

MINUTES

Commission Meeting**July 22, 2008**

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
F. Wayne McLeskey)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief Deputy, Fisheries Mgmt.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Administration and Finance
Sunita Hines	Bs. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Arthur Walton	Marine Police Officer
Carl Dize	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.

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Randy Owen
Justin Worrell
Danny Bacon
Bradley Reams

Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
Carl Hershner

Other present included:

Mason Chapman	Gene Brown	George Marshall	David Saunders
Gary L. Webb	Calvin Vann	Dorothea Vann	Marri Parker
Melvin Parker	Tim David	Frank Harksen	Robin Bedenbaugh
Kathleen M. Morgan	Lisa A. Wolfer	Bob Simon	Karl Mertig
Tim McCulloch	Dennis Dietrich	Thyra Harris	Lee Spence
Carolyn Conklin	Richard Conklin	Scott Harper	Chris Moore
Lee R. Smith			

and others.

Commissioner Bowman called the meeting to order at approximately 9:32 a.m. and announced that Associate Member McConaugha would not be at the meeting. He said that there was a quorum present and the Commission could proceed with the meeting.

At the request of Commissioner Bowman, Associate Member Robins gave the invocation and Carl Josephson, Senior Assistant Attorney General led the pledge of allegiance.

APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. There were no changes.

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

MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the June 24, 2008 meeting minutes. **Associate Member Holland moved to approve the minutes, as circulated. Associate Member Bowden seconded the motion. The motion carried, 6-0-2. Associate Members McLeskey and Tankard both abstained because they were not present at the last meeting. 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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Associate Member Fox noted that the Commission meeting date for December was on the 23rd and asked if this should not be changed to the 16th due to the holiday.

After some discussion, Commissioner Bowman asked for a motion. **Associate Member Fox moved to change the date from December 23rd to December 16th. Associate Member Robins seconded the motion. The motion carried, 8-0.**

Bob Grabb, Chief, Habitat Management, stated that this was usually discussed later in the year. He asked if the Commission also wanted to look at the November meeting date and make a change. Associate Member Fox noted that it was two days before the holiday and he felt it was not necessary to make a change. There was a general consensus of the board to keep it the same.

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

Bob Grabb, Chief, Habitat Management Division, reviewed the six page two items, 2A through 2F, for the Commission. He said that staff was recommending approval of these items. He noted a change in item 2A, indicating the square footage price should be \$5.00 rather than \$2.00. His comments are a part of the verbatim record.

Commissioner Bowman opened the public hearing and asked if anyone was present, pro or con to address these items. There were none, therefore, the public hearing was closed.

Commissioner Bowman asked for a motion for Items 2A through 2F. **Associate Member Holland moved to approve these items. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

2A. CSX TRANSPORTATION, #08-0929, requests authorization to install a 12' x 12' x 80' replacement concrete culvert, reline 352 linear feet of a second culvert with a 9' diameter steel plate metal pipe and install riprap splash aprons to maintain railroad culvert access across Jordans Branch at the CSX Acca Yard in Henrico County. Recommend approval based on a royalty of \$4,800.00 for the encroachment of the culvert over 960 square feet of State-owned subaqueous land at a rate of \$5.00 per square foot.

Royalty Fees (filling approx. 960 sq. ft. @	
\$5.00/square foot.....	\$4,800.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$4,900.00

2B. HANOVER COUNTY DEPARTMENT OF PUBLIC UTILITIES, #08-0902, requests authorization to install a submerged sewer line beneath 30 linear feet of Oppossum Creek at two locations, 30 linear feet of Totopotomoy Creek at two locations and 15 linear feet of Strawhorn Creek at one location to provide sewer service to area residents in the Shady Grove Road area of Hanover County. Recommend approval with our standard instream permit conditions.

Permit Fee.....	\$100.00
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2C. VIRGINIA INSTITUTE OF MARINE SCIENCE, #08-0964, requests authorization to construct a concrete pier extending approximately 350 feet channelward of mean high water with a 16-foot, 3-inch wide by 23-foot long pumphouse located near the channelward end and a concrete caisson to house a water intake structure designed to provide raw seawater for the Seawater Research Laboratory adjacent to their property situated along the York River off Greate Road in Gloucester County. Upon completion of the new pier, the existing "Oyster Pier" and "Ferry Pier" are scheduled to be removed.

Permit Fee.....	\$100.00
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2D. NORFOLK SOUTHERN CORPORATION, #08-0573, requests authorization to install 391 linear feet of replacement steel sheet-pile bulkhead, to install new fender pile clusters on the channelward side of the proposed bulkhead, and to re-work an existing riprap drainage swale, adjacent to Piers L and N at Lamberts Point Docks situated along the Elizabeth River in the City of Norfolk.

Permit Fee.....	\$100.00
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2E. ROUTE 28 CORRIDOR IMPROVEMENTS LLC, #07-1576, requests authorization to modify their previously authorized permit to include additional impacts to 2,158 square feet of Horsepen Run as a result of the Route 28 Frying Pan Road interchange project in Fairfax County. Staff recommends a royalty in the amount of \$2,158.00 for the encroachment over 2,158 square feet of State-owned subaqueous bottom.

Royalty Fees (encroachment 2,158 sq. ft. @ \$1.00/sq. ft..... \$2,158.00 (Note: Permit Modification)

2F. U.S. COAST GUARD, #08-0986, requests authorization to install a 4-foot by 30-foot aluminum gangway leading to an 8-foot by 80-foot concrete floating dock adjacent to the U.S. Coast Guard Station to provide docking facilities for response boats within the Naval Amphibious Base Little Creek, situated along Little Creek in Virginia Beach.

Permit Fee..... \$100.00

3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board).

Bob Grabb, Chief, Habitat Management, gave the presentation. He reviewed the two consent items 3A and 3B for the Commission and his comments are a part of the verbatim record. He stated that the staff was seeking approval of the terms of the consent agreements, which had been negotiated by staff and the parties involved.

Commissioner Bowman asked if there were any questions for staff. There were none. He asked if the applicants were present. The applicants were not present. He asked for action by the Commission.

Associate Member Schick moved to approve the items, as read. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

3A. ARLINGTON COUNTY DEPARTMENT OF PUBLIC WORKS, #08-0987, requests after-the-fact authorization for repairs to an exposed, existing 48-inch diameter sanitary sewer in Four Mile Run including encasing the pipe with concrete and riprap near the Glebe Road/Route 120 exit of I-395 in the City of Alexandria. After installation the streambed was returned to its original grade and

conditions. The applicant has agreed to a civil charge in the amount of \$600.00 and triple permit fees.

Civil Charge.....	\$600.00
Permit Fee (triple).....	\$300.00
Total Fees.....	\$900.00

3B. LARRY SLIPOW, #05-2490, requests after-the-fact authorization for the installation of approximately 401 linear feet of riprap, the toe of which extends a maximum of 8 feet channelward of mean low water and the existing concrete bulkhead, adjacent to his property in the Birdneck Point subdivision, situated along Linkhorn Bay in Virginia Beach. The applicant has agreed to pay triple permit fees (\$300.00) and a civil charge of \$600.00. The agent, Waterfront Consulting, Inc., has also agreed to pay a \$600.00 civil charge, and the contractor, Spence Marine Construction Inc., has agreed to pay a \$1,200.00 civil charge for installing the revetment without Commission authorization.

Applicant:

Civil Charge.....	\$600.00
Permit Fee (triple).....	\$300.00
Total Fees.....	\$900.00

Agent: Civil Charge..... \$600.00

Contractor: Civil Charge..... \$1,200.00

4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. No closed meeting was held.

5. COMPTON AND ASSOCIATES, #06-1000. Commission review, on appeal by the applicant, of the March 20, 2008, decision by the Suffolk Wetlands Board to deny the applicants' request for after-the-fact authorization to retain multiple previously installed floating piers and previously constructed pier and deck structures, as well as requesting after-the-fact authorization to retain an enclosed expansion of an existing restaurant at the applicants' marina/restaurant facility situated at the terminus of Ferry Road, along Bennetts Creek, a tributary to the Nansemond River. The applicant also requested and was denied authorization to

install additional floating pier sections. Project deferred from the May 27, 2008, meeting.

Commissioner Bowman asked if the applicant was present and he was.

Ben Stagg, Environmental Engineer, Sr. stated that this matter was tabled for sixty (60) days at the May Commission meeting as requested by the Mr. Compton and because it was necessary for Mr. Josephson, VMRC Counsel to research the staff's reference to a previous opinion given some time ago by the Attorney General, which stated that the Wetlands Board could consider the indirect or secondary impacts on the wetlands resulting from the subaqueous portion of the project. He said that he had given a complete presentation for this matter at the May meeting and he requested instructions from the Board as to how he should proceed. He stated that because of the Removal Order by the Wetlands Board for the unauthorized portion of the project, Mr. Compton had begun to remove some of the structures. He noted for the Commission that he had been notified in writing by Mr. Compton's attorney, that she was no longer his representative.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that he did find that there had been an official opinion indicating what the Wetlands Board could consider secondary impacts in their deliberations of projects, that was referenced by staff. He explained that he also looked at the Code, Section 28.2-1205 and the Wetlands Ordinance which supported this opinion, as well. He further said that since it had been some time since the Board had heard the presentation, staff should maybe give the entire presentation again, but it was up to the Commission as to how to proceed.

Commissioner Bowman asked if all the Board members were present at the May meeting. All were present at that meeting. He stipulated that staff briefly go over the wetlands portion and then proceed with the subaqueous portion. Mr. Stagg noted that separate motions would be necessary.

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

Mr. Stagg explained that during the March 20, 2008, Wetlands Board hearing, City of Suffolk staff made a brief presentation to the board, with aerial photographs from 2002 and 2006, which clearly depicted the structures that were present before Hurricane Isabel, and what was installed after the storm. Mr. Compton had indicated at that hearing that he believed he was in compliance with the Governor's Executive Order No. 58, which authorized reconstruction of previously permitted structures following Hurricane Isabel. In further testimony Mr. Compton noted that he was told by numerous other officials, soon after the hurricane, that he could reconstruct and repair damaged structures.

Mr. Stagg stated that numerous nearby property owners spoke in opposition to the project with concerns including potential adverse wetlands impacts, increased boat wakes, noise, and other upland issues.

Mr. Stagg said that the Wetlands Board then discussed the obvious differences in the site since the hurricane. Additionally, the Board requested clarification on their jurisdiction. City staff indicated that the board routinely reviewed marina applications to include modifications, even when the proposed activities do not directly impact tidal wetlands. VMRC staff further noted that the Wetlands Ordinance allowed the Board to consider not only direct tidal wetlands impacts, but also indirect impacts, and the impact of the project on public health, safety, and welfare, the testimony of any person in support or opposition to the project, as well as whether the anticipated public and private benefit of the proposal exceeds its anticipated public and private detriment.

Mr. Stagg explained that after careful consideration the Wetlands Board moved to deny the after-the-fact application to retain any structures installed after Hurricane Isabel, to deny any new structures, and to direct the applicant to remove said structures and restore the marina footprint to what had been previously authorized. The motion was passed unanimously by a 6-0 vote. Mr. Compton noted to the Wetlands Board that he intended to appeal the decision. Mr. Stagg noted the Board did not address the fixed marginal pier along the shoreline or the restaurant expansion.

Mr. Stagg said that staff had reviewed the entire record, which clearly showed the Board thoroughly reviewed the proposal and determined that the applicant had installed structures in excess of those previously authorized. Additionally, they determined that the applicant had not obtained either a proper wetlands permit or subaqueous permit from VMRC for the structures. The Wetlands Board considered the applicant's testimony that it was his belief that he was in compliance with the Governor's Executive Order #58 and his testimony that he believed the current configuration was actually an improvement over the older authorized footprint. After considerable discussion the Board voted to deny the application and require removal of the unauthorized structures. The Wetlands Board did not address the restaurant enclosure or the additional fixed dock along the shoreline. Based on the record considered as a whole it was apparent the Board considered the potential impacts the marina expansion could have on nearby wetlands resources. As such, staff could not find that the Board erred in its deliberations or actions; and therefore, recommended the Commission uphold the Suffolk Wetlands Board decision.

Commissioner Bowman asked if Mr. Compton or his representative wished to comment.

Nathaniel Compton, appellant, was sworn in and his comments are a part of the verbatim record. He said he understood that the appeal process was to have this appeal heard by this court. He said that the Commonwealth Attorney was supposed to decide if this was

under the Wetlands Board jurisdiction or not and he did not know what had been decided. He said he was not clear if the Wetlands Board had jurisdiction or not.

Mr. Josephson explained that he had researched the previous opinion by then Attorney General, Governor Baliles, and pursuant to that opinion the Wetlands Board did have jurisdiction to consider structures beyond the wetland area over what would ordinarily be considered State-owned submerged land, as it does impact the wetlands.

Mr. Compton explained that the restaurant and pier were built prior to him becoming the owner and these structures had impacted the wetlands for the past 22 years. He explained also that the main pier, fixed and floating were within the footprint as well as the 2nd floating pier, which was in the footprint of the pier that was destroyed by hurricane Isabel. He said he felt an impact study was needed, as he had checked for one and it was not done by the City or anyone else. He said he had prepared the drawing to address what staff had requested. He said that the Suffolk Wetlands Board had shut down everything including the restaurant, which had impacted him financially. He said he had received approval by the Health Department, the Corps, and DEQ for all of it. He said he had also been told by others that it was okay as long as he kept within the footprint. He said this had all hit him by surprise and he had loss business amounting to \$50,000. He asked if others could speak on his behalf from the Health Department.

As a result of the request by Mr. Compton to hear testimony from others and based on the advice of VMRC Counsel and staff, Commissioner Bowman asked for a motion to open the record. Associate Member Holland moved to open the record. Associate Member Tankard seconded the motion. The motion carried, 8-0.

Bob Grabb, Chief, Habitat Management, stated that the restaurant and marginal pier were not a part of the Wetlands Board's decision.

Mr. Stagg explained that in regards to jurisdiction question, it was only for the floating pier.

Kathleen Morgan and Lisa Wolfer, both representing the Health Department, were sworn in. Their comments are a part of the verbatim record.

Ms. Wolfer explained that a marina inspection had not been done for some time by them, but by another office. She said the records go back to the previous owner.

Associate Member Schick asked about an occupancy permit. Ms. Wolfer stated that was a grey area, as the correspondence was not for the marina, but for the restaurant. Associate Member Schick asked if the mooring slips were inspected. Ms. Wolfer stated there was no certification.

Commissioner Bowman asked if the Wetlands Board was represented. There was no one present for the Board.

Commissioner Bowman explained that a motion was requested and the decision is to determine whether or not the Wetlands Board erred under the Code.

Mr. Josephson read Section 28.2-1313 of the Code of Virginia into the record.

Associate Member Schick stated that the evidence was confusing and he was not familiar with the Wetlands Board considering the secondary impacts. He said he did not see how the slips would affect more than what had been prior to Isabel. He asked about VIMS comments.

Mr. Stagg explained that was a problem as there was no VIMS report at the Wetlands Board hearing. He said the Wetlands Board staff felt that it was not needed, but VMRC staff believed that the application was not complete; therefore, no VIMS comments were made for the entire project.

Associate Member Schick asked about the floating docks. Mr. Stagg said that in order to clarify what was considered by the Wetlands Board he explained that they had ordered the removal of any structures that were built after the hurricane. Associate Member Fox asked about the date of the map. Mr. Stagg stated 2002. Associate Member Schick asked about any scientific information. Mr. Stagg stated that there was no VIMS report and no water quality impact study, as this project predated the Chesapeake Bay Preservation Act that now required a report.

Associate Member Robins stated that after reviewing the record he felt that the Board had not done anything inappropriate in their making a decision. **Associate Member Robins stated that there was an appeal before the Commission to decide whether or not the Wetlands Board erred and made a reasonable decision. He said he felt that they had not erred; therefore, he moved to uphold the Suffolk Wetlands Board's decision. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

No applicable fees - Wetlands Appeal

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5. **COMPTON AND ASSOCIATES, #06-1000**, requests after-the-fact Commission authorization to retain multiple previously installed floating piers and previously constructed pier and deck structures, as well as after-the-fact authorization to retain an enclosed expansion of an existing restaurant at the applicants marina/restaurant facility situated at the terminus of Ferry Road, along Bennetts Creek, a tributary to the Nansemond River in the City of Suffolk. The applicant also requests authorization to install additional floating pier sections. The project

is protested by a nearby landowner and oyster ground leaseholder. Project deferred from the May 27, 2008, meeting.

After some discussion it was decided that the Commission was now considering the subaqueous portion of the project which included the fixed marginal pier and the enclosed portion of the restaurant. It was further determined that a new application would be necessary to place the floating pier in the footprint of the old main marina fixed pier Staff was instructed to proceed with the presentation.

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

Mr. Stagg explained that the fixed pier along the shoreline and the restaurant enclosure were both apparently constructed by a previous owner. The Commission was shown previous permit documents that requested a bulkhead near the location of the fixed pier and a request to construct a screened in waiting area adjacent to the then existing restaurant. Staff further noted that it was unclear if the structure was originally constructed as a waiting area or if it was enclosed from the beginning.

Upon completion of the staff presentation, Mr. Stagg stated that staff recommended that the enclosed portion of the restaurant be converted to a screened in waiting area, as previously authorized and noted that while the fixed pier currently served little purpose due to shoaling in the immediate vicinity that approval of that structure may be warranted since the area had been previously dredged and could be used again in the future should new dredging occur.

Nathaniel Compton, applicant, was present and his comments are a part of the verbatim record. Mr. Compton questioned if the other issue was decided by the Wetlands Board because of the protest. Commissioner Bowman indicated that the decision to uphold the Wetlands Board was based upon the Commission finding no technical errors were committed by the Wetlands Board in reaching their decision. He reminded Mr. Compton that the hearing was for the pier and enclosed area. Mr. Compton indicated that the pier had been built 22 years prior in 1982 and the restaurant was built in 1986. He stated there was never a screened in area and the current Mayor sold the property.

Associate Member Schick asked if a building permit had been issued. Mr. Compton responded yes.

Associate Member Robins asked if from an economic aspect, the enclosure of the restaurant seating area was critical to the facility. Mr. Compton responded yes.

Commissioner Bowman asked if there was anyone in protest to the project present who wished to speak.

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David Saunders, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Saunders explained he has submitted a letter of protest, dated April 6th. He provided a hand-out of a news article, dated March 1st for the Suffolk News, which he read into the record. He stated that the Commission was being asked to allow the additional structures, which would only add to the pollution. He noted that Mr. Compton could have done all of the construction without a permit, within the footprint. He said with the added screened area, there would be added noise, trash, etc.

Commissioner Bowman reminded Mr. Saunders that the Wetlands Board did act properly in making its decision and only the enclosure and pier were being considered now.

Mr. Saunders stated that he agreed to the requirement to reapply for the modification.

Commissioner Bowman asked if anyone else wished to speak.

Calvin Vann, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Vann stated that Mr. Compton had done everything without permits, which had been denied to the previous owner, adding the bar and screened area.

Commissioner Bowman stated that the Zoning Ordinance was not considered by the Commission.

Mr. Vann stated that the additional expansion added to the sewage and run off, which he was concerned with also.

As no one else asked to address the Commission, Commissioner Bowman asked for further discussion or a motion.

Associate Member Schick stated that this project included the enclosed deck and the fixed pier for which a building permit had been issued by Suffolk. He moved to approve the project. Associate Member Fox said from the Health Department testimony he was permitted by them for 100 seats, but had less, which he moved around, therefore, he felt there would be no further impact. Associate Member Holland seconded the motion. Associate Member Robins stated that he agreed with the motion, as it involved the screened area. Associate Member Fox stated that the trash from the deck was not an issue for VMRC, as they were looking at the restaurant only. The motion carried, 8-0. The Chair voted yes.

It was noted by members of the Board that from earlier statements, the applicant could amend the permit or submit an application for the floating piers, within the footprint of the existing marina fixed pier, for which a public notice would have to be advertised.

Royalty Fees (encroachment 600 sq. ft. @
\$1.00/sq. foot)..... \$600.00

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Permit fee..... \$100.00
Total Fees..... \$700.00

7. **JACKSON CREEK HARBOUR CONDOMINIUMS, #08-0719**, requests authorization to install uncovered boatlifts in four (4) existing slips at the condominium association's existing pier adjacent to their property situated along Jackson Creek off Oyster Shell Road in Middlesex County. The project is protested by an adjoining property owner.

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

Mr. Neikirk explained that the Jackson Creek Harbour Condominiums are located along the northern shoreline of Jackson Creek in Deltaville, Middlesex County. The existing development included a community pier with 24 wet slips. Twelve (12) slips were located on the channelward side of the pierhead and 12 slips were located on the landward side of the pierhead. In 2003, the condominium owners received a VMRC permit to install 12 boatlifts in the 12 slips located along the landward side of the pier. Only eight (8) of the authorized lifts were installed prior to the expiration of that permit (#03-0719). This project involves the installation of the four (4) uncovered boatlifts that were not installed prior to the expiration of the previous permit. The proposed boatlifts would be installed in the four remaining slips on the landward side of the pierhead that do not currently contain boatlifts. There were no boatlifts existing or proposed along the channelward side of the pier head.

Mr. Neikirk also explained that the project was protested by Mrs. G. C. Harris Jr. He said she was primarily concerned with the impact of the lifts and the associated raised boats on the view from her adjacent property and she had indicated, she was busy taking care of her husband in 2006 when the boatlifts were originally applied for and she did not comment nor realize the impact the structures would have on her view.

Mr. Neikirk stated that the Health Department informed staff that the Jackson Creek Harbour Condominiums previously received an exemption from their sanitary regulations and no further authorization was required. The Department of Environmental Quality determined the water quality impacts would be minimal and temporary and that a Virginia Water Protection permit would not be required. No other State agencies had commented on the application.

Mr. Neikirk said that the proposed lifts would not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk explained that staff understood Mrs. Harris' concern regarding additional

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structures being located on the pier, however, staff believed the four additional boatlifts would have only a minimal additional impact on the view from her property. The adverse environmental impacts associated with the lifts were also expected to be minimal and there were potential positive benefits associated with storing a boat on a lift rather than in the water. Boats stored in a lift do not typically require the application of anti-fouling bottom paint and maintenance issues such as leaks are more easily identified when a boat was stored in a lift.

Mr. Neikirk said 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 project, as proposed.

After some discussion between staff and Board members, Commissioner Bowman asked if a representative for the applicant was present and wished to speak.

Mason Chapman, resident and Dock Committee member, was sworn in and his comments are a part of the verbatim record. Mr. Chapman stated that staff gave a thorough report. He said they were only continuing with what was left to do from the previous permit and there would be no new pilings.

Commissioner Bowman asked if anyone was present in protest of the project and wished to speak.

Mrs. G. C. Harris, Jr., protestant, was sworn in and her comments are a part of the verbatim record. Mrs. Harris said originally she was a part-time resident and now she was a year-round resident. She explained that she was never notified of the original project, which did impact her view, but what was being done now would not impact her view from her living room any further. She stated she was withdrawing her protest, as she had been confused about what was being done now.

Commissioner Bowman stated for the record that the protest had been withdrawn and he asked the Board for action.

Associate Member Fox said that after hearing the presentation, looking at the Code, and the protest being withdrawn, he moved to support the staff recommendation. Associate Member McLeskey seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee..... \$25.00

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8. **GREGORY GARRETT, #07-1883**, requests authorization to construct five Class III quarry stone breakwaters totaling 350 linear feet, place 2,910 cubic yards of beach nourishment material and install seven warning signs at his property situated along the Thorofore in York County. The project is protested by an adjoining property owner.

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

Mr. Owen explained that Mr. Garrett resides at 122 Sandbox Lane in the Dandy section of York County. His property, a four acre low-lying peninsula, was bounded by the York River to the north, the Thorofore to the east/southeast and an unnamed cove to the west. Vehicular access to the property was via an existing causeway, created from a narrow spit of sand armored with riprap. His home was currently protected by an existing rip-rap revetment. He was seeking authorization to construct a gapped breakwater structure with beach nourishment to protect a 'marsh island,' situated immediately south of his home, and to restore the shoreline to pre-Isabel conditions. The current application was received on August 17, 2007.

Mr. Owen stated that a previous application, VMRC #06-1087 was submitted on November 8, 2006 which sought authorization for a similar structure. That application was subsequently withdrawn. In fact, a total of five applications had been submitted by Mr. Garrett since 2004 for activities at his property. As a result, representatives from VMRC, VIMS and York County had made multiple site visits on this property over a period of approximately four years.

Mr. Owens explained that VIMS characterized the site as a small low-lying peninsula, approximately 900 feet in length, with the elevations being less than 6 feet. The channelward (windward) face was described as mostly beach, currently sited in front of an eroding scarp of marsh peat and clay. The marsh along the windward face appeared to be smaller today than in 2005 based on observations from aerial photography. The leeward side of the property was intertidal marsh, mostly *Spartina alterniflora* (smooth cordgrass). VIMS advised that these conditions were indicative of a sandy dune/berm retreating northward, with sand movement along the shoreline toward the terminal end of the peninsula. At that location, the adjacent property owner had a permitted and dredged navigation channel with jetties which currently provided recreational access to his and Mr. Garrett's private piers in the cove.

Mr. Owen said that the project was protested by the adjacent property owner, Mr. Tim McCulloch. In his letters, dated received June 20, 2008 and June 21, 2008, Mr. McCulloch expressed his concern that the project, as proposed, would increase shoaling rates in his previously permitted and dredged commercial boat basin nearby and the residential boat channel into the cove. During the York County Wetlands Board hearings, Mr. McCulloch stated that he supported the breakwater's construction but was opposed to

the proposed beach nourishment. He concluded, at their hearings and in his letters, that this area was locally referred to as 'The Sandbox' and was already sand rich. As such, he could not support the placement of additional sand updrift of his permitted dredge basins. Initially, at their first meeting the York County Wetlands Board tabled the matter, but they finally approved the project, as proposed, at their June 12, 2008 hearing. They asked the applicant to meet on-site with Mr. McCulloch and VIMS to discuss a previous rock spur/marsh sill design that was recommended by VIMS in 2005. The Chairman also asked the two parties to discuss with VIMS the need for a terminal feature designed to trap the sand and reduce shoaling of the shared residential boat channel.

Mr. Owen said that VIMS next advised, prior to the on-site meeting, that the applicant pursue the 2005 rock spur/marsh sill design if erosion protection was considered acceptable for this area. They said that design allowed for the restoration of the rapidly eroding marsh while providing erosion protection. An additional advantage over the breakwater design was that a continuous sill, stabilized with vegetation, decreased the likelihood of sand movement down-drift.

Mr. Owen stated that the two parties did meet on-site with VIMS, but could not reach a mutual agreement on the project's design. The applicant agreed to reduce the gap width between the breakwaters to minimize sand loss. Although VIMS apparently still favored their original marsh sill design, they indicated in a June 9, 2008 e-mail that the project, as revised, met the majority of their design concerns for the proposed breakwaters.

Mr. Owen said that the application stated that the project purpose was to restore the shoreline to pre-Isabel conditions and to protect the property from erosion caused by future storm events and increased boat wakes. VIMS, in their original Shoreline Report dated March 6, 2008, first questioned the need for the project at all since the applicant had already protected his upland improvements (i.e., driveway access and home).

Mr. Owen stated that staff believed that Mr. Garrett should be able to protect his property from erosion; however, staff shared the protestant's concerns over the potential down-drift impacts to an established navigation channel. Since the applicant modified the breakwater design to the general satisfaction of VIMS, staff recommended approval of the breakwaters provided they were constructed to a height acceptable to VIMS. Staff could not; however, support the placement of the beach nourishment material on State-owned submerged lands at this time given the potential likelihood of down-drift movement and impacts to the navigation channel. Staff concurred with the VIMS position that the more appropriate erosion control measure for this property was the rock spur/marsh sill design originally recommended in 2005. Should the breakwaters be constructed and fail to catch sand naturally after a two-year period, then staff would be willing to recommend that the Commission reconsider the applicant's request for beach nourishment at that time. The portion of the nourishment approved by the local Wetlands Board was not in question and could be placed now.

Mr. Owen stated that staff also believed that the applicant and protestant needed to agree on a terminal feature design, which would more effectively trap sand currently being deposited in the cove's dredged channel entrance. Any such improvements would need to be reviewed for the necessary regulatory approvals.

After some further discussion, Commissioner Bowman asked if the applicant or his representative wished to speak.

Karl Mertig, agent for Mr. Garrett, was sworn in and his comments are a part of the verbatim record. Mr. Mertig said the drawings had been revised for the Board and he could either hand it out or display it on the overhead projector. He said the revisions reflect comments made by Mr. McCulloch. He said that the staff had made a good presentation. He added that this was a dynamic shoreline that made the project necessary. He said in this case one size does not fit all. He said time will show whether it will work or not, even though science says it should work. He said a breakwater would not allow natural filling and that one breakwater was actually proposed in the channel.

Commissioner Bowman asked about the depth of the channel.

Mr. Mertig answered that it was three feet at low-tide near the shore. He stated that all the shoreline is armored and cannot trap the sand, as there was a continuous sill. He said that no sand would be added to the marsh area as what was there naturally was healthy marsh. He said that in another area of wetlands there had been erosion. He stated that Mr. Garrett is willing to build and let nature takes its course.

Commissioner Bowman asked if he had done this before in this type of system. Mr. Mertig responded no. Commissioner Bowman stated that VMRC had approved four similar projects for other areas, which had worked.

Associate Member Tankard stated he was concerned about the transport area and the channel shifting allowing water to affect the shoreline that actually made it deeper. Mr. Mertig said that it would push the channel out into the Thorofare and he was not worried about a negative effect.

Associate Member Fox asked if the jetty could be extended along the channel. Mr. Mertig said that Mr. McCulloch already had approval for that, but had not done it yet.

Commissioner Bowman asked for anyone to speak, pro or con.

Dennis Detrich, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Detrich felt that a better alternative would be better, such as a rock jetty to stop the North East fetch by tying into the sill and tying both ends leaving the marsh behind it. He said that was done on Mr. McCulloch's property and it protected the marsh and stopped the flow of sand. He said he agreed with the NE jetty, but it still needed the

toe marsh sill, which would make it better. He said a NE storm would bring the sand around it.

Commissioner Bowman asked him if he was only objecting to the method, not the project. Mr. Detrich responded yes.

Tom McCulloch, adjoining property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. McCulloch stated that he had never constructed the 30-foot jetty he had gotten a permit for and at 60 feet the sand would just keep moving.

Commissioner Bowman asked if Mr. Mertig had any rebuttal comments. Mr. Mertig responded, no.

Commissioner Bowman asked for further discussion from the Board or a motion.

Associate Member Schick stated that he was not a coastal engineer, but he did not see that this project was better than the one in 2005. He said it would not create marsh only sandy beach. He said it would also be a problem for the channel as the structure needs a terminal end. He said he did not see this as the right application for this area.

Associate Member Robins stated that both methods were risky as this was a highly dynamic area. He said the applicant did not agree with the other method and there was risk of shoaling either way. He said he felt the applicant had made his case, but staff recommended no beach nourishment did help.

Associate Member Tankard moved to approve the project as presented by staff. Associate Member Robins seconded the motion. The motion carried, 6-2. Associate Members Fox and Schick both voted no. The Chair voted yes.

Permit Fee..... \$100.00

- 9. **RICHARD CONKLIN, #05-0897**, requests after-the fact authorization to retain two (2) additional finger piers, twelve (12) additional mooring piles and relocate two (2) boats slips on his existing community pier along Chincoteague Channel at "The Landings" in the Town of Chincoteague, Accomack County. Mr. Conklin also requests to retain one boat slip on the south side of the adjacent motel pier. This slip was to be removed prior to the completion of the community pier.

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

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Mr. Badger explained that "The Landings" is a 20 unit townhome complex located on South Main Street, four tenths (0.4) of a mile south of the Chincoteague Causeway and 400 feet southwest of the Coast Guard Station. While the existing 20-slip community pier was owned by the applicant at the present time, Mr. Conklin planned to ultimately transfer the ownership of the community pier to the Townhome Association.

Mr. Badger said that Mr. Conklin received a permit from the Commission at its October 25, 2005 meeting for the construction of a 213-foot long by 6-foot wide community pier with a 50-foot by 8.5-foot T-head and eight (8) finger piers creating a total of twenty (20) slips (18 wet slips on the pier and 2 more along the bulkhead). The pier and boat slips were for the exclusive use of the owners or tenants of the 20 townhomes in "The Landings" development. In order to induce the Commission to approve the 20 slips, the applicant agreed to remove the 14 existing wet slips from the south side of his adjacent motel pier at the "Anchor Inn Motel Marina" prior to the completion of the project. The pier was completed in 2007.

Mr. Badger stated that on July 17, 2007, staff conducted a compliance inspection of the completed project. During that inspection, staff found that two (2) additional boats slips, two (2) additional finger piers and twelve (12) additional mooring piles had been installed on the community pier that were not permitted. The two (2) slips that had been permitted along the bulkhead had not been constructed. As a condition of approval, Mr. Conklin also had agreed to remove all fourteen (14) boat slips on the south side of the adjacent motel pier. While he removed thirteen, one boat slip remained.

Mr. Badger explained that a Notice to Comply was issued to Mr. Conklin on September 18, 2007. The Notice directed removal, within 60 days, of that portion of the pier that was not in compliance with his permit and restoration of the area to pre-existing conditions. Mr. Conklin was advised that failure to accomplish the corrective actions within the time frame specified would result in this matter being heard by the Commission Board, as an enforcement action.

Mr. Badger said that in lieu of removal, Mr. Conklin's representative, Ms. Ellen Grimes by letter dated October 27, 2007, requested an after-the-fact modification to the original permit in order to retain the additional finger piers, pilings and the one boat slip on the motel pier. The proposed slips, finger piers and pilings continued to fall within the existing community pier's bold outline. This application was then subjected to the standard public interest review.

Mr. Badger stated that the Virginia Institute of Marine Science (VIMS) had originally indicated that consideration should be given to the individual and cumulative adverse impacts resulting from construction and occupancy of the twenty slips. In general, a community facility was preferred over individual piers for each riparian owner. They recommended the Association operate the pier in an environmentally responsible manner. In an additional e-mail, dated July 9, 2008, VIMS indicated that the re-configured pier

and additional one slip on the adjacent motel pier should not significantly increase the environmental impact.

Mr. Badger said that the Virginia Health Department advised that the applicant had been granted a variance and did not object to the issuance of the subject permit and that the project was already sited in a condemnation area.

Mr. Badger explained that although the Accomack County Wetlands Board approved the original permit, they did not require a permit for this modified proposal since the after-the-fact components were all channel-ward of the mean low water and therefore were outside their jurisdiction.

Mr. Badger stated that the project was not protested. No other State agencies had commented on the project.

Mr. Badger noted that Mr. Conklin had agreed to remove the fourteen (14) wet boat slips from his adjacent motel pier, as a proffer to obtain the 18 slips on the community pier and two (2) slips along the bulkhead. As a result, staff could not support his request to retain the one boat slip on the south side of the motel pier. Accordingly, staff recommended the Commission order the removal of the mooring pile and direct that no boats be allowed to moor overnight on the south side of the motel pier, as was originally stated as a condition in the Commission's permit.

Mr. Badger said that the remainder of the project was unprotested and represented a reconfiguration of the permitted slips. Had the applicant not constructed the additional two slips, finger piers and pilings prior to receiving authorization from VMRC, the modification would probably have been considered as a page two item on the agenda. Therefore, after evaluating the merits of the entire project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the two (2) additional finger piers, twelve (12) additional mooring piles and the relocation of the two (2) boats slips onto his existing permitted community pier as constructed, with triple fees of \$75.00 and a civil charge of \$1,800.00 based on minimal environmental impact and a major degree of deviation given the after-the fact nature of the project. All other permits conditions would remain in effect.

Commissioner Bowman asked who was the contractor. Mr. Badger said that it was Jimmy Adams. There were no further questions.

Commissioner Bowman asked if the applicant wished to speak.

Richard Conklin, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Conklin explained he had not intended to violate the law as he was correcting the original drawings adding the additional pilings. He said that the first permit was approved, but the slips needed a piling in order to tie up a boat. He said he told the

contractor to do it in order for it to be done correctly. Mr. Conklin stated he was moving too fast and assumed he knew what he was doing. He said he did not go past the adjacent property pier, reduced the slips so as to not go out any further, gave up other slips for the transient traffic and removed all of the finger piers and put in the pilings. He said he did everything to correct the errors made in the plans.

Commissioner Bowman asked if anyone else wished to speak, pro or con? There were none. He asked for discussion or action by the Commission.

Associate Member Bowden stated it was correct that this was a contractor oversight. He said that they were giving up the slips as recommended by staff. He explained that he felt this was not a major deviation, but a moderate deviation and they should have come back to the Commission to get approval for these changes and additional structures. He stated that the assessment of a fine of \$1,800.00 was too much and it should be \$1,200.00. He moved to approve the after-the-fact permit request and to require the assessment of a fine for \$1,200 for a moderate deviation. Associate Member Robins seconded the motion. The motion carried, 8-0.

Civil Charge.....	\$1,200.00
Permit fee (triple).....	\$ 75.00
Total Fees.....	\$1,275.00

10. GEORGE H. MARSHALL AND GENE BROWN, II, OYSTER PLANTING GROUND APPLICATION, #2008-012. Applicant's request to lease approximately 11.90 acres of oyster planting ground within the James River adjacent to the Jail Island Clean Cull Area in the City of Newport News. The application is protested by an adjacent oyster ground leaseholder, Mr. John DeMaria.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. He stated that the protestant was not present at the meeting and the applicants were present.

Associate Member McLeskey left the meeting.

Mr. Stagg explained that an Oyster Planting Ground Application was received on January 17, 2008, for approximately 12 acres of oyster planting ground near the Jail Island Clean Cull area of the James River also known as the "Swash" area near Mulberry Island. The area had been previously leased but was relinquished.

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Mr. Stagg stated that the ground was surveyed on June 20, 2008, and contained, by survey, 11.90 acres.

Mr. Stagg stated that on May 7, 2008, staff received a letter of protest from Mr. John DeMaria, Jr., objecting to the application. Mr. DeMaria indicated he was opposed to the leasing of any ground to Mr. Marshall that was contiguous to any of his leases. His specific objections included his concern that Mr. Marshall was previously charged and convicted of dredging oysters from one of Mr. DeMaria's leased grounds. He further alleged that Mr. Marshall was ordered to pay restitution by the Isle of Wight Circuit Court, but had failed to do so. He also alleged that Mr. Marshall was also convicted of dredging without a proper permit. Mr. DeMaria did not mention the co-applicant, Mr. Gene Brown, II, in his letter of objection. A review of Court records, however, indicated guilty pleas by Mr. Marshall for the taking of oysters from public rocks out of season (Code of Virginia, §28.2-506), and the entering property of another for the purpose of damaging it, etc. (Code of Virginia, §18.2-121). Both cases were considered misdemeanors. There was no record of the Court ordering restitution to Mr. DeMaria.

Mr. Stagg said that staff normally supported the leasing of historically leased areas. While sympathetic to Mr. DeMaria's concerns, staff believed his objections were best addressed through the Court system and/or as a law enforcement issue. Staff recommended the leasing of the ground, as surveyed and shown on the prepared plat.

Commissioner Bowman asked the applicants to speak.

George H. Marshall was sworn in and his comments are a part of the verbatim record.

Commissioner Bowman asked Mr. Marshall if he would stay on this lease only, not on Mr. DeMaria's. Mr. Marshall responded yes.

Associate Member Tankard moved to approve the application. Associate Member Holland seconded the motion. The motion carried, 7-0. Associate Member McLeskey had left the meeting.

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11. **DISCUSSION:** Establishing criteria for the definition of existing beds of submerged aquatic vegetation (SAV) and the delineation of areas where there is potential for submerged aquatic vegetation restoration, and specifying conditions for SAV protection in Regulation 4 VAC 20-335, pertaining to on-bottom shellfish aquaculture activities.

Tony Watkinson, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record. Mr. Watkinson stated that this presentation included a request for a public hearing.

Mr. Watkinson explained that submerged aquatic vegetation (SAV) is an important natural resource which provided a variety of ecological functions, including stabilizing sediments, physically baffling wave energy, reducing water column turbidity, recycling water column nutrients, and providing high levels of primary and secondary production. SAV was considered to be of extremely high habitat value to commercially and recreationally important species of fish and shellfish, and was considered to be the primary nursery habitat for young blue crabs in the Chesapeake Bay. As such, the importance of Submerged Aquatic Vegetation (SAV) as a resource and habitat within the tidal waters of the Commonwealth was well-documented and the protection and restoration of SAV had been a long standing commitment of the Commonwealth and was identified in numerous Bay Program agreements and strategies for SAV management. Furthermore, when considering proposals for the use of State-owned submerged lands the Commission was especially charged with considering a project's effects on SAV pursuant to §28.2-1205 of the Code of Virginia.

Mr. Watkinson explained that SAV coverage was annually mapped by VIMS. In addition, potential restoration areas within the Chesapeake Bay, totaling 185,000 acres, had also now been identified by the Chesapeake Bay Program partners based on historic coverage. Combined, this information had been utilized by Commission staff, as criteria to guide resource management decisions. These decisions generally followed consultation with VIMS regarding the presence or absence of SAV resources based on their annual surveys of SAV coverage. However, recent fluctuations in SAV coverage due to extreme weather conditions had hampered utilizing the most recent year survey information as the primary criteria and basis for decisions regarding proposed projects potentially affecting existing SAV beds and SAV recovery. This made it necessary to consider multiple years' coverage of SAV to define SAV beds, and to formally incorporate the historic presence of SAV into criteria to identify areas for potential SAV restoration.

Mr. Watkinson said that as such, staff recommended the Commission schedule a public hearing at the September or October meeting to consider adopting a regulation to establish the criteria to define beds of Submerged Aquatic Vegetation (SAV) and to delineate areas where there was potential for SAV restoration, as well as amend the language of Section 30 of Regulation 4 VAC 20-335 (Pertaining to On-Bottom Shellfish Aquaculture Activities) regarding the restrictions on placement of structures on SAV. This would be in accordance with the Commission's authority under §§28.2-103 and 28.2-1204.1 of the Code of Virginia.

There was some discussion about the displacement of leaseholders where SAV was now thriving on the Eastern Shore and the impacts on the shellfish and aquaculture industries.

Mr. Watkinson stated that the public hearing would provide the time for those issues to be addressed.

Commissioner Bowman suggested that Dr. Bob Orth be contacted to be at the public hearing. Mr. Watkinson agreed that Dr. Orth was needed at the hearing.

Commissioner Bowman suggested that a workgroup be formed involving the stakeholders to hear their ideas. Mr. Watkinson stated that these individuals could be invited to an informational hearing, if the Commission wants to do that.

Associate Member Fox suggested that a map of the areas affected be provided on the website. Mr. Watkinson stated that the VIMS website would provided this information through their blue infrastructural tool. Associate Member Schick suggested that it should be noted in the notice of public hearing that the information was available on the website.

Associate Member Robins moved to approve a Public Hearing for the October meeting. Also, he stipulated that staff hold a public informational hearing, as well. Associate Member Tankard seconded the motion. The motion carried, 7-0. Associate Member McLeskey still had not returned.

No applicable fees.

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Commissioner Bowman recessed for a lunch break at approximately 12:30 p.m. The meeting was reconvened at approximately 1:00 p.m. Associate Member McLeskey left for the rest of the meeting at approximately 1:00 p.m..

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12. PUBLIC COMMENTS:

Lee Smith, Treasurer of the Chesapeake Bay Watermen’s Association, was present and his comments are a part of the verbatim record.

Mr. Smith had asked for this time to express this concern for the recent crab restrictions voted on by the Commission for the crab fisheries. He stated that it would put a lot of watermen out-of-business because of these regulations, as well as the increased cost to operate the vessels mostly because of the high fuel cost. He said for what it cost him per day to fuel his vessel it was not worth him leaving the dock. He explained that it would be the end of watermen for this year and there were no jobs, no work, and nothing to replace their salaries. He stated also, that for the last year he had not been working in the crab fishery in order to do his part to conserve the crabs. He said now from what he had heard, he might not be able to keep his license.

Mr. Smith explained that it was not over-fishing by the watermen, but that it was the poor water quality of the Bay resulting from pollution. He stated that the Commission needed

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to look elsewhere for a solution to the problem and stop the madness, because it was not the watermen's fault. He thanked the Board for giving him the opportunity to speak.

No action was taken.

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- 13. PUBLIC HEARING:** Proposed Regulation 4VAC20-1150, "Pertaining to Charter Boat and Head Boat Fisheries", to establish a control date of June 24, 2008.

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

Mr. Travelstead explained that the Virginia Charter Boat Association had requested the Commission consider limiting access to the Virginia Charter Boat Fishery by limiting the sale of charter boat licenses. Section 28.2-302.8 of the code of Virginia authorized the Commission to establish the sale of a fishing guide license, which would be required of each charter vessel captain. The Commission may then limit the sale of the guide license, when deemed necessary for effective fisheries management.

Mr. Travelstead said that one of the first steps in the process of limiting access to a fishery was the establishment of a control date. Use of a control date was a means of defining the pool of potential participants in a given fishery management program. Control dates may establish a range of years or an end date, prior to which potential participants must have been active in a fishery in order to qualify for a license, permit or quota share in that fishery in future years.

Mr. Travelstead stated that a control date of June 24, 2008 had been advertised for public comment. It was this date, if adopted, that would be used to determine those who would qualify for a fishing guide license, should access to such a license be limited. Participation by an individual in the Virginia charter boat and head boat fisheries, after the control date, would not be considered in the distribution of fishing guide licenses, should the Commission determine that limits on participation in this fishery were necessary.

Mr. Travelstead said that if entry to the charter boat fishery was restricted at a later date, individuals entering the fishery after the control date would have no guarantee of participation in the fishery in future years. Establishing a control date at this time also limited speculation by individuals, who might purchase a license now, believing that a limited charter fishing license in the future may have intrinsic value.

Mr. Travelstead stated that no public comment on this issue has been received.

Mr. Travelstead said that staff recommended adoption of Regulation 4VAC20-1150-10 et seq., "Pertaining to Charter Boat and Head Boat Fisheries," to establish a control date of June 24, 2008.

Mr. Travelstead said that the Maryland Department of Natural Resources had been contacted and made aware of the control date. He said they requested that no other action be taken at this time to allow time for discussion. He stated that a meeting between Maryland's Charter Boat Association and Virginia's Charter Boat Association had been scheduled for August 11, 2008 to discuss the reciprocal license agreement between Maryland and Virginia for Charter Boats.

Commissioner Bowman stated that he was optimistic about the meeting. He said it was an unhappy situation between North Carolina and Virginia, as their fees were higher for Virginia fishermen and when asked about reciprocity, they had not been cooperative.

Associate Member Robins said that a guide license would help with a reciprocal agreement.

Associate Member Schick asked if the licenses would be limited. Mr. Travelstead stated that no limited entry was suggested at this time, as there were legal issues if we do not apply it to all. He said Maryland crabbers took Virginia to court and it was decided that it was unconstitutional to limit entry for non-residents only.

Associate Member Bowden stated that it was the same for striped bass. Starting last year, Maryland no longer allowed transfers for Virginia licensed fishermen, but Virginia still allowed Maryland fishermen. He said Maryland gives Virginia the short end of the stick.

Commissioner Bowman opened the public hearing. There was no one who wished to comment, therefore, he closed the public hearing. He asked for action by the Commission.

Associate Member Fox moved to approve the control date of June 24, 2008. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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14. PUBLIC HEARING: Proposed Amendments to Regulation 4VAC 20-910, "Pertaining to Scup", to establish the 2008 commercial harvest quota of 2,887 pounds.

Alicia Nelson, Fisheries Management Specialist, gave the presentation and her comments are a part of the verbatim record.

Within a recent NMFS and ASMFC closure notice for the summer period, staff discovered a discrepancy between the summer quota listed by ASMFC (2,887 pounds) and that listed in the VMRC Regulation 910 (7,862 pounds). Staff contacted the ASMFC plan coordinator who indicated a letter had been sent revising the summer quota in February. Staff has no record of receipt of that letter. However, it is important to amend our regulation since all states are required to implement the provisions established in addenda to the Scup Fishery Management Plan. Staff had not received any public comments.

Staff recommended establishing the 2008 summer period quota at 2,887 pounds.

Commissioner Bowman opened the public hearing. There being no comments, he closed the hearing. He asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

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There was no further business and the meeting was adjourned at approximately 1:20 p.m. The next meeting will be Tuesday, August 26, 2008.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary