

**MINUTES****Commission Meeting****April 24, 2007**

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr. )	
J. Carter Fox )	
J. T. Holland )	
John R. McConaughay )	Associate Members
Richard B. Robins, Jr. )	
Kyle J. Schick	
J. Edmund Tankard, III )	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Todd Sperling	Program Analyst. Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Lisa Gruber	Marine Police Officer
Bill Franklin	Marine Police Officer

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

### Virginia Institute of Marine Science (VIMS)

Lyle Varnell  
David O'Brien  
Roger Mann  
Rom Lipcius

Other present included:

Lawrence Hoffman	William C. Kreye	Jim Gunn
Robert Madigan	John Small	Massie Burger
Derrick Smith	Chip Watkeys	Sylvia O. Rowe
Anna M. Drake	Joe Sisler	Brain Fletcher
Tom Northam	Martin Cardwell	Robert Holloway
John Brooks	Walter Hodges	James Hopkins
Elizabeth Kricorian	Kirk Harlas	Karen Duhring
Charles Rhodes	Fred Obrecht	Page Dyres
Keith Kopcsak	Ray Britt	Dwight Beasley
Danny U. Mills	Virginia L. Nicholson	Kenneth W. Miles
Patrick Lynch	Ellis W. James	Elizabeth Wilson
John M. DeMaria, Jr.	Douglas F. Jenkins	Roger Parks
Russell Gaskins	Bill Hill	Rob Savage
Tommy Eskridge	William S. Lynn	Dolores Lynn
Letty Lynn	Tom Pevans	Susan Gaston
Russell Burke	Jeff Deem	Robert Jenson
Harry L. Doernte	Chris Ludford	Peter Nixon

and others

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Commissioner Bowman called the meeting to order at approximately 9:36 a.m. Associate Member McLeskey was absent. Both Associate Members Bowden and Holland arrived at approximately 9:40 a.m.

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Commissioner Bowman asked for a moment of silence for the tragedy that occurred at Virginia Tech and MPO Marina Libro led the pledge of allegiance to the flag.

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**APPROVAL OF AGENDA:** Commissioner Bowman asked if there were any changes to the agenda. Bob Grabb, Chief, Habitat Management said that staff was requesting that Item 14, staff's presentation "On how the mean low water was calculated and surveyed.", be deferred until next month.

**Commissioner Bowman asked for a motion to approve the agenda. Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 6-0. 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 March 27, 2007 meeting minutes.

**Associate Member Robins moved to approve the minutes, as circulated. Associate Member Fox seconded the motion. The motion carried, 6-0. The Chair voted yes.**

Commissioner Bowman stated that since Associate Member McLeskey was not present at the hearing and he was one of the five that attended a special Commission meeting, the Commission would hold off on the approval of the March 12, 2007 minutes. He said Associate Member McLeskey being present was necessary to have a quorum to vote on any motion made.

**Associate Members Bowden and Holland arrived at approximately 9:40 a.m.**

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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).

Bob Grabb, Chief, Habitat Management Division, reviewed items 2A through 2L for the Commission. He said that staff was recommending approval of these items.

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

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

- 2A. **CHERRYSTONE CAMPGROUND, #07-0355**, requests authorization to remove three (3) existing campground piers and construct three new piers within the original footprints. The proposed piers will be 330 feet long by 6 feet wide, 404 feet long by 6 feet wide and 260 feet long by 6 feet wide respectfully and each will include 40-foot by 20-foot T-heads adjacent to the Cherrystone Campground property along Cherrystone Creek in Northampton County. The northern pier will also be used for the mooring of 16 (rental and registered guest) boats. Staff recommends a royalty of \$13,236.00 for the encroachment over 13,236 square feet of State-owned submerged land at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 13,236 sq. ft. @\$1.00/sq. ft.).....	\$13,236.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$13,236.00

- 2B. **COUNTY OF FRANKLIN, #07-0555**, requests authorization to construct a 12' wide by 80' long clear-span bridge across the Pigg River to facilitate pedestrian access to athletic fields at Waid Park in Franklin County.

Permit Fee.....	\$ 100.00
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- 2C. **METRO MACHINE CORPORATION, #07-0271**, requests authorization to maintenance dredge approximately 21,000 cubic yards of State-owned submerged materials to restore maximum depths of -59 feet below mean low water to the 40,000 LT Dry Dock adjacent to their property situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in Norfolk.

Permit Fee.....	\$ 100.00
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**2D. DEPARTMENT OF CONSERVATION AND RECREATION, #06-2936,** requests authorization to hydraulically maintenance dredge approximately 1,650 cubic yards of accumulated sediment to restore maximum depths of minus six (-6) feet below mean low water at the York River State Park Croaker Landing Boat Ramp in James City County.

Permit Fee.....\$ 100.00

**2E. DOMINION TRANSMISSION INC., #07-0304,** requests authorization to install 50 linear feet of new 30-inch diameter natural gas pipeline a minimum of three feet below Tuscarora Creek in Leesburg in Loudoun County. Staff recommends a royalty of \$150.00 for the encroachment under 50 linear feet of State-owned submerged lands at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 50 lin. ft. @\$3.00/l. ft.).....	\$ 150.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$ 250.00

**2F. NEWPORT NEWS SHIPBUILDING AND DRY DOCK CORP., #00-0583,** requests authorization to modify their previously authorized permit to dredge 18,942 cubic yards of State-owned submerged land to maximum depths of -25 feet below mean low water in the area of the demolished Pier 4 adjacent to their property situated along the James River in Newport News. Staff recommends a royalty of \$8,523.90 for the new dredging of 18,942 cubic yards of State-owned subaqueous bottom at a rate of \$0.45 per cubic yard. Staff also recommends mitigation for the dredging impact to approximately 4,675 clams by the planting of market size clams at a rate of 1.33:1, which equates to a total of 6,217 clams, within one year of the dredging. The planting shall be coordinated with VMRC Fisheries staff.

Royalty Fees (dredge 18,942 cu. yds. @ \$0.45/cu. yd.).....	\$8,523.90
Permit Fee.....	\$ 100.00
Totals Fees.....	\$8,623.90

**2G. APPALACHIAN POWER COMPANY, #06-2379,** requests authorization to dredge approximately 2,000 cubic yards of State-owned subaqueous material from a 60-foot by 110-foot area, and to maintenance dredge approximately 2,000 cubic yards of State-owned subaqueous material from a second 60-foot by 110-foot area, and to conduct maintenance dredging in both areas on an as-needed basis, to create and maintain maximum controlling depths ranging between minus six (-6) and minus eighteen (-18) feet at ordinary high water, adjacent to the Glen Lyn Plant's intake screen house fore bay situated along the New River in Giles County. Staff recommends a royalty in the amount of \$900.00 for the new dredging of 2,000 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard.

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Royalty Fees (dredge 2,000 cu. yds. @ \$0.45/cu. yd.).....	\$ 900.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,000.00

- 2H. PHARRELL WILLIAMS, ET AL, #06-2644,** requests authorization to install approximately 462 linear feet of fiberglass bulkhead, aligned a maximum of 2 feet channelward of mean low water and a failing aluminum bulkhead, at his property in the Great Neck Point subdivision situated along Long Creek in Virginia Beach. Staff recommends a royalty of \$760.00 for the filling of 760 square feet of State-owned submerged bottom at a rate of \$1.00 per square foot.

Royalty Fees (filling 760 sq. ft. @ \$1.00/sq. ft.).....	\$ 760.00
Permit Fee.....	\$ 100.00
Totals Fees.....	\$ 860.00

- 2I. CHRISTCHURCH SCHOOLS IN DIOCESE OF VA, #07-0296,** requests authorization to construct an 8-foot wide by 325-foot long pier with a 96-foot by 18-foot pier-head, a 16-foot by 8-foot "testing platform", and two uncovered boatlifts adjacent to their property situated along the Rappahannock River in Middlesex County. Staff recommends a royalty in the amount of \$4,112.00 for the encroachment on 4,112 square feet of State-owned submerged land at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 4,112 sq. ft. @ \$1.00/sq. ft.)....	\$4,112.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$4,212.00

- 2J. LEWIS R. LITTLE, #06-2996,** requests authorization to construct a 34-foot by 35-foot open-sided dual-slip boathouse roof adjacent to the applicant's property situated along the Pagan River in the town of Smithfield in Isle of Wight County.

Permit Fee.....	\$ 100.00
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- 2K. RIVERMONT ASSOCIATES, LLC, #06-2780,** requests authorization for multiple road crossings of Johnson Creek and un-named stream tributaries in conjunction with a proposed residential and commercial development in Chesterfield County. Recommend standard instream permit conditions and that no work be done between February 15 and June 30 of any year to protect anadromous fish species. Recommend a royalty of \$2,310.00 for the encroachment over 1,540 square feet at a rate of \$1.50 per square foot.

Royalty Fees (encroachment 1,540 sq. ft. @ \$1.50/sq. ft.)....	\$2,310.00
Permit Fee.....	\$ 100.00
Totals Fees.....	\$ 2,410.00

- 2L. RICHMOND REGION 2007, #07-0044,** requests authorization to add an additional 140 linear feet to the previously authorized 24-foot wide by 500-foot long floating causeway that the Commission approved on February 27, 2007. This temporary causeway (total length 640 linear feet) will be used to support the mooring of period vessels (*Godspeed, Schooner Virginia, Kalmar Nyckel & Lady Maryland as well as the Pride of Baltimore*) within the James River, adjacent to the City of Richmond Intermediate Terminal (3101 Water Street), in May 2007, as part of the Jamestown 2007 celebration.

No applicable fees – Permit Modification

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**3. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL.**

Commissioner Bowman announced that VMRC Counsel had informed him that no closed meeting would be necessary.

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**4. U.S. ARMY PRESENTING AN AWARD TO COMMISSIONER BOWMAN FOR THE AGENCY'S WORK WITH THE RESERVES.**

Lt. Col. Hence, Commander for the Southern Transportation Unit-Fort Eustis presented Commissioner Bowman a certificate, especially as it relates to MPO Marina Libro as a reservist on active duty and working with the transportation unit during this time of crisis.

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**5. DISCUSSION:** Commission action in response to Judge Norman Thomas' ruling in the case of Sarah Harrison v. Virginia Marine Resources Commission and Ronald W. Boone (Civil Action No: CL06-1664).

Commissioner Bowman asked Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel to comment.

Mr. Josephson explained that this item was on the agenda today because of the anticipated receipt of the Court Order in regards to this case. Since the only item received at this point was a letter of an opinion from the Judge, the Commission did not have the authority to take any action at this hearing. He said the Commission must wait for the Court Order.

No action was taken.

6. **LAWNES POINT SERVICE COMPANY, #06-2324**, requests authorization to install a 6-inch treated wastewater outfall pipe and diffuser, to service a planned residential development, into Lawnes Creek, a tributary to the James River, in Isle of Wight County. The application is protested by a nearby oyster ground leaseholder.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. Mr. Stagg explained that these were special circumstances and the staff's presentation will explain the staff's recommendation for approval. He said that staff had spoke with Mr. DeMaria since he was the protestant and explained that the outfall was 9,000 ft. from his oyster ground lease. He said that Mr. DeMaria had withdrawn his protest. His comments are a part of the verbatim record.

Mr. Stagg explained that the proposed outfall pipe is located along Lawnes Creek within the Lawnes Creek subdivision in northern Isle of Wight County. The centerline of Lawnes Creek is the boundary between Isle of Wight and Surry Counties. This outfall pipe and diffuser will serve a planned community of 150 homes and facilities at a park at the property. The treatment plant will employ both primary and secondary treatment, as well as nutrient reduction and tertiary filtration technologies, and is designed to produce high quality effluent that is not expected to adversely affect the water quality of Lawnes Creek. Additionally, the facility will employ beneficial reuse of the treated wastewater through irrigation of nearby upland during dry periods which will result in a reduction of the frequency and volume of discharges. According to the requirements of the Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Department of Environmental Quality, the permittee is limited to a discharge maximum of 50,000 gallons per day. Pursuant to requirements by the Health Department, Division of Shellfish Sanitation, the effluent must be discharged into a 30-day detention pond prior to secondary disinfection and final discharge into Lawnes Creek.

Mr. Stagg explained that Mr. John DeMaria, a nearby oyster ground leaseholder initially protested the proposed outfall. He originally objected to the potential requirements for prohibited harvesting areas around the outfall, which could adversely impact oyster ground in the area and the potential to change salinity levels within the creek which could also adversely affect oyster resources within the creek. The applicant's agent, Olver Incorporated, responded to these concerns in a letter dated March 5, 2007, which was forwarded to Mr. DeMaria. The letter confirmed that no "prohibited" zone would be required by the Health Department and that the outfall amounts from the pipe would make up less than 2% of the flow of the creek even under the maximum discharge allowed by the VPDES permit.

Mr. Stagg further explained that Mr. DeMaria submitted a second letter dated, March 30, 2007, and renewed his objections. Those objections include his contention that this project will still result in further and increased condemnation of shellfish waters and places direct risk on his commercial harvest. Additionally, he believed this proposal was contrary to

The Chesapeake Bay and Virginia Waters Clean-Up Plan (Code of Virginia, Chapter 3.7 of Title 62.1), and that should water quality improve sufficiently within Lawnes Creek to allow for direct harvest of oysters, this project would preclude that option.

Mr. Stagg stated that currently, all of Lawnes Creek was condemned for the harvest of shellfish for direct sale. Shellfish could be harvested, however, under a Health Department permit, relayed to a clean area and then re-harvested after the appropriate 15-day waiting period for direct sale. Installation and operation of this discharge pipe would result in a Minimum Restricted Area within Lawnes Creek beginning approximately 1,000 feet downstream of the outfall and extending upstream to the headwaters. Should water quality improve within Lawnes Creek to a point at which direct harvest was allowed, this restricted area would remain. Unlike previous restricted areas required by the Health Department, which prohibited relaying, this area would still be open to the relaying of shellfish under Health Department permit. Mr. DeMaria's lease was over 9,000 feet downstream from the outfall pipe location and approximately 5,700 feet from the proposed Minimum Restricted Area. Additionally, staff believed that the Minimum Restricted Area was likely at, or above, the limits where oysters would survive due to low salinity levels.

Mr. Stagg said that the Isle of Wight County Wetlands Board did not require a permit for this project since the pipe was to be installed by directional drill method beneath the tidal wetlands. The Department of Game and Inland Fisheries recommended an in-stream construction time-of-year restriction from February 15 through June 30 to minimize impacts to anadromous fish species. The Department of Environmental Quality issued their Virginia Pollutant Discharge Elimination System (VPDES) permit on November 17, 2006. No other agencies had commented. Provided the applicant adhered to the provisions required within the VPDES permit as issued by DEQ, which include primary treatment, retention for a minimum of thirty days within a holding pond, and secondary disinfection treatment, before discharge, installation of the outfall pipe, with diffuser, appeared to be a reasonable use of State-owned subaqueous lands and should not adversely impact shellfish resources, since any viable resource should be located well downstream of proposed outfall.

Mr. Stagg said that staff recommended approval with the following conditions:

- Should the use of this outfall pipe result in a prohibition of shellfish harvest (to include prohibition of relaying of shellfish) downstream from any area supporting shellfish growth, the applicant would be required to immediately cease use of the outfall pipe.
- No construction within Lawnes Creek was allowed from February 15 through June 30 of any year.

- All areas of State-owned bottom and adjacent lands disturbed by this operation shall be restored to their original contours and natural conditions within thirty (30) days from the date of completion of the authorized work. All excess materials shall be removed to an upland site and contained in such a manner to prevent its reentry into State waters.
- Staff also recommended a royalty of \$75.00 for the encroachment over 25 feet of State-owned subaqueous bottomland at a rate of \$3.00 per linear foot.

Commissioner Bowman asked for questions of staff.

Associate Member Robins stated that in regards to the Chincoteague outfall there was much concern for virus that could be harmful. He asked does the holding pond address this issue? Mr. Stagg responded yes and there was a second treatment. Associate Member Robins asked if a required closure should occur, how would it be monitored. Mr. Stagg explained that this would be a violation of the DEQ permit and VMRC's permit would have a backup condition. Associate Member Robins asked who would be responsible for the monitoring. Mr. Stagg responded, the Health Department. Commissioner Bowman stated that monitoring was conducted regularly by the Health Department.

Associate Member Tankard stated that this closure resulted from the project, but the royalties were only based on 25 feet. Mr. Stagg explained that the area where the outfall pipe was located was the only encroachment considered. Commissioner Bowman explained that only tangible encroachments were considered. Bob Grabb, Chief, Habitat Management explained that the royalty fees were based on the private use of a public area. He said this was a special closure and if it were more restrictive then that might be an argument. Associate Member Fox asked if this area was not being impaired. Mr. Grabb explained that it was not absolutely impaired, as a leaseholder could still relay shellfish from their private oyster ground lease. He said this area was not being converted to private use only.

Associate Member Fox asked about the marsh area across the creek and if it was impacted. Mr. Grabb explained that in accordance with Section 28.2-1205 of the Code of Virginia, staff did not believe there was an impact either directly or indirectly.

Commissioner Bowman asked if the applicant or their representative wished to address the Commission.

Richard Lawrence, agent for the applicant, was sworn in and his comments are a part of the verbatim record. Mr. Lawrence explained that the VMRC staff had been very thorough in their presentation. He said he would like to add that the daily amount of discharge, rather than 50,000 gallons per day would actually be 25,000 gallons per day. He stated they would utilize spray irrigation to reduce the amount of wastewater. He stated also that there

would be a primary treatment and a secondary treatment for the shellfish pathogens. He said that when the holding pond was designed it was done conservatively and was actually a 60-day holding pond. He said they had gone through permit processes with other agencies and complied with all of them. He said the last permit required was from VMRC.

Commissioner Bowman stated that this was a difficult decision of allowing the outfall, but it was different from the Chincoteague issue. He asked if there was anyone else, either pro or con, who wished to address this issue. There were none. He asked for further discussion or a motion.

**Associate Member Robins** stated that he agreed with the concern in regards to the water quality. He said the Bay does have water quality problems, but from staff comments and comments from others, as well as the VMRC conditions, he felt the impacts on the shellfish and the public would be reduced. He, therefore, moved to approve the staff's recommendations. Associate Member McConaughy seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 25 l. ft. @ \$3.00/l. ft.).....	\$ 75.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$100.00

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7. **FRED OBRECHT, #06-1725**, requests authorization to construct a 288-foot long by 5-foot wide L-shaped community pier to include a 53-foot long by 12-foot wide T-head and eight (8) finger piers adjacent to the Obrecht Subdivision proposed on Underhill Creek, a tributary of Pungoteague Creek in Accomack County. The community pier would be used to moor up to 18 community boats. Nearby property owners protested the project.

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

Mr. Badger explained that the proposed community pier is designed to serve a new eighteen lot residential subdivision known as Underhill Creek Landing. The property is located 4.5 miles southwest of the Town of Onancock and one mile north of the Town of Harborton. Underhill Creek was primarily surrounded by farmland and some residential homes. The creek was approximately 330 to 400 feet wide at the proposed pier location and possessed maximum depths of -3 feet at mean low water (MLW).

Mr. Badger further explained that according to the applicant's drawings, only six lots (13 through 18) of the eighteen lots were bona fide riparian properties. If the community pier was approved as proposed, the applicant had agreed to sever the riparian rights to five of the six waterfront properties. The applicant intended to construct a private pier on lot #13

and maintain the riparian rights to that lot. Lots 16, 17 and 18 were on a small cove that was less than 75 feet wide and only had about half a foot (0.5) of water at MLW.

Mr. Badger said that all of Underhill Creek was in the Virginia Department of Health's Condemned Shellfish Area Number 081-119.

Mr. Badger stated that several nearby property owners along and near Underhill Creek protested the project. They had expressed concerns over the size of the community pier and the number of slips. They also had concerns that the size of the pier would impede boat traffic going in and out of the creek and about the changes this facility might bring to this otherwise pristine area.

Mr. Badger said that the Virginia Institute of Marine Science had indicated that the individual and cumulative adverse environmental impacts resulting from the community mooring facility could be reduced. In their opinion, the number of slips should be reduced to the minimum required to service the existing waterfront lots in the subdivision to minimize the encroachment over subaqueous bottom. They also recommended that the waterfront lots be placed under restrictions to prohibit the construction of private piers.

Mr. Badger said also that while the Department of Health had recommended that the permit application be approved, they had also indicated that the Certificate to Operate would not be issued until the State Health Commissioner had rendered a decision on the application for a variance to Section 12 VAC 5-571-120-C of their regulations and that the owner be prohibited from allowing any temporary or long-term vessel dockage at the pier until the Certificate to Operate had been issued.

Mr. Badger stated that The Accomack County Wetlands Board approved the wetlands portion of the project, as submitted, at their January 25, 2007, meeting.

Mr. Badger explained that the U.S. Army Corps of Engineers had reviewed the project and had issued their Regional Permit number 19 for a community pier. This permit was conditioned on the proposed pier being no more than one quarter the width across the waterway and contingent on the applicant obtaining a permit from VMRC and the Local Wetlands Board.

Mr. Badger said that staff generally supported a community pier approach as opposed to numerous private piers in an attempt to provide a central point of water access for communities with riparian lots. Depending on its location, one community pier was typically preferred over numerous individual private piers given the cumulative navigation, environmental and aesthetic impacts that could be involved. In this case, although the applicant was willing to prohibit the construction of private piers on five of the six riparian waterfront parcels, three of those lots (16, 17 and 18) were located on a small cove that was less than 75 feet wide with approximate depths of minus five tenths (-0.5) of a foot at

mean low water. These three lots could only support small private piers, which would not be expected to impede boat traffic going in and out of the main body of Underhill Creek.

Mr. Badger stated that since this essentially left only two lots with the possibility of building a private pier, staff recommended approval of a community pier structure, that would extend no further than one quarter across the waterway, with a maximum number of five boat slips, a T-head not to exceed 400 square feet and two fingers piers. That approval should also be conditioned on recorded deed restrictions, which prohibit the construction of individual private piers on lots 14 and 15. By limiting the number of slips to five, staff also felt the community pier can be realigned so that it would not be a hindrance to navigation, which would address the concerns expressed by those in opposition to the project

Mr. Badger stated that staff further recommended assessing a royalty based on the total square footage of the bold outline footprint encompassing the pier, slips and any other approved appurtenances, at a rate of \$1.50 per square foot.

Finally, Mr. Badger said that staff recommended that a permit not be issued until the applicant had obtained a Certificate to Operate from the Department of Health and revised drawings had been provided that appropriately and accurately depict the structures authorized by the Commission.

Tom North, representing the applicant, was sworn in and his comments are a part of the verbatim record. Mr. North explained Mr. Obrecht was agreeable to reduce the number of slips if lot 13 would be allowed to have its individual pier. He said that a revised plan had been submitted where the pier was angled and it was included in the Corps letter. He said angled it will have a 25% less impact on the waterway. He said there were no hookups, no transient, except in an emergency, and no overnight at the slips. He said that 6 of the lot owners could not build a full size pier, but if they were to build, it would impact 8,100 sq. ft. of subaqueous bottom and 900 sq. ft. of wetlands. He said further that the community pier would impact less. He said there was no public ramp nearby that could be utilized. He said the private sector should be encouraged to utilize slips and as it said in the staff recommendation, it was better to have one well-built pier versus individual piers.

Fred Obrecht, applicant, was sworn in and his comments are a part of the verbatim record. In response to the question about minimum size allowed in the County, Mr. Obrecht stated it was thirty thousand square feet. He said that they thought the subdivision would be better served by one dock for all 18 lots, but with the objections they were agreeable to cut the number back to 12 with lot 13 having an individual dock. He said everything else is approved and completed, including the septic fields.

Associate Member Tankard asked why was the dock starting at the narrowest point. Mr. Obrecht said it was done this way to get to closer to the channel and deeper water to make access easier. He said it was five feet at the channel and only 2 ½ feet near the shore.

Associate Member Fox asked if there was a drawing that showed the new configuration and how much area was being impacted? Mr. Obrecht said this was on the drawing presented by staff as their item 3-A. Associate Member Fox stated that it shows half way across the creek.

Commissioner Bowman said he was concerned in this case with the number of lot owners that were expecting water access. He said he felt the staff was being generous with the additional slips. He asked if there was anyone present, pro or con to speak on this issue.

Rob Armstrong, protestant and resident of Underhill Creek subdivision, was sworn in and his comments are a part of the verbatim record. Mr. Armstrong stated he believed that the rights are for property owners that are on the creek, but seemed there were rights for the developers as well. He said there were three waterfront lots and 3 mudflat lots. He said he recommended that there be 3 slips for small boats. He said the proposed project was overkill.

Kenny Miles, protestant, was sworn in and his comments are a part of the verbatim record. He said there were already 3 lots on the opposite side that already have docks. He said he had oyster ground that he could not use. He said he was opposed to the 18 slips and the private pier at lot 13. He said he would like to see individual small piers for the waterfront lots. He said the project now would cause them to lose the use of the channel. He said he was retired now and did dock his boat more at his property. He wanted to know who would be responsible for the clean up. Commissioner Bowman stated the landowner was required by law.

Danny Mills, protestant and upstream property owner, was sworn in and his comments are a part of the verbatim record. Mr. Mills said he had submitted his letter of protest. He said the pictures were taken on high tide and the channel at low tide had 75% less water in the channel. He said the channel was small, 8-12-20 feet wide. He said the project was oversized for the size of the creek. He said the developer was using this project as a selling tool. He said it would impact the wildlife, oysters had survived here, and migratory ducks came to this area in the winter.

Virginia Mills, protestant and property owners, was sworn in and her comments are a part of the verbatim record. Ms. Mills stated she had lived there for 47 years and had enjoyed the creek, but the channel was narrow. She said this would impact the little channel that is used by residents on the creek.

Associate Members Robins, Tankard, Schick and Fox all agreed that the scope of the original proposal was too large for the creek and some felt that the staff recommendation was very generous.

**Associate Member Holland moved to adopt the staff recommendations. Associate Member Robins seconded the motion. Associate Member Tankard stated he could**

**not support the motion, as a “bonus” slip was being approved that was not needed.** Associate Member Schick stated that the developer should not be penalized when he made a decision to go with larger lots and that revised drawings were pending that would show whether this additional slip would fit. Associate Member Robins stated that the character of the area was considered and this would be approving the maximum for a highly developed area. He stated also that he continued to support the motion. The motion carried, 7-1. Associate Member Tankard voted no. The Chair voted yes.

Royalty Fees – Pending revised drawings  
Permit Fee.....\$100.00

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8. **COASTAL DESIGN & CONSTRUCTION, INC., #06-2740,** requests authorization to install two (2) commercial mooring buoys in the Southwest Branch of the Severn River, approximately 600 feet channelward of the Broad Marsh area and approximately 1,200 feet southwest of the Severn Wharf Marina, in Gloucester County. Two nearby property owners protested the project.

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

Mr. Neikirk explained that Coastal Design & Construction, Inc. was a marine construction company located along the York River in Gloucester. Among other activities, the company built and installed concrete floating pier and breakwater systems. The company constructed the piers at their facility located along the York River but typically transported them by truck to the Severn River Marina where they were removed from the trucks and placed in the water by the marina's 60,000 pound travel lift.

Mr. Neikirk said that this proposal called for the installation of two moorings to provide temporary in-water storage of the concrete piers and breakwaters awaiting transport by tugboat to various locations throughout the Chesapeake Bay and along the East Coast. The proposed moorings were sited in water with a depth of minus four (-4) feet at mean low water and they were approximately 600 feet channelward of the Broad Marsh area along the southern shoreline of the Southwest Branch of the Severn River. The proposed buoys were situated approximately 500 feet apart with one buoy centered at 37° 18' 05" North Latitude, 76° 27' 27" West Longitude and the second buoy centered at 37° 18' 02" North Latitude, 76° 27' 22" West Longitude. The Southwest Branch of the Severn River was approximately 1,500 feet wide at the project site and the channel was approximately five (5) feet deep at mean low water.

Mr. Neikirk stated that the proposed buoys consisted of a 3-ton concrete block anchor, 30 feet of chain, and a 60-inch steel-mooring ball. Mr. Jim Gunn, the owner of the company,

stated that he would be willing to utilize rubber mooring buoys instead of the steel balls to minimize any hazard. A total of four floating concrete structures, each measuring up to 66-feet in length and 13-feet in width were proposed to be moored at the two balls.

Mr. Neikirk explained that two nearby residents protested the project. They believed the moorings present a safety hazard and that they might have adverse environment impacts. The proposed moorings were located on oyster planting ground leased by Mr. Mitchell Dunston. He originally opposed the project but he and the applicant had reached an agreement.

Mr. Neikirk said that the United States Coast Guard stated that they had no objection to the application. They noted, however, that the structures or mooring balls must be illuminated when utilizing the mooring and that the mooring ball must show ownership and the proper color code. No other agency comments were received on this proposal.

Mr. Neikirk stated that staff believed the deployment and utilization of the moorings should have only a minimal adverse impact on navigation and other public uses of the waterway provided they were properly illuminated at night and were used for the stated purpose of the temporary and occasional storage of structures awaiting deployment.

Accordingly, Mr. Neikirk said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with the inclusion of the following special conditions:

- The mooring buoys shall be constructed of a rubber material and shall be marked in accordance with the "Uniform State Waterway Marking System" which requires the buoys to be white with a blue stripe around the middle. Additionally, the Permittee shall affix the numerals 06-2740 to the buoys for identification purposes.
- The Permittee shall remove the buoys within 90 days of receiving written notification from the Commission.
- The Permittee shall notify the Commission within 30 days of any changes in the information submitted in the application. This includes, but shall not be limited to, changes in the Permittee's domicile, use of the moorings, or intent to vacate the buoys.
- The Permittee shall notify the Commission annually of his intent to continue to occupy the moorings.

- The Permittee shall comply with all requirements of the U.S. Coast Guard concerning the marking and use of the buoys.

Mr. Neikirk explained that in addition to the previously stated recommendations and conditions that staff recommended a royalty of \$500.00 be assessed for the private use of State-owned submerged bottom for each of the moorings.

Associate Member Robins stated that this was an issue of the risk to small boats and the amount of traffic. Mr. Neikirk stated that there was a fair amount of traffic and a campground was located upstream from the project.

Associate Member Robins stated his concerns were for the lights proposed being in conflict with the Coast Guard requirements. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that the private aid to navigation with a light might be confused with other lights in the area. He said this might have to be approved by the Coast Guard.

Jim Gunn, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Gunn did not have anything to add, but was available for questions. Associate Member Tankard asked how long the boats would be tied up to the mooring? Mr. Gunn stated that they would be moved daily, unless impacted by bad weather, then they might stay for 4 or 5 days. Associate Member Fox asked how often a boat would be tied up to the mooring buoy. Mr. Gunn answered maybe 20 times a year.

Sylvia Rowe, protestant, was sworn in and her comments are a part of the verbatim record. Ms. Rowe stated that this would impact access to fishing by other boats, crab potting, etc. She said there were two marinas and a campground and there was a lot of boat traffic even at night. She said that when she inquired about permits acquired, she was told that no Corps permit or VMRC permit was required. She was told by VMRC that they had a permit, but it was for the York River and the Severn River was being impacted by this project for which there were no permits. She said there was not much room in the channel and this could cause an accident if someone unfamiliar was boating in the area and did not know about the buoys. She said the leaseholder was impacted from taking shellfish from the private lease. She said she was concerned with bad weather and the impact these large vessels might have on the adjacent properties.

Mr. Gunn stated that in the event of bad weather they would be moved. Associate Member Fox asked about the size of the floating breakwaters. Mr. Gunn responded 13' X 66' and smaller and they would be pulled out for significant bad weather.

Commissioner Bowman asked for discussion or a motion.

**Associate Member Schick moved to approve the project, as recommended by staff.  
Associate Member Robins seconded the motion. The motion carried, 8-0.**

Royalty Fees (encroachment 2-moorings @ \$500.00 ea.)	\$1,000.00
Permit Fee.....	\$ 25.00
Total Fees.....	\$1,025.00

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9. **TRICOUNTY FARMS, INC., #05-2246**, requests authorization to construct 405 linear feet of 8-foot wide open-pile pier with attached wave baffles, finger piers and mooring piles to create 21 wetslips, a 75-foot long timber wave baffle near an existing travel lift, and to install 500 linear feet of pilings spaced 8 to 10 inches apart intended to protect the facilities from wave damage adjacent to their existing pier and travel lift facility situated along the Rappahannock River in Middlesex County.

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

Mr. Neikirk explained that the project is located along the Rappahannock River, approximately 1.5 miles downstream from the Town of Urbanna and was locally referred to as the "Duck Farm." The river was approximately 2.5 miles wide at the project site with long northwest and northeast fetches. Spot soundings included with the application indicated that the water was approximately four (4) feet deep at mean low water within the project area. A travel lift facility and a 427-foot long pier were currently located at the site. The project was designed to provide 21 wet slips to support a land based boat storage operation. The applicant had stated he had approval for the storage of 100 boats on the upland site and existing buildings were used to support boat maintenance and construction activities.

Mr. Neikirk stated that since the facility was exposed to significant waves, the proposal included the construction of a timber wave baffle to be attached to the existing and proposed pier and an angled timber "wave break" wall extending from a jetty adjacent to the travel lift. Additionally, over 300 10-inch pilings were proposed to be driven adjacent to one another, with a gap of between 8 and 10 inches, to create a total of 500 linear feet of soldier pile breakwater around the perimeter of the proposed piers.

Mr. Neikirk said that this proposal had been modified several times during its review. The original proposal sought authorization for longer piers to provide approximately 100 wetslips and also included the installation of a floating plastic wave attenuator marketed as "WhisperWave." After staff questioned the ability of the wave attenuator to dampen the anticipated storm waves sufficiently to protect the moored vessels, Mr. Bunch, the owner of the facility, decided to modify the proposal. Mr. Bunch had stated that the current

proposal would provide an adequate number of wetslips to support his dry storage operation but would be limited enough to allow them to haul all the in-water boats when a storm was forecast. Mr. Bunch said he believed the soldier pile breakwater and attached wave timber baffles would provide additional protection.

Mr. Neikirk said that no comments were received in response to the public notice and the notification letter that was sent to the adjoining property owners.

Mr. Neikirk said that VIMS in their report dated April 17, 2007, questioned whether the exposed and shallow location was appropriate for a commercial marina and they noted that additional details concerning depth fluctuations, expected wave height and wave reflection on the structures had not been provided. They stated that impacts on fish passage and tidal currents would be reduced if the splashboards on the armored piers did not extend all the way down to the substrate. They recommended the slips be located in water that was naturally deep enough to accommodate the vessels without the need for dredging and they recommended the development of a marina management plan to address issues such as, fuel and oil spill response, solid waste disposal, and storm preparations.

Mr. Neikirk said that the Department of Game and Inland Fisheries stated that the project could become an impediment to fish passage, a safety hazard to boaters and generally be interpreted as a privatization of public waters. DGIF recommended a minimum spacing of at least 12 inches between pilings to minimize impacts to fish passage. To reduce the hazard to boaters, they recommended the piers be properly marked. They also recommended a time-of-year restriction of February 15 through June 15 to minimize impacts on migratory fish and strict adherence to erosion and sediment control guidelines. Finally they noted the presence of an active eagle nest in the vicinity and stated that if this project was a part of a larger development, it might be located within the management zone.

Mr. Neikirk said that the Health Department stated that the project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings. They noted, however, that a seasonal shellfish closure would be required for the facility if it had more than 10 slips. The Department of Conservation and Recreation found the project to be acceptable.

Mr. Neikirk stated that the structures would not encroach on any public or privately leased shellfish planting ground. Public Ground Number 1 was located approximately 1,500 feet offshore.

Mr. Neikirk said that the proposal appeared to generally adhere to the Marina Siting Criteria, with the notable exception that the expected maximum wave height exceeded one (1) foot. It was this factor that had staff most concerned. In a paper titled "Design Wave Information for Chesapeake Bay and Major Tributaries in Virginia" Dr. David R. Basco found that a 35-mile per hour wind would produce a 5-foot wave with a period of 4.5

seconds just offshore of this location. A 35-mile per hour wind was not uncommon and one would certainly expect higher waves during stronger storms.

Mr. Neikirk explained that although the number of wetslips associated with this project had been reduced and the proposal had changed from a typical 100-slip marina to a facility designed to support a dry storage operation, staff remained concerned with the siting of this facility in such an exposed area. Staff also questioned the effectiveness of the proposed soldier pile breakwater and the ability of the piers to withstand the anticipated wave climate during storms. Staff was also concerned with the possible adverse impacts on sediment transport and fish passage associated with the wave baffle attached to the piers (since it extended all the way to the substrate) and the soldier pile breakwater. Finally, staff could not support the construction of more than 10 wetslips, since the Health Department had stated that more than 10 wetslips would necessitate a seasonal closure of shellfish waters that were currently open for the direct marketing of shellfish.

Accordingly Mr. Neikirk said that after evaluating the merits of the project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended denial of the soldier pile breakwater and approval of a pier addition providing a maximum of 10 wetslips with the inclusion of the following special conditions:

- The applicant shall be required to develop an acceptable marina management plan prior to permit issuance.
- The “splash boards” of the wave baffle attached to the piers shall maintain a clearance of at least two (2) feet between the bottom of the boards and the substrate.
- Should portions of the pier become damaged, the Permittee agrees to remove any damaged pier sections from the shoreline and/or waters of the Commonwealth within 30 days of receiving written Commission notification.

Mr. Neikirk said that should the applicant desire to pursue authorization for an alternative wave attenuation structure at this facility, staff recommended that the structure be properly designed and certified by a licensed engineer to withstand the expected wave climate.

Mr. Neikirk stated that a royalty for the encroachment of the facility over State-owned submerged land was not recommended since commercial facilities engaged in the business of selling or servicing watercraft were exempted from encroachment royalties under §28.2-1206 (B)(iii) of the Code of Virginia.

Mr. Neikirk stated that the applicant had left the meeting and no one in opposition was present.

**Commissioner Bowman suggested that condition 3 be changed by adding wording that said “to remove forthwith”, thereby, making the permittee responsible for taking action and avoiding the necessity of a letter of notification from VMRC.**

**Associate Member Schick moved to adopt the staff's recommendations. Associate Member Robins asked if this included Commissioner Bowman's suggestion. Associate Member Schick responded yes. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.**

Permit Fee.....\$100.00

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- 10. VULCAN CONSTRUCTION MATERIALS, #07-0405,** requests authorization to construct a 4' wide by 65' long open-pile commercial pier with a 4' by 10' T-head and install two (2) 5-pile timber dolphins to facilitate the temporary mooring of tugboats calling on their existing quarry facility situated along the James River in the City of Richmond. Both wetlands and subaqueous permits are required.

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

Mr. Owen said that the project is located on the western shoreline of the James River, approximately 1.9 miles downstream of the I-95 crossing of the James River in the City of Richmond. The river at this location was approximately 550 feet wide and was utilized by both recreational boaters and commercial barge traffic. The federal project channel extended upriver an additional 1.5 miles, terminating at the Richmond Locks.

Mr. Owen said that the applicant was seeking authorization to construct a 4' wide by 65' long open-pile commercial pier with a 4' wide by 10' long T-head dock and to install two 5-pile timber dolphins to facilitate the mooring of tugboats calling on their existing quarry facility. The pier as proposed would be constructed inshore of a larger existing conveyor dock used to load barges with quarry material.

Mr. Owen said that the shoreline was unhardened at the proposed pier's location. A tidal mudflat exists along the shoreline. The pier, as proposed, would be constructed over approximately 80 square feet of non-vegetated wetlands (mud flat community). No vegetated wetlands were present. The City of Richmond had not yet adopted the model wetlands ordinance and the Commission was charged with acting as the local wetlands board and authorization was required for this portion of the project pursuant to Chapter 13, Subtitle III, of Title 28.2 of the Code of Virginia. The remainder of the pier and the proposed dolphins required Commission authorization for encroachment over State-owned submerged land pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen stated that the Virginia Institute of Marine Science, in their Shoreline Permit Application Report dated March 29, 2007, advised that the estimated impacts, due to shading, are 120 square feet of subaqueous bottom and 80 square feet of non-vegetated wetlands. As such, they do not anticipate any significant adverse environmental impacts from the project.

Mr. Owen said that the Virginia Department of Health had advised that they had no objections to the project. No other State agencies had commented on the proposal. The project was not protested to date.

Mr. Owen stated that the project as proposed should not negatively impact tidal wetlands or State-owned subaqueous land due to the open-pile design of the pier. The project should not negatively impact navigation in the adjacent federal project channel since the pier and dolphins were proposed inshore of the applicant's existing barge dock.

Accordingly, Mr. Owen explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1302(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project as submitted.

Additionally, Mr. Owens stated that staff recommended a royalty of \$280.00 for the encroachment of the pier and dolphins over 140 square feet of State-owned submerged land at a rate of \$2.00 per square foot.

Tom Brooks, representing the applicant was sworn in and his comments are a part of the verbatim record. Mr. Brooks stated that he did not have anything to add to the staff's comments and he would answer any questions. There were no questions.

There were no questions and no one was present in opposition. Commissioner Bowman asked for discussion or a motion.

**Associate Member Tankard moved to accept the staff recommendations. Associate Member Fox seconded the motion. The motion carried, 8-0.**

Royalty Fees (encroachment 140 sq. ft. @ \$2.00/sq. ft.)	\$280.00
Permit Fee.....	\$100.00
Wetlands Permit Fee.....	\$ 10.00
Total Fees.....	\$390.00

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**11. YORK COUNTY, #06-1431,** requests authorization to replace the Allens Mill Road culvert crossing of West Chisman Creek to reduce roadway flooding in York County. A York County resident protested the project.

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

Mr. Owen explained that the project is located in the headwaters of Chisman Creek, in the Brandywine section of York County. A drainage study, completed in September 2003, recommended upgrading the Allens Mill Road culverts as part of a comprehensive effort to reduce roadway flooding and improve storm water drainage in this section of York County. Allens Mill Road periodically floods and must be closed during heavy rainfall events and northeasters.

Mr. Owen said that York County seeks authorization to replace two existing 24" culverts with two 60" culverts, to install approximately 30 linear feet of riprap scour protection immediately downstream of the proposed culverts, and to replace an existing 8" diameter water line. Also, in order to reduce the flooding, the roadway would be raised approximately 1'.

Mr. Owen explained that the Commission's authorization is required for the culvert replacement; riprap scour protection; and water line relocation involving State-owned submerged land pursuant to Chapter 12, Subtitle III, of Title 28.2 of the Code of Virginia. Tidal wetlands impacts associated with the project are exempted as a governmental activity pursuant to §28.2-1302(3)(10) of the Virginia Code.

Mr. Owen stated that Mr. Robert Holloway, a nearby County resident protested the project. In his November 17, 2006, letter, Mr. Holloway suggested that the project drawings were unclear and that the project, if constructed, would lead to increased siltation downstream. Mr. Holloway believed that the project attempted to remedy problems brought on by overbuilding and that it will cause damage to downstream property owners.

Mr. Owen said that the Virginia Institute of Marine Science, in their April 11, 2007 report, advised that project impacts would be largely temporary in nature and that significant adverse environmental impacts were not anticipated. No other State agency had commented on the project.

Mr. Owen said that while staff acknowledged the concerns that were raised by Mr. Holloway, increasing development pressure and the attendant storm water runoff was common throughout all of Tidewater Virginia. It appeared that York County was attempting to address the problems that were associated with storm water drainage comprehensively by funding the improvements recommended in the Brandywine Area Drainage Study. Staff noted that the project drawings called for the installation of silt fencing and a downstream silt boom during project construction.

Accordingly, Mr. Owen stated that after evaluating the merits of the project against the concerns expressed by the protestant, and after considering all of the factors contained in

§28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as submitted.

Commissioner Bowman asked if a representative was present for the County.

Joe Sisler, representing York County, was sworn in and his comments are a part of the verbatim record. Mr. Sisler said that the Burcher's area had a similar problem to that at Allen's Mill. He said the residents on Burcher had requested that these two projects be done at the same time. He said that RKK Engineering had been hired to study the situation and provide a proposal. He said that VDOT would be sharing the cost and it would be a simple fix by replacing the culverts.

After some questions, Commissioner Bowman asked if anyone was present who wished to speak in opposition to this project.

Robert Holloway, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Holloway stated that he was opposed to the project in principle. He said that he was familiar with the area and it does flood. He said the impacts resulting from the larger pipes would be that the sediment from the project would be transferred downstream. He said notice of the project was not given to those that live downstream. He stated that the Commission looks at all types of projects and in the Code were given the job to be stewards for the Bay. He stated the County was a poor steward. He asked that the Commission withhold approval until other comments had been received and a study done.

Martin Cardwell, protestant was sworn in and his comments are a part of the verbatim record. Mr. Cardwell had a powerpoint presentation that included other areas, such as Harwood Mills. Commissioner Bowman asked that he speak to the project being discussed and the rest would be heard during public comments.

Mr. Cardwell stated that York County was only concerned with the road flooding. He said the larger pipe proposed would increase the amount of water entering the creek. He said that this project should include the best management practices. He said as a homeowner he felt that best management practices needed to be observed because of the increased sediment going into the river. He asked the Commission to not approve the project without an appropriate study being done. He said the proposal was inadequate for storm water control.

Commissioner Bowman asked Mr. Sisler if projects described used the same procedures? Mr. Sisler explained that the same procedures were used throughout Virginia for erosion control. He stated that the Department of Conservation and Recreation came out to the site and all of it looked fine to them. He said for the Moore Creek's project that Department of Environmental Quality, the Army Corps of Engineers and others came to the site and okayed what was being done. He said they were just trying to stop the flooding, not trying to repair all the ills of the last 50 years.

Commissioner Bowman at this point decided to allow Mr. Cardwell to give his entire presentation.

Mr. Cardwell explained that in the Moore's Creek area there is drainage of water into the Running Man subdivision, which was causing the flooding. He said siltation fencing was used but the runoff still occurred. He said as at the Harwood Mills project site there was no containment for the dirt in order to grow grass. He said the same method was being used with the same results. He said the only response he had from his correspondence to various agencies was from a York County Engineer and he was told that DCR told them that everything was all right. He said that it was high time that best management practice was used upstream and that stormwater being contained by mud booms and silt fencing was not adequate. He said this could not continue to go on the same way. He said he urged the Commission to look at what works and what doesn't.

Commissioner Bowman stated that the Commission was concerned, but it was not under VMRC's jurisdiction.

Mr. Sisler stated that he agreed but as far as the Newport News Waterworks project they had no idea where the sediments came from because E and S controls were used. He said the County reviewed all this and DCR was out numerous times. He explained that for the amount of sediment they said was running off, it would have required much digging. He said that Hurricane Ernesto had also impacted these areas significantly. He stated they passed the DCR examination the first time. He said they do take this seriously and they did use the State's recommendations.

Associate Member Robins asked VMRC counsel if it was within this Commission's jurisdiction to require more to be done for sediment control. Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel responded it was not so much jurisdiction but whether a better way was known to approach this problem. He said the standards were set and the County complied with them. He said if the VMRC staff could come up with something better, as it does impact state-owned bottom, it would be a reasonable thing to do as part of the permit.

Bob Grabb, Chief, Habitat Management, stated that staff agreed with Counsel. He said that staff did not have a supplemental condition and relied on DCR and others who set the best management practices. He said there it would be staff recommendation that they comply with the other agency practices.

Associate Member Fox asked if VIMS had any comments. Lyle Varnell, representing VIMS, said they did not have any, because this was done by DCR.

Commissioner Bowman asked for further discussion or a motion.

**Associate Member Holland moved to accept the staff recommendations. Associate Member Robins seconded by motion. The motion carried, 8-0.**

Permit Fee.....\$100.00

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The meeting was adjourned at approximately 12:25 for lunch. At approximately 1:05 p.m. the meeting was reconvened.

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- 12. HARBOUR ON INDIAN CREEK, #06-1969**, requests authorization to install one (1) forklift-style boatlift and formal, after-the-fact authorization to retain a change from an approved four-slip T-head community pier to an L-head pier with three (3) four-foot wide finger piers, two (2) uncovered boatlifts, and a 12-foot by 10-foot floating dock adjacent to their residential development on Pitman's Cove off Indian Creek near Kilmarnock in Lancaster County.

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

Mr. Woodward explained that on February 1, 2000, the Commission approved a request (VMRC #99-0374) from Mr. Bob Bragg for four (4) community piers with a total of 24 slips to serve a planned 24-unit residential development on the site of a former commercial wood chip loading facility on Pitman's Cove. The piers included a 12-slip facility at the old wharf location and three other 4-slip, 100-foot long T-head piers, extending approximately 90 feet channelward of mean low water along the approximate 1,300 linear feet of shoreline. Although extended once, that permit had expired and only the eastern most pier, pier #1, was constructed which was the subject of this case.

Mr. Woodward further explained that during construction of pier #1 in January of 2005, Mr. Bragg called staff to inquire about changing the design to better accommodate one of the homeowners expected to use the pier. Specifically, he asked to change the T-head to an L-head design, with a finger pier and an uncovered boatlift. The T-head was reduced from 50 feet in length to a 24-foot L-head and the finger piers were no wider than 4 feet in width, with the proposed lift being within the footprint of the approved pier. Upon receipt of revised drawings prepared by the contractor, Mr. Dana Stillman of D & L Construction, staff reviewed the proposed changes and found them to be minor, falling within the footprint of the original proposal with no increase in channelward encroachment or number of slips. Believing the impacts to be minimal, staff accepted the changes without regard for the need for formal approval by either the Division Chief or the Commission.

Mr. Woodward said that on August 11, 2006, staff received application #06-1969, under the name Harbour on Indian Creek, for another modification to pier #1. That request was for two (2) forklift-style boatlifts to be installed at the community pier, again, to accommodate residents' desires. The drawing for that request showed an unauthorized second boatlift and a 10-foot by 12-foot floating platform that was not on the original plans or depicted on the modified plans reviewed previously by staff. Staff conducted a site inspection and verified that the additional lift and floating platform had indeed been added and contacted Mr. Bragg, by letter dated October 11, 2006, informing him that these changes constituted a violation of the original permit. Staff inquired as to who installed the changes, when they were added and why prior approval was not sought from VMRC. Staff further informed Mr. Bragg that we would not continue staff's review of the current request until we received a formal request for after-the-fact authorization for the additions. In addition, staff explained that such a request in no way guaranteed approval and could include civil charges. In the alternative, staff indicated that were the lift and platform to be removed, the violation would be considered resolved and the review of the current request could continue.

Mr. Woodward stated that on October 14, 2006, staff received a letter from Mr. Raymond L. Britt, Jr., indicating that he was the person who directed installation of the second boatlift and the floating "raft" platform. He indicated that he had his business partner's son, Mr. Keith Kopcsak of Docks of the Bay, install the lift and raft. He said that he inquired as to whether permits were required and was told they were not. He also stated that neither Mr. Bragg, the owner nor Mr. Stillman, the original contractor let him know that a permit was required for the changes to the pier. Mr. Britt indicated that he needed the raft to launch kayaks and that while ignorance of the law was no excuse, he was relying on the knowledge of Mr. Kopcsak regarding the need for permits.

Mr. Woodward said that on October 23, 2006, staff sent a letter to Mr. Britt, requesting additional information regarding details of the unauthorized construction. After reviewing his response, staff met with all parties involved in an attempt to resolve the situation and clarify the permitting requirements for waterfront construction. Staff indicated that since only 4 slips were originally approved by the Commission at this pier, and since the pier as built could support 2 powerboats on lifts and a third in a wet slip, in addition to multiple smaller watercraft on the raft, it would be unlikely that staff could support two more boatlifts, resulting in a total of five slips plus the raft. A compromise was reached wherein staff accepted the second lift and raft, provided only one of the two new forklifts was installed, resulting in no more than four boat slips total. Staff felt the raft was a minor impact, and understood its necessity for launching kayaks, as the entire shoreline had previously been stabilized with riprap. Staff suggested moving the one proposed forklift to the inboard side of the pier, but apparently there was an obstruction in this location so the original location to the left of the pier was currently proposed. At the conclusion of the meeting, staff reiterated the need to coordinate with VMRC prior to conducting any construction activities in Virginia waters.

Mr. Woodward said that staff believed these changes were environmentally minor, and with the exception of the floating platform, resulted in an actual reduction of encroachment over State-bottom. As such, staff administratively accepted the modifications. Unfortunately, staff did not have the authority to approve these changes since the full Commission formally approved the original permit. Accordingly this matter was being brought back for formal consideration and Commission authorization.

Mr. Woodward explained that the Virginia Institute of Marine Science indicated that the marine environmental impacts resulting from the existing and proposed additions to the pier should be insignificant. However, they encouraged the distribution of the Clean Marina Tips handout to all users of the piers and stress the importance of responsible usage to keep boating impacts to a minimum.

Mr. Woodward stated that the Lancaster County Wetlands Board did not require a permit for the changes, as all of the work was channelward of mean low water and there were to be no additional powerboats than the four previously approved by them at this pier.

Mr. Woodward said that the U. S. Army Corps of Engineers issued a Regional Permit (98RP-19) on April 14, 1999 for the entire project and since there was no change in the number of slips or channelward encroachment, that approval was still valid. No other agencies commented on the application.

Mr. Woodward explained that while staff had the ability to permit minor modifications to a permit that was approved administratively when the resulting encroachments were reduced, staff failed to bring this to the attention of the full Commission as required, since the original permit was approved by the full Commission. Regrettably, while attempting to expedite the review and handle certain changes administratively, staff had put the applicant in a position where formal after-the-fact Commission approval was required. Staff was certain that all parties involved now clearly understand the need for prior, formal authorization before commencing any construction over State-owned subaqueous bottom in the Commonwealth.

Accordingly, Mr. Woodward said that staff recommended approval of the initial pier modification from a T-head to an L-head, the three 4-foot wide finger piers, and the first boat lift in slip #1, all of which staff reviewed prior to construction. Staff further recommended approval of the second modification, done without prior staff review, to add the second lift in slip #3, and approval of one currently proposed forklift, provided it was located in either slip #2 or #4, as indicated in the drawing provided by the applicant, dated Jan. 19, 2005. However, staff recommended removal of the floating raft platform, as this structure provided additional boat mooring space over that, which was originally approved by the Commission in 2000. Since all of the structures as they currently exist now were constructed prior to the resumption of our royalty collections in December 2005, staff does not recommend a royalty be assessed in this case. Staff was also hesitant to recommend a civil charge, given the circumstances involved. By policy, staff did not recommend a

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royalty for a boatlift installed in a previously approved boat slip if the amount of encroachment over the bottom did not increase.

Mr. Woodward stated that Mr. Bragg was not present and there was a letter from him to the Commission. He said Mr. Bragg is the applicant for this project, since there is no Homeowners Association at the present time.

Commissioner Bowman asked for clarification if staff tried to do this administratively and failed to seek the proper pathway. Mr. Woodward responded yes. Commissioner Bowman stated that since the applicant was not present, he did not like to take action in his absence. Associate Member Schick stated that the letter from Mr. Bragg stated that the others involved could speak for him.

Massey Burger, resident was sworn in and his comments are a part of the verbatim record. Mr. Burger explained that he was concerned with the additional forklift, which staff recommended locating in slips 2 or 4. He said this was across from slip one that he uses to keep all his boats on that same side. He used a staff slide to show where this was located in the project area. He said he would like to keep his boats on the side where there is electricity access.

Raymond Britt, resident, was sworn in and his comments are a part of the verbatim record. Mr. Britt explained that he put the floating platform in as it was needed because of the rip rap to allow access to the water for the small boats and kayaks. He said he would be willing to pay any fine to keep it.

Commissioner Bowman asked if he was aware that a permit was required. Mr. Britt responded, no.

Keith Kopcsak, agent, was sworn in and his comments are a part of the verbatim record. Mr. Kopcsak stated that he had installed the forklift. Commissioner Bowman asked how long had he been in the business. Mr. Kopcsak stated that he had been doing this for about 1 to 1 ½ years. Associate Member Fox asked him which forklift he had installed, 2 or 3. Mr. Kopcsak responded lift 3 on the left.

Commissioner Bowman asked for discussion of the issue.

Associate Member Schick explained that there were 4 slips and requests for 6, a floating dock in the slip could be retained with a permit, the platform could be kept if it were in slips 2 or 4 and the forklift could be kept in either slip 2 or 4. He said an application would be necessary to have the platform put into a slip, the forklift outside was okay, and if they retained slip 4 there would be no temporary or overnight docking.

Associate Member Fox suggested making the motions incrementally. He moved to approve the modification approved by staff in error. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.

Associate Member Schick moved to allow forklift number 3 to stay and the forklift becomes slip 4, to not allow slip number 4, and that no penalties to be charged. Associate Member Robins seconded the motion.

Associate Member Fox expressed his concerns in regards to mooring at slip 4 and suggested that if the top were removed from the L-head then slip 2 would not be necessary. Associate Member Schick amended this motion to allow the forklift at slip number 3, which would become slip 4 and that no penalties are to be charged. Associate Member Robins seconded the amended motion. The amended motion carried, 8-0. The Chair voted yes.

Associate Member Robins moved to keep the floating dock putting it in the area where slip 4 would have been. Associate Member Schick seconded the motion. Associate Member Fox stated if this were done, then actually there would be 5 slips not 4. Associate Member Schick suggested adding a restriction on the use of the floating pier for non-motorized vessels, such as kayaks and canoes, thereby not allowing anything motorized, such as jet-skis. He said this would be for water access purposes only. Associate Member Robins accepted the amendment. The motion carried, 7-1. Associate Member Tankard voted no.

Permit Fee.....\$100.00

\* \* \* \* \*

13. 3304, LLC, #06-2284, requests after-the-fact authorization to retain a 22-slip commercial marina, including two (2) main floating piers with their associated pilings, finger piers, and access ramps, intended to replace a previously existing marina facility adjacent to their property situated along the Occoquan River in the Town of Occoquan, Prince William County.

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 is located on the Occoquan River, immediately west of the Route 123 Bridge in the Town of Occoquan, Prince William County. The applicant purchased the subject property, which had historically operated as a commercial marina with an upland waterfront restaurant, in October of 2005. VMRC permits were previously issued for projects at this property to Mr. Richard L. Krauss (VMRC #77-0341) for a 38-slip commercial marina, and Sea Sea and Company (VMRC #01-0471) for the existing marginal wharf.

Mr. McGinnis said that the applicant sought after-the-fact authorization to retain a 22-slip commercial marina, comprised of two main floating piers with their associated finger piers, pilings, and access ramps/gangways. The applicant's after-the-fact marina structures were installed to replace older marina structures installed by the previous owner(s). Bill Lynn, Vice President of Riverwalk at Occoquan, Inc., contacted staff by telephone on July 24, 2006, to determine whether a VMRC permit had been obtained by the owners of Madigan's Waterfront for the complete replacement of the floating piers and associated structures at their marina facility located on the upstream side of a Town of Occoquan owned street which separated the two properties. Riverwalk at Occoquan, Inc., followed up this conversation with a letter, dated July 24, 2006, in which they requested VMRC's attention on this matter.

Mr. McGinnis said that staff visited the subject property on August 3, 2006, and verified Riverwalk at Occoquan, Inc.'s concerns that the applicant's marina had been recently replaced. A search of the Commission's records failed to produce any evidence that the marina replacement project was authorized by VMRC. Staff issued a Notice to Comply letter, dated August 7, 2006, to Mr. Robert J. Madigan, Managing Member of 3304, LLC, which directed removal of the unauthorized marina structures within 30 days. In the alternative, staff informed the applicant that they could elect to submit an application for after-the-fact authorization of the marina replacement constructed without a permit. After stating their intention to submit an after-the-fact application in a letter dated August 24, 2006, the applicant was granted an additional 30 days to comply with the directives of the Notice to Comply, in a letter by staff dated August 31, 2006. Staff received the applicant's after-the-fact application on September 25, 2006.

Mr. McGinnis explained that Riverwalk at Occoquan, Inc., by letter dated January 3, 2007, stated their objection to the applicant's after-the-fact project. It appeared that the protestant was concerned that the current configuration of the applicant's marina would require boats entering and exiting the marina to utilize a significant portion of the protestant's riparian area, which they hoped to develop as a small marina in the future.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Application Report, dated February 15, 2007, stated that from a marine environmental viewpoint, the adverse impacts resulting from this project did not appear to be significant.

Mr. McGinnis said that the Virginia Department of Health (VDH), by letter to the applicant dated December 4, 2006, had determined that the marina was exempt from the requirements for sewage pump-out and dump station facilities, since the applicant had an alternate pump-out and dump station service agreement with a nearby facility.

Mr. McGinnis said also that the Virginia Department of Environmental Quality (DEQ), in a letter dated July 14, 2006, stated that no permit would be required from their agency. Staff noted that the applicant had stated that he contacted DEQ to determine the need for permits prior to the start of the marina replacement project. Although DEQ informed the

applicant that a permit would not be required by their agency, they did not inform him that a permit might be required by VMRC.

Mr. McGinnis stated that the Virginia Department of Game and Inland Fisheries (DGIF), in an e-mail dated January 30, 2007, stated that the Occoquan River was a Confirmed Anadromous Fish Use Area, and had recommended a time-of-year restriction which would preclude all in-stream construction activities between February 15 and June 30 to minimize potential adverse impacts to anadromous fish during the spring spawning/migration period.

Mr. McGinnis said that the Virginia Department of Transportation (VDOT), in a letter dated February 15, 2007, stated that a VDOT Land Use Permit would be required if the project involved the use of any VDOT right-of-way.

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

Mr. McGinnis said that although the current facility was intended to replace a previously existing marina, staff believed that the protestant's concern over the project's potential infringement upon their riparian rights was a valid issue. Typically, staff recommended that the fairway between two adjacent marinas be at least 1.5 times the width of the longest slip, to allow for the safe operation of boats into and out of the marinas. Although the protestant did not currently have a marina, they do have riparian rights that should be considered. Staff recognized that the 1977 permit for the original marina, had permitted 30-foot long slips aligned immediately adjacent to the extended property line and that the current marina was similarly aligned. Staff did not believe, however, that the increased length of some of the slips at the applicant's marina fairly accommodated the increased space required to safely navigate between the applicant's existing and the protestant's planned marinas. Staff believed that the applicant's desire to accommodate larger boats, while protecting the protestant's riparian rights and plans to construct a marina of their own, could be accomplished by reducing each finger pier on the downstream side of the marina to a maximum 30 feet in length. This reduction would provide an additional 15 feet of space for a boat navigating into or out of the longest, channelward slip, without necessarily reducing the size of the boat intended for that or any other slip.

Accordingly, Mr. McGinnis said that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved in a modified form, specifically that the finger piers on the downstream side of "Dock A", as labeled in the application drawings, be reduced to a maximum of 30 feet in length.

Mr. McGinnis said also that staff recommended the assessment of a royalty for the encroachment of the marina over State-owned submerged land at a rate of \$1.00 per square foot, based upon revised drawings reflecting the Commission's authorization.

Mr. McGinnis explained that Mr. Robert Madigan, Managing Member of 3304, LLC, has stated that he did contact DEQ and the U.S. Army Corps of Engineers, prior to the start of work, to inquire about the necessity of any permits and that those agencies did not direct him to contact VMRC. However, staff believed that, as an attorney, Mr. Madigan, should have been more diligent in seeking out and determining the need for a permit from VMRC to construct a commercial marina over State-owned submerged land. Therefore, staff would further recommend that the Commission assess triple-permit fees and consider an appropriate civil charge based upon minimal environmental impact and a minimal degree of non-compliance. Staff considered this final recommendation appropriate considering the after-the-fact nature of the applicant's request, but also the applicant's cooperation with staff following receipt of the Notice to Comply.

Associate Member McConaughy asked if the old marina was removed to put in the bridge. Mr. McGinnis explained that there was an agreement with VDOT to temporarily remove the floating dock, but it was reinstalled in a different configuration but similar to the past and with larger slips. Associate Member Schick asked if the finger piers were longer. Mr. McGinnis explained they were 30 feet long and now they were 30, 40, and 45 feet long and staff was recommending that they all be reduced to 30 feet long.

Commissioner Bowman asked if the applicant was present.

Robert Madigan, applicant was sworn in and his comments are a part of the verbatim record. Mr. Madigan explained that he would first address why the permit was not requested. He said that he purchased the old marina in 2005 and knew about the agreement with VDOT to put back the piers after they finished a project. He said when they got ready to do that he decided that the structures were in such bad condition that he needed to replace them with new ones. He contacted a pier construction contractor and the floating and finger piers were put within the property lines. He stated that he was a lawyer, but was not experienced in marine matters. He said he contacted DEQ and complied with their requirements and was told by DEQ staff to contact the Corps, which he did. He said the Corps said the modification was allowed as it was within the scope of the permit. He said neither told him that he might need a VMRC permit. He explained that once the new piers were ready to be installed he started the work. He said that he was checking the work when he noticed that they were not being installed properly and he stopped the work. He said in the meantime, he received the VMRC Notice to Comply and was told to move the piers to where they are now located and where the 1977 permit stipulated. He said the only difference was that one pier was 45 feet long, which was originally 30 feet long. He apologized, but said he was not aware that a permit was needed from VMRC and that he believed this was covered by the bridge contractor's permit. He said he was concerned that

VMRC wanted him to cut back the piers to 30 feet only because it would interfere with the other property owner's desire to construct a marina.

Commissioner Bowman stated that if others decide to build, a condition of this permit could be that he would be required to remove the added length of the piers. He said that in the staff presentation they had said that the VDOT right-of-way would impede this other project because it would be under the bridge. He also stated he felt this was a riparian apportionment issue, as to whose infringement will continue. He asked for any one in opposition who wished to speak.

William Lamb, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Lamb stated that his concern was the new piers, which were parallel to the property line and would cause larger boats docking to infringe on his riparian rights. He said even at 30 feet long it would result in a tight fit. He said the original structures infringed on his father's riparian rights, but the lot was vacant and they did not realize it at the time. He said in 1986 they built the Riverwalk and had planned to do more, but did not have the finances. He said that they were also told to hold off until the bridge was completed. He said that they have an additional lot on the other side of the bridge to be included in the project. He said the average depth of the water on his side was 10 feet.

Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel, said that maneuvering a boat was not the law's intent for riparian rights. This right was established to give the property owner the right to have a pier for his personal use in front of his waterfront property.

Mr. Lamb said the permitted pier to the property line was never built. Mr. Josephson said that if it were to be constructed then a court apportionment would be needed.

Associate Member Robins asked would it be appropriate to include a permit condition for an automatic review, if the protestant should apply for his pier. Mr. Josephson stated that it would be a mute point, as it would be a property right issue for the court.

Commissioner Bowman said that staff had attempted to correct this situation, as we are supposed to do. Mr. Josephson stated that it was not the responsibility of VMRC to determine riparian rights. He said the Commission could consider reasonable use and cut back the pier for purposes of navigation.

Commissioner Bowman asked for a motion.

**Associate Member Schick stated that cutting back the pier would not help. He said the Commission should approve the project as is, because the marina was in the same footprint. He said it was sad that the Corps or DEQ did not refer him to VMRC. He said he moved to allow the structures to remain the same, with an assessment for triple permit fees and a minimal civil charge of \$600.00, and including the royalty**

fees. Associate Member Holland seconded the motion. Associate Member Fox said he could not support the motion if it was not being required that the piers be cut back. The motion carried, 7-2. Associate Members Fox and Tankard both voted no. The Chair voted yes.

Royalty Fees (encroachment 9,050 sq. ft. @ \$1.00/sq.ft.).....	\$9,050.00
Permit Fee (A-T-F Triple Fees).....	\$ 300.00
Total Fees.....	\$9,350.00

Civil Charge.....	\$ 600.00
Total.....	\$9,950.00

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**14. DISCUSSION:** Staff presentation on mean low water and how it is calculated and surveyed.

Pulled from the agenda by staff.

\* \* \* \* \*

**15. PUBLIC COMMENT:**

**REQUEST FOR AN EXTENSION OF THE JAMES RIVER OYSTER HAND TONGING SEASON:**

Douglas F. Jenkins, Sr., President of the Twin Rivers Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that he was requesting that the James River Hand Tong Harvest Season be extended through June 30, 2007.

Commissioner Bowman requested staff's comments. Dr. James Wesson, Head-Conservation and Replenishment, explained that numerous requests had been made by industry to extend this season. He explained also that the regulation allowed for the Commissioner to make such approval.

Commissioner Bowman stated that he would make a decision after consulting with staff on the status of the stocks.

No action was taken.

Commissioner Bowman asked for anyone else wishing to address the Commission.

**CITY OF NEWPORT NEWS AND YORK COUNTY PROJECTS—INADEQUATE SEDIMENT RUNOFF CONTROLS AND RESULTING ADVERSE ENVIRONMENTAL IMPACTS:**

**Martin Cardwell**, a York County resident, was present and his comments are a part of the verbatim record. Mr. Cardwell explained about the sediment runoff resulting from the Harwood Mills and other County projects. He said an independent study was needed to prevent such problems from occurring in the future, as the methods used now were not working.

Commissioner Bowman asked if the County had been consulted. Mr. Cardwell stated that he had made contact with Newport News Waterworks and York County by letter. He said he had also made contact with the Secretary of Natural Resources.

**Robert Holloway**, a York County resident, was present and his comments are a part of the verbatim record. Mr. Holloway provided the Commission with a handout package that included copies of letters, the bill of rights, etc.

Mr. Holloway stated that he had contacted York County and they told him they could not react to rainfalls, etc. He said he had contacted Keith Skiles of the Virginia Department of Health-Division of Shellfish Sanitation and Mr. Skiles explained about the testing and what it meant. He was told that all sources could not be gotten rid of, but they could try to reduce it. He said he was told at the York County Board of Supervisors' meeting that it could not be changed now and it was the price of progress.

**Elizabeth Wilson**, a York County resident on Morris Creek, was present and her comments are a part of the verbatim record. Ms. Wilson explained that the County was just getting by with this project and they considered them successes. She said that to she and others, it was a loss.

No action was taken.

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**16. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-490. "Pertaining to Sharks," to establish a commercial trip limit of 3,000 pounds for Spiny Dogfish for the May 1-April 30 fishing season.

Joe Grist, Head-Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist stated that during the February 2007 ASMFC Winter meeting, the Spiny Dogfish and Coastal Shark Management Board voted to allow the states to adopt their own trip limit, not to exceed 3,000 pounds to promote bycatch landings and a small-scale directed fishery for the 07-08 season. He said this would begin May 1<sup>st</sup>.

Mr. Grist explained that currently the regulation established the commercial catch limit as 600 pounds of spiny dogfish per day, from May 1 through October 30, and 4,000 pounds per day from November 1<sup>st</sup> through April 30<sup>th</sup>.

Mr. Grist stated that this proposal was advertised in accordance with Section 28.2-209 of the Code of Virginia for a public hearing today. He said that staff had not received any public comments in regards to this matter.

Mr. Grist stated that staff recommended adoption of the amendment to Regulation 4 VAC 20-490-10, et seq. to establish the 3,000-pound commercial possession limit for spiny dogfish.

Commissioner Bowman opened the public hearing.

Chris Ludford, waterman, was present and his comments are a part of the verbatim record. Mr. Ludford stated that he would be brief and said that he supported the amendment.

As there were no more public comments, the public hearing was closed.

**Associate Member Robins moved to accept the staff recommendation to amend 4 VAC 20-490-10 to establish a commercial 3,000-pound trip limit for dogfish. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

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**17. PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-370, "Pertaining to the Culling of Crabs," and Regulation 4 VAC 20-752, "Pertaining to Blue Crab Sanctuaries," to repeal the prohibition on the harvest of dark colored sponge crabs and to extend the sanctuary from the mouth of Chesapeake Bay to the North Carolina line.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that a public hearing on these issues was scheduled for last month. He said at that time, Dr. Lipcius requested additional time to prepare his report, complete a literature review, and seek peer advise on the information. He said the Commission decided to defer until the April meeting and re-advertise the public hearing.

Mr. O'Reilly said that two issues were before the Commission and that was the sponge crab issue and the expansion of the sanctuary to include the coastal area. He reviewed the powerpoint presentation to explain the issues. He said that Dr. Lipcius felt that there was a 70% protection of the sponge crabs with the increase to 927 square miles of sanctuary. He said the Commission was now looking at the 30% that were not protected. He said that another issue was the spawning potential. He said that what could be done to protect or

boost the spawning potential was to expand the sanctuary and raise minimum size, such as with cull rings, which have both been done. He said the expansion of the sanctuary in 2000 and 2002 provided protection for the spawning potential by 70%. He said that in considering an expansion of the area consideration should be given to the state of the female crabs. He stated that even with the protections the spawning potential was still low. He said that there were a lot of females caught in Virginia, especially during the winter dredge season, as much as 95% of the catch was females. He said because of the high percentage of females caught the issue of the spawning potential would need to be looked at before lifting the ban.

Mr. O'Reilly stated that the staff recommendation was tentative and dependent on the results of Dr. Lipcius' study.

Associate Member McConaughy stated that he felt the 70% might be high for what was being protected by the sanctuary, as the sponge crabs move in and out of the sanctuary and still spawn there also.

Dr. Rom Lipcius, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Lipcius said that staff had presented the highlights. He said the Press Releases (winter dredge survey) for both Maryland and Virginia, say the same thing. Maryland says it is stable, but he was concerned with Virginia saying the same thing. He said the current regulation prohibits the harvesting of the sponge and female crabs and the harvester with the high sponge mortality was only losing. He said they had done the literature review, both peer and technical reports. He said that what is happening was that exposure, in-trap agonism, and traps and handling were causing the crabs stress and affecting the blue crab's survival. He said that there was delayed mortality, as it does not always happen immediately and quite often the crab will die a week later. He said that exposure to heat, air, etc., was a common stress in all species especially the subtropical species. He said the in-trap agonism was a common stress among species caught with traps. He said it results in lost appendages in crabs. He said trap and handling stress had been seen to cause 45-77% mortality in lobsters. He said the trap time increased mortality for many species, but there was little data that existed for crabs. He said he agreed with the sanctuary expansion, but he thought that the sponge crab prohibition should be limited or eliminated during the hot months. He said it was necessary to have effective regulations.

Commissioner Bowman asked what should be done with the sponge crab law. Dr. McConaughy stated that a compromise would be to keep the prohibition until July 15, to allow one spawning, and by September 15 the production was usually done. Commissioner Bowman asked staff to comment. Mr. O'Reilly responded that there was no need to have a start/stop dates in the regulation, on the July 15 date to correspond to no ban on taking dark sponge crabs.

Pete Nixon, Lower Chesapeake Bay Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Nixon stated that he was a member of

C MAC for many years and he had been around for almost every adoption of management measures, except those in 1942. He said the prohibition had been more of a headache, and the management measures had not worked. He said the regulations were counterproductive. He said there was not much difference in the color of the sponge and it was hard to tell the difference. He said the MPOs cannot understand the taking of the sponge crabs and they cannot make an unbiased decision. He said the inspection takes about 2 hours, and they only have 8 hours to work. He said this inspection impacts the crabs. He said he did not see where the expanded sanctuary in the ocean would be a benefit, as the problem was mostly in the lower Bay. He said that since 1993 the peeler crabs have declined, even with regulations, and the black sponge law had not been effective. He said there was no need for an additional sanctuary area.

Tom Powers, was present and his comments are a part of the verbatim record. Mr. Powers said that he was a C MAC member who had voted on lifting the ban. He said the lower Bay sanctuary, by Code, was a commercial restriction and the deepwater areas apply to both recreational and commercial. He said the regulation causes a conflict and it should be 2 areas with one totally commercial and one split between the recreational and commercial.

Associate Member Robins said that Pete Nixon had made some good comments. He said the regulation was done, with good intentions, at the start, which was to protect late-stage pregnant crabs. He said the resource was not doing well and the Commission had to try to conserve it.

**Associate Member Robins moved to repeal the prohibition on the dark sponge crabs and to make it seasonally based, by repealing the ban for July 15 through September 15; and, to approve the expanded sanctuary. Associate Member McConaughy seconded the motion. Associate Member Bowden said that he knew that Mr. Nixon felt the impacts more than others and if we do want to help, then repeal part of the sponge crab prohibition. He also said that the sanctuary was necessary and he supported the motion. Associate Member Schick stated that upstream the pressures increase and the soak time increases the mortality. He said this all puts a stress on other areas, the study would help, and with the decline in population there was a need to move forward. He stated he supported the motion. Associate Member Fox stated he supported the motion. He said the crabbers do not work where there were a lot of sponge crabs simply for the reason that they do not want to have to do a lot of culling. He said he felt it would be unwise to approve a total repeal. He also said he was disturbed by the decline in harvest. Associate Member McConaughy said he had a respect for all watermen. He said he was not sure what was needed, but there was a need for caution and to look at the measures now in place. He stated he agreed with Mr. Nixon that the Commission had missed something. Mr. O'Reilly stated that the repeal be July 15 until the end of the year, since crabs are not egg-bearing beyond September 15. The motion carried, 8-0.**

**Associate Member Robins** stated that he was requesting that the Commission initiate a review of the current management measures, as heard earlier, they were not working and the species was not recovering. He stated that he had written and sent a letter earlier in the week to Commissioner Bowman, which he read into the record. He asked that a panel with a broad range of individuals be established to conduct a comprehensive review of the Virginia Blue Crab Management Plan.

**Associate Member Robins** asked if a motion was necessary, and Commissioner Bowman responded yes. Associate Member Robins moved that the Commission initiate such a review. Associate Member Fox seconded the motion. The motion carried 8-0.

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**27. REQUEST FOR EMERGENCY REGULATION AND PUBLIC HEARING:**  
To establish alternative methods for complying with certain summertime oyster harvest restrictions related to public health.

This issue was moved forward on the agenda at the request of Del. Robert Wittman who had a meeting at 7 p.m. he needed to attend.

Dr. James Wesson, Head-Conservation and Replenishment, deferred to Del. Wittman.

Del. Robert Wittman, representing the VHD-DSS, gave the presentation and his comments are a part of the verbatim record. Del. Wittman explained that Virginia is potentially in danger of being under a Vibrio Plan, if there is one more incident. He said it is required for 2 or more cases from 1995 forward. He said that the U. S. as a whole has accomplished a 36% reduction in disease incidences and the Plan requires a 60% reduction by 2008, which is the U. S. collective goal. He explained that last year there was only a 36% reduction so this will require an 80% reduction the following year to meet the goal. He said if there was a second incident, three things could happen:

- 1) The closure of the harvesting of oysters during May through October.
- 2) Only the shucking of oysters would be allowed during May through October.
- 3) To require post harvest treatment and there is only one facility in the State currently that can do this.

Del. Wittman stated that with these regulations, we would be proactive as a State. He said that if there were to be a second incident, the State would be grouped with the Gulf Coast States who lead with these incidences. He said he had worked with staff to establish these regulations. He said it would not eliminate the risk, only reduce the risk but not to zero. He said there had been a number of meetings with the FDA and the reality was that we had to deal with this so we can comply to reduce these risks in order for the State to not be placed under a management plan by FDA. He said he believed that the controls proposed

would reduce the risk of another incident. He said that we could not control the presence of Vibrio, only its growth while the shellfish were out of the water.

Commissioner Bowman stated that it did not look like there was a choice, this had to be done or it would be a situation of pay me now or pay me later. He said there were not a lot of options.

Del. Wittman stated that they believed it would be better to be proactive.

Commissioner Bowman asked for comments from staff. Dr. Wesson explained the concern was to make sure there was no temperature abuse from harvest to it going to the consumer. He said the regulation would require that the harvesting be done between one hour before sunrise and back to refrigeration by 10 a.m. He said shading over the shellfish storage area or cages with tops, such as it used in aquaculture, to protect the shellfish from the sun, would be required. He said in order to not be restricted to the 10 a.m. time limit would require an approved refrigeration system or ice storage by the Health Department. He said another means of going beyond 10 a.m. would require verifiable documentation, such as a log book or GPS record for the 2 hour window from harvest to landing to refrigeration. He said they believed these were very serious regulations and would give enough options to keep the half shell market operating.

Associate Member Bowden said that the cut off would not work on the Seaside of Eastern Shore, as it seldom gets to 75 or 85 degrees. Dr. Wesson explained that there usually is a jump in cases in April and to as late as October, but they wanted to keep it during May through September. He further said that on the Seaside the rocks were already exposed to the sun.

Commissioner Bowman asked if this was an emergency regulation. Dr. Wesson said yes, but it would need to be made permanent. Commissioner Bowman asked if a public hearing would be necessary next month. Dr. Wesson responded yes.

Commissioner Bowman asked if anyone was present to comment on this issue.

John DeMaria, owner of a Seafood Business and waterman, was present and his comments are a part of the verbatim record. Mr. DeMaria provided a handout on his sales for the half shell market. He said he had an increase in sales during the months of May through September. He said the regulation would affect the way his men harvest, as they work until 11 a.m. and then came to shore. He said the small boats he had working for him do not have room for refrigeration and they were being discriminated against. He said the regulation would cut their working time from 4 ½ hours to 2½ hrs. He said he understood why there needed to be something done because he wanted to keep his business, but the smaller boats needed to be able to start earlier in the cooler hours.

Commissioner Bowman stated that if we do not react to the experts and then a situation occurs, it would be detrimental to the industry. Mr. DeMaria stated they only wanted to gain lost time.

Associate Member Fox asked whether they could start one hour before sunrise now. Dr. Wesson stated that is was one hour before sunrise now and staff was not comfortable with earlier for the reason that there were public grounds, polluted grounds, and other private grounds in the vicinity.

Associate Member Bowden said he saw one problem and that was the effective date being May 1, which was next week. He said there was no time to get the refrigeration approved to be in compliance. Commissioner Bowman suggested a starting date of May 15 instead.

Del. Wittman agreed with this, as they realized the watermen needed time to get approval for their refrigeration set up.

**Associate Member Robins moved to accept the staff recommendations with an effective date of May 15, 2007, as suggested by Commissioner Bowman. Associate Member Fox seconded the motion. The motion carried, 8-0.**

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- 18. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC 20-900, "Pertaining to Horseshoe Crab," to define male horseshoe crab and to establish buyer permitting and reporting requirements.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Gillingham explained that the ASMFC Interstate Fishery Management Plan for Horseshoe Crab implemented a strict state-by-state quota in 2000. He said that Virginia's quota was set at 152,495 crabs, based on reference point years of landings. He stated that a Horseshoe Crab Endorsement License (HCEL) was established that allowed fishermen to harvest and sell of 5,000 horseshoe crabs. The fishermen were required to call in daily in addition to filing their monthly reports. He said currently there are 19 license holders.

Mr. Gillingham said that a Restricted Horseshoe Crab License (RHCL) was established which allows fishermen to harvest and sell up to 2,000 crabs and there are 14 eligible fishermen. He explained that the regulation allows the HCEL holder to possess aboard any vessel any number of crabs in excess of 2,500 and the RHCEL holder any number in excess of 1,000 crabs, once the 85% of the quota is caught.

Mr. Gillingham stated that the bycatch limit was increased from 100 to 500 crabs in December 2005 by the Commission, and unlike the other licenses, the bycatch allowance was not reduced after 85% of the quota was caught, but stayed at 500 crabs, until the fishery was closed.

Mr. Gillingham explained that in 2006 staff learned how fragile the quota was, as it was caught very quickly and the fishery was closed on June 19, 2006. He said staff also learned that some of the reporting requirements needed to be improved to keep from exceeding the quota. He said staff proposed to establish a buyer's permit and associated reporting requirements to assure capture of the bycatch harvest. He said this was in the regulation on page 5. In addition to standard reporting, the buyers would be required to call in daily their purchases of horseshoe crabs once it was projected and announced that 85% of the quota had been caught.

Mr. Gillingham said the second issue, involved enforcement of Addendum IV that provided additional protection of female crabs of Delaware Bay origin, which was a mandate of the ASMFC Plan and was adopted May 2006. He said Section 25 of the regulation, Subsections B, D, and E, were adopted in July 2006 to protect these crabs. He said that industry assumed all small crabs were male and that was not true. He said that staff now proposed to add the definition for a male crab that says, "for the purpose of this regulations, no horseshoe crab shall be considered a male crab unless it possesses at least one modified, hook-like, appendage, as its first pair of walking legs."

Commissioner Bowman opened the public hearing. As there were no public comments, the public hearing was closed.

**Associate Member Tankard moved to accept the staff recommendations. Associate Member Bowman seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained from voting because of business conflicts.**

\* \* \* \* \*

19. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-890, "Pertaining to Channeled Whelk," to repeal limits on the use of horseshoe crabs, define bait bag, establish buyer permits and reporting requirements, and increase the daily vessel trip limit to 120 bushels, when two conch pot licensees are on board the same vessel.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. Mr. Gillingham said that the conch fishermen depend on horseshoe crabs as their primary bait and the majority of the coast-wide harvest of horseshoe crabs has been used as bait by the conch pot fishery. To meet the needs of the Virginia conch fishermen, it is estimated that 1 million or more horseshoe crabs have been imported from other states, prior to the ASMFC Interstate Fisheries Management Plan for

the horseshoe crabs. He said that when in 2000 there was a cut of 25% coast-wide and state-by-state quotas mandated, the Virginia conch fishery feared a shortage of crabs for bait would result. The Virginia Conch Industry initiated a study, which was led by Robert Fischer of VIMS to test the effects of using less crab for bait. He said the industry standard was one whole female or two male crabs per pot and the experiment was to use one-half of a female and two halves of a male crab, enclosed in a bait bag. He said the test results showed that the decrease in amount of bait in a bait bag produced a nearly identical catch rate as the standard amount of bait. He said as a result the industry suggested the Commission require the use of a bait bag and limit the amount of bait to half the amount used in the past.

Mr. Gillingham said the second concern was the reporting. He said that reporting was required for instate harvest and bait use, but a majority of the channeled whelk landings occurred in the EEZ where the fishermen are not restricted in the amount of gear, gear licenses and they are not obligated to sell to federally permitted dealers or provide a Vessel Trip Report to NMFS. He said since 2001 these catches from federal waters which were not sold to a federally permitted dealer, were required to be reported on the Mandatory Reporting Forms indicating what federal waters they were harvested.

Mr. Gillingham explained that in 2006 a fisherman challenged the regulation regarding the use of bait bags, as to whether it prohibited his actions but the Northampton County court found the fisherman guilty. The fisherman then appealed the lower court decision and the Appeals Court reversed the decision. He said the judge determined that the definition of a bait bag was too vague and he further ruled that the two halves of a female were no different from a whole male crab.

Mr. Gillingham explained that staff initially did not believe that industry wanted to continue to set limits for the bait usage in conch pots. But at the last meeting, Associate Member Fox raised concerns about eliminating the amount of horseshoe crab used for bait in conch pots and questioned whether the fishery would be able to self-regulate the use of bait in each conch pot. Staff's position last month was that the high cost of bait and past practices would cause the fishermen not to increase the amount of bait. He said that since that meeting he had heard from industry and they wanted to maintain limiting the amount of bait and staff does support it.

Mr. Gillingham stated that to improve reporting of all landings of conch, staff recommended the adoption of the Channeled Whelk Buying Permit to be required after July 1, 2007, which shall be in the possession of the buyer when buying or possessing any whelk. He said further that staff recommended that the buyer be required to report daily purchases and provide VMRC with written reports by month on forms provided by VMRC. He said the reports shall be completed in full and submitted once a year to VMRC, by no later than January 15.

Mr. Gillingham explained that the request by Tommy Eskridge for the 60-bushel limit be increased to 120-bushel limit per vessel was to make the harvest more efficient, thereby, lowering the cost for the waterman. He said that staff recommended that the limit be 60 bushels per licensed conch pot fisherman on board the vessel, but the vessel limit should not exceed 120 bushels.

Mr. Gillingham stated that staff recommended adoption of the amended regulation 4 VAC 20-890-10 which included a more precise definition for the bait bag, clarified the amount of bait to be used in any one bait bag, established a permit and reporting system for buyers and increased the vessel limit.

Commissioner Bowman opened the public hearing.

Tommy Eskridge, waterman, was present and his comments are a part of the verbatim record. Mr. Eskridge stated that he supported the staff's recommended amendments.

Troy Hanley, waterman, was present and his comments are a part of the verbatim record. Mr. Hanley stated they needed more time to work to recover lost harvest days, as they were only able to work 50 days in 5 months.

Chris Ludford, waterman, was present and his comments are a part of the verbatim record. Mr. Ludford stated that he supported the staff recommendations.

As there were no other public comments the public hearing was closed.

**Associate Member Bowden stated that the staff had done a good job. He moved to accept the staff recommendations for all 3 issues. Associate Member Fox seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained because of a business conflict.**

\* \* \* \* \*

- 20. PUBLIC HEARING:** Proposed Sheepshead regulation establishing a 4- fish recreational fishing possession limit and 500-pound commercial fishing possession limit.

Joe Grist, Head-Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist explained that FMAC was recommending 4 fish per day for the recreational fishery and a 500-pound limit for the commercial fishery.

Mr. Grist said that at the February 27, 2007 Finfish Management Advisory Committee meeting there was a proposal for conservation measures for the sheepshead fishery. He stated that currently there were no Virginia regulations for this species. He said that sheepshead regulations along the South Atlantic vary. He said the South Atlantic Fishery

Management Council and North Carolina limited the recreational harvest to 20-fish per person per day, in aggregate with 17 other species and in South Carolina their regulations are the same, except the list of aggregate species is much larger with 60 other species. He said Georgia's limits were 15 per person per day, with a minimum size limit of 10 inches fork inches and Florida limits harvest to 15 per person per day with a minimum size limit of 12 inches total length.

Mr. Grist explained that the commercial landings of the sheepshead ranged from 540 pounds in 1994 to 9,820 pounds in 2003. He said the recreational landings have varied quite a bit, from 317 in 1998 to 17,197 in 2005. He explained that for the sheepshead, the proportional standard error (PSE) for annual recreational landings was no lower than 45% while many year's landings estimates have a PSE near 100%. He also explained that any landings estimate higher than 30% was not considered, to be, a stable estimate. He gave an example of 10,000 sheepshead, with a PSE of 50%, means that with a 95% confidence interval, the landings estimate ranges from 5,200 to 14,800 sheephead. He said that this recreational number should be taken with a grain of salt.

Mr. Grist stated that ODU was just finishing up the 1st year of a three-year study, Sheepshead Population Dynamics in the Chesapeake Bay. He said in this study they were looking at the age composition, annual growth, mortality rates, and reproductive status of sheepshead in the Bay, with a goal of using this information to establish a baseline for a stock assessment of this species. He said in the progress report it noted that 171 sheepshead had been collected as of October 2006. He said the total lengths ranged from 5.7 inches to 26.7 inches, with ages ranging from 0 to 32 years and indicated a female to male sex ratio of 1 to .57. He said that spawning conditions were present in May and June.

Mr. Grist said at the February 20<sup>th</sup> FMAC meeting in a discussion with Tom Powers showed that the trend in the recreational citations was increasing, while the commercial fishery had been minimal through 2006. He said the CCA in their written comments, requested the Commission consider modest daily possession limits for both recreational and commercial hook and line fisheries. He further explained that FMAC was recommending a 4-fish limit for recreational anglers and a 500-pound commercial limit for hook and line only.

Mr. Grist stated that staff recommendations were a little different from the FMAC in that it supported the 4-fish recreational possession limit, but the commercial limit of 500 pounds was for all commercial gears, not just hook-and-line. He said the reason for this was to provide additional conservation measures and to protect against any unforeseen exploitation of the species.

Associate Member Robins stated that this was precautionary action being proposed prior to the completion of an ongoing study. He said the 500-pounds was a correct amount, when record shows 9,800 pounds of landings. He said that staff had discussed this with FMAC and were using their recommendations, as they were being proactive.

Tom Powers, FMAC member was present and his comments are a part of the verbatim record. Mr. Powers provided a handout for the Commission. He said that that the average weight caught was 8.4 pounds. He said that he had talked with some recreational fishermen and they supported the 4-fish per day. He stated this was a unique trophy fishery and it was necessary to take these proactive management measures.

Chris Ludford, was present and his comments are a part of the verbatim record. Mr. Ludford stated that recreational fishermen agreed with the equal fish to bag limits. He said this was recreationally caught fish, predominantly hook-n-line. He said he would like to see an expansion into a Commercial fishery. He said the 500-pound was a respectable limit for pound netters or those who target the fish daily. He noted that the fish were caught at slack tides. He stated he supported the staff recommendations.

Larry Snyder, CCA representative, was present and his comments are a part of the verbatim record. Mr. Snyder stated that he agreed with Mr. Powers' comments. He said that FMAC had considered the limits and it was better to be proactive, but that the limits should be equal for both the recreational and commercial fisheries. He said the Commission should not wait until the ODU study was done to consider 4 or 5 fish limit for both sectors and not to retain more than one over 24". He said he supported the ODU study but the number of participants in the fishery was climbing and the study would support the FMAC interim actions. He said there were plenty of sheepshead, but there was a need to preserve the sizes. He said that he would like to see these proactive measures approved.

Harry Doernte, waterman, was present and his comments are a part of the verbatim record. He said that the staff recommendation for a 500-pound limit was realistic.

**After some discussion, Associate Member Bowden moved to accept the staff recommendations. Associate Member Schick seconded the motion. Associate Member Robins said that there were a lot of known and unknowns, such as how long the species lives and a life history. He said there was an increase in effort and this was a unique trophy class. He stated that one 24" fish was a part of the bag limit, but the 500 pounds was a problem, when it is shown that 9,800 pounds could be caught in a year and he felt that the 500 pounds would only expand the fishery. He moved that there be a 500-pound limit for the commercial fishery and a public hearing held to discuss an annual cap be put in place for a total of 9,800 pounds for the commercial fishery; and, the recreational fishery be limited to 4 fish with one over 24". Associate Member Tankard seconded the motion.**

**Associate Member Bowden stated that any regulatory action taken would reduce the fishery, since it is not presently regulated at all. He said he did not support the substitute motion. Associate Member Robins said that he did not want to see the fishery expanded and after a study was completed, the Commission could discuss other measures.**

**Associate Member Fox asked if the only change was one fish over 24". Associate Member Robins explained that it included a public hearing to be held to discuss putting an annual cap on the commercial harvest of 9,800 pounds. The substitute motion failed, 3-5. Associate Members Bowden, Fox, Holland, McConaughay, and Schick all voted no.**

**Commissioner Bowman asked for a vote on the original motion. The motion passed, 5-3. Associate Members Robins and Tankard both voted no. The Chair also voted no.**

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**21. PUBLIC HEARING:** Proposed regulations for Tilefish and Grouper to establish recreational and commercial possession limits.

Joe Grist, Head-Plans and Statistics, gave the presentation. His comments are a part of the verbatim record. Mr. Grist stated that the blueline tilefish and snowy grouper were managed by the South Atlantic Fisheries Management Council and are included under the Snapper-Grouper Complex Fisheries Management Plan that includes two other tilefish and various others groupers. He stated that the jurisdictional boundary for the South Atlantic Plan is the Virginia-North Carolina border.

Mr. Grist said that for the commercial fishery a limited entry program went into effect for the South Atlantic snapper-grouper fishery in December 1998. He said that those who did not meet the qualifying criteria had to purchase two valid, transferable limited entry permits and exchange them for one new valid, transferable permit to gain entry into the fishery.

Mr. Grist said that the tilefish are long-lived, slow growing fish, whose habitat ranges in depths from 200 to 800 feet. Blueline tilefish were considered for a complete stock assessment in 2004 for SEDAR 4. He explained that data for the tilefish could not be distinguished between the blueline and golden, but data from Carolina did indicate downward shifts in length frequencies of male and female from the early 80's to the late 90's.

Mr. Grist said that the assessment indicated that snowy grouper were currently overfished. He said the Snowy grouper are Protogynous hermaphrodites that start out as female and switch to male. He stated that South Atlantic head boat data since 1960 showed the average size snowy grouper had dropped from approximately 26 inches in length to just below 12 inches in 2002. He said the sex ratio data showed that males made up 20-23% of the population in the early 1980's, and 1% of the population in the mid-90's.

Mr. Grist said that at the annual meeting in October 2006, the Virginia Saltwater Tournament Committee added blueline tilefish to its list of species that were eligible for a citation as well as the golden tilefish and snowy grouper.

Mr. Grist said that off the coast of Virginia there were current recreational limits for blueline tilefish and snowy grouper. He said that also there have been notable catches of the Warsaw grouper and wreckfish.

Mr. Grist stated that at the November 2006 meeting of FMAC staff provided them with information on the background and updates on the tilefish and grouper fisheries off the Virginia coast and elsewhere. He said that at the February 2007 FMAC meeting, staff had invited scientist address the biological concerns. He said Dr. Erik Williams of the National Marine Fisheries Service and Roy Pemberton from the Virginia Institute of Marine Science provided this information.

Mr. Grist said that public comments had been received on this matter and were a part of the Commission packet. He read Dr. Onley of VIMS comments into the record.

Mr. Grist said that staff recommended the adoption of Regulation 4 VAC 20-1120-10, to establish a recreational possession limit of ten fish per person per day for tilefish and one fish per person per day for grouper, and a commercial limit of 300 pounds per vessel per day for tilefish and 175 pounds per vessel per day for grouper, no transfer at sea shall be allowed. He said that all measures being considered today were keeping these species as a by-catch fishery and not a directed fishery.

Associate Member Robins stated that these species are viewed as a unit stock to the South and it would be an argument for inclusion in the South Atlantic Plan (SAP). He said that staff desired flexibility in negotiating for more than what was in the SAP. Mr. Grist responded yes, that it would be 2 or 3 years before this reaches Virginia and the State was being proactive, thereby, gaining data to provide a negotiating leverage.

Commissioner Bowman opened the public hearing.

Harry Doernte, waterman, was present and his comments are a part of the verbatim record. Mr. Doernte provided the Commission with a handout. He said efforts were made to get something done for Black Sea Bass in 1991 and the ASMFC eventually caused a reaction by the State. He said that staff had done an outstanding job with one exception. He said they did not emphasize the data here today. He said this is a slow growing, slow maturing fish that burrows in its home until it is caught. He said that if other fisheries were in poor condition, this fish would be wiped out, because the Charter Boats have found the tilefish. He said commercial watermen already knew about it, but it was not economical to catch.

Chris Ludford, waterman, was present and his comments are a part of the verbatim record. Mr. Ludford explained that he endorsed the FMAC recommendation of 300-pound limit

per licensee. He said Virginia is unique as it is located in the middle of the North and South. He stated that no management to some management was a good start.

Tom Powers was present and his comments are a part of the verbatim record. Mr. Powers stated that this was a CCA request and not based on a directed fishery. He said FMAC voted 5-4 for a substitute motion and 3 of the no votes were the result of the substitute motion.

Jeff Deem was present and his comments are a part of the verbatim record. Mr. Deem stated that he was a representative for Virginia at the MAFMC. He said it was good to be proactive as it says something good about Virginia. He explained that the State would be setting the standards. He said that being able to keep the bycatch without being penalized was good. He said the 500 pounds limit was too much and the staff recommendation was better, as it would keep this from becoming a directed fishery. He said the Charter Boats were interested in this species and the development of equipment. He said this action would be good for the State and good for the resource.

Pete Nixon, President of the Lower Chesapeake Bay Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Nixon said that there was a group of head boats from Maryland who usually came to Virginia looking for striped bass and they were the ones who wanted to get into this fishery. He said that one boat could damage the fishery, if 10 fish per person were allowed.

The public hearing was closed.

**Associate Member Fox stated that there was no data and this action would be proactive. He stated that 10 tilefish was too high, but it was suggested that 5 would be too low. He stated he suggested making it 7 fish. He moved to accept the staff recommendation with a possession limit of 7 tilefish per person per day. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

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**22. JOHN E. BECKWITH:** Request to locate a new pound net near the mouth of Matchotank Creek on the Eastern Shore. Recreational fishermen and others protested the project.

Jack Travelstead, Chief Deputy Commissioner, explained that Mr. Beckwith had called and requested that his current location in Thoroughfare be replaced with another location on the southside of Parkers Island, which was a previously used area but without having to re-advertise and go through the process again. He said that Mr. Beckwith was asking the Commission to consider this new location.

Commissioner Bowman explained that the Commission appreciated this compromise, but there was concern if it was not processed in accordance with the regulation. He stated that if it were still used, it might be considered.

Associate Member Robins asked if a motion for a public hearing was needed. Mr. Travelstead explained that it must be posted and if there was no opposition, it could be approved administratively.

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**23. RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD**

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation. Her comments are a part of the verbatim record. Ms. Davis explained that there was only one item, for approval, a request to increase the current budget of \$199,000 for the Virginia Saltwater Fishing Tournament by an additional \$15,000, bringing the total yearly budget to \$214,000. She said the projected amount available in the Recreational Fund for September 2007 was \$3.2 million.

Commissioner Bowman explained that this was an increase in the budget for the tournament, for housekeeping and administrative costs.

**Associate Member Schick moved to approve the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0.**

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**24. BOB JENSEN:** Rappahannock Preservation Society Community Service Update: oysters and kids.

Robert Jensen, Rappahannock Preservation Society, was present and his comments are a part of the verbatim record. Mr. Jensen explained that he would not give the presentation he had prepared because of the long meeting day so far. He just said that he wanted to let the Commission know that he was "still in the game".

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**25. REQUEST FOR PUBLIC HEARING:** To establish recreational fishing limits for Tautog necessary for compliance with the ASMFC Tautog Fishery Management Plan.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that this was a request by staff to

hold a public hearing on this matter in May. He said that an ad hoc meeting had been held on this matter.

**Associate Member Robins moved to approve the request for a May public hearing. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

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**26. REQUEST FOR PUBLIC HEARING:** To amend the recreational possession limit and commercial by-catch limit for Grey Trout.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that this was a request for a public hearing in May. He said that even though it was being heard in May, the effective date would not be until October.

**Associate Member Fox moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 8-0.**

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**28. FAILURE TO REPORT HARVEST IN ACCORDANCE WITH REGULATION 4VAC20-610 - Patrick Johnson and Richard Johnson**

Stephanie Iverson, Fisheries Management Specialist, Sr., gave the presentation and her comments are a part of the verbatim record. Ms. Iverson stated that both individuals were not present at the hearing.

Commissioner Bowman stated that their licenses were still suspended, until they appear before the Commission. Ms. Iverson responded, yes.

No further action was taken.

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**29. REPEAT OFFENDER - Patrick Johnson**

Warner Rhodes, Deputy Chief, Law Enforcement, gave the presentation. His comments are a part of the verbatim record. Mr. Rhodes said this is the same individual from the previous case.

**Associate Member Robins moved to suspend Mr. Johnson's license until such time as he appeared before the Commission. Associate Member Schick seconded the motion. The motion carried, 8-0. The Chair voted yes.**

**Commission Meeting**

**14274  
April 24, 2007**

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There was no further business and the meeting was adjourned at approximately 6:28 p.m.  
The next meeting will be Tuesday, May 22, 2007.

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Steven G. Bowman, Commissioner

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Katherine Leonard, Recording Secretary