

MINUTES

Commission Meeting**February 26, 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)	
John R. McConaugha)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick)	
J. Edmund Tankard, III)	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Sunita Hines	Bs. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Alicia Middleton	Fisheries Mgmt. Specialist
Holly Aber	Fisheries Mgmt. Technician
Suzanne Mills	Fisheries Mgmt. Technician
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Ray Jewell	Captain, Northern Area
Kenny Oliver	Captain, Southern Area
Steve Pope	Captain, Middle Area
Randy Widgeon	Captain, Eastern Shore

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James Rose	Sergeant, Middle Area
Ben Major	Sergeant, Southern Area Bruce
Ballard	Sergeant, Eastern Shore
James Vanlandingham	Sergeant, Northern Area
Gerald Pitt	Marine Police Officer
Bryan Tittermary	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.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician
Joanne Jones	Office Services Specialist

Virginia Institute of Marine Science (VIMS)

Lyle Varnell	Rom Lipicus
David O'Brien	Jacques van Montfrans
Roger Mann	Julie Bradshaw

Other present included:

Alice Callahan	Wayne Harding	Bill Hamm	Cecil Allsbrook
Alvecica Payne	Tom Ponko	Edward C. Deerfield	
Robert Allen	Charles Williams III	Charles H. Williams IV	
S. Parker	Christina Carson	Wilbert Carson	Frank Blake
Peggy Blake	Jim Wilson	James Stanley	Traycie West
Jan Eversen	Joel Petery	Dick Lynn	William Ernst
Chris Flint	Jack Kennedy	Douglas Burdett	Erik Zimmerman
Jay Foster	Hal Goodman	Sharon Powell	Cary Powell
James White	P. L. McDermott	Brittany Blackwater	Frank G. Lawson
Tom McDermott	Kevin McDermott	Edward Burn	Lee Rosenberg
Karen Petery	Jeanne Richardson	Roger Mann	Vanessa T. Valldejuli
Paul Peterson	Donald Rice	Martha McNeill	Steve Moore
Fred White	Frank Kearney	Ron Sterling	Nelson Ortiz
Chris Moore	Ellis W. James	Trish Ferraro	Daryl Hurley
Roger Hurley, Jr.	Louis A. Barlow	William F. Wright	Robert W. Jensen

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Douglas L. Jenkins	Curtis B. Jenkins	Mary Ann Moxon	Ken Smith
Tommy Leggett	Jackie Harmon	Andrea Moran	Kenneth Carpenter
Pete Brunk	Keith Martin	Robert Purnell	Boyce Lavender
W. C. Tice	John Dawson	Joe Shelton	Bob Reed
James L. Riggins	James L. Riggins, Jr.	Roger Parks	Keith Wilson
Mark Hodges	Rufus H. Ruark, Sr.	Lee Ann Washington	Amy Firth
Chuck Pruitt	Dale Taylor	Russell Gaskins	John Harrison, Jr.
Mike Langowski	Terry Phillips	Charles Littlefield	Lester H. Moore, Jr.
Tony Edwards	Harry Marshall, Jr.	Kevin A. Moore	Wayne Parks
Welden Pruitt	Shannon L. Wells	Ronnie Jett	Jack Little
Vernon Ward	Norman Ward	Michael Britt	Asbey Cross
Dan Dise	Norman Parks	Donald Crockett	Dennis Crockett
July Ryan	Dave Boyce	Lee Tolliver	H. M. Arnold, Sr.
Mark Wallace	Hayes Angle	Lawrence Latne	Peter Nixon
Gene Hunsocket	Randy Lewis	J. R. Lewis	Scott Harper
Daniel Hernandez	Donnie Thrift	Frances Porter	Patrick Lynch
Wes Bloc	Danny Bowden	Timmy Howard	Jeff Deem
Ty Farrington	Kelly Price	Ed Lynch	John B. Graham
Kelly Place	Kent Carr	John Forrest	Michael Duffy
Larry W. Thrift	Robert L. Jones	Vernon Merritt	J. Wakeford
Rudy Gerth			

and others

Commissioner Bowman called the meeting to order at approximately 9:33 a.m. All Associate Members were present.

Associate Member Robins gave the invocation and Carl Josephson led the pledge of allegiance.

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

Commissioner Bowman asked for a motion to approve the agenda. Associate Member Robins asked if staff had any changes to the agenda. There were none. Associate Member Robins moved to approve the agenda. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

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MINUTES: Commissioner Bowman asked if there were no corrections or changes, for a motion to approve the January 22, 2008 meeting minutes. **Associate Member Robins explained that he had a small correction in his comments on page 37. He said where it said "...no qualifying period", should be changed to "...a qualifying period."** Robins moved to approve the minutes, as amended. **Associate Member McConaugha seconded the motion. The motion carried, 8-0-1. Associate Member Fox abstained as he was not in attendance to 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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- 2. **PERMITS** (Projects over \$50,000 with no objections and with staff recommendation for approval).

Tony Watkinson, Deputy Chief, Habitat Management Division, reviewed items 2A through 2N for the Commission. He said that staff was recommending approval of these items. His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff. There were none.

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 2N. **Associate Member Schick moved to approve these items. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

- 2A. **TRANSCONTINENTAL GAS PIPELINE CORPORATION, #07-1000**, requests authorization to repair or replace, as needed, natural gas transmission pipeline segments from the bank of the Potomac River in Fairfax County to Mainline Valve 180 B10 in Fauquier County at multiple stream crossings in Fairfax, Fauquier, and Prince William Counties. Stream crossings may include Potomac River, Cub Run, and Bull Run in Fairfax County; Dawkins Branch, Broad Run, and Kettle Run in Prince William County; and Cedar Run in Fauquier County. Staff recommends a permit condition stating that the permittee agrees to notify the Commission of any line replacements, at which time a royalty at the rate of \$3.00 per linear foot for the encroachment over State-owned subaqueous bottom would be assessed.

Permit Fee.....\$100.00

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2B. TOLL BROTHERS, INC., #07-2643, requests authorization to install 40 linear feet of sanitary sewer line beneath Broad Run near the intersection of Route 606 and Route 744 in Loudoun County. Staff recommends a royalty of \$120.00 for the encroachment under 40 linear feet of State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 40 l. ft. @ \$3.00/l. ft.).....	\$120.00
Permit Fee.....	\$100.00
Total Fees.....	\$220.00

2C. GASLIGHT LANDINGS LLC, #05-1221, requests authorization to modify existing dock configuration by the addition of 12 mooring piles, associated with the Gaslight Landing project adjacent to property at 207 Mill Street, situated along Occoquan River in Prince William County.

No applicable fees – Permit Modification

2D. OCCOQUAN HARBOUR MARINA, #07-2591, requests authorization to rearrange the existing marina configuration by removing two (2) piers (E and F) and to construct a 8-foot wide open pile floating commercial pier extending 250-foot channelward of mean low water, and a 8-foot by 103-foot T-head platform, five (5) 4-foot by 45-foot and five (5) 4-foot by 50-foot finger piers, and 15 mooring piles, resulting in a reduction of wet slips from 216 to 160, adjacent to their property at Occoquan Harbour Marina, situated along Occoquan River in Prince William County. Staff recommends a royalty of \$5,150.00 for the encroachment over 5,150 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 5,150 sq. ft. @ \$1.00 per sq. ft.)...	\$5,150.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$5,250.00

2E. STAFFORD COUNTY DEPARTMENT OF UTILITIES, #07-1175, requests authorization to replace and upgrade an existing county waterline crossing approximately 30 linear feet of Aquia Creek in Stafford County.

Permit Fee.....	\$ 100.00
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2F. CITY OF BRISTOL, #08-0003, requests authorization to construct an 82' long by 84' wide clear-span replacement Bridge across Beaver Creek to facilitate the widening of Lee Highway in Washington County.

Permit Fee.....	\$ 100.00
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2G. CITY OF NORFOLK, #06-2365, requests authorization to dredge approximately 1.7 million cubic yards of beach quality sand from within a portion of the auxiliary channel of the Thimble Shoal Federal Navigation Channel, immediately east of the Chesapeake Bay Bridge Tunnel, for the purpose of selective beach nourishment, on an as-needed basis, along approximately 7.2 miles of the City's beaches situated along the Chesapeake Bay from the Little Creek entrance channel westward to the terminus of Willoughby Spit in the City of Norfolk. The project will also include the extension of 12 existing storm water outfalls, as needed, to accommodate the increased beach width.

Permit Fee.....\$ 100.00

2H. DEPARTMENT OF THE NAVY, #07-1589, requests authorization to replace 4,622 linear feet of bulkhead landward of or within the same alignment of an existing bulkhead, adjacent to the SP Area aircraft parking apron at Naval Station Norfolk situated along Willoughby Bay and Mason Creek in the City of Norfolk.

Permit Fee.....\$ 100.00

2I. WESTERN VIRGINIA WATER AUTHORITY, #07-2053, requests authorization to install 12-inch diameter waterline crossings in Back and Magodee Creeks by directional bore method beneath each creek or by attaching the waterline to existing bridges along U.S. Route 220 at each crossing location in Roanoke and Franklin Counties.

Permit Fee.....\$ 100.00

2J. CITY OF NORFOLK, #07-2517, requests authorization to replace and stabilize, through the installation of concrete pilings and support beams, the brick façade of the existing Armed Forces Memorial at Town Point Park, situated along the Elizabeth River in the City of Norfolk.

Permit Fee.....\$ 100.00

2K. NAVAL FACILITIES ENGINEERING COMMAND, #07-2540, requests authorization to construct a 145-foot, 8-inch wide concrete launch ramp tapering to 99 feet, 11 inches wide, extending 167 feet channelward of mean low water, adjacent to Naval Station Norfolk, situated along Willoughby Bay in the City of Norfolk.

Permit Fee.....\$ 100.00

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2L. NORFOLK DREDGING COMPANY, #07-2426, requests authorization to construct 861 linear feet of steel sheet-pile replacement bulkhead a maximum of two (2) feet channelward of an existing, deteriorated bulkhead and mean low water, with associated backfill, and install four (4) 7-pile cluster mooring dolphins adjacent to their commercial property at the confluence of New Mill Creek and the Southern Branch of the Elizabeth River at 1500 Shipyard Road in Chesapeake. Recommend approval with the assessment of a royalty in the amount of \$5,166.00 for the filling of 1,722 square feet of State-owned subaqueous bottom at a rate of \$3.00 for square foot, and \$176.00 for the encroachment of the dolphins over 88 square feet at a rate of \$2.00 per square foot for a total royalty in the amount of \$5,342.00.

Royalty Fees (encroachment 88 sq. ft. @ \$2.00/sq. ft.).....	\$ 176.00
Royalty Fees (filling 1,722 sq. ft. @ \$3.00/sq. ft.).....	\$ 5,166.00
Permit Fee.....	\$ 5,342.00

2M. TOWN OF CHINCOTEAGUE, #07-0265, requests authorization to construct a 225-foot long by 6-foot wide pier which includes a 16-foot by 10-foot L-head and a 225-foot long breakwater under the proposed pier; extend an existing pier to 450 linear feet and install under the proposed pier a 450-foot long breakwater; construct and backfill 30 linear feet of bulkhead; to dredge approximately 121 cubic yards of state owned subaqueous material to provide maximum dredge depths of minus four (-4) feet at mean low water; and install one (1) day marker at the entrance to Curtis Merritt Harbor in the Town of Chincoteague, Accomack County.

Permit Fee.....	\$ 100.00
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2N. TOWN OF SAXIS, #07-2647, requests authorization to extend their existing public fishing pier an additional 200 feet into Pocomoke Sound. The new proposal also includes a 100-foot long by 10-foot wide T-head. (The Town fishing pier will now be 400-foot long by 8-foot wide with two (2) 100-foot by 10-foot T-heads.)

Permit Fee.....	\$ 100.00
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3. CONSENT ITEMS: (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board).

There were no consent items.

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Commissioner Bowman asked Carl Josephson, Senior Assistant Attorney General and VMRC Counsel whether a closed meeting was necessary. Mr. Josephson stated that no closed meeting was necessary.

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(Items 5 and 6 were combined and heard at the same time.)

- 5. CITY OF HAMPTON, #06-1356**, requests authorization to construct a 16-foot wide by 709-foot long commercial fishing pier with a 70-foot by 26-foot T-head platform adjacent to the City of Hampton's property situated along the Chesapeake Bay in Hampton.
- 6. CITY OF HAMPTON, #06-1355**, requests authorization to construct a 30-foot by 100-foot trestle with 2 associated 4-foot by 16-foot ramps for use during construction of the proposed Buckroe Beach Fishing Pier adjacent to the City of Hampton's property situated along the Chesapeake Bay in Hampton.

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

Ms. Gallup explained that the project site was located on the Chesapeake Bay in the Buckroe neighborhood of Hampton at the south end of the public beach just north of a private beach and residential area.

Ms. Gallup said that the City proposed to reconstruct the Buckroe Beach Fishing Pier that was destroyed by Hurricane Isabel in 2003. If approved, a temporary construction trestle would also be necessary to facilitate pier construction. The trestle would be removed after the pier was constructed. The pier, as proposed, would be 709-feet long by 16-feet wide with a 70-foot by 26-foot T-head platform.

Ms. Gallup stated that the project also included a parking lot and building housing bathrooms, a snack bar, and a bait shack. Since these portions of the project were located on the adjacent upland on City owned beach, they were considered to be outside of the Commission's jurisdiction pursuant to §28.2-1403 of the Code of Virginia as a government activity on government-owned beaches.

Ms. Gallup said that since June 27, 2006, staff had received 21 letters of protest for this project from both adjacent and nearby property owners. The majority of the protestants lived in Chesapeake Landing, the neighborhood immediately to the south of the City's beach property. The first protest letters detailed concerns over the proposed upland

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improvements to the property. When the City first proposed to rebuild the Buckroe Fishing Pier, a restaurant was included in the plans for the upland. The adjacent property owners were concerned with noise, lights, smells, and other possible effects of a restaurant and night spot. Concerns about the pier also included possible damage to nearby homes should another hurricane destroy the pier and an unsafe swimming environment due to lines and tackle being lost by fishermen.

Ms. Gallup said that by letter dated July 27, 2006, the Chesapeake Landing Homes Association, Inc. (Association) appealed what they referred to as a “case decision” by staff. The “case decision” was a letter sent by staff in response to questions posed by Mr. Joel Petery who was the director of the Association. Staff explained that the City’s application was for a pier only and that any proposed work on the uplands would be outside of the Commission’s jurisdiction based on staff’s determination that it constituted governmental activity. Mr. Petery’s letter also referenced pilings that were driven on the beach by Boone Builders. The Commission was briefed on that matter at the April 25, 2006, meeting.

Ms. Gallup explained that Commissioner Bowman responded to the Notice of Appeal on August 2, 2006. He suggested that the appellants submit a request for statutory interpretation and support for their position. Also, he did not agree that staff’s letter constituted a “case decision.”

Ms. Gallup said that the Association followed up with a letter, dated August 9, 2006, to support their position that the governmental activity exemptions in Code were not applicable to the pier. On August 15, 2006, the City of Hampton responded to the Association’s August 9th letter reiterating the City’s belief that the pier qualified under the governmental activity exemption. The Association subsequently filed a Petition to Appeal in Hampton Circuit Court on August 24, 2006.

Ms. Gallup explained that on September 26, 2006, the Association appealed the City of Hampton Wetland Board staff’s decision that no wetland permits were required for the pier or upland structures because they too were considered governmental activity. Staff responded on September 29, 2006, with a letter acknowledging the appeal. A motion to dismiss was filed on October 10, 2006, by the Office of the Attorney General.

Ms. Gallup further explained that on February 13, 2008, staff received notice of a civil action seeking an apportionment of riparian rights by the Chesapeake Landing Homes Association. Staff received a copy of the apportionment request by email and had not received anything since.

Ms. Gallup stated that barring some sort of court injunction, there did not appear to be any reason why the permit process could not go forward.

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Ms. Gallup said that the application was revised in December 2007 and the City removed the proposed restaurant from the plans. The current proposal calls for the pier and an upland building containing bathrooms, a snack bar, and bait shack. The adjacent property owners and previous protestants were notified of the revised plan. They were still concerned about the pier and the building's proximity to their homes. Hampton Municipal Code §7-31 also prohibited boating and jet skiing within 300 feet of certain fishing piers in the City, including the Buckroe Pier. As a result, the residents in Chesapeake Landing were also concerned that the pier could impact or diminish their riparian rights and ability to access the water by boat.

Ms. Gallup explained that on multiple occasions, the residents of Chesapeake Landing had stated that they would reconsider their protests if the City would agree to move the pier and the proposed upland improvements north on the City's beach property. The City had refused to consider relocating or shifting the location.

Ms. Gallup stated that in their Shoreline Permit Application Reports for the pier and trestle, VIMS had stated that the adverse environmental impacts attributable to the pier's construction should be relatively minor.

Ms. Gallup said that staff had received several e-mails in support of the project and received a letter of support from the Coastal Conservation Association Virginia on February 20, 2008.

Ms. Gallup said that no other agencies or organizations had commented on the project.

Ms. Gallup explained that while staff was sensitive to the concerns expressed by the Chesapeake Landing residents and other protestants the majority of their concerns appeared to be related to upland impacts and issues which were outside of the Commission's jurisdiction. Staff understood the concerns with the proximity of the proposed fishing pier to the adjacent landowners, however the pier was proposed in the same location, as the pre-Isabel pier. As a result, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the fishing pier and temporary construction trestle, as proposed.

Commissioner Bowman asked if the city's representative was present and wished to comment.

John Daniel, Attorney, representing the City of Hampton, was present and his comments are a part of the verbatim record. Mr. Daniel stated that this was not a new issue and was considered in 2006. He said that it had been held up by litigation and it was determined at that time to be government activity. He said the project was different from before as there was a new contractor and this was a City project to provide access to the water for the residents. He said this was a replacement pier for the one destroyed by Hurricane Isabel. He said to date there had been 19 public events to receive comments. He stated

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that they had looked at another area to the North, but it was determined not to be suitable and the old location was suitable. He stated that the City representatives agreed with staff's report and the staff recommendation. He said they were asking approval of both projects.

Associate Member Fox asked why it could not be moved. Mr. Daniel said that they had considered another site but it was too congested and not as vacant as thought due to other activities, the same concerns as expressed by the protestors for this location. Associate Member Fox asked if it could not be moved 156 feet north to address some of the concerns. Mr. Daniel responded that it would be in conflict with a City ordinance. He said the City had made an earnest effort to consider all concerns and had held 19 public hearings. He said that a pier had been at this location for a very, very long time. He said the pier was in this location prior to the condos being built. Associate Member Fox said he agreed with putting it in the proposed location, but he could understand the concerns expressed by others.

Associate Member Schick asked if parking was not available at the northern site. Mr. Daniel responded yes.

Vanessa T. Valldejuli, Senior Deputy City Attorney, was present and her comments are a part of the verbatim record. Ms. Valldejuli stated that they were trying to be accommodating for the fishermen and the parking space was an issue at the other site. Also the other site meant conflicts between parking, fishermen and swimmers so they decided the best place was where it had been located. She stated that they were not aware of the 300 foot prohibition in the Code as it had not been enforced, but they would do all they could to accommodate others. She said the restaurant that was originally proposed would not be constructed there at that location and the use permit issued by the City excluded the restaurant. She stated that Mr. Boone was no longer the contractor and all the construction was on City property and operated by the City. She said there were letters in support for the proposed project from Coliseum Central and the Bass ProShop. She explained they were providing amenities for the fishermen, citizens and tourists. She said she was respectfully asking for approval by the Commission.

Associate Member Fox asked if the City's Ordinance could be amended. Ms. Valldejuli responded yes. Commissioner Bowman stated that the Code said 150 feet. Ms. Valldejuli responded they would be following the law.

Alice Callahan, a member of the Buckroe Civic Association and the Hampton Neighborhood Committee, was sworn in and her comments are a part of the verbatim record. Ms. Callahan said that she was involved in the 2005 Master Plan Committee which included all interested parties and public hearings were held. She said at that time no objections were made. She stated that the Chesapeake Association asked that restaurant and lighting be addressed by her and the City. She said that there was a resolution by the Buckroe Association to approve the project. She stated that the parking

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was a serious issue if the location were to be changed and she asked for support for both projects.

Robert Allen, Recreational Fisherman and Buckroe resident, was sworn in and his comments are a part of the verbatim record. Mr. Allen stated that there was a lot considered when this project was put together. He said the City did consider moving to another location, but there had been a long history of a pier in the location proposed, maybe 100 years, at least 50 years in his memory. He said he was representing others from all over and they were requesting approval of the projects.

Commissioner Bowman asked for any others that supported the project and asked them to come forward and say their name for the record.

Tom Ponko	William Ernst	Frank Blake	Peggy Blake
Bill Hamm	Eddie Deerfield	Alveccia Payne	Gary Powell
Bill Carson	Cecil Allsbrook	Nelson Ortiz	Frank Kearney

Wayne Harding was sworn in and his comment is a part of the verbatim record. Mr. Harding said that the restaurant was the main objection and now that was gone.

Jerry Jones, fisherman, was sworn in and his comments are a part of the verbatim record. Mr. Jones explained that he had fished here for many years and had been following the proposed project process and he felt it was important for him to be here. He said the Daily Press had an article in it that discussed the roughness of the area and that was wrong. He said he had never seen anything in all his years. He said the area was family orientated under good management. He said any trouble was easily gotten rid of. He said this was a great place for kids.

Commissioner Bowman asked for all those in opposition to stand up and be sworn in.

Joel Petery, President of the Chesapeake Landing Homeowners Association, was sworn in and his comments are a part of the verbatim record. Mr. Petery provided some handouts, a map of the area, plus a powerpoint presentation. He said that he himself was a recreational fisherman. He said that their Attorney had been unable to attend as he was out of the State. He said that they were not opposed to the pier nor did they want to deny the rights of others, but asked that it be approved, only if it were to be moved to the North or if there was a buffer or safety zone as an alternative. He said it would be less impacting on the environment and a greater service to the public interest. He said the City does have other area that could be used. He stated that parking was a major concern as well as pollution, use of the beach and the Bay. He said that the VIMS had said that it needed to be moved behind the dune line and it was in a safety zone established by City Ordinance where there could be no boating, surfing, etc. He said also that it had been moved into their beach, which was very close to the first house. He said that there was no guarantee that the restaurant would not be put there. He stated that there had been

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problems with the previous pier. He said there were reasons that the pier could be moved and this was not a magic fishing area. He said the City had not done any soundings and the Corps did one, which showed no change in the depth of water. He said the City owned 4,000 linear feet to the North and there was more parking space available there. He said staff had informed him that VMRC could only consider the pier, but the parking problems would result from it. He said they moved there to be able to enjoy the Bay. He said they want approval of the pier, but 400 feet north of the City's line. The City told him the area was needed for the beach and boating area.

Mr. Daniel in his rebuttal said that they appreciated the comments and concerns, but it had already been a long and involved process. He said the City had issued the use permit in this location. He said the pier had been there 70 plus years and they had all known about it and the issues. He stated this was a known quantity and they were asking for approval.

Associate Member Fox noted that the protestant stated that the parking would be on a dune and he asked that the dune not be destroyed to build a parking lot.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, stated the Attorney General previously advised that when considering Chapter 12 permits and the affects on nearby property owners the Commission should considered the physical impact on others. He said at the present time the Harrison appeal, which was a different situation, was in Court and would soon be decided upon. He said also that this was a different situation from the one being appealed. He stated further that the Commission was not the Zoning Board.

Commissioner Bowman asked for a motion.

Associate Member Schick said that, after considering all comments and in accordance to Section 28.2-1205(A) of the Code of Virginia, he moved to approve the project, as proposed. Associate Member Holland seconded the motion. Associate Member Robins said that the City had done a good job addressing the upland concerns by deleting the restaurant, which was the main concern to others outside of VMRC. He further said that it was good to locate the pier in the previous location and the City staff had worked so as not to impact others. The motion carried, 9-0.

Permit Fees (06-1356 & 06-1355 @ \$100.00/Permit).....\$200.00

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- 7. **VIRGINIA NATURAL GAS, #07-1036**, request authorization to install, by the directional drill method, 80 linear feet of natural gas pipeline beneath Newmarket Creek in Hampton and 1,064 linear feet beneath Salter's Creek in Newport News and install, by the directional drill and jetting methods, 21,470 linear feet of

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pipeline beneath Hampton Roads in Newport News and Portsmouth with four tie-ins resulting in displacement of 211,274 cubic yards of sediment.

John Daniel, Attorney representing Virginia Natural Gas, was present and his comments are a part of the verbatim record. Mr. Daniel stated that they were requesting that the matter be deferred until the March Commission meeting. He said they were dealing with unknowns and they wanted to incorporate VIMS and staff's comments into the design and become more in consensus with them.

Commissioner Bowman stated that Virginia Natural Gas and VIMS were working together to resolve this matter and this cooperative effort was appreciated.

Associate Member Robins moved to continue the matter until the March meeting, as requested by the applicant's attorney. Associate Member McLeskey seconded the motion. The motion carried, 9-0. The Chair voted yes.

Deferred until the March Commission meeting.

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8. **DOUGLAS BURDETT, #07-2375**, requests authorization to construct a 10-foot by 10-foot open-sided gazebo onto the L-head platform of a proposed private, non-commercial pier, adjacent to his property situated along the Lafayette River in the City of Norfolk. The project is protested by an adjacent property owner.

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

Mr. McGinnis explained that the proposed project was located along the Lafayette River in the City of Norfolk, approximately one-half mile upstream of the Granby Street Bridge. The applicants had an existing, deteriorated pier, which would be removed and replaced with a proposed 5-foot wide by 100-foot long pier with a 10.5-foot by 15.5-foot L-head platform, a 15-foot by 15-foot floating platform, and boat lift. This replacement pier was previously determined by staff to qualify for statutory authorization, pursuant to Section 28.2-1203 (A)(5) of the Code of Virginia, under a previously submitted application (VMRC #07-2176).

Mr. McGinnis stated that the applicants were now seeking authorization to construct a 10-foot by 10-foot open-sided gazebo onto the channelward end of their proposed private, non-commercial pier.

Mr. McGinnis said that staff received a letter of protest from Mr. Burdett's neighbors, Dr. Francois E. Holder and Dr. Rosanne Newman, dated October 1, 2007, and an Adjacent Property Owners Acknowledgement Form signed September 23, 2007, stating their

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objection to the proposed gazebo. Their objection was originally submitted in reference to Mr. Burdett's previous application (VMRC #07-2176) for his pier replacement project, which at the time had included the proposed gazebo. However, after being informed of staff's receipt of the protest letter, Mr. Burdett's agent, Flint Construction, elected to delete the gazebo portion of that application and subsequently filed a separate application for the current request. Since both projects were under review by staff during the same period, the protest was transferred to the current request by staff. Drs. Holder and Newman's letter stated that they were opposed to Mr. Burdett's project because they believed the structure would obstruct their view of the river.

Mr. McGinnis explained that if not for the Doctors' objection, Mr. Burdett's proposed open-sided gazebo would have qualified for the statutory authorization provided in §28.2-1203 (A)(5) of the Code of Virginia, since the proposed 100-square foot roof structure was below the 400-square foot threshold allowed for open-sided gazebos built on private, non-commercial piers.

Mr. McGinnis said that in addition, staff had received a letter of support from Mr. John E. Kennedy, dated November 28, 2007. Mr. Kennedy stated that he lived across the river from Mr. Burdett, and thought that the proposed gazebo would be visually appealing. He also indicated that several other members of the community were either in support or had no objections to the project.

Mr. McGinnis stated that no other State agencies had raised concerns or objections to the proposed project.

Mr. McGinnis said that while staff was sensitive to the concerns of the protestants, staff did not feel that Mr. Burdett's proposed gazebo was excessive since it was well below the 400-square foot threshold provided in the statutory authorization contained in §28.2-1203 (A)(5) of the Code of Virginia. When considering that the protestants' own view of Mr. Burdett's pier and gazebo would be almost entirely blocked by existing evergreen trees and playground equipment, staff did not believe that the applicants' proposed gazebo would significantly obstruct the protestants' view of the Lafayette River.

Mr. McGinnis stated that accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition, since impacts resulting from the use of State-owned submerged lands should be minimal, and after considering all of the factors contained in §28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as proposed.

Commissioner Bowman asked for questions. There were none.

Commissioner asked if the applicant or his representative was present.

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Chris Flint of Flint Construction and agent and contractor for the applicant was sworn in and his comments are a part of the verbatim record. Mr. Flint said that the staff's comments about the project were correct. He said he wanted to add that a boat lift would be put in and was already approved, so the gazebo would not add to the obstruction as the boat lift was high as well. He stated that there was another gazebo in the area.

John Kennedy, resident across the creek from the structure, was sworn in and his comments are a part of the verbatim record. Mr. Kennedy explained that he thought the structure was attractive and he supported the project. He said he had spoken to some of his other neighbors and they agreed with him.

Commissioner Bowman asked for protestors that wished to speak.

Frances Holder, next door neighbor to the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Holder said he had a different perspective as he was next door to Mr. Burdett. He said the problem was the extension would block his view. He provided some photographs. He said that he did not object to the pier, but they oppose the gazebo.

After some further discussion, Commissioner Bowman asked for discussion or a motion by the Commission.

Associate Member McLeskey moved that #07-2375 be approved in accordance with Section 28.2-1205(A) of the Code of Virginia. Associate Member Holland seconded the motion. The motion passed, 9-0. The Chair voted yes.

Permit Fee.....\$25.00

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- 9. **WILMIK-ZIMMERMAN HOMES, LLC, #07-2125**, requests authorization to construct an 80-foot long open-pile marginal wharf a maximum of 20 feet channelward of mean high water with a 10-foot wide octagonal gazebo structure on the wharf adjacent to their community pier associated with the Hawthorn Green subdivision situated along the Northeast Branch of Sarah Creek in Gloucester County. The project is protested by two nearby property owners.

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

Mr. Neikirk explained that the applicants were the developers of a new subdivision called Hawthorn Green. The 17-lot subdivision was located along the upper reaches of a cove of the Northeast Branch of Sarah Creek in Gloucester County. The shoreline was

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generally low and development in the vicinity was primarily residential. The waterway was approximately 100 feet wide at the project site.

Mr. Neikirk stated that the applicants proposed to construct an 80-foot long marginal wharf adjacent to a common area located along the creek. Approximately 50 linear feet of the wharf extended only slightly beyond mean low water. The most downstream side of the wharf extended 20 feet channelward of mean high water (12 feet channelward of mean low water) and supported a 10-foot wide octagonal gazebo structure. No slips or outer mooring poles were proposed.

Mr. Neikirk said that the common area, from which the proposed structure extended, separated the residential lots from the creek, so none of the four lots located near the water appeared to be riparian parcels. Accordingly, it was unlikely that any of the lots would have the riparian right to construct individual, private, non-commercial piers. The stated purpose of the structure was to provide recreational access to the water.

Mr. Neikirk explained that the project was protested by the owners of two parcels located across the creek from the project. They were concerned that the project would interfere with navigation in the upper reaches of the creek. One of the protestants suggested shortening the structure and shifting it downstream to a slightly wider portion of the creek. In response to the objections raised, the applicants reduced the length of the originally proposed 100-foot long wharf to the currently proposed 80-foot long wharf and they shifted the widest portion of the pier downstream.

Mr. Neikirk stated that in their report dated November 13, 2007, The Virginia Institute of Marine Science (VIMS) noted that there would likely be some modifications to the native riparian vegetation and they recommended any removal of native vegetation should be limited to that necessary to access the pier and finally that the vegetation be relocated elsewhere in the riparian buffer area.

Mr. Neikirk also stated that the Health Department advised that the project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings under the condition that signage was placed on the pier stating that in addition no temporary or long-term mooring was permitted.

Mr. Neikirk said that the proposed pier would not encroach on any public or privately leased oyster planting ground and the project was located in an area currently condemned for the direct marketing of shellfish.

Mr. Neikirk said that provided boats were not moored to the most channelward portion of the pier, staff did not believe the proposed pier would affect navigation any more than the private piers already located on the other side of the creek. The proposed pier would extend 20 feet channelward of mean high water and the piers on the opposite side would

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extend a similar channelward distance, preserving more than one-half the width of the creek for navigation.

Mr. Neikirk said that prior to 2006, staff generally recommended against the construction of roofed structures on private and community piers unless such structures were deemed to be water dependent. In 2006, however, the General Assembly amended §28.2-1203(A)(5), to provide statutory authorization for open-sided shelter roofs or gazebo type structures measuring no more than 400-square feet on private, non-commercial piers, provided such structures were allowed under local ordinance and provided further that such structures were not objected to by an adjoining property owner. Although the proposed gazebo was located on a community use pier, its design appeared to be consistent with that in the statutory exemption and the structure was allowed under local ordinances. Accordingly, 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 with a condition that boats be prohibited from mooring adjacent to the most channelward portion of the pier, even temporarily.

Associate Member Fox asked if the structure was considered opened sided with the fencing. Mr. Neikirk stated that he did not know, but it was not screened and they were installing open picket fence, which was not objected to. Mr. Grabb stated that the Commission usually allowed for a railing. Commissioner Bowman asked if this was just a navigation concern, to which Mr. Neikirk responded yes. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that the Code described an opened-sided boat house, but only referred to the gazebo, not whether it was to be opened.

Eric Zimmerman, Managing Partner, was sworn in and his comments are a part of the verbatim record. Mr. Zimmerman explained that four lots had been sold. He said that this was a good addition to the development. He said that they had met with others and were putting in a buffer with vegetation.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins stated that the General Assembly had given the Commission the guidance and this would provide considerable benefit for the community. He said that the structure had been shorten and was opened-sided. He moved to approve the project. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

Royalty Fees (encroachment 400 sq. ft. @ \$0.30/sq. ft.).....	\$120.00
Permit Fee.....	\$100.00
Total Fees.....	\$220.00

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- 10. **UPDATE: CITY OF NEWPORT NEWS, #93-0902.** Pilot Study for the King William Reservoir Project, Mattaponi River raw water intake, Pre-Operational Ichthyoplankton Monitoring Program, pilot study (study years 1 and 2) results and extended study (years 3 through 8) plans.

Tony Watkinson, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Watkinson explained that he was giving a quick update on the monitoring program, which was a condition of the permit approval in 2004. He said when the Commission approved this project there was concern with the intake having an effect on fish in the area. He said a study was required in two-parts, a 2-year pilot study and a 6-year extended study. He said this was a review of the pilot study and no action was needed by the Commission at this time. He stated that what had been done was consistent the permit and there would be a final report at the end of the 8-year period. He said the purpose for the briefing was to let the Commission know where the City was with the study.

A discussion followed regarding the sampling and the Commission heard from Lyle Varnell with VIMS, Bob Grabb, Chief, Habitat Management Division and Pete Peterson on behalf of the City. Comments are a part of the verbatim record. Mr. Watkinson said that the last sentence of special condition 20 of the permit, which says, "Permittee shall collect data on the presence of post-yolk sac larvae until the river water temperatures reach 28° C during the first two years of this monitoring program and, if required by the results thereof, during the remainder of this program" appeared to address the cut off for sampling proposed by the City for the extended study.

No further action was necessary at this time.

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Commissioner Bowman announced the lunch break at approximately 11:38 a.m. He stated the Fishery items would be heard following the lunch break. The Commission meeting was reconvened after lunch at approximately 12:24 p.m.

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11. PUBLIC COMMENTS:

Commissioner Bowman opened the public comment period.

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Ellis W. James, Norfolk Resident on the South side of Hampton Roads, was present and his comments are a part of the verbatim record. Mr. James expressed his concern resulting from an article on the U. S. Army Corps of Engineers comments that a permit would be issued for a marina to be developed on Back Bay. He said he had received numerous calls regarding this article. He stated it was a case of money, power, and development versus protecting the wildlife refuge. He encouraged the Commission to not allow this development to occur.

There being no other public comments, the public comment period was closed.

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- 12. PUBLIC HEARING:** Consideration of multiple proposals to eliminate overfishing in the blue crab fisheries. The proposed measures pertain to cull rings, season limits, minimum size limits, peeler crabs, the blue crab sanctuary, the winter dredge fishery and the use of agents.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. He provided the board with additional information as handouts.

Mr. Travelstead stated that at the last meeting there was a detailed presentation given by staff and today he would provide a brief report at this hearing.

Mr. Travelstead explained that despite the current regulations there has been no improvement shown, but the prior regulations have probably prevented a collapse of the resource.

Mr. Travelstead said there had been a large number of individual comments. He said most of the 256 comments were supportive of all of staff recommended measures and mostly positive from both fishermen and the public. He said there were also comments on other measures not advertised.

Mr. Travelstead stated that staff recommended all of the seven advertised items, such as, cull rings, season limits, peeler crab minimum size, peeler crab definition. He said with the cull size limit of 2-5/16 inch for females, there could be a savings of approximately 3.6 M female crabs. He said the season limit of April 1 through November 15 could result in a total savings of 1.2 million crabs.

Mr. Travelstead stated that peeler crab minimum size would go from three inches to 3 ¼ inches, then on July 16 to 3 ½ inches, which is a stronger measure to provide spawning and save 3.6 M crabs. He said that the staff recommendations were consistent with

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Maryland and it was believed to be working. He went on to say that the PRFC's size limit was 3 ½ inches year round. He stated that among the complaints for increasing the peeler crab sizes was that product would be lost, and the need to lessen the impact caused by inspections, which may cause mortality. He said the staff was recommending an Inspection Protocol, to minimize handling by the MPO checking only one container with a tolerance of 10 crabs per US bushel to be undersized and allowing for a tolerance of 5 percent for different containers. He said a new definition for whiteline crabs, which was in the Code of Virginia, would also minimize impacts and wastage. He said the new definition means savings.

Mr. Travelstead explained that the crab sanctuary measure is straightforward and will close May 15. He said CMAC favored it and an even longer closure, as early as April 15.

Mr. Travelstead stated that CMAC supported and the industry supported the regulating of agents. He CMAC went so far as to say they supported total elimination in 2009. He said that the staff did not recommend a total elimination of agents, but a limit of only one agent per license. He said that future measures will address this more.

Mr. Travelstead said that public feels the dredge fishery is a problem and is in an economic tailspin. He said there are only 65 boats working today. He said that staff recommended that the dredge fishery participation be capped and limited to those that are documented as active prior to the control date in 05-06 and 06-07. He said the current cap is 225 and they estimated that 55 individuals would be eligible. He said the initial recommendation would be short-term and not solve the problem. He said additional actions were needed. He said as a result of CMAC, and public comments, there were five additional measures to be approved for public hearing in April.

Mr. Travelstead stated that these are the measures recommended from the public hearing:

- 1) Reduce the number of pots per license up to 50 percent.
- 2) Close the Blue Crab Sanctuary as early as April 15th.
- 3) Require 2 3/8" cull rings in the tributaries and cull rings in peeler pots.
- 4) Close entire crab dredge fishery or shorten the season to December 15 to January 15.
- 5) Require 6 ½ inch maximum size for female crabs.

Mr. Travelstead stated that the results of the Winter Dredge Survey will be available April 1st, which may show there is a need for extreme measures, if stock abundance drops below the target, but if it remains above the target, some additional measures will still be needed.

Mr. Travelstead explained that Maryland was discussing the maximum size limit, as well, reduction of the exploitation rate. He said the same needed to be done in Virginia waters. An article indicated that Maryland was considering taking this action in mid-April.

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Mr. Travelstead stated that staff was working on the long-term measures, such as an effort control system, the tagging of crab pots and eliminating or controlling latent effort. He said this needs further review by CMAC.

Commissioner Bowman said that the issue was on knowing the Baywide problems. He said there needed to be dialogue between States.

Mr. Travelstead said it had been discussed with Maryland and they were holding meetings, preparing measures and considering putting a ban on the harvest of female crabs. He said Virginia would meet with them soon to provide the Status of Virginia's measures and Commission Actions.

After further discussion, Commissioner Bowman opened the public hearing.

The following individuals spoke in opposition to the proposed crab regulations.

Charles Pruitt, Tangier	Charles Wilson, Reedville	Doug Jenkins, Pres., TRWA
Ken Smith, VWA	Dale Taylor, Pres., VWA	Dan Dise, Tangier
Kelly Price, Eastern Shore	James Riggins, Yorktown	Jim Waterfield, NS
Ty Farrington	Dee Turner	Johnny Graham, Processor
Kelly Place, CWA	Jimmy Riggins, Yorktown	
Pete Nixon, Norfolk, Member of CMAC		

All of them spoke and their comments are a part of the verbatim record.

All watermen felt that the crab problem was not overharvesting by them, but more related pollution and poor water quality, lost of habitat, loss of SAV, and the increased numbers of predators, such as catfish and striped bass. Some said they did not think there was a need for any more regulations. They felt that any more regulations would put them out of business. Some suggested the elimination of the peeler pot fishery and crab dredging fishery, because of the waste of the resource and others said to do it simply and make it across the board for everyone. It was commented more than once that the scientists do not know more than the watermen that are in the fishery. There were comments that the scientists think that the crabs only spawn in the sanctuary, when actually they spawn all over the Bay and its tributaries. One suggested that VMRC go to the General Assembly to request a study on the predators, which would help in the decision-making process. There was one fishermen who said that there were better measures to consider, such as a restriction on the use of agents and a moratorium on transfers, which had created a huge loophole in the regulation. There were comments that quality 6" crabs and more jimmies were needed to market. There were comments that the allowing of two (2) recreational crab pots per person, per household was more harmful because there were no restrictions at all on them. There was some talk that sponge crabs were important to the processor and that there was only one remaining processor in the tidal area.

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Chris Moore, representing the Chesapeake Bay Foundation, was present his comments are a part of the verbatim record. Mr. Moore noted for the Commission that they had submitted a letter of comments. He said the State had a budget of \$356 million for water quality improvement by upgrading sewage treatment plants. He said the General Assembly was talking about ways to reduce nitrogen and other pollution in the Bay. He noted that CBF, VIMS and VMRC were all working to increase oyster habitat and sea grasses.

Dr. Rom Lipcius, VIMS, was present and his comments are a part of the verbatim record. Dr. Lipsius said that Mr. Jenkins had spoken some wise words regarding predators and their efforts in part were to look at predation outside of the SAV.

Dr. Jacques Van Montfrans, VIMS, was present and his comments are a part of the verbatim record. Dr. Van Montfrans said that they at VIMS would be happy to discuss whatever the watermen want to discuss at their meetings.

Commissioner Bowman closed the public hearing. He read Delegate Pollard's letter into the record, which indicated that lack of action would only make matters worst. He also read Senator Richard Stuart's and Senator Ralph Northum's letters into the record and they recommended that a moratorium be placed on sponge crabs as they were of poor quality. He then asked for discussion by the Commission.

Associate Member Bowden shared a quote that said that "the Bay was dying the death of a thousand wounds." He continued by saying that crabbers suffered the most and that watermen contribute to the problem but not enough to be blamed for the drop in the resource. He said that cleaner water and a thriving oyster industry would help. He noted that once the industry was gone it would be gone. He said there is only one picking house on the Eastern Shore, as it was not economically feasible to build a processing plant on the waterfront as it was so expensive to buy upland. He said any reductions should affect all watermen that are a part of the industry. He said the Commission could not correct the pollution and can only go the watermen.

Commissioner Bowman asked him to discuss the measures line by line.

Associate Member Bowden stated that the cull rings have a lot of support, but did not know if it would reduce the size of the crabs, but would allow some to escape that mostly affects the Eastern Shore area, not the Bay area. He said as for the season, the Seaside Eastern Shore has the smallest crabs and the season needed to start March 17th to maximize the profits. He said for the peeler crabs and the 3 ¼ inch size limit, it will have more impact on the crab traps than the pots and this would be more effective on the Seaside of Eastern Shore than Bayside. He said the enforcement protocol was needed and he was glad to see it, as the Marine Police hired now come from other enforcement organizations.

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He said peeler crab definition needs to be worked out with Law Enforcement, but it cannot be done now. He said a sanctuary would be spreading out the effects. He went on to say that the issue of agents needed to be addressed, the proposed action was an interim fix and needed to be looked at further and the stock survey was needed to do this. He said the issue of the crab dredge fishery was a legal problem, as they were told earlier that some did not have to get a license to crab dredge.

Commissioner Bowman asked Mr. Josephson to respond to that last item. Mr. Josephson stated that he could not answer that right then.

Associate Member Robins stated the review panel recommendations were not intended to ruin the industry, but to fix it. He stated that the loss of SAV, oysters beds, loss of habitat, predation and degrading of the environment contributed to the over harvesting. He said the Commission needed to take action at the same time working with the industry. He said this was the most important resources for all Virginians. He said there could be trade offs, but substantial action was needed.

Associate Member Robins moved to adopt the staff recommendations of items for public hearing with modifications to include, a reduction of effort 10-30%, a blue crab sanctuary closure of April 15th, add a maximum size for females at 6 ½ inches, reduce the number of recreational pots, and a provision requiring two violations during one season results in appearing before the Commission. Associate Member Holland seconded the motion. Associate Member Fox asked that the motion include a request that staff ask the General Assembly to reduce the number of recreational pots as stated in the Code of Virginia from 2 per person to 1 per person. Commissioner Bowman suggested that a cap be added for the number per pier.

Associate Member Fox also suggested that the permit allowing for 5 recreational pots be eliminated, which would require amending the regulation. He said this would give the public a message of how serious the problem was. Associate Members Robins and Holland both accepted the amendment to ask the General Assembly to change the two (2) recreational pots per person to 1 with a cap on the number allowed per pier. Associate Member Schick requested that the issue of sponge crabs be added to the long-term issues. Associate Member Robins suggested that the issue of the sanctuary be heard in March and the remainder be considered in April. The motion carried, 9-0. The Chair voted yes.

Associate Member McConaugha said that waste should be eliminated in any and all fisheries. He said over the last 50 years there had been a fluctuating in stock abundance, but now it had dropped to very low levels in the last 10 years. He said it was an unhealthy fishery and could collapse at such a low level.

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Associate Member Tankard stated that water quality is a problem, more of a problem than watermen. He said he liked all the points suggested by staff as these were measures that affected all fisheries.

Associate Member Schick said that 20 years ago his docks were full of oyster and crab boats, but now all he saw was one crabber and no oystermen. He said it was an overfishing issue as much as an environment issue. He said there was also a need to keep it simple and in a manner to keep all full-time people going.

Commissioner Bowman stated that putting restrictions on anyone was not pleasurable, but the numbers reflect that the catch is down and it was obvious that something needed to be done. He said that the crab's short life cycle will benefit the recovery process. He said measures that have been done have helped and measures taken now, he believed, will benefit the resource and turn it around in two years. He said the shortened season may be a benefit, but the start date should remain March 17; the peeler minimize size would save some crabs; size limits would not benefit the Seaside of Eastern Shore; inspection protocol was good and would help law enforcement; the crab sanctuary season was good; agents were a concern as originally they were intended for hardships and not intended to increase effort; he supported elimination of the crab dredge fishery because of the science; and with 96% females being harvested and with only 7 out of 20 barrels being acceptable, the rest were wasted. He said that he applauded the committee, which had been suggested by Associate Member Robins.

Associate Member Robins explained that what was being offered here, were interim measures, therefore, he moved to approve the minimum peeler crab size for Seaside Eastern Shore as 3 ¼ inches, the enforcement protocol, the existing season, reduction in the agency allowing it to be 1:1 ratio, both cull rings to be utilized everywhere, a cap on the dredge fishery along with the measures advertised, as short-term measures. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

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Commissioner Bowman announced that staff had requested that the summer flounder be heard next and asked for a motion to hear Item 14, pertaining Summer Flounder, before hearing Item 13, pertaining to gill nets.

Associate Member Holland moved to approve this request. Associate Member Schick seconded the motion. The motion carried, 9-0.

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14. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-620, "Pertaining to Summer Flounder", to establish the 2008 recreational fishery measures.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation with slides. His comments are a part of the verbatim record. Mr. O'Reilly explained that five options had been advertised for public hearing. These are the options that were advertised.

Option	Size limit	Bag Limit	Closure dates
1	18.5	3	1/1 - 4/15 and 7/21 - 8/15
2	18.5	3	7/21 - 8/23
3	19.0	3	1/1 - 3/29
4	19.0	4	7/21 - 7/28
5	19.0	5	7/21 - 7/30

Mr. O'Reilly stated that the two 18 1/2-inch options were the same except for the closure dates and three options raised the size limit to 19 inches. He explained that in 2007 the limits were 18 1/2 inches, 5-fish, and closure from March 1 through March 31 and July 23 through July 28.

Mr. O'Reilly explained that with the open poll which was done on the website, option 5 received two times the votes as any of the other options. He said that the Ad hoc Committee had been split between options 5 and 3 and the Fisheries Management Advisory Committee (FMAC) had voted Option 5 as their first choice and Option 3 as their second. He said that Option 3 was more conservative than Option 5, but the ASMFC had offered a buffer so that there was a margin for error. He said that in 2008 the target would be lowered by 21.6%, from the estimated landings in 2007.

Mr. O'Reilly explained that the staff was recommending the size limit be 19 inches with a 5-fish limit and a closed the season July 21 through July 30. He also said the amendments to the regulation should be effective March 1, 2008.

Commissioner Bowman opened the public hearing.

Robert Allen, recreational fisherman, was present and his comments are a part of the verbatim record. Mr. Allen stated that he did not care which option because if the federal law changes the fishery will be closed. He stated that other States had reacted to

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ASMFC's reduction requirement and had increased size, decreased catch and shortened seasons. He said that recruitment of the flounder was not good.

Bill Tice a member of the Virginia Saltwater Fishermen Association, was present but representing himself. He stated he supported the 19", 5-fish limit. He stated also that the Feds do not consider weather when it comes to closures. His comments are a part of the verbatim record.

Commissioner Bowman asked Mr. O'Reilly if this was right. Mr. O'Reilly explained that it was figured for each two month period and factored in.

Mr. Tice stated that he would like to have a request made to the Governor to take menhaden out of the hands of the legislature.

Lewis Glazer, member of the Norfolk Anglers Club, was present and his comments are a part of the verbatim record. Mr. Glazer explained that the majority of the vote by his club was for option 5 and he personally supported 5.

Mr. Glazer stated that the VMRC had done a good job and last year a lot of flounder were caught but not kept. He said that on a good day with a crew of 4 they could catch 10 flounder.

Bob Reid was present and his comments are a part of the verbatim record. Mr. Reid stated he was representing himself as well as other fishermen. He said the Association had voted for option 5 and he agreed with the last speaker that he would like to see 3-fish, over 17-18 inches. He stated that the Lower Bay and Eastern Shore had been left out.

Randy Lewis, Eastern Shore fisherman, was present and his comments are a part of the verbatim record. Mr. Lewis stated that Mr. Reid was right, that making it 19 inches left them out because you caught 18 inch fish there. He stated he supported option 5 and supported a 18 ½ inches on Seaside Eastern Shore. He said the regulation needed to be amended because the Magnum-Stevenson Act could close the fishery.

Z. R. Lewis, Eastern Shore Anglers Club, was present and his comments are a part of the verbatim record. Mr. Lewis stated that 500 members voted for option 5, the best of the worst.

The public hearing was closed.

Commissioner Bowman asked for a motion.

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

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13. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-751, "Pertaining to the Setting and Mesh Size of Gill Nets", to establish restrictions on the use of gill nets on the ocean side of the Eastern Shore.

Joe Grist, Head, Plans and Statistics, gave the presentation with slides. His comments are a part of the verbatim record. Mr. Grist stated this was a public hearing.

Mr. Grist explained that at the October Fisheries Management Advisory Committee (FMAC) meeting they recommended that no unattended gill net be within 500 yards of the shore, from Smith Island Light north to the Virginia-Maryland border during the period of June 1 through October 15. He said they also recommended that a gill net be defined as unattended if the harvester is further than one mile from the net. He said that staff had met with FMAC twice on this matter. He stated that there were no public comments received.

Mr. Grist stated that staff recommended the Commission approve the following amendments to the regulation, which were recommended by FMAC.

4VAC20-751-15. Definitions.

"Unattended gill net" means any gill net set in Virginia tidal waters, described in 4 VAC 20-751-20 E, that is located more than one mile from the licensee of that gill net.

4 VAC 20-751-20

E. From June 1 through October 15, it shall be unlawful for any person to place an unattended gill net, within 500 yards of the mean high-water mark, on the ocean side of Northampton and Accomack Counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line."

Mr. Grist said that staff had recommended using the southern most point of Smith Island, in lieu of the FMAC recommendation of Smith Island Light, due to the lack of a clear identification of Smith Island Light on some nautical charts.

Commissioner Bowman stepped out of the meeting. Associate Member Holland acted as the chair in his absence.

Associate Member Holland opened the public hearing.

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Vernon Merritt of the Eastern Shore was present and his comments are a part of the verbatim record. Mr. Merritt explained this change for unattended gill nets was good, but should include no chains or anchoring of nets.

Associate Member Robins asked if this was a problem that had just begun to occur.

Mr. Merritt said yes, just within the last two years, there have been a number of individuals that have put out these anchored or chained nets along the beach where some species of fish will gather together, which made it for only them to use. He said they should only be allowed to drift. He further said that the Commission should pass what benefits the most people.

Commissioner Bowman returned to the meeting, but Associate Member Holland continued to act as the Chair.

Danny Bowden of the Eastern Shore was present and his comments are a part of the verbatim record. Mr. Bowden stated that he agreed with Mr. Merritt. He said the Commission should act to benefit all and to cut down the waste on the beaches as it looks bad for the fishery. He said he requested the Commission to approve the amended regulation.

Eddie Burns of Maryland, was present and his comments are a part of the verbatim record. Mr. Burns stated that he had fished in these areas and he agreed with the other speakers.

The public hearing was closed.

Mr. Grist stated that due to the comments heard today, staff recommended that Subsection 20(e) be amended to say, "from June 1 through October 15 it shall be unlawful for any person to place an anchored or weighted gill net within 500 feet of the mean high water mark on the Oceanside of Accomack and Northampton Counties on the Seaside of Eastern Shore..."

Commissioner Bowman asked VMRC Counsel if this could be amended. Carl Josephson, Senior Assistant Attorney and VMRC Counsel responded that any regulation filed or published can be amended as long it does not alter the intent of the regulation. The Commission would have to make that determination. Commissioner Bowman responded that it did not.

Associate Member Holland asked for a motion by the Board.

Associate Member Bowden stated that he had brought this problem to the attention of the Commission and requested that this matter be heard and the amendment offered by staff was what had been the intent of his request. He moved to accept the

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staff recommendation, as amended. Associate Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

Commissioner Bowman resumed his duties as the chair.

- 15. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-950, "Pertaining to Black Sea Bass", to establish the 2008 commercial fishery measures.

Alicia Middleton, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record. Ms. Middleton explained that this was a public hearing.

Ms. Middleton stated the 2008 coast-wide total allowable landings was 4.2 million pounds, which is 16% less than 2007. She said that Virginia's portion of the quota was 20 percent or 405,152 pounds.

Ms. Middleton said that in 2007, the by-catch quota was adjusted from 15.8% of the commercial quota to a cap of 40,000 pounds, and the hardship quota was dropped from 17,000 pounds to 10,000 pounds, to alleviate some of the reductions for the directed fishery due to reductions in the Coastal TAL. The additional quota gained by these adjustments was distributed to only the active directed permit holders.

Ms. Middleton explained that on page 5 of the draft Regulation 4 VAC 20-950, Section 48.1 restricted the quantity of transfers to the lowest quantity held, as of January 1st of the current year. She said there is concern from industry that low share holders could harvest a very small amount of harvest earlier in the year and as a consequent be unable to transfer the remainder of their quantity later in the year. She stated that rewording the regulation to restrict transfers to a set amount, i.e., 200 pounds, could alleviate that concern. She said it was done this way in the striped bass fishery.

Ms. Middleton said several directed permit holders have called staff about the distribution of the commercial quota, particularly the bycatch quota. She said a letter had been received from Jim Dawson regarding this issue and a fax had been received that morning.

Ms. Middleton said that staff recommended amending the regulation to set the 2008 by-catch quota at 40,000 pounds, the hardship quota at 10,000 pounds, and the directed quota at 355,152 pounds, to be distributed equally among permit holders based on their shares. She said that staff also recommended limiting transfers to any quantity over 200 pounds.

Commissioner Bowman opened the public hearing.

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Mark Hodges, Sea Bass Trap Fisherman, was present and his comments are a part of the verbatim record. Mr. Hodges stated that there had not been an industry meeting on this issue. He said his quota had been reduced by 16 to 20 %. He said he was surprised that the by-catch quota was 40,000 pounds when they had not caught even half of their quota last year. He said he felt like Mr. Dawson, that the by-catch quota should be 20,000 pounds, as it could always be raised later in the year to get the quota back up by emergency action. He said that the quota being set aside was wasted quota.

Ms. Middleton explained that in 2005 the by-catch fishery caught 41,000 pounds and about 4,000 pounds this year. She went on to explain that usually it was about 20,000 pounds all other years.

The public hearing was closed. Commissioner Bowman asked for a motion by the Board.

Associate Member Robins said that he felt that because the industry could not utilize their quota and staff's recommendation would have only a slight affect on the allotments of the quota, he moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

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16. OYSTER RESTORATION: Approval of the 2008 restoration program and procurement procedures.

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

Associate Members Robins and Holland were not present during the presentation.

Dr. Wesson explained that this was a request for approval of the procurement procedures for this 2008 program. He said the funding was level this year, even with the loss of most the Federal Funds as Waterway Improvement Funds were being utilized. He said there would be shell plantings and projects such as the Cow Nosed Ray Project and the Watermen Aquaculture Training Project. He said he would provide more information if the Board asked, but it was all in the packet.

Commissioner Bowman asked about whether there had been an increase in the per pound price for the Cow Nosed Ray Project. Dr. Wesson responded no, because no additional funds were available and the project was to be continued with the previous year's participants.

Kent Carr, waterman and seafood buyer, was present and his comments are a part of the verbatim record. Mr. Carr explained that he did attend the Committee meeting and disagreed with the purchasing of private seed from the Great Wicomico for \$12.00/bu.

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He said there were plenty of James River seed oysters available for \$3-\$4 per bushel. He said the State kept cutting the James River watermen out. He said he did not agree with the January closure of the lower James River, but he was glad it had been reopened again. He said the watermen were catching their limit and they were fat oysters like the Rappahannock ones. He said he did not agree with the 4 ¼ inch and larger oyster being thrown back this past fall, because it was bad for the oyster and they would not survive. He said the younger generation was not looking to be watermen and the Commission should look at their past actions.

Commissioner Bowman asked Dr. Wesson to respond to the James River disease situation. Dr. Wesson stated that one of the recommendations of BRPOP was to not move diseased oysters to other areas.

Mr. Carr said that there had not been any replenishment effort in the James River for a long time. He said that staff was not listening to them at the meetings. He said seed should be moved from upriver to the lower river to help the industry. He said reshelling was needed in the James River. He also said that they were competing with the Gulf States.

Commissioner Bowman asked for a motion.

Associate Member Schick moved to accept the procurement procedures, as stated. Associate Member Tankard seconded the motion. The motion carried, 7-0. Associate Members Robins and Holland had not returned to the meeting.

2008 OYSTER REPLENISHMENT PROGRAM

FUNDING SOURCES	MATCHING REQUIRED	AMOUNT
Non-federal		
General Funds (GF) State		\$600,000 - \$900,000
Waterway Improvement Funds		\$300,000 - \$600,000
The Nature Conservancy (TNC) – Seaside		\$ 60,000
City of Virginia Beach – Lynnhaven River		\$ 100,000
Total Non-federal (NF)		\$1,360,000
Federal		

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NOAA-- Industry		\$ 87,000
NOAA-VIMS—Sanctuary		\$ 152,000
CZM – Seaside Heritage Program	\$53,756	\$ 98,000
U. S. Navy – Naval Weapon Station		\$ 68,000
Total Federal		\$ 405,000
Grand Total		\$1,765,000

BAY & TRIBUTARIES

Seed Transfer: Natural

There was a modest spatset in most areas of the Bay in 2007. The only exception was in a portion of the Great Wicomico River, where there was a spatset that was not as large as 2006, but is higher than any other area. Because of the higher salinities in the Bay, the disease pressure has also increased, and seed movement is therefore more risky.

The spatset in a portion of the Great Wicomico River was good, with counts on many bars in excess of 1,000 oysters per bushel (Dredge Survey, Attachment 1). A tremendous amount of money and effort has been expended by the Army Corps of Engineers, the NOAA-Chesapeake Bay Office, VIMS, CBF, and our Agency, over the past 4 years, to add shell, add broodstock that can be traced in the system, and to protect the broodstock in the Great Wicomico. It is still uncertain as to whether this spatset has resulted from these efforts, but all of the partners remain adamant that none of this spatset should be removed from the public beds until this project is fully evaluated. The only option for moving seed in 2008 would be again for VMRC to buy seed from private leaseholders that also received this spatset. We purchased seed from private grounds in the Great Wicomico River in 2003 and 2007. The costs per bushel are higher for this because we try to provide enough money for the leaseholder to reshell his grounds, and allow some profit from the activity. VMRC paid \$12.00 per bushel in 2003 and 2007, and staff believes that the cost will be the same in 2008. Several watermen in the Shellfish Management Advisory Committee meeting preferred that the money be spent on public seed in the Great Wicomico River, since the cost per bushel would be less, and more seed could be moved.

The Native Oyster Restoration partners have concerns over even removing the private seed from the system, and they believe that if we do not provide a market for the seed, that most oysters will remain in the system, because there is no one else that will buy them. This is possibly true; however, the industry bought into this big project in the Great Wicomico River based on the fact that they would be able to use these seed oysters if the

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project was successful, and many leaseholders reshelled their private grounds in 2003 and 2007 to be ready for a spatset. Staff believes that it is prudent to move some seed oysters from this area in 2008, to continue to test their survivability with rays and disease pressure. VMRC will purchase up to 20,000 bushels of seed oysters from private leases in the Great Wicomico River and transplant these seed to the Rappahannock River and the Potomac Tributaries.

Great Wicomico River seed to:

6,000 bushels @ \$12.00/bushel to the Nomini River	\$72,000.00
2,000 bushels @ \$12.00/bushel to the Coan River	\$ 24,000.00
2,000 bushels @ \$12.00/bushel to the Yeocomico River	\$ 24,000.00
10,000 bushels @ \$12.00/bushel to the Waterview And Morattico areas of the Rappahannock River	\$120,000.00
Total	\$240,000.00 (NF)

Staff will monitor survival of these seed oysters, and will recommend keeping the seed plant areas closed until the majority of the oysters have reached market size. Therefore, those areas will likely have to be closed to harvest in 2008, since the seed that is being moved is currently so small.

In the Piankatank, spatsets have been modest over the past two years, but counts per bushel were approximately 500 oysters per bushel in some areas. Staff would like to make up to 20,000 bushels of this seed available to the private oyster industry. We have done this several times in the past, and it has worked well for our program and the industry. The seed will be made available on the basis that for every bushel of seed oysters harvested by private industry (under VMRC supervisor), a bushel of shell will be replanted on the same beds by private industry in the summer (under VMRC supervisor).

Seed Transfer: Spat on shell

We will also continue the collaborative effort between MRC-VIMS-NOAA and the private oyster industry to produce oyster spat on shell. This effort is a program for oyster replenishment that provides an economic development opportunity for industry, while at the same time, benefiting restoration. This program incorporates the remote setting of eyed larvae of wild, disease resistant, or polyploidy oyster varieties on shells at industry sites. The spatset on shell will be used for restoration projects, a public bed “put and take” fishery, and some of the product will be used for extensive aquaculture on privately leased beds. Remote setting at industry sites requires large scale hatchery capabilities to produce millions to billions of eyed larvae. We have been developing programs to build

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private hatchery infrastructure as well as the remote setting infrastructure throughout Virginia. We increased hatchery production in Virginia more than three-fold in 2007, but we still did not complete the goals of the 2007 program, and we intend to complete those unfinished projects in 2008. We also increased the number of remote setting stations from 6 to 10 sites in 2007. The entire process of ramping up the hatchery and spat on shell production has required oversight, training and monitoring, and VIMS and MRC are working together to provide due diligence for all projects.

Hatchery production

Hatchery production in Virginia was increased to approximately 200 million eyed larvae, in 2006, and then again in 2007 to nearly 400 million. This is still well below our needs, which were more than 1 billion larvae in 2007 and more than 1.4 billion larvae in 2008. Oyster hatchery production Bay-wide was much lower in 2007 than in 2006 because of a number of environmental factors. The State hatchery in Maryland provided eyed larvae for our program in 2006 and 2007 to make up some of the State production shortfall, but they also had a very poor hatchery season in 2007. In 2008, MRC will again use NOAA and State Funds to purchase eyed larvae and provide infrastructure assistance to expand and improve hatchery oyster production facilities. A notice will be advertised among all hatcheries for participation in the project with a set price of \$200.00 per million for up to 1.4 billion eyed larvae. A second solicitation will be advertised for an additional \$200.00 per million of eyed larvae. This second \$200.00 per million (for up to 750,000 million eyed larvae) will be for those hatcheries within the State that make improvements in their hatchery facilities to meet the anticipated growth in the need for oyster eyed larvae. Oyster broodstocks will be VIMS disease resistant strains, wild stock or both – whatever is appropriate for the ultimate destination of the spat-on-cultch.

Ultimately, for public-private oyster restoration, industry setting sites will purchase eyed larvae from hatcheries as part of their overall operating costs of producing spat-on-cultch. Ideally then, the hatchery component of public-private oyster restoration in Virginia will be perpetuated by larvae sales themselves, without need for financial assistance.

750,000 million eyed larvae Hatchery Infrastructure Assistance	\$150,000	(NOAA-NF)
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Setting stations

Currently there are 10 industry setting stations working with our program. It is these setting sites that will generate future demand for eyed larvae. Through empirical trials led by VIMS and VMRC from 2006 through 2008, staff will try to optimize the remote setting process at all locations and to transfer this expertise to industry. Ultimately, setting sites will operate by purchasing eyed larvae from hatcheries, set them on cultch prepared on site, and transport the spat on cultch to restoration sites, or plant public grounds to provide potential benefits to the public fishery. The ultimate goal is for

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industry to choose to plant spat on private beds, profit from the efforts and restabilize the oyster industry.

In 2006, we advertised for remote setting stations and had a great deal of interest. Six spat on shell producers were chosen and approximately 270 million eyed larvae were set on 3,600 bushels of shell. In 2007, we advertised again and added 4 more stations, set about 600,000 million eyed larvae, and produced about 8,400 bushels of spat-on-shell. These shells had been placed in bags, which were placed in large tanks. The tanks were filled with Bay water and oyster eyed larvae were added. After several days, the bags of shells, with spat attached, were loaded in boats, taken to reef sites, the bags cut open, and the shells released. The setting rate of the first year was 10%, with about 27 million oysters being placed on the 6 locations. In 2007, the set rate was less, approximately 6%, with again approximately 27 million oysters deployed at various locations. We had very poor setting rates at several times during the summer of 2007, and many improvements have been made to address the lower setting rates. Staff will advertise for only 2 new remote setting stations in 2008, directed primarily at the production of spat on shell for projects in the Lynnhaven River.

For 2008, there will be a number of projects. We will first complete four projects that were started in 2007.

4,000 bushels of spat on shell for public bars	\$60,000 (NF)
1,500 bushels of spat on shell for sanctuaries in Great Wicomico	\$22,500 (NOAA)

An additional project is being funded by the U. S. Navy at the Yorktown Naval Weapons Station. They have offered funding for an additional 2,000 bushels of spat on shell with the oysters to be placed on the sanctuary reef that had earlier been built in Felgates Creek.

2,000 bushels of spat on shell to Felgates Creek	\$36,000.00 (NAVY)
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Staff is proposing to have the remote setting locations produce up to 4,000 bushels of additional spat on shell for industry seed planting, for basically a “put and take” fishery on public grounds and for sanctuary areas in the Lynnhaven River.

600 bushels of spat on shell in the Pocomoke Sound

600 bushels of spat on shell in the Coan River

600 bushels of spat o shell in the Yeocomico River

2,200 bushels of spat on shell in the Rappahannock River near Waterview	\$100,000 (NF)
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These areas will have to be closed for harvest for at least the 2008-2009 season.

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2,000 bushels of spat on shell in the Lynnhaven

\$100,000 (VA Beach)

These areas will be sanctuaries.

Private Industry: Spat on Shell

We also have a NOAA grant to support an incentive for private leaseholders to plant “spat on shell” on their leases. Staff advertised for interest by private leaseholders in a cooperative effort where NOAA funds are used to pay for the oyster eyed larvae, if the leaseholder bags the shell, sets the shell, places it on their private lease, and provides data on the success of the growout of the oysters to harvest. Staff advertised for participation and accepted all ten current setting stations. Each station will receive support for 500 bushels which will require a payment of \$15.00 per bushel for the eyed larvae.

5,000 bushels of spat on shell for the private
Industry, spat on shell

\$75,000 (NOAA)

Shell Planting:

About 400,000 bushels of shucking house shells are available to plant on the western shore of the Bay and 20,000 bushels on the Eastern Shore.

Chesapeake Bay:

Many of the shucking house shells will be used in the redesign of the harvest and sanctuary areas of the Great Wicomico and Rappahannock Rivers and Tangier Sound. Some additional shells will be used in other areas to maintain good, public oyster bottom.

400,000 bushels of house shells within the Bay

\$550,000.00 (NF)

Seaside: Eastern Shore

The availability of shell limits the areas that can be shellplanted on the Eastern Shore. There is a small quantity of shucked conch shells in the Oyster area, and there are sources of fossil shells in areas of Northampton County that can be harvested for replanting.

Two grants are available for shellplanting on Seaside.

The Nature Conservancy has funds for oyster restoration in the Box Tree area of Northampton County. These sites will be oyster sanctuaries.

34,000 bushels of shells in Box Tree area of Northampton
County

\$60,000

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The Coastal Zone Management Program is providing a grant for oyster restoration in both Northampton and Accomack Counties. We have to match a portion of these funds with non-federal fund sources. These areas will also be set aside as sanctuaries.

20,000 bushels of conch shells	\$98,000 (CZM)
60,000 bushels of dredged shells	\$53,756 (NF)

Watermen Aquaculture Training Program:

VMRC conducted small, oyster aquaculture training projects for 10 watermen in 2006 and 2007. Each waterman was provided with 50,000 oyster seed and all the equipment necessary to grow them to market size. All of the participants have taken the project very seriously, and have been very involved with the project. Other watermen that have seen this activity have asked for another training program this year. Staff proposed to advertise for 10 more participants, this year from both the Eastern and Western Shore of the Bay.

\$3,500/watermen for seed and materials	
10 watermen @ \$3,500.00	\$35,000 (NF)

Cow-Nosed Ray Control and Marketing Project:

We will continue the project to provide industry assistance in developing a harvest and marketing program for cow-nosed rays. This project worked well in 2007. More than 380,000 pounds of cow-nosed rays were harvested with assistance from this program in 2007, and marketing success was very encouraging. We only have funding to continue this project with the six participants from 2007. We will advertise again for those participating processors and again will pay \$0.30 per pound for all the cow nosed rays which are caught up to the \$120,000.00, which is available

Cow-nosed Ray Project	\$120,000.00 (NF)
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APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2008 OYSTER REPLENISHMENT PROGRAM:

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

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This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the production of eyed larvae and spat on shell, the Commission will set a price per million larvae and the price per bushel of spat on shell. Loading, transporting, and planting costs for spat on shell will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity site. For the turning and cleaning and dredging of public oyster bottoms, the Commission will set a per hour or per day rate to be paid. For the purchase of hatchery-spawned, aquaculture-produced, broodstock oysters and scallops, the Commission will set the price. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method. For the purchase of the cow nosed rays, the Commission will set the price at \$0.30 per pound. Contractors will be limited to those that participated in the 2007 program.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.50 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.625 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2008 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased for the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

For participation in the Aquaculture Training Program, public notices will be posted, and all interested watermen may apply. Selection of participant, if more than 10 watermen apply, will be by lottery.

The agency anticipates that all other 2008 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

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If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2008 Replenishment Program.

APPROVAL, BY THE COMMISSION, OF THE REPLENISHMENT PROGRAM WILL ALSO INCLUDE APPROVAL OF THE PROCUREMENT METHODS MENTIONED ABOVE.

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17. CASES CONCERNING FAILURE TO COMPLY WITH THE HARVEST QUOTA PROVISIONS OF THE STRIPED BASS REGULATION.

Joe Grist, Head, Plans and Statistics, gave the presentation and his comments are a part of the verbatim record. Mr. Grist explained that were a few individuals cases that needed to be completed from last month.

Mr. Grist said that there was 1 individual that was over his quota from 4% to 10%. He said that staff was recommending a quota reduction for the next years, as a penalty. He explained that this individual was notified of this hearing by certified-return receipt mail and was told in the letter that if he did not oppose the staff recommendation then he did not have to be in attendance.

Alvin Jenkins	Bay Permit	7% overage
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Mr. Grist said that there were two individuals who were over their quota from 0% to 3%. He stated that staff was recommending that they be sent warning letters.

Stanley White	Bay Permit	2% overage
Alcova Jones	Bay Permit	0.4% overage

Associate Member Robins moved to accept the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 8-0. Associate Member Holland was still absent from the meeting. The Chair voted yes.

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18. VIRGINIA SEAFOOD COUNCIL: Request for public hearing to consider their 2008 proposal for the study of Crassostrea ariakensis in Virginia waters.

Jack Travelstead, Chief Deputy, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead stated that the Virginia

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Seafood Council was requesting approval to hold a public hearing at the next meeting to consider an Ariakensis Project Proposal for 2008.

Commissioner Bowman asked for a motion from the Commission.

Associate Member Robins moved to approve the request. Associate Member Tankard seconded the motion. The motion carried, 8-0. Associate Member Holland was absent. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 5:00 p.m. The next meeting will be Tuesday, March 25, 2008.

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Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary