

MINUTES

Commission Meeting**August 28, 2007**

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. T. Holland)	
McConaugha)	
Wayne McLeskey)	Associate Members
Richard B. Robins, Jr.)	
Kyle J. Schick)	
J. Edward Tankard, III)	
Carl Josephson	Sr. Assistant Attorney General
David C. Grandis	Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Bill Bowen	Deputy Chief, Admin/Finance
Sunita Hines	Bus. Applications Specialist
Laura Ryans	Grants Manager
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Alicia Middleton	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
George Verlander	Marine Police Officer
Russell Phillips	Marine Police Officer

Commission Meeting

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

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
David O'Brien
Carl Hershner
Roger Mann
Jim Kirkley

Other present included:

Robert Swink	Dean Parker	Terry Turner
Amber Kennedy	James R. Gunn	Rebecca Frances
Bob Liveingood	Doug Stamper	Craig Palubinski
David Morgan	Kristina Cravens	Katie Nunez
R. H. Meyers	H. Spencer Murray	Mike Jewett
Ellis W. James	Robert W. Jensen	Dale Denniston
Charles Dryden	Douglas F. Jenkins, Sr.	
Roger Park	Chris Moore	Frank Kearney
Laura McKay	Tom Powers	Kelly Place
Susan Gaston		

and others

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Commissioner Bowman called the meeting to order at approximately 9:40 a.m. Associate Member Fox was absent.

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Associate Member Holland gave the invocation and Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, led the pledge of allegiance.

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management said that Item 2A, Courtland Farms – Loudoun, LLC, #06-2468 was pulled because of unresolved protests.

Commissioner Bowman asked for a motion to approve the agenda. Associate Member Robins moved to approve the agenda, as amended. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

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MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for separate motions to approve the July 24, 2007 and July 25, 2007 minutes. **Associate Member Robins moved to approve the July 24, 2007 meeting minutes, as circulated. Associate Member Holland seconded the motion. The motion carried, 6-0-2. Associate Members Tankard and McConaugha abstained, as they were both absent. The Chair voted yes. Associate Member Robins moved to approve the July 25, 2007 Special meeting minutes. Associate Member Tankard seconded the motion. The motion carried, 6-0-1-1. Associate Member McConaugha abstained, as he was absent. Associate Member McLeskey had recused himself because of the possibility others seeing his participation as a conflict of interest. The Chair voted yes.**

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

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SPECIAL INTRODUCTION:

Jane McCroskey, Chief, Administration and Finance introduced a new employee, Laura Ryans, who will hold the position of Grants Manager in the Accounting Department. Ms. Ryans worked with a non-profit organization and has experience working with grants.

She said she will hold the position of Grants Manager. She has a BS and MS, which she acquired from High Point University in North Carolina.

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

Bob Grabb, Chief, Habitat Management Division, reviewed items 2B through 2I and Item 3A for the Commission. He noted that item 2A had been pulled from the agenda. He said staff was recommending approval of the Page Two Items.

Commissioner Bowman asked if any persons attending the meeting wished to address any of these issues, either pro or con. There were none. Commissioner Bowman announced the public hearing was closed.

Commissioner Bowman asked for any discussion or a motion for Page Two Items 2B through 2I. **Associate Member Schick moved to approve these items. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

- 2A. **COURTLAND FARMS LOUDOUN, LLC, #06-2468**, requests authorization to install, by the directional drill method, 119 linear feet of 6-inch HDPE pipe encased in an 8-inch HDPE sleeve at least 10 feet beneath Little River as part of the Courtland Farms Forcemain project in Loudoun County. Recommend a royalty of \$357.00 for the encroachment under 119 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Pulled from the agenda, protest unresolved.

- 2B. **DEPARTMENT OF THE ARMY, #07-1080**, requests authorization to install a total of 305 linear feet of utility lines at separate crossing along Accotink Creek, a 109-foot by 48-foot bridge, and a 91-foot by 41-foot bridge above Accotink Creek resulting from the Base Realignment and Closure construction at the Engineer Proving Ground development at Fort Belvoir in Fairfax County.

Permit Fee.....\$100.00

- 2C. **LEESBURG UTILITIES DEPARTMENT, #07-1122**, requests authorization to replace an existing 8-inch waterline with 150 linear feet of 16-inch waterline beneath Tuscarora Creek, south of the Route 7/15 Bypass Bridge, along Business Route 15 in Leesburg in Loudoun County.

Permit Fee.....\$100.00

2D. DOMINION TERMINAL ASSOCIATES, #07-1162, requests authorization to maintenance dredge, hydraulically or mechanically, approximately 80,000 cubic yards of material to maximum depths of -52.6 feet below mean low water approximately every two years, or when maintenance is required, adjacent to property situated along the James River in Newport News.

Permit Fee.....\$100.00

2E. CHESAPEAKE DEPARTMENT OF PUBLIC WORKS, #07-1352, requests authorization to replace the substandard Willis Creek Bridge on Cedar Road with two (2) 10-foot wide by 8-foot tall by 48-foot long pre-cast concrete box culverts, countersunk six (6) inches below the natural stream bed, located just south of Sawyers Mill Crossing in Chesapeake.

Permit Fee.....\$100.00

2F. TOM LANGLEY, ET AL, #07-0704, requests authorization to mechanically dredge approximately 2,344 cubic yards of State-owned submerged bottom, 388 cubic yards of which is considered maintenance dredging (VMRC #89-1283), to achieve maximum water depths of minus five (-5) feet mean low water around private piers serving three residential properties in the North Alanton subdivision, situated along Broad Bay in Virginia Beach. Dredged spoils will be offloaded at a nearby boat ramp and transported to an approved landfill. Recommend a royalty of \$880.20 for the dredging of 1,956 cubic yards at a rate of \$0.45 per cubic yard.

Royalty Fees (dredging 1,956 cu. yds. @ \$0.45/cu. yd.)...\$880.20
Permit Fee.....\$100.00
Total Fees.....\$980.20

2G. COLONIAL BEACH, TOWN OF, #07-0147, requests authorization to expand an existing public pier by constructing two (2) 11-foot wide by 170-foot long platforms on either side of the pier, immediately landward of an existing T-head platform, each with wheelchair ramps, to serve as a "day-dock" for the temporary mooring of vessels visiting the Town's restaurants and shops, adjacent to Town property situated along the Potomac River in the Town of Colonial Beach, Westmoreland County.

Permit Fee.....\$100.00

2H. DANVILLE PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY, #05-0775, requests authorization to modify their previous permit for authorization to allow for the installation on one (1) 69 kV and two (2) 12 kV aerial electrical transmission lines over 54 linear feet of Cane Creek in the City of Danville, Pittsylvania County.

No applicable fees – Permit Modification

2I. QUEENS LAKE COMMUNITY ASSOCIATION, #07-0553, requests authorization to maintenance dredge, by hydraulic method, approximately 800 cubic yards of bottom material, to restore navigable depths to minus four feet (-4.0') at MLW, with a 6" overdredge tolerance, at their existing marina situated along Queens Creek in York County. The material will be mixed with a flocculent (*Solve 9330*) and pumped into and dewatered by two 1,000 cubic yard capacity *TenCate GT 500* Geotubes® with upland disposal. Recommend approval with our standard dredge conditions and a royalty of \$360.00 for the removal of 800 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard.

Royalty Fees (dredging 800 cu. yds. @ \$0.45/cu. yd.)...	\$360.00
Permit Fee.....	\$100.00
Totals Fees.....	\$460.00

3. CONSENT AGENDA ITEMS.

3A. JEFF HEBENSTREIT, #05-2416, requests after-the-fact authorization to retain an open-sided boathouse, constructed approximately 8 feet higher than previously permitted, on his private pier adjacent to 1833 Windy Ridge Road, situated along Broad Bay in the East Alanton subdivision in Virginia Beach. The previously issued permit (Page 2 item approved by the Commission on April 25, 2006) authorized boathouse construction to a maximum height of 20 feet above mean high water. However, the boathouse was constructed to a height of 27.8 feet above mean high water.

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

Mr. Grabb stated that staff had completed a full public interest review regarding the change, including contacting both adjoining property owners and running another newspaper advertisement. Although the adjoining property owner to the south initially protested the boathouse height as-built, she later withdrew her objection after meeting with the applicant. The applicant explained that the change was due to the fact that he

purchased a slightly larger boat after permit issuance, and the new boat's size required more vertical clearance under the boathouse. Neither the applicant nor his contractor realized that the change in the boathouse height necessitated a permit modification from the Commission. Other than the height, the length and width dimensions of the boathouse had been measured and were in compliance with the permit.

Mr. Grabb explained that had Mr. Hebenstreit applied for a modification in advance of construction it is likely that staff would have recommended approval. As a result, staff was recommending approval with triple permit fees (\$300.00) and a civil charge of \$1,200.00 based on a minimal environmental impact and a moderate degree of non-compliance. The applicant had agreed to the triple permit fee and civil charge.

Associate Member Schick asked if the contractor was being penalized. Mr. Grabb stated that it was all being lumped together.

Commissioner Bowman asked if the applicant was present and asked if he was okay with the staff comments and recommendation. The applicant indicated a positive response to the Commissioner's question. (Spoke from the back of the room.)

Associate Member Robins stated that he appreciated this new process and staff's efforts. He moved to approve the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee (triple, A-T-F).....	\$ 300.00
Civil Charge.....	\$1,200.00
Total Fees.....	\$1,500.00

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4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL

Commissioner Bowman asked for a motion to convene a closed meeting.

Associate Member Robins moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purposes of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to items:

Sandler at Indigo Bay, LLC
VMRC versus Michael Jewett

Associate Member Holland seconded the motion. The motion carried, 8-0.

Associate Member Robins moved for the following:

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

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

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

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

Associate Member Holland seconded the motion. Commissioner Bowman held a Roll Call vote:

AYES: Bowden, Bowman, Holland, McConaugha, McLeskey, Robins, Schick and Tankard. (Associate Member McLeskey recused himself from voting on the Sandler Indigo, LLC matter.)

NAYS: NONE

ABSENT DURING VOTE: Fox

ABSENT DURING ALL OR PART OF CLOSED MEETING: Fox

The motion carried, 8-0 (Sandler Indigo, LLC. 7-0-1).

Katherine Leonard, Recording Secretary

Commissioner Bowman asked for a motion for the City of Virginia Beach’s request for a stay of the effective date for the Commission’s decision for the Sandler at Indigo Bay, LLC. There was no motion made, therefore, the request was not granted.

5. **BLUNT MANAGEMENT, LLC, #06-2974**, requests authorization to expand an existing 7-slip, open-pile, commercial marina to a length of 265 feet channelward of mean low water, with 39 total slips, and to construct an 8-foot wide by 130-foot long open-pile marginal wharf, adjacent to their property situated along Monroe Bay in the Town of Colonial Beach, Westmoreland County. A nearby property owner protested the project.

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

Mr. McGinnis explained that the project was located along the eastern shoreline of Monroe Bay in the Town of Colonial Beach, Westmoreland County. As proposed, the project entailed the expansion of an existing 7-slip marina pier to a length of approximately 265 feet channelward of mean low water, with a 6-foot wide by 114-foot long main pier extension, a 6-foot by 40-foot L-head platform, three (3) 6-foot wide ancillary piers of 90, 105, and 120 feet in length, and 32 additional slips and associated finger piers and mooring piles. The applicant's proposal also included the construction of an 8-foot wide by 130-foot long open-pile marginal wharf.

Mr. McGinnis stated that in addition to the existing marina, the applicant's property included a restaurant operated under lease by a separate individual. The applicant's agent had stated that the slips would be reserved for transients and short-term use by restaurant patrons. The general area surrounding the applicant's proposed project included a mix of both residential and commercial properties including several marinas.

Mr. McGinnis said that by letters to the applicant's agent, Bayshore Design, dated January 2, 2007 and January 20, 2007, Mr. and Mrs. Robert and Janice Swink, nearby property owners, explained their objections to the proposed project. The Swinks were the owners of Nightingale's Marina and Motel, which was separated from the applicant's property by Jefferson Avenue. It appeared that the Swinks were concerned about the width of the navigable fairway separating the two marinas, and the proposed length of the new pier.

Mr. McGinnis said further that after having received revisions to the applicant's proposal, which increased the width of the fairway between the two marinas, and following the project's approval by the Westmoreland County Wetlands Board, staff sent a letter dated April 11, 2007, to the protestants to determine if they still had objections to the revised project. By letter dated April 23, 2007, Mr. Swink confirmed that they still objected to the proposed project.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated March 9, 2007, included general comments applicable to all marinas including potential adverse impacts to water quality, and marine and coastal resources. While the report did not provide any site specific comments or

recommendations it did state that marinas should be located in areas that were highly suitable to assimilate pollutants generated by a marina, and limited impacts to wetlands, submerged aquatic vegetation (SAV), and riparian forests.

Mr. McGinnis said that the Virginia Department of Health (VDH), Office of Environmental Health, in a letter dated May 14, 2007, stated that the proposed project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings, and had therefore been approved. Their Division of Shellfish Sanitation, in an inter-office memorandum dated April 16, 2007, stated that the project would affect condemned shellfish growing waters but would not cause an increase in the size of the existing closure.

Mr. McGinnis explained that the Virginia Department of Game and Inland Fisheries (DGIF), in an e-mail dated May 4, 2007, stated they did not anticipate a significant adverse impact upon threatened or endangered species under their jurisdiction. The Virginia Department of Conservation and Recreation (DCR), in a memorandum dated May 8, 2007, stated that the proposed project should not affect any State Natural Area Preserves under their jurisdiction. In addition, they stated that the proposed project must comply with the Chesapeake Bay Preservation Area Designation and Management Regulations as enforced through locally adopted ordinances. No other agencies had raised concerns or objections to the project.

Mr. McGinnis said that while staff was sympathetic to the concerns of the protestants, it did not appear that the proposed pier would impede navigation within Monroe Bay. Furthermore, as proposed, the fairway separating the applicant's and protestants' marinas exceeded the minimum width staff would generally recommend between adjacent marinas. Typically, staff recommended that the fairway between two adjacent marinas be at least 1.5 times the length of the longest slip, to allow for the safe operation of boats into and out of the marinas. In this case, both marinas were designed to accommodate boats of up to 40 feet in length, which would necessitate a minimum 60-foot wide fairway under our general guideline. As proposed, the minimum fairway width between the two marinas was approximately 97 feet; 37 feet wider than the minimum fairway staff would normally recommend.

Accordingly, Mr. McGinnis stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended that the project be approved as proposed. However, staff recommended the inclusion of a permit condition that would prohibit the mooring of vessels on the outboard side of the proposed southerly L-head platforms situated along the edge of the proposed fairway. In addition, staff recommended a royalty in the amount of \$39,938.00 be assessed for the bold outline encroachment of the marina and marginal wharf over 39,938 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot.

Commissioner asked if the applicant or their representative were present and wished to comment.

Craig Palubinski, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Palubinski explained that the applicant had a business conflict and could not be present for the hearing. He provided two letters as handouts to be made a part of the record. He stated he did not have any further comments and would answer any questions the Commission might have.

Commissioner Bowman asked if there was anyone else present, pro or con, who wished to address the Commission on this matter.

Robert Swink, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Swink explained that he was not opposed to the project and appreciated such a project coming to an area where it was needed. He said it was simply the size of the project and the structures preventing others from accessing their waterfront property. He said there must be allowances for ingress and egress.

Commissioner Bowman asked for further discussion or a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 39,938 sq. ft. @\$1.00/sq. ft.)...	\$39,938.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$40,038.00

(NOTE: Royalties are approximate and will be recalculated after receiving revised drawings reflecting the correction of a dimensional error.)

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- 6. **H. SPENCER MURRAY, #07-0792**, requests authorization to dredge, on an as-needed basis, up to 297 cubic yards of State-owned subaqueous bottom, to provide a 320-foot long by 20-foot wide entrance channel into Nassawadox Creek, with a maximum depth of minus four (-4) feet at mean low water along the Chesapeake Bay near the mouth of Nassawadox Creek in Northampton County. The sandy dredged material will be placed overboard 100 feet south of and parallel to the proposed channel.

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

Mr. Badger explained that the channel at the mouth of Nassawadox Creek had been shifting and shallow for more than 40 years. In the mid 1970's, the large sand spit that channeled the water flow at the mouth disappeared, causing the filling of the shifting channel. The controlling depth was now less than three (3) feet at mean low water.

Mr. Badger said that at the Commission's August 23, 2005 meeting the Commission authorized the County of Northampton the one-time placement of up to 75,000 cubic yards of hydraulically dredged beach quality sandy material arising from the Nassawadox Creek Federal Navigation Channel in an unconfined, 68-acre overboard site in the Chesapeake Bay, northwest of the mouth of Nassawadox Creek.

Mr. Badger stated that the Federal Channel was designed to connect the community of Bayford to deep water in the Chesapeake Bay. Mr. Murray and Associate Commissioner Holland had headed the efforts to have Nassawadox Creek dredged and were successful in having the channel designated a Federal project channel by the U.S. Army Corps of Engineers in 1999. The Federal Navigation Channel had not been dredged to date and there appeared to be no funding in the Federal budget for this project in the foreseeable future.

Mr. Badger explained that Mr. Murray had submitted a Joint Permit Application in April 2007 to hydraulically dredge, on an as-needed basis, a small channel (plug) at the mouth of Nassawadox Creek. The applicant proposed to dredge on average 1.25 feet of sandy material to achieve a maximum depth of minus four (-4) feet at mean low water. Mr. Murray would incur the cost of the proposed dredging project.

Mr. Badger said that the proposed channel was south of the Nassawadox Creek Federal Navigation Channel and would not interfere with the Federal Channel if funding was ever appropriated. The applicant proposed to place the sandy dredged material overboard, 100 feet south of and parallel to the proposed channel. In order to achieve the proposed 3" rise in bottom elevation from the dredge material, the overboard placement site would be 320 feet long by 100 feet wide.

As stated in our Subaqueous Guidelines, Mr. Badger explained that the overboard disposal of dredged material into tidal waters was usually not permitted unless the material was uncontaminated and granular (sand size). Quality dredged material should be used for beach replenishment.

Mr. Badger stated that the Virginia Institute of Marine Science (VIMS) had indicated that dredging could cause a significant disruption of the marine environment, and it often must be repeated in order to maintain water depths, especially with overboard disposal of dredge material. While the reported large-grain size of the dredge material would minimize water quality impacts from re-suspension, the proposed dredging would remove the existing bottom-dwelling organisms. They estimated that the impacts to the benthic community would be largely temporary and might recover over time. VIMS also stated

that the disposal of the dredged material in upland sites away from the shoreline was preferable to overboard disposal. They further stated that the placement of dredged material in properly sized and contained upland disposal site removed the material from the system, so it was less likely to fill in the dredged area, thus extending the time between maintenance dredging events.

Mr. Badger said that the Northampton County Wetlands Board did not require a permit for this proposal since the project was channelward of mean low water and outside their jurisdiction.

Mr. Badger also said that the U.S. Army Corps of Engineers had stated that a maintenance dredging permit would be issued in the near future. The project was not protested and no State agencies had commented on the project.

Mr. Badger said that there appeared to be a need to dredge the mouth of Nassawadox Creek, as suggested by the U.S. Army Corps of Engineers designation of Nassawadox Creek, as a Federal Navigation Channel. The applicant would not have applied to dredge the proposed channel had the Federal Channel been funded and dredged, as permitted. Even though the small channel would most likely require yearly maintenance dredging, staff believed it was appropriate, considering the public benefits to the commercial and recreational boaters of Northampton County and the Commonwealth of Virginia.

Accordingly, Mr. Badger stated that staff recommended approval of the proposed dredging with the following conditions. Staff recommended that a pre-dredging conference be required before every dredge cycle and that the applicant be required to submit a post-dredging bathymetric survey of the dredged area within 30 days of completion of the dredging so staff may assess permit compliance.

Mr. Badger said that staff also recommended a royalty in the amount of \$133.65, for the dredging of 297 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard. Staff further recommended the permit be terminated should the Federal Channel ever be dredged.

Furthermore, Mr. Badger noted that even though our Subaqueous Guidelines, Section III, *"Filling and Dredging Material Placement"* indicated that overboard disposal of uncontaminated and granular (sand size) dredge material into tidal waters was permissible and that the total volume of 297 cubic yards was well below the 7,500 cubic yards set forth in our guidelines for beach nourishment, staff could not support the proposed placement site. The proposed overboard placement site was only one hundred (100) feet away from the proposed channel. Due to the large amount of sand transport occurring at the mouth of Nassawadox Creek, staff believed the material would contribute to the filling of the proposed dredge area thus shortening the time between maintenance dredging events.

Mr. Badger said that since the Commission had already established a 68-acre overboard placement site in the Chesapeake Bay, northwest of the mouth of Nassawadox Creek for the Nassawadox Creek Federal Navigation Channel's dredge material that staff recommended that the proposed sandy, dredged material be placed at the same placement site. Staff preferred the material be used for more beneficial purposes, such as placement along an eroding shoreline instead of being dumped in an overboard site offshore.

H. S. Murray, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Murray explained that there was a County representative and a member of the Wetlands Board present at the hearing. He stated that the application was a joint application. Moving the sand will help with navigation and will not affect the Federal Navigation Channel project. He said he was actually representing 300 residents in the area, the Wetlands Board, an environmental group called Shore Keepers and the County. He said the County had set aside \$300,000 to go towards the federal maintenance project. He said they all thought it would happen, it was just a matter of when funding will be available for it from the Federal level. He said since there was an unknown time for when it would get done, they decided to go ahead with it and help themselves. He stated that the staff had done a great job and the only concern was the side casting overboard of the spoil on the subaqueous bottom. He said it was cost prohibitive to move it to the spoil site by barge approximately ½ mile away. He said they were hoping that the Board would consider this. He said the Coast Guard markings are wrong in the area, but the Coast Guard can not get into the area to correct it.

Associate Member Robins asked about the dredging methodology. Mr. Murray stated that barging the spoil would be incredibly expensive for less than 300 cubic yards of sand.

Katie Nunez, County Representative, was sworn in and her comments are a part of the verbatim record. Ms. Nunez explained that the County supported this project as presented. She explained that they had been working with the Corps for 8 or 9 years to get the channel dredged, but federal funding had been stalled for the last 2 years. She said it was not going to happen for maybe another 2 or 3 years. She said this was a cooperative and positive effort. She said they were asking for approval of the project. She provided a letter from the County, expressing their support. Commissioner Bowman asked if the tax system generated the match funds. Ms. Nunez responded yes. She explained the funds were dedicated as a match even though it was no longer collected, and was stopped last year. She said if or when the federal government does get the funds to dredge, the monies might still be needed for a match.

Matt Byrne, Deputy Chief of Engineering, Corps of Engineers, Norfolk District, was sworn in and his comments are a part of the verbatim record. Mr. Byrne explained that they supported the local efforts and supported the project to keep the channel opened. He said a study had been done on the mouth of the creek. He said they asked that the Commission approve the project as submitted. He said in 2005 there was a moratorium placed on shallow projects and funding was halted.

Bob Meyers, resident on Nassawadox Creek, was sworn in and his comments are a part of the verbatim record. Mr. Meyers explained that he was in support of the project. He said the natural channel had formed since the survey and the weather caused the movement of the sand causing a plug. He said it was good water in the area except for a small section. He said it was essential that the Board approve Mr. Murray’s request for flexibility.

Associate Member Holland explained that this small plug affected 3 creeks, Church, Nassawadox, and Warehouse Creeks. He said an area called Bayford was utilized by the local watermen and they could not get into the area to moor their boats. He said this area was a safety point for boats to take refuge from bad weather. He said to fuel here was inaccessible and there were a lot of reasons this needed to be done. He said this was ranked high on the Federal Project list and represented a good example of how different individuals and groups can worked jointly for the common good. He said the Federal government had obtained all the necessary permits and all they needed was the funding. He said it could be anytime just not now. He explained that moving the spoil to an offshore site was cost prohibitive.

Associate Member Holland moved to grant the permit for the project, as proposed. Associate Member McLeskey seconded the motion. Associate Member Robins stated he appreciated the staff’s concerns, but this would be an interim solution for this problem and he supported the motion. Commissioner Bowman stated that staff had covered all bases, but drastic times called for drastic measures. He said this was not the best solution, but the only solution. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (297 cu. yds. @ \$0.45/cu. yd.).....	\$133.65
Permit Fee.....	\$100.00
Total Fees.....	\$233.65

- 7. QUEENS CREEK LANDING, #06-0723**, requests authorization to install six (6) pilings on the east side of the T-head pier to improve an existing boat slip, construct a 4-foot by 16-foot open-pile pier to improve access to a sewage pump-out facility, and to construct a 68 square foot open-pile addition at the landward end of their existing pier situated along Queens Creek at 321 Walnut Acres Lane in Mathews County. An adjoining property owner protests the project.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Neikirk stated that the applicant had called him and said he agreed with the staff’s recommendations.

Mr. Neikirk explained that the Queens Creek Landing Marina was owned by Mr. Mike Uliasz and was located along the southern shoreline of Queens Creek in Mathews County. Mr. Uliasz acquired the marina in 2001. He had worked with the Health Department to improve the sanitary facilities, but no significant modifications appeared to have been conducted on the pier or boathouse. This was the first application staff had received from the marina since Mr. Uliasz purchased the facility. Queens Creek is approximately 725 feet wide at the project site and with mean low water depths of approximately seven (7) feet. The piers extended approximately 275 feet channelward of mean high water. A 175-foot long T-head was located at the channelward end of the pier.

Mr. Neikirk said that Mr. Uliasz was proposing to install six (6) mooring poles extending 22 feet east of the existing T-head pier, which was approximately 10 feet further east than the poles associated with an existing slip. The modification was designed to better accommodate a larger private boat or possibly a charter fishing boat. The total width of the T-head pier, including the existing and proposed mooring poles, would be approximately 200 feet. He also proposed to construct a 16-foot by 4-foot pier along an existing bulkhead to provide access to a sewage pumpout station and a 68 square foot open-pile addition to the landward side of their existing pier.

Mr. Neikirk stated that since no new slips were being proposed, the Virginia Institute of Marine Science did not anticipate any significant environmental impacts associated with this proposal. The Health Department had approved a plan for sanitary facilities and had no objection to the project. No other State agencies had commented on the proposal.

Mr. Neikirk said that the pier additions would not encroach on any public or privately leased oyster planting grounds. Queens Creek was currently condemned for the direct marketing of shellfish.

Mr. Neikirk explained that Mr. Dean Parker, the adjoining property owner on the west side of the marina, protested the project. Mr. Parker believed the existing facility was larger than originally authorized. He was also concerned that the proposed mooring poles would extend eight feet further into the creek and might constitute a hazard to navigation. He also stated that the T-head pier with the existing and proposed mooring poles was wider than the upland parcel from which the pier extended. He claimed the wide T-head forced boats entering and exiting the boathouse and more landward slips to navigate in front of the neighboring properties.

Mr. Neikirk stated that staff believed the proposed 4-foot by 16-foot pier at the pumpout station and the 68 square foot angled deck area were reasonable and would improve access to the facilities with only minimal impact on the environment and other uses of the waterway. The proposed addition of the six (6) mooring poles to increase the width of the easternmost slip should have only a minimal environmental impact, but staff believed the concern expressed by Mr. Parker regarding the relative width of the marina facilities related to the marina's water frontage could have merit. Based on the plan view drawing

provided with the application, it appeared that the proposed increased width of the slip would extend the width of the entire pier beyond that of the marina's upland parcel. Although only a Court of Chancery can apportion riparian rights, without such an apportionment, staff was reluctant to recommend approval for a project that resulted in a facility that was wider than the associated upland parcel.

Accordingly, 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 4-foot by 16-foot pier at the pump-out station and the 68 square foot angled deck area at the landward end of the main pier. Staff was unable to recommend approval for the increase in the width or length of the easternmost slip, although staff would have no objection to the replacement of the pilings or the addition of intermediate pilings, provided they extended no further channelward or to the east. If deemed necessary, staff could also support a revised plan to relocate pilings within the existing footprint of the slip area landward of the T-head to better accommodate larger boats. Finally, staff recommended the assessment of an encroachment royalty at the rate of \$1.00 per square foot for any new authorized encroachment over State-owned submerged land.

Dean Parker, next door neighbor, was sworn in and his comments are a part of the verbatim record. Mr. Parker explained some of the permit history and how this project came to be in existence. He said he had been away a lot over the years with the Merchant Marine and did not see what occurred and over the past 30 years this had grown slowly and steadily and it had been done all at once it probably would have received a lot of protests. He was asking the Commission to accept the staff's recommendation. He said approve it as it is as he was only protesting the 6 pilings and the extension in footage. He said the existing slip there had never been permitted. He said the site does need to be cleaned up and improvements made. He said the plan view drawing was very crude and did not include enough details. He suggested that the Commission require a better plan view and clarification on the number of slips and linear footage.

Commissioner Bowman explained that the Commission took these violations very seriously and will hear these issues, when they can. He said the number of slips was figured in when decisions for piers are being made.

Commissioner Bowman asked for further discussion or a motion.

Associate Member Robins moved to accept the staff recommendation and to deny the increase in the length of the easternmost slip. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Royalties Fees (encroachment 132 sq. ft. @\$1.00/sq. ft.).....	\$132.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$232.00

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8. **TERRY TURNER ET AL, #07-0616**, requests authorization to construct a 24-foot by 24-foot enclosed boathouse to replace a similar sized enclosed boathouse adjacent to their property situated along Hunton Creek, at 72 Monroe Drive, in Middlesex County.

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

Mr. Neikirk explained that the Turner's property was situated along Hunton Creek, a tributary of the Rappahannock River in the Deltaville area of Middlesex County. The old boathouse that was proposed to be replaced was located on a small cove of Hunton Creek. Development along the creek was primarily residential. The Turner's proposal was to remove a deteriorated 24-foot by 24-foot enclosed boathouse and construct a new 24-foot by 24-foot boathouse in the same location. According to the application, the boathouse would provide protected mooring for a 19-foot center console boat with a draft of 2.5 feet. The water in the vicinity of the boathouse was very shallow and portions of the cove ebb dry during extreme low tides.

Mr. Neikirk went on to explain that a new 105-foot open-pile pier was designed to provide access to the boathouse. Staff previously determined that the pier itself met the statutory authorization for private piers contained in §28.2-1203(A) (5) of the Virginia Code. Accordingly, staff did not believe a permit from VMRC was required for the pier portion of the application.

Mr. Neikirk said that the boathouse would not encroach on any public or privately leased oyster planting ground and staff did not believe the project would adversely affect navigation. No one had objected to the project in response to our public notice and the adjoining property owners indicated they had no objection to the proposal. No State agencies commented on the project.

Mr. Neikirk stated that it did not appear that the project would significantly, adversely impact either the environment or navigation.

Mr. Neikirk explained that in 1998, the General Assembly amended §28.2-1203(A) (5) of the Virginia Code to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, noncommercial pier, provided the boathouse was not objected to by the adjoining property owners and was allowed by local ordinances.

Mr. Neikirk noted that in recent years the Commission had generally been reluctant to issue permits for enclosed boathouses except in situations where the boat intended to be moored within the boathouse was constructed of wood or another material that warranted

the additional protection afforded by an enclosed boathouse. In this case, the boat to be moored within the boathouse was a center console fiberglass boat and although a deteriorated enclosed boathouse was currently located at the site, staff was unable to conclude that the construction of a new enclosed boathouse was warranted.

Mr. Neikirk explained that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff was compelled to recommend denial of the enclosed boathouse. It should be noted, however, that an open-sided boathouse measuring 700 square feet or less and designed to cover a single boat would meet the statutory exemption and a permit would not be required from VMRC.

Commissioner Bowman asked if the applicant or their representative were present.

Terry Turner, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Turner thanked the Commission and the staff for allowing him to come before the board and he requested a staff slide to assist him in his presentation. He stated the previous landowner did not keep it up and just recently passed away at the age of 96. He explained the house was built in 1962 and the boathouse in 1965-67. He said the structure had been damaged by ice from the creek freezing and he wanted to keep it in the same location. He stated he wanted to replace it even though he could just repair it. He said it was common sense to rebuild it. He said that the existing structure was not saltwater treated. He said he wanted to restore a family business and was familiar with what was needed. He said he needed to be able to use it for storage for what he now stored on the highland as it was destroying his grass. He said his neighbors had indicated that they would like to see improvements made and modern methods used. He said he wanted to rebuild it right the first time.

Amber Kennedy, Mr. Turner's wife and co-applicant, was sworn in and her comments are a part of the verbatim record. Ms. Kennedy explained that her husband was more familiar with and could explain their plans to make it more attractive. She said the neighbors would appreciate these efforts. She said the plan had been changed so as not to interfere with the neighbor's view. She said individuals across the creek in the condos would appreciate the improvements. She said they wanted to use it for storage. She said with his experience and expertise she knew her husband would do a great job by making it very sturdy and by using strong materials.

Commissioner Bowman asked for those in opposition. There were none.

Associate Member Robins asked if anything prohibited it from just being repaired. Mr. Neikirk stated that was a grey area and the Board could require it to be rebuilt exactly as it was. Associate Member Robins asked if a permit was required for it. Mr. Neikirk said it would be considered maintenance.

Associate Member Schick stated that this was certainly a grey area in this matter and he did appreciate the staff's efforts. He said since this structure could be rebuilt, he made a motion to grant the permit. Associate Member Holland seconded the motion. Associate Member Robins stated that he supported the motion, but felt that the sides were not water dependent and it was a matter of concern to him. He explained that this could be done gradually, if necessary, but he felt it was better to go ahead and approve it now. Commissioner Bowman stated that he did not support the motion. He explained that this was not the intent when the General Assembly decided that 250 sq. ft. was too little to be permitted and the individual did have the right to wharf out and moor his boat. He said water dependence was supposed to be considered and using it for storage for other items besides the boat did not make it water dependent. He said there must be justification for allowing it, not because of how it was architecturally built.

Associate Member Tankard offered a substitute motion. He said he agreed with the Commissioner and moved to deny the request. Associate Member Bowden seconded the motion. The motion failed by a 3-5 vote. Associate Members Holland, McConaugha, McLeskey, Robins, and Schick all voted no. The Chair voted yes.

Commissioner Bowman returned to the original motion made by Associate Member Schick and asked for a vote. **The original motion carried, 5-3. Associate Members Bowden and Tankard both voted no. The Chair voted no.**

Permit Fee.....\$100.00

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- 9. **ROBERT WINFIELD, #07-0693**, requests authorization to construct a 43-foot by 19-foot, open-sided boathouse adjacent to property situated along the Warwick River in Newport News.

Elizabeth Gallop, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record.

Ms. Gallop explained that the proposed project was located on the Warwick River, in the City of Newport News, across the river from Fort Eustis. Development along this section of the shoreline was residential.

Ms. Gallop stated that the applicant was seeking authorization to construct a 43-foot long by 19-foot wide open-sided boathouse to cover a single lift. The applicant also sought authorization to construct a 5-foot wide by 360-foot long private, non-commercial pier with a 16-foot by 18-foot L-head platform and a 56-foot long by 5-foot wide finger pier. With the exception of the boathouse structure, all other portions of the applicant's pier

request did not require authorization from the Marine Resources Commission, since the proposed pier qualified for the statutory authorization, provided in Section 28.2-1203 (A) (5) of the Code of Virginia.

Ms. Gallop said that Mr. Winfield's proposed boathouse did not qualify for the statutory authorization provided in Section 28.2-1203 of the Code of Virginia because the proposed boathouse roof was greater than 700 square feet, which is the threshold allowed for private, non-commercial boathouses.

Ms. Gallop explained that the applicant had stated in his application that he did not currently own a boat. Staff called the agent to inquire if the applicant had purchased a boat since the submittal of the application, and was informed that the applicant was waiting to purchase a boat in the 32-foot range subsequent to permit approval.

Ms. Gallop said that staff was concerned that the boathouse was larger than necessary and could not be justified by the information provided. The applicant stated in his application that he did not currently own a boat and gave no indication of his plans to purchase one. Without a documented boat ownership, there existed no clear necessity for a boathouse larger than the 700 square foot deemed appropriate by the General Assembly and embodied in code. In addition, staff questioned why a boathouse, measuring roughly 20 feet by 35 feet, was not deemed adequate to house a potential 32-foot boat. As a result, staff recommended denial of the request as applied for and approval of a boathouse no larger than 700 square feet in size.

Commissioner Bowman asked for the applicant or a representative of the applicant was present to address the matter.

Bob Liveingood, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Liveingood stated that they could reduce the structure to 42 feet long by 18 feet wide, which would equal 756 square feet. He said the applicant was hesitant to purchase a boat unless he could store it. He said the pilings are never set perfectly and he did need some leeway there. He said the style of roof was hip style for the boathouse and when building the structure he must allow for pilings to make the roof fit with the rest of it. He said an A-frame could be stopped whenever it was wanted, but the hip style roof is slightly longer than the gable.

Commissioner Bowman asked if anyone in opposition was present. There were none.

Associate Member Holland moved to accept the 756 sq. foot structure as requested by the applicant. Associate Member Schick seconded the motion. Associate Member Robins stated he did not have a problem with a larger open-sided boathouse, if there was a larger boat. He referenced Section 28.2-1204 of the Code, which required the permit be approved if this was reasonable use of the bottomland and this seemed to be a situation where the cart was being put before the horse. He

said there should be further evidence of boat ownership details. He said, as made he could not support the motion, but maybe the matter could be tabled until ownership of a larger boat was confirmed. The motion carried, 6-2. Associate Members Robins and Tankard both voted no. The Chair voted yes.

Permit Fee.....\$100.00

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10. MR. AND MRS. RAYMOND THOMPSON, #07-1329, request after-the-fact authorization to retain the side wall which partially encloses a previously permitted, noncommercial boathouse adjacent to their property situated along Balls Creek in Northumberland County.

Jeff Madden, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Madden stated the applicants were present.

Mr. Madden explained that the project was located along Balls Creek, a tributary to the Great Wicomico River, approximately one mile upstream of the Route 200 Bridge crossing of the Great Wicomico River at Glebe Point in Northumberland County. The applicants already had two boathouses at their property. The larger of the two was a 38-foot long by 17-foot wide, enclosed, timber boathouse oriented perpendicular to the shoreline. This boathouse was permitted in 1987. The smaller of the two, and the subject of the current after-the-fact request, was situated parallel to the shoreline at the end of the applicants' private pier. The smaller boathouse was permitted in 1988, but as an open-sided dual slip structure. Two sides of the smaller boathouse are now enclosed. The south side wall measures 20.33-foot long by 10-foot high. The west wall measures 12' and 11/12" long by ten (10)-foot high.

Mr. Madden stated that staff became aware of this violation while investigating a protested boathouse project next door. Mr. and Mrs. Thompson were objecting to the construction of an open-sided boathouse proposed by their neighbor, Mr. Steve Lowe. The Thompson's protest was later withdrawn which enabled Mr. Lowe's boathouse to be authorized by statute.

Mr. Madden said that after observing the two enclosed boathouses during the Lowe site-visit, staff then contacted the Thompson's and arranged a site-visit of their property. During a subsequent site visit, the Thompson's larger boathouse was found to be in compliance with the previously issued VMRC permit. The siding on the smaller of the two boathouses, however, was never permitted.

Mr. Madden explained that following the site-visit, a Sworn Complaint was filed and a Notice-To-Comply was served on the Thompson's by our Marine Police. The applicants

then submitted an after-the-fact application requesting Commission authorization to retain the siding which partially encloses the smaller boathouse.

Mr. Madden said that in October of 1987, Mr. Thompson received authorization (VMRC 87-1304) to construct a 38-foot long by 17-foot wide, close-sided timber boathouse aligned perpendicular to the shoreline. A year later under separate cover, Mr. Thompson received authorization from VMRC (# 88-0424) to construct a second boathouse on the end of their pier. That boathouse was designed to be a 24-foot long by 24-foot wide, dual slip, open-sided structure. After receiving the permit, the Thompson's apparently elected to build only a single cover over the pontoon boat berthed in the outboard slip and to allow a sailboat to be berthed in the inboard slip.

Mr. Madden explained that the applicants maintained that when they contemplated adding sides to their second boathouse that they contacted the Habitat office and spoke with Mr. Bert Parolari, then a member of the Habitat Management Division. According to Mrs. Thompson, Mr. Parolari told her that 'no permit' was required for the construction of the boathouse siding.

Mr. Madden said that on May 21, 2007, Commission staff was copied on an email exchanged between Mrs. Thompson and Mr. Parolari. In that e-mail, Mr. Parolari, who is still in State government with the Department of Environmental Quality, disputed Mrs. Thompson's claim. He pointed out that he had no responsibility for either issuing subaqueous permits or reviewing permits in Northumberland County at the time of the alleged phone call. He also stated that he would have been very reluctant to interject his opinion into the review of a project outside his territory and area of responsibility, which at that time was Virginia Beach.

Mr. Madden stated that no other State agency had commented on the project.

Mr. Madden said that the notarized permit document (VMRC 88-0424) endorsed with Mr. and Mrs. Thompson's signatures clearly stated that, "All activities authorized herein, shall be accomplished in accordance with plans and drawings dated March, 1988". Those project drawings clearly indicated, in three separate places, that the boathouse was to be an open-sided structure. No modification request or modified drawings were ever submitted to this agency.

Mr. Madden said that in reviewing applications for encroachments over State-owned submerged lands Commission staff was guided by the Section 28.2 -1203 of the Code of Virginia. Considering the fact that the Thompson's already had an enclosed boathouse, and the apparent lack of water dependency or justification for an additional enclosed boathouse, staff could not conclude that the sides are either necessary or appropriate.

Commission Meeting

Mr. Madden stated that as such, staff recommended denial of the after-the-fact request and further recommended that the Commission direct the Thompson's to remove the unauthorized sides within 90 days in lieu of further enforcement action.

Commissioner Bowman asked if the applicants were present.

Alice "Ann" Thompson, co-applicant, was sworn in and her comments are a part of the verbatim record. Ms. Thompson stated that she objected to the staff recommendation. She provided documentation in a notebook for the board with all the history of the pier and boathouse. She reviewed the information with the board.

Ms. Thompson explained that she contacted the Commission to find out whether they needed to amend their permit. She said she spoke with a person who identified himself as Bert Parolari, which she noted at the time of the conversation. She said when she asked, he told her they did not need to do an amendment. She said she sent a follow-up postcard to this conversation to VMRC. She said she sent a letter to the Wetlands Board also regarding VMRC not requiring an amendment to their permit. She said the staff had been gracious, but she did not realize that the staff recommendation was to deny. She said she would have retained an attorney if she had known. She said she believed that this was "grandfathered" and would appreciate approval for retaining the sides.

Commissioner Bowman stressed that the engineers do a marvelous job with 3,000 permit applications a year and with all the conversations that result. He said this was a well documented VMRC record considering it covered 20 years. He said he believed Ms. Thompson from her documentation and they have to look at the total case.

Associate Member Tankard noted that in the documentation it stated that there applying for a cover for 2 slips with a roof structure, but no walls. Commissioner Bowman stated that the applicant stated she did call and ask about this.

Associate Member Robins stated he felt the applicant had sought the proper authorization and he wanted to give the applicant the benefit of the doubt. He said the added sides were a departure from the permit and it was not a policy decision. Commissioner Bowman agreed that it was not a policy decision.

Associate Member Holland moved to approve the request to retain the sides on the boathouse. Associate Member Robins seconded the motion. The motion carried, 7-1. Associate Member Tankard voted no and the Chair voted yes. Associate Member Holland stated that the applicant had documented her case well and did not need an attorney to represent her in this matter.

Permit Fee.....\$25.00

11. COASTAL DESIGN AND CONSTRUCTION, #07-1204, requests authorization to install two (2) concrete floating pier/wave attenuators, one measuring 13-foot wide by 66-foot long and the other measuring 10-foot wide by 33-foot long adjacent to their existing private, noncommercial, open-pile pier situated along the York River at 6344 Almondsville Road in Gloucester County.

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

Mr. Neikirk explained that Coastal Design & Construction, Inc. was a marine construction company, owned by Mr. James Gunn. Among other activities, the company built and installed breakwaters and concrete floating pier/wave attenuator systems. This project was located on a residential property owned by the Company and was adjacent to Mr. Gunn's commercial property that bordered Fox Creek and the York River in the Allmondsville area of Gloucester County.

Mr. Neikirk said that the proposal called for the installation of two (2) concrete floating pier/wave attenuators near the channelward end of a recently rebuilt private pier extending approximately 150 feet channelward of mean high water. One of the wave attenuators was 13 feet wide and 66 feet long and the other was 10 feet wide and 33 feet long. The proposed floating structures were to be secured by an anchoring system consisting of four (4) 7-ton concrete anchors connected to the wave attenuators with 1½-inch chain. The concrete anchors were designed to be located approximately 50 feet from the structures and to be installed flush with the substrate.

Mr. Neikirk explained that VIMS did not anticipate any significant environmental impacts associated with the proposal. No other State agencies had commented on the project.

Mr. Neikirk said that the proposed structures would encroach on oyster planting ground leased by the applicant. No other public or privately leased grounds were involved. Staff did not believe the project would adversely affect navigation.

Mr. Neikirk stated that it did not appear that the proposed project would have a significant adverse impact on either the environment or navigation. Floating pier/wave attenuators had been deployed at various commercial mooring facilities within the Chesapeake Bay and served a dual purpose of providing stable pier access while serving to dissipate wave energy within the protected mooring facilities

Mr. Neikirk said that staff was of the opinion, however, that this proposal to deploy such structures at a private, noncommercial pier represented an excessive encroachment over State-owned submerged land. The proposed structures would encroach on 1188 square feet of State-owned submerged land, nearly three times the size of the 400 square foot maximum size of a pier-head associated with a statutorily authorized private,

noncommercial pier. Although the area was exposed to significant wave energy during storms, staff believed a boatlift would provide adequate protection for the applicant's boat with only a minimal encroachment on State-owned submerged land. Accordingly, after evaluating the merits of the project and considering all of the factors contained in Section §28.2-1205(A) of the Code of Virginia, staff was compelled to recommend denial of the application, as proposed.

James Gunn, the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Gunn explained that the design of the structure was to protect it from wave action and to be ready for the 100 year storms, when winds were about 35 miles per hour.

Associate Member Robins asked if this was a private residential site. Mr. Gunn responded that the company owned it.

Commissioner Bowman asked if anyone was present, pro or con. There were none. He asked for a motion.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Robins seconded the motion. He said he can understand the wave action problems, but in the staff recommendation it was not justified as there were better alternatives. He said it needs to be a smaller encroachment. Commissioner Bowman stated he agreed that there was no need for an adjustment and a need to stick to the law. The motion carried, 8-0.

No fee applicable, Permit Denied.

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The Commission broke for lunch at approximately 12:40 p.m. The meeting was reconvened at approximately 1:19 p.m.

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12. PUBLIC COMMENTS:

U. S. Navy - Ammunition Loading Facility:

Robert W. Jensen, Rappahannock River Preservation Society, was present and his comments are a part of the verbatim record. Mr. Jensen provided an update for the Commission on the status of the U. S. Navy's ammunition loading facility in Hampton Roads.

Commissioner Bowman said he had several telephone communications with the U. S. Navy personnel on this matter. No action was taken.

Overnight Anchoring of Nets in Hot Water:

Associate Member Bowden suggested that the problem of overnight anchoring of nets in hot water, resulting in the fish dying, be referred to Fisheries Management Advisory Committee (FMAC) for their consideration.

Commissioner Bowman stated that there was a similar case in Virginia Beach and agreed that this matter be referred to FMAC.

No further action was taken.

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13. PRESENTATION OF THE REPORT AND RECOMMENDATIONS OF THE BLUE RIBBON OYSTER PANEL (BROP).

Jack Travelstead, Chief Deputy Commissioner, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that the BROP had been working on this matter for about a year. He said a copy of the report had been provided to all as well as the Board. He said he would not repeat it all, just provide the highlights.

Mr. Travelstead said that staff was asking that the Commission endorse the plan and direct the staff to utilize the plan in the development of oyster restoration and management strategies. He explained that the group was made up of individuals very familiar with the oyster industry. He said Governor Holton and several others had been involved in the original panel.

Mr. Travelstead stated that all had worked well together with good give and take by all, even though they had not always agreed on every point. He said the Panel asked to limit their discussions to the native species restoration and to not consider the non-native species. He said if that had been done, the recommendations would have been quite different. He said the industry was frustrated that they did not look at the non-native animal to resolve the problem of a lack of resource. He explained that there are 2 major impediments to native oysters, diseases and cow nosed ray predation.

Mr. Travelstead explained that the final recommendations were not achieved by vote, but thorough debate and general consensus. He said at the last meeting there was a motion to accept the recommendations and findings. He said the bottom line recommendation was to double funding for oyster restoration from \$1.2 million per year to \$2.5 million per year, to be allocated as follows:

1. Shell replacement – Status Quo.
2. New reef construction – need additional closures.
3. Expand the Aquaculture Industry.

4. Provide aquaculture training projects for the watermen.
5. Expand hatchery based put-and-take fishery.
6. Continue cow nosed ray investigations.

Mr. Travelstead further explained the more specific recommendations, which are as follows:

1. Expand the spat-on-shell oyster production to produce disease tolerant animals, protect from predation, and minimize the oyster to grow out.
2. Expand the training of watermen in aquaculture techniques, which had occurred for the last 2 years.
3. Hire a position similar to an Extension Agent for the industry.
4. Shellplanting – need to continue this activity and utilize all available house shells. This would add financial support to the shucking houses. He said the shell planting should be continued, as long as the results realize a return on investment in a 1:1 ratio.
5. Seed Transplanting - stop the transplanting of diseased seed oysters from the James River as recommended by VIMS. Seed transplanting from other areas may continue as long as there is a return on investment in a 1:1 ratio.
6. Rappahannock River – had not been opened for 14 -15 years. Oysters there are disease tolerant. There are a number of larger oysters which have survived.

Divide the Rappahannock River into rotational harvest areas using the best model by VIMS for larvae distribution and current patterns, with permanent sanctuaries being established within each harvest area.

Establish a maximum size limit of 4.25 inches and replant the larger oysters on the sanctuary areas in close proximity to improve spawning occurrence and success. The watermen would be paid for the larger oysters and be required to replant them.

7. Open all areas Statewide with possible limited entry and control dates at the same time. Opening all areas would result in spreading harvesting in all areas, no concentrated effort in one area. All season dates to be maintained with no extensions being granted or other areas opened to harvest to go beyond the established harvest areas and dates for the 2007-2008 season.
8. Include the Potomac River tributaries in the rotational plan, but alternate between bodies of water (Coan-Nomini-Yeocomico Rivers).
9. Apply the rotational plan to the Pocomoke-Tangier Sounds and the James River when possible.
10. Panel was unanimous in encouraging that there needs to be greater enforcement effort.

The Rappahannock River plan required another layer of additional enforcement.

Sanctuaries and closed areas need to be maintained.

The maximum cull size is enforced and larger oysters replanted on sanctuary areas.

Stronger penalties, such as, revoking the permit for one violation and stronger penalties for multiple violations.

11. Cow Nosed Ray Issue – support of current effort this year and additional expenditures necessary for a responsible and sustaining fishery ensuring they are not overfished.

Mr. Travelstead stated that the BROP will reconvene to review the Ariakensis EIS and provide comments, which would be added to the current document.

Mr. Travelstead noted that several members of the BROP were present and some had indicated that they wish to speak to this issue.

Associate Member Robins explained that the rotational model was multi-year (3 years) and included 6 areas with 2 areas to be opened each year below and above the bridge. He said the Oyster Heritage Program has also committed to this 3 year period with it being reevaluated after that time. He asked if a resolution could be made as an endorsement by the Commission.

Mr. Travelstead stated that staff needed the Board's endorsement and direction to use this plan as a guide for developing the replenishment and management strategies.

Commissioner Bowman asked if some were included now. Mr. Travelstead stated that staff wanted to hit the ground running for management strategies. He stated that the BROP document was a living document which will be looked at annually with a meeting to reevaluate the progress at the end of the 3rd year.

Dr. Roger Mann representing VIMS was present and his comments are a part of the verbatim record. He stated he did not have anything to add to Mr. Travelstead's comments but he was a member of the present and earlier BROP 15 years ago, which provided a report but not much guidance. He said this new panel had a good meeting with a cooperative group who came to a consensus. He said the rotational proposal was a good compromise and should be tried and would be a real step forward. He said it was good not to get bogged down with the non-native issue.

Robert Johnson, waterman, was present and his comments are a part of the verbatim record. He said he was also a member of the past and present panels. He stated he was not pleased with the 2 prior presentations, but everything was on tape. He said there was need to get rolling on the EIS. He said the non-native oyster was not included in this panel discussion. He stated the elephant in the room was oyster disease. He continued by saying that all the reports say the same thing, but expect different results. He said VIMS had been studying the diseases with no more know about them than before. He said he was asking the Commission to include in the resolution to bring the EIS to the table and

that the State stop 'prostituting' itself for others who can provide funds. He said the State needs to commit to getting the EIS completed before May 2008. He said the State needs to take a stand and not settle for status quo. He said the Board said it wants to use good science, but he questioned what was good science is. He stated he felt that both the Corps (GAO for mishandling of funds and replenishment activities) and VIMS (JLARC for personal agendas that drive decision by the scientific community) needed to be investigated.

Mr. Johnson stated that he was disappointed by where everything was now and by the directions that everything was going. He said that diseases do not know any boundaries. He said the private industry was out producing the public sector by many fold and the impediments needed to be removed.

Commissioner Bowman stated that he was disappointed and also frustrated and felt the same, but it was not an easy fix. He said he took exception to the statement about prostitution. He stated that there was a need for good science before the non-native oyster is put overboard and there were things that preclude moving forward. Any investigations would have to be requested by the General Assembly. He went on to say that once the EIS was available, the BROP would be reconvened. He said the BROP document was a living document and the EIS allowed for a deep breath by the committee, even though it was not going as fast, as was wanted.

Mr. Johnson stated he believed what the Commissioner had said, but he was still frustrated as it had been done this way for a long time with no difference being made. He said he was extremely skeptical about the EIS because of statements made by the Corps about the watermen and staff. He said he was skeptical about VIMS and felt there was a conflict of interest.

Douglas F. Jenkins, Sr., President of Twin Rivers Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated he appreciated the opportunity to serve on the panel and he was the only waterman. He said of the information that was provided 10 percent was valuable and 90% was not. He said the positive things to come from the meeting was the opening of the lower Rappahannock River which would keep from it fouling, the tide analysis and flow of the oyster spat, and the control of the rays. He said that replenishment monies should not be used for this, as SAV and other fisheries were affected too. He said the Commission should get the monies from RFAB funds, as it is habitat for other fisheries as well. He stated he had served on the RFAB and felt the recreational fisheries benefited from oyster replenishment. He said he was concerned with the seed beds being closed to the public and the State utilizing seed oysters from private grounds for replenishment efforts. He stated that the public funds and public Baylor benefited the private planters and was denied to the watermen. He said it can be changed and the Board can set the policy and not wait for staff and VIMS.

Associate Member Bowden read a letter by Mr. Tommy Mason expressing concerns for oyster restoration funding. He said the cow nosed ray project was supported, but the 15 cents being paid to fishermen was not a fair market price. He said there was \$400,000 proposed in 2008 for a 4-year study by VIMS at \$100,000 per year. He said they had already done studies with no conclusions with what had been done to date. He said the \$400,000 should be used for the benefit of the watermen and the industry. He said he supported the oyster sanctuaries, but was against the use of concrete. He said it was suggested that there be a stiff fine and revocation of the license for one year. He said there was support for the spat on shell, but there was a shortage of larvae. He said on the Eastern Shore things had been done the same way for 40 years; and, now Ariakensis were being grown for shucking stock, which was a good thing and not in conflict with the native half shell market.

Commissioner Bowman asked for any further discussion.

Associate Member Robins stated the panel was not tasked to look at the non-native oyster, only native oyster restoration and management strategies. He said that the EIS should not be short-circuited. He explained that in the proposal there were new approaches, such as rotational areas, spat on shell, disease tolerance, which was a long term effort. He said this was a positive step to resolve a long term adverse impact, with new and positive approaches.

Associate Member Bowden said it was a lot of the same stuff. He said oysters were not there on the Seaside of Eastern Shore and there was one sanctuary sign which was in bad shape. He said the cow nosed rays were not on the Seaside as they had already been there and done that. He said the watermen cannot cover their expenses with the 15 cents per pound of cow nosed ray. He went on to say there was a thriving oyster aquaculture industry on the Seaside.

He said that if the Commission supported the BROP proposal it would not be a 'carte blanche' implementation and it would still need the Board's vote. He said some of the plan was good and he agreed to giving initial support to get it going, otherwise he could not support the plan, as a whole.

Commissioner Bowman assured him it would have to come before the Board.

Associate Member Schick stated that he saw good things in the plan, some old methods maybe, but packaged differently. He said the plan was trying to restore what had been there for 100 years. He said the key issues were water quality and habitat and the Commission did not control all of it. He said VMRC can only do the best that it can with the best science that was available. He said it was better than doing nothing. He said there was a need to make sure it was 2008 for completion of the EIS and not 2009 or 2010. He said the future of the industry depended on having oysters that could survive and that he felt that aquaculture was the way of the future.

Commissioner Bowman thanked all the panel members and said it was a diverse way to look at the issue. He stated that there was no ‘silver bullet’. He stated that the VMRC could do nothing or do the best that can be done with what was there to work with. He also expressed thanks to Jeff Corbin from the Secretary of Natural Resources office who participated on the panel.

Associate Member Robins moved to endorse the Plan and utilize now the primary guides for the restoration and management strategies; and, that the BROP meet again when the EIS was available. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

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Associate Member Tankard left at this point of the meeting for the remainder of the day.

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14. REPORT FROM VIMS: Report on the status of the menhaden economic analysis and stakeholder involvement by Dr. James Kirkley.

Dr. James Kirkley representing the Virginia Institute of Marine Science made a 90-day status report for the Commission at their request providing more information on the study plan and involvement of the stakeholders. He brought a PowerPoint presentation to assist in his report. His comments are a part of the verbatim record.

No action was taken.

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15. REPORT FROM VIMS: Annual update on the status of submerged aquatic vegetation areas and update on the propeller scar project by Dr. Bob Orth.

Dr. Bob Orth, representing the Virginia Institute of Marine Science gave a status report for the Commission at their request. He brought a PowerPoint presentation to assist in his report. He made two recommendations to the Board and that was to continue with the SAV restoration efforts and to continue with the study for 2007 – 2008 on the Scarring of the SAV Beds. He said he would provide another report in August 2008. His comments are a part of the verbatim record.

Jack Travelstead, Chief Deputy Commissioner, stated that staff was recommending the funding of the study to be continued for 2007-2008. He said the funding was for \$20,000.00 annually and provided by the funds of the Recreational Fishing Advisory Board (RFAB) and Commercial Fishing Advisory Board (CFAB).

Associate Member Robins moved to approve the request for funding. Associate Member McConaugha seconded the motion. Associate Member McConaugha complimented Dr. Orth on his great work at such a bargain. The motion carried, 7-0. The Chair voted yes.

Dr. Orth explained that there were various funding sources being utilized in addition to these funds.

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Commissioner Bowman asked to be allowed to correct an omission by him for the BROP item. He said he did not remember to mention the good job done by Jack Travelstead in his working with this panel and putting it all together.

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16. DISCUSSION: Proposed management measures for the 2007 Fall Chesapeake area recreational striped bass fishery; request for a September 2007 Public Hearing.

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

Mr. O'Reilly stated he would wait until the next month to go into greater detail on the management measures and just briefly highlight some information. He said on page 1 there was information showing the harvest and the quotas and their differences over the years. He said because of a recent large overage in the recreational striped bass fishery this was being brought before the Commission now. He said there had been an Ad Hoc Committee for a number of years which the Commission had worked with on these striped bass matters and they had met twice now, to discuss this issue. He said at the 1st meeting the committee came up with five options, which were on page 3 of the packet provided. He explained that at their second meeting they were asked to pick the top two preferences of these five options. He said they had selected Option E, first, followed by option C, second, at a 7-4 vote, respectively.

Mr. O'Reilly explained that next the FMAC met to discuss these options and they had added an option, which was B. He said that they recommended that these be taken to public hearing next month. He said at the public hearing there will be a number of issues to be discussed, including data challenges this year.

Mr. O'Reilly stated that staff asked that they be directed to advertise Options B, C, and E for a public hearing in September.

Commissioner Bowman asked for a motion.

Associate Member Holland moved to advertise for a public hearing in September. Associate Member Robins seconded the motion. The motion carried, 7-0. The Chair voted yes.

The table below lists the five options recommended by the Striped Bass Ad Hoc Committee:

A summary of options formed by the Striped Bass AD HOC Committee, on August 20, to potentially reduce the 2007 harvest of striped bass

Option	Description	Potential Savings
A	A no-take slot limit, between 28 and 34 inches T.L., and a 1-fish limit, from December 18 through December 31	618,354
B	A no-take slot limit, between 28 and 34 inches T.L., and a closure, December 25 through December 31	672,084
C	A no-take slot limit, between 28 and 34 inches T.L., and a 1-fish limit, from December 1 through 31	849,378
D	A no-take slot limit, between 26 and 37 inches T.L.	615,683
E	A no-take slot limit, between 28 and 34 inches T.L., and a 1-fish limit, from December 10 through December 31	727,071

Option Preference (each of 8 members chose 2 of the 5 options)
 A 2
 B 2
 C 4
 D 1
 E 7

- PUBLIC HEARING:** Amendments to Regulation 4 VAC 20-755-10 et seq., "Pertaining to Artificial Reefs", to incorporate additional artificial reef sites to be reserved for recreational fishing only.

Mike Meier, Head, Artificial Reef Program, gave the presentation. His comments are a part of the verbatim record.

Mr. Meier explained that the purpose of amending the regulation was to establish a prohibition of commercial fishing gear on the reefs and to avoid user conflicts and entanglements with the reef structure. He said the regulation needed to be updated to add all the areas established by VMRC since the regulation was promulgated in 2000. He said there were a number of new reefs to add and existing ones that needed to be redelineated. Among them were:

Asphalt Pile	Mobjack	Nandua-Pungoteague Cell
Poquoson	Cherrystone	Gwynn Island
Windmill Pt.	York Spit	

Mr. Meier explained that staff had made an effort to square off a number of the reefs, thereby clarifying the boundaries, enabling Law Enforcement personnel to enforce the commercial gear prohibition.

Mr. Meier stated that staff recommended approval of the amended regulation.

Commissioner Bowman opened the public hearing.

Kelly Place, waterman, was present and his comments are a part of the verbatim record. Mr. Place expressed his concern that the change in the boundaries had increased the area, as square corners add area. He requested that the area be quantified. He said he was unclear as to what is trying to be achieved. He stated the Cell reef was supposed to be open to all and he was concerned this one was being restricted to recreational fishermen only. He said there had been no EIS seen and he wanted the vote to be delayed until questions could be answered.

Mr. Meier stated that the Cell Reef had been a recreational reef since 1988, and the Cell and other reefs were covered in the original version of the regulation.

Commissioner Bowman asked about the amount of area involved in the reconfiguration. Mr. Meier explained how the squaring was done and stated that it involved 5% or less, but he did not have the exact area. Commissioner Bowman asked about the EIS. Mr. Meier stated that the Corps did not require an EIS and neither did the EPA. He said generally an EIS was required when large vessels are to be deployed onto the reefs, such as the Liberty Ships.

Kelly Place stated that he felt it was different from what Mr. Meier had stated. He said recently there were some materials that had toxic substances on them that Mr. Meier told him had been turned down. He expressed concern over the assessment of materials used since the program was started, as he understood that a lot of material was used that should

not have been used. He stated that the squaring of the Cell Reef increased the area by more than 5% and that using RFAB funds allowed the reefs to be restricted from all users. He said he was concerned it was not being done in the way the General Assembly had wanted it to be done. He said there needed to be some CFAB funds used for some of the reefs, as they were continually being pushed out of these areas.

Commissioner Bowman asked about the certification program. Mr. Meier explained that there was much concern for PCB's and how they were used on many materials and their many uses on vessels. He said last summer when the program obtained some material from the West Point Bridge, samples were taken to EPA to be analyzed and they said it was fine. He said the Eltham Bridge material was turned down by the EPA; therefore, it was not used.

Kelly Place stated that others have not been tested and the use of them has shown more effects than are actually known. He said there was fauna in the bay and a chemical change had occurred, creating 'hot spots' in the Bay.

Tom Powers was present and his comments are a part of the verbatim record. He said that the commercial sector was concerned with losing so many sites to the recreational sector. He said that when areas were chosen they had agreed to them. He said the commercial sector have input into the gas tax monies that are used by the program. He said that when the reef is squared off the area is increased by 27%. He said with materials in the corners of the reef, it made it difficult to square them.

Doug Jenkins, President of the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that his group was concerned with the number of reefs now in the Bay. He said he agreed with Tom Powers in his comments about the gas tax monies and that they are paid by the watermen too. He said they felt there needed to be a cap on the number of reefs allowed in the Bay.

Charles Dryden, Poquoson commercial waterman, was present and his comments are a part of the verbatim record. Mr. Dryden stated that when the watermen talked to Rob they were supposed to be called when the regulation was to be decided upon. Mr. O'Reilly said he did not remember the conversation.

Mike Meier explained that in regards to the Poquoson and Blue Fish Rock reefs, he was asked by the commercial watermen if the reefs would be prohibited to them and he told them yes. He said actually he was the one who failed to contact the watermen when the regulation was being re-written.

Associate Member Bowden asked why the reefs were being squared off. Mr. Meier stated that it was easier to run survey tracks and the Corps had asked for a more straight forward physical delineation. He said that 4 reefs had already been done and 1 was left to do.

Associate Member Robins moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 7-0. The Chair voted yes.

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18. DISCUSSION: Request for an exception under the hardship provision of Regulation 4 VAC 20-950-10 Et seq. by Dale Denniston for the commercial Black Sea Bass Directed Fishery.

Joe Cimino, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record.

Mr. Cimino explained that the evaluation included the individuals who had previously been approved for the same hardship request, as well a history for Mr. Denniston. He said also included was a letter from Jack Stallings confirming Mr. Denniston’s background working in the fishery with him.

Mr. Cimino stated that staff was recommending approval of Mr. Denniston’s request and his quota allotment would be 1,444 pounds.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Holland seconded the motion. The motion carried, 6-0. Associate Member Robins was absent during this presentation and vote. The Chair voted yes.

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19. DISCUSSION: Request for public hearing at the September 25, 2007 Commission meeting to consider amending Regulations 4 VAC 20-260-10, Et seq., “Pertaining to the Designation of Seed Areas and Clean Cull areas”, 4 VAC 20-650-10, Et seq., “Pertaining to the Establishment of Oyster Sanctuary Areas”, and 4 VAC 20-720-10, Et seq., “Pertaining to the Restrictions on Oyster Harvest”, to establish the 2007-08 Public Oyster Harvest Seasons.

James Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record.

Dr. Wesson explained that the Blue Ribbon Oyster Panel and Oyster Heritage Program recommendations had been incorporated in the proposed staff recommendations. He said during the Shellfish Management Advisory Committee (SMAC) meeting on September 4th, he hoped that some of the conflicts had been resolved.

Dr. Wesson explained in Regulation 4 VAC 20-260-10, Et Seq., “Pertaining to the Designation of Seed Areas and Clean Cull Areas”, it was proposed to establish a

maximum cull size of 4 ¼ (4.25) inches for oysters taken for commercial purposes in the lower Rappahannock River. He explained that in Regulation 4 VAC 20-650-10, Et Seq., "Pertaining to the Establishing of Oyster Sanctuary Area", the management areas would be changed to sanctuary areas. He further explained that 4 VAC 20-720-10, Et Seq., "Pertaining to the Restrictions on Oyster Harvest", was being changed to reflect dates for the public oyster harvest seasons.

Dr. Wesson said that the staff was also asking for the approval of the procurement procedures for a proposed Lower Rappahannock River Oyster Buyback Program. He said VMRC would be purchasing oysters larger than 4 ¼ (4.25) inches for replanting by the watermen on sanctuary areas.

Dr. Wesson said that finally that there would be a permit requirement for the Lower Rappahannock River area. He said also that with the permit, a cull stick and laminated maps showing the areas, with latitude and longitude coordinate numbers, would be provided to the watermen.

Dr. Wesson stated that staff recommended the advertisement for a public hearing in September.

Associate Member Robins explained that in the Rappahannock River Management Plan by the Oyster Heritage Program it was recommended that all areas to be opened statewide at the same time or to established limited entry, thereby, not allowing those not previously in the fishery before to work in the Lower Rappahannock River thereby putting concentrated effort on an earlier opening area. He said it was recommended to be one or the other to avoid this from happening and staff had proposed to allow different opening dates. He asked should the Board include this in the advertisement for a public hearing. Dr. Wesson said, yes staff could include these recommendations and as it was written was certainly not set in cement. He explained that there was a meeting scheduled with the Shellfish Management Advisory Committee to see what they would agree to in hopes of resolving some of the controversy over this area that has occurred in the past.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to accept the staff recommendation to advertise for a public hearing and to include the recommendation for a limited entry restriction. Associate Member Holland seconded the motion. The motion carried, 7-0.**

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There was no further business and the meeting was adjourned at approximately 4:05 p.m. The next Commission meeting will be September 25, 2007.

Commission Meeting

**14434
August 28, 2007**

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary