motion to approve the funding.**

S) 2010 Understanding the Impacts of Mycobacterial Disease on Striped Bass: When and Where does Mortality Occur in the Rappahannock River. J. Hoenig, W. Vogelbein, VIMS. \$50,535. **Vote 8-0.**

Commissioner Bowman stated that the members of the Recreational Advisory Board were a great group and provided a service to VMRC. He said they had made a list of the best projects to recommend to the Commission. He said he was taking this opportunity to publicly thank them.

Mr. Travelstead explained that there were two projects recommended for funding by the Commercial Fishing Advisory Board, which cost a total of \$79,187. The first being a product development study for the Cow Nose Ray at a cost of \$55,900 and the second, a study for the American Eel for \$23,287.

II) On June 5, 2009, the Commercial Fishing Advisory Board (CFAB) members completed their review of the 5 project proposals and staff recommendations. The CFAB members have provided no opposition to the staff recommendations. The Commission already approved 1 project at its June 23, 2009 meeting.

The estimate of funds available, for projects, as of July 31, 2009, from the Virginia Commercial Marine Fishing Improvement Fund (MFIF), is \$153,440.

The Commercial Fishing Advisory Board (CFAB) requests the use of Commercial Marine Fishing Improvement Funds to fund the following two projects, totaling \$79,187.

A) Product Development for Cownose Ray. Mike Hutt, VMPB. \$55,900.

E) Jan.-Dec. 2010, Estimating Relative Abundance of Young-of-Year American Eel in the Virginia Tributaries of Chesapeake Bay (Yr 9). M. Fabrizio, T. Tuckey, VIMS. \$23,287.

Commissioner Bowman said that the matter was before the Commission for action.

Associate Member Holland moved to approve the recommendations by the RFAB and CFAB Boards. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

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24. DISCUSSION: Use of by-catch reduction devices in recreational crab pots by Dr. Rom Lipcius (VIMS).

Dr. Rom Lipcius, VIMS, was present and provided his report. His report is a part of the verbatim record. He requested that he be allowed to work with staff to require the by-catch reduction devices in all recreational crab traps.

After some discussion, Associate Member Robins said there was a need for an outreach program to get this information out to the public. He said that the Blue Crab Management Advisory Committee (BCMAC) wanted to proceed with an educational strategy and wanted a complete report. He suggested Dr. Lipcius work with staff to provide a ‘Strawman’ recommendation. After a little more discussion, Dr. Lipcius stated he agreed with whatever the Board wanted to do.

No further action was taken.

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There was no further business and the meeting was adjourned at approximately 3:15 p.m. The next regular meeting will be Tuesday, October 27, 2009.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary