

MINUTES

Commission Meeting**December 21, 2004
Newport News, VA**

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:

William A. Pruitt)	Commissioner
Ernest N. Bowden, Jr.)	
Russell Garrison)	
Cynthia Jones)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick)	
Carl Josephson	Sr., Assistant Attorney General
Col. Steve Bowman	Deputy Commissioner
Michele Guilford	Acting Recording Secretary
Andy McNeil	Programmer Analyst, Sr.
Jane McCroskey	Chief, Admin./Finance Div.
Jack Travelstead	Chief, Fisheries Management Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Roy Insley	Head, Plans and Statistics
Lewis Gillingham	Fisheries Management Specialist
Joe Cimino	Fisheries Mgmt. Planner
Stephanie Iverson	Fisheries Mgmt. Supervisor
Ellen Cosby	Fisheries Mgmt. Planner
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
MPO James Vanlandingham	Marine Police Officer
MPO Russell Phillips	Marine Police Officer
MPO David Lumgair	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.

Commission Meeting

**13000
December 21, 2004**

Justin Worrell	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)
 Lyle Varnell
 Tom Barnard

Other present included:

Stephen Collins	Virgil Miller	Myrtle Miller
Martha Bauer	E. L. Stone	Harrison Bresee
William Braun	Ronald Boone	George Whitney
Robert Hayslett	Tim C. Young	Michael Poplawski
Barry W. Miller	Kelly V. Place	Bryan Peck
Jim Breeden	E. H. Bender	Andrew Parks
J. F. Harper	Douglas F. Jenkins, Sr.	
R. H. Pride	Roger Park	Tom Powers
Russell Gaskins	Jeff Deem	Carroll Wilson
Robert Allen	Jared Philipps	

Commissioner Pruitt called the meeting to order at approximately 9:30 a.m. Associate Members Cowart and Holland were absent.

Associate Member Garrison gave the invocation and Carl Josephson, Senior Assistant Attorney General, led the pledge of allegiance to the flag.

Richard Robins, was introduced to the Commission by Commissioner Pruitt as a new Associate Member appointed by Governor Warner in December, 2004. Mr. Pruitt explained that Mr. Robins managed Chesapeake Bay Packing, LLC's, seafood exporting operations in Newport News, Virginia and owns Bernie's Conch's LLC, a conch processing company located in Cheriton, Virginia. He further explained that Mr. Robins was a lifelong recreational angler and a very avid offshore tournament fisherman. He congratulated Mr. Robins at this appointment on behalf of the entire Commission.

Associate Member Robins expressed his thanks for Commissioner Pruitt’s kind words in the introduction and further went on to express his sentiments and great respect for his predecessor, Mr. Chad Ballard.

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

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Approval of Agenda: Commissioner Pruitt asked for a motion for the agenda. Carl Josephson said at the end of the meeting he wanted to brief the Commission on several issues. **Associate Member McLeskey moved to approve the agenda. Associate Member Garrison seconded the motion. The motion carried, 5 - 0.**

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- 1. **MINUTES:** Commissioner Pruitt asked for a motion for the November Commission minutes. **Associate Member Garrison moved to approve the minutes as circulated. Associate Member McLeskey seconded the motion. The motion carried 4-0-1, with Associate Member Robins abstaining because he did not attend the November meeting.**

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- 2. **PERMITS:** Bob Grabb, Chief, Habitat Management, gave the presentation on Page Two items, A through M, and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unopposed, and for which staff is recommending approval.

Associate Member Robins asked Mr. Grabb why there were time limit restrictions connected to the approval. Mr. Grabb said that in seeking comments from other agencies, it was a recommendation of one of those agencies.

Commissioner Pruitt asked if there was anyone to address the Commission on any of these projects, either pro or con.

Associate Member McLeskey moved to approve items 2A through 2M. Associate Member Schick seconded the motion.

Ronald W. Boone, representing Harrison’s fishing pier, was present and asked to address item 2L. He said he did not see on the agenda anything about the building structures. Mr. Grabb explained that an agreement had been made to bring the T-head and

breakwater to this meeting and the other structures at a later date so the contractor could commence construction now on the breakwater and T-head. Mr. Boone said he did not know what information they needed about the structures and when would this be brought back? Mr. Grabb explained that staff could help him and that he would be notified of the meeting date.

Robert Hazelet, representing Columbia Gas Transmission Corporation, asked why the third project had been pulled as his copy of the agenda still showed it. Mr. Stagg said there were a number of protests received since the agenda was prepared and it was pulled from the agenda the previous week. He further explained that the staff needed time to attempt to resolve these protests and if they could not be resolved, the matter would be brought back to the Commission for its consideration, but not as a page two item. He also stated the applicant would be notified when it would come back to the Commission.

Commissioner Pruitt explained that when there are protests, the protested item cannot be heard as a page two item.

Commissioner Pruitt asked that the previous motion be rescinded and a new motion be made since a vote was not made on the previous motion and because of the comments received after it was made. Associate Member Schick moved to approve the page two items, 2A through 2M. Associate Member Garrison seconded the motion. The motion carried, 6-0.

2A. NISOURCE CORPORATE SERVICES, #04-2201, requests authorization to install 21 feet of 10-inch diameter gas pipeline approximately five (5) feet beneath 15 linear feet of Mine Run and six (6) linear feet of Turkey Run, both tributaries of the Rappahannock River, within an existing pipeline easement in Spotsylvania County.

Permit Fee.....\$100.00

2B. COLUMBIA GAS TRANSMISSION CORPORATION, #04-1990, requests authorization to repair or replace existing gas pipeline segments along a 76.5-mile section of Line VA, possibly requiring the excavation, exposure, and replacement of the pipeline along numerous stream crossings in Greene, Madison, Culpeper, Fauquier, Prince William, and Fairfax Counties.

Permit Fee.....\$100.00

2C. COLUMBIA GAS TRANSMISSION CORPORATION, #04-1991, requests authorization to replace or repair existing gas pipeline segments along a 24.7-mile section of Line VB and a 14.7-mile section of Line VB-Loop, possibly requiring the excavation, exposure, and replacement of the pipeline along numerous stream crossings in Loudoun and Fairfax Counties.

Permit Fee.....\$100.00

2D. TOLL VIRGINIA, IV, L.P., #04-2078, requests authorization to construct a road crossing, which will include a natural bottom, 16-foot wide by 10-foot high, concrete arch (ConSpan) culvert, to include an 11-foot maximum thickness of graded fill above the culvert, along approximately 115 linear feet of an 8-14 foot wide, unnamed perennial tributary of Opequon Creek, associated with the Channing Drive - Phase 9 residential development in Frederick County.

Permit Fee.....\$100.00

2E. TOWN OF BLUEFIELD, #04-2054, requests authorization to remove portions of a box culvert system, construct 945 linear feet of concrete retaining walls and install approximately 585 linear feet of riprap revetment stream bank protection to restore portions of Beaver Pond Creek and Whitney Branch and reduce flooding in the Town of Bluefield. Recommend our standard instream construction conditions.

Permit Fee.....\$100.00

2F. WALLOPS FLIGHT FACILITY, #04-2413, requests authorization to attach four (4) 1,284-foot long power cables to the existing bridge from Wallops Island over Cat Creek and the Virginia Inside Passage in Accomack County. The conduit system will not change the height clearance under the bridge.

Permit Fee.....\$100.00

2G. VIRGINIA C. JACOBS, #04-0137, requests authorization to install 400 linear feet of bulkhead no greater than two feet in front of an existing deteriorated bulkhead at her commercial property adjacent to property situated along Little Creek in Norfolk.

Permit Fee.....\$100.00

2H. OCEAN MARINE, LLC, #04-1948, requests authorization to dredge 1,000 cubic yards of maintenance and 390 cubic yards of new subaqueous material, and to maintenance dredge on an as-needed basis, to provide maximum depths of up to minus -11.5 feet below mean low water within two slip areas, -26.5 feet below mean low water at the syncrolift and -17.5 feet below mean low water at the travel lift adjacent to their property situated along the Southern Branch of the Elizabeth River in Portsmouth. Staff recommends submission of both pre- and post-dredge bathymetric surveys and a royalty assessed at \$0.45 per cubic yard for all new dredging. Disposal will occur at the Craney Island Rehandling Basin.

Permit Fee.....\$100.00

2I. CITY OF SALEM, ET AL, #04-2003, requests authorization to relocate telecommunications lines and replace the Colorado Street Bridge with a new bridge, 115-feet long by 83-feet wide, and install a bridge-suspended 2" electrical conduit over the Roanoke River in the City of Salem. Recommend time-of-year restriction from March 15 to June 30 to protect fish spawning habitat and our standard instream construction conditions.

Permit Fee.....\$100.00

2J. METRO MACHINE CORPORATION, #01-0690, requests authorization to reactivate and extend a permit which expired on May 26, 2004, and authorized the dredging, by clamshell method, a maximum of 147,300 cubic yards of State-owned submerged lands to provide maximum depths of -59 feet below MLW and install five (5) new mooring dolphins and three (3) tower cranes on platforms in order to expand the existing drydock adjacent to property situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in Norfolk.

Permit reactivation and extension, no fees applicable.

2K. SEAFORD SCALLOP CO., INC., #04-1572, requests authorization to install a 195- foot long by 16-foot wide open-pile finger pier at an existing commercial pier and to dredge, by clamshell method, a maximum of 5,900 cubic yards of State-owned submerged lands within a 315-foot long by 100-foot wide mooring basin to provide maximum depths of -12 feet below mean low water adjacent to their property situated along Back Creek in York County. All dredged materials will be suitably disposed on along Back Creek in York County. All dredged materials will be suitably disposed on site. Recommend a pre-dredge conference, submission of a post-dredge bathymetric survey and a royalty of \$0.45 per cubic yard for the dredging.

Royalty (Dredging at \$0.45/cu. yd.).....\$2,655.00
Permit Fee.....\$ 100.00
Total Fees.....\$2,755.00

2L. RONALD W. BOONE, #04-2187, requests authorization to install two (2) 40-foot long concrete breakwaters (7 pilings) and an 18-foot by 40-foot T-head at the Harrison's Fishing Pier situated along the Chesapeake Bay in Norfolk.

Permit Fee.....\$100.00

2M. SANDERS YACHT YARD, #03-1630, requests authorization to construct two (2) 330-foot long open-pile commercial piers, one with an 85-foot long T-head, the other with a 35-foot long L-head, a total of 21 four-foot wide finger piers and 24 mooring piles to create a total of 45 wet slips on Carter Creek between Crockett’s Landing and Irvington Marina in Irvington, Lancaster County.

Permit Fee.....\$100.00

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3. CLOSED SESSION:

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

Matters related to the recently established pound net siting regulation (4VAC 20-25-10 et. seq.).

The motion was seconded by Associate Member Robins. The motion carried, 6 - 0.

Associate Member Jones moved for the following:

**CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION**

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

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

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

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

Associate Member Robins seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Bowden, Garrison, Jones, McLeskey, Pruitt, Robins, and Schick.

NAYS: None

ABSENT DURING VOTE: Cowart and Holland

ABSENT DURING ALL OR PART OF CLOSED MEETING: Cowart and Holland

The motion carried, 7- 0.

**Recording Secretary
Virginia Marine Resources Commission**

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- 4. BAY MARINE, #01-1302**, continuation of a restoration hearing to consider the unauthorized construction of a 290-foot by 6-foot commercial pier with four (4) unauthorized boatlifts, the installation of a sewage discharge pipe and diffuser extending approximately 268 feet channelward of mean low water, a 5-foot by 80-foot T-head, and 18 wetslips exceeding their authorized dimensions adjacent to their marina situated along Broad Creek in Middlesex County.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation and his comments are a part of the verbatim record. The powerpoint presentation included slides to refamiliarize the board with the project and also included current photographs of what had been accomplished since the last hearing to bring the project into compliance.

Mr. Neikirk explained that Bay Marine LTD, principally owned by Mr. Barry Miller, serves as agent and performs all service and construction for a marina facility owned by Mr. Miller's parents, Virgil and Myrtle Miller. The Commission conducted a restoration hearing regarding this violation during the regularly scheduled meeting on October 26, 2004. Mr. James Breeden serves as council to the Millers and represented them during the October 26, 2004 hearing.

Mr. Neikirk said that during Mr. Breeden's presentation he offered, on behalf of the Millers, to complete the following restoration work prior to the December 21, 2004 Commission meeting:

- Remove the 80-foot long "T-head" at the channelward end of the western pier, thereby reducing the length of the pier to no more than 260 feet,

- Reduce the length of the eastern pier to a total length of 260 feet channelward of the bulkhead, by removing approximately 30 feet of pier,
- Develop an acceptable marina management plan,
- Provide documentation verifying that the Health Department has approved the plan for sewage treatment or disposal facilities at the marina,
- Install lights on the channelward end of the piers that satisfy the requirements of the U.S. Coast Guard.

Mr. Neikirk stated that the Commission voted unanimously to issue an order directing completion of the specified restoration proffered by Mr. Breeden prior to December 21, 2004. They also agreed to continue this matter until the December meeting and to consider after-the-fact approval of the remainder of the unauthorized work in light of their offer to pay \$12,500.00 in civil charges and triple permit fees, in lieu of further enforcement action.

Mr. Neikirk said the Millers have removed the T-head, reduced the length of the eastern pier to less than 260 feet and have installed the lights on the channelward end of the piers. He said we have received correspondence from the Health Department confirming that the required sewage pump-out has been properly installed and that the facility is now in compliance with their "Sanitary Regulations for Marinas and Boat Moorings." Additionally, Mr. Barry Miller and Mr. Breeden have been working with staff to develop a marina management plan and staff has not observed any boats moored in the slips on the eastern pier subsequent to the October meeting.

Mr. Neikirk stated that since the facility has been brought into conformance with staff's recommendations, we recommend approval of the project and acceptance of Mr. Miller's proffer to pay \$12,500.00 in civil charges and a triple permit fee in lieu of any further enforcement action. He said that we recommend further that the marina management plan being developed by the Millers be incorporated into the permit document, as well as revised drawings which accurately reflect the current dimensions of the facilities and the remaining proposed work.

Associate Member McLeskey left the meeting.

Associate Member Robins asked Mr. Neikirk if staff was satisfied with the marina management plan. Mr. Neikirk explained that staff only received the plan the day before but the applicant has expressed a willingness to accept reasonable changes staff recommends. He also said that they would seek VIMS input on the plan.

James Breeden, Attorney for the applicant, was present his comments are a part of the verbatim record. Mr. Breeden stated that they were requesting acceptance of staff recommendations by the board.

Associate Member Garrison asked Mr. Breeden if it was understood that any motion would be subject to consideration by VIMS of the marina management plan? Mr. Breeden responded yes and explained that when they prepared the plan Mr. Neikirk provided them with information, which included information from VIMS.

Commissioner Pruitt asked if there was any opposition to the project. There being none he placed the matter before the Commission.

Associate Member Garrison moved to approve the staff recommendations, subject to VIMS approval of the Marine Management Plan. Associate Member Schick seconded the motion. The motion carried, 5-0-1. Associate Member McLeskey was absent from the meeting room.

Civil Charge.....	\$12,500.00
Permit Fee (Triple).....	\$ 300.00
TOTAL FEES.....	\$12,800.00

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- 5. **REEDVILLE FISHERMAN'S MUSEUM, #00-2043**, requests authorization, to modify a previously issued permit, to include the construction of a 20-foot long, by 8-foot wide floating pier section along the north (upstream) side of the Museum's pier adjacent to the Permittee's property situated along Cockrell Creek in Northumberland County. The project is protested by Mr. John W. Haynie, an adjacent property owner.

Associate Member McLeskey returned to the meeting.

Jeff Madden, Environmental Engineer, Sr., gave the presentation and his comments are a part of the verbatim record.

Mr. Madden explained that the Reedville Fisherman's Museum is located at the head of a prong of Cockrell Creek in the Town of Reedville. The creek is approximately 275 feet wide at the project site and the controlling depth averages about minus four (-4) feet at mean low tide.

Mr. Madden said that on March 1, 2001 the museum was granted authorization, to construct a 120-foot long by 6-foot wide, open-pile, timber, marginal wharf and associated upstream access pier adjacent to their existing 50-foot long pier. This project was not protested. The marginal wharf and additional access pier have since been constructed and they extend 66 feet channelward of mean low water.

Following the initial expansion, Mr. Madden said that the permittee sought additional authorization to secure a proposed 20-foot long by 8-foot wide, floating pier section

donated to the museum by a patron. The Museum would like to allow visitors who arrive by skiff or kayaks to use the floating pier. In addition, staff has learned from the Executive Director that the float will also support their kayak building programs by providing participants a platform from which to launch their boats.

Mr. Madden stated that as a part of the required public interest review for the project, the adjacent property owners were contacted and asked to comment on the Museum's request to moor the floating pier section at the wharf. On August 18, 2004, Commission staff received a letter of objection from Mr. and Mrs. John Haynie who live across the creek from the museum. The protestants contend the museum is becoming a marina which they feel is undesirable. They further believe that the concentration of boat traffic in the vicinity of the wharf makes it difficult to maneuver in the small creek.

Mr. Madden explained that in a recent telephone conversation with a member of the Museum, Mr. Fred Biddlecomb had expressed his concerns about the floating dock and had asked him to bring this to the attention of the board.

Mr. Madden said that on the other hand, Commission staff has received a letter from Bethany United Methodist Church, dated January 26, 2004. In the letter, Dr. Al Hurt expresses his congregation's support of the project and his expectation that visitors to the museum, who arrive by kayak or skiff, will visit their church which is immediately next door to the museum.

Mr. Madden stated that the Virginia Department of Health has approved the modification. The Virginia Institute of Marine Science has indicated that the project modification will not have a significant impact on the marine environment. No other state agencies have commented on the modification.

Mr. Madden explained that while staff is sensitive to the concerns of the adjacent property owners, the floating pier section, will not extend channelward of the previously authorized marginal wharf. With a mean low water channelward encroachment of 66 feet, the wharf and floating pier section will extend less than 1/3 the 275 foot distance across the creek. Accordingly, staff recommends approval of the modification as proposed.

Associate Member Robins said that Mr. Madden had mentioned the concerns of a member of the museum. Mr. Robins asked if this facility was available to the public. Mr. Madden said yes and explained that this was a big resource and draw for the community.

George Whitney, a member of the board of directors for the Museum, was present and his comments are a part of the verbatim record. Mr. Whitney said that they had been working on this project for sometime and there were grants in place to build it. He further explained that this was only part of a bigger plan by an outside organization and this was their part of the plan.

Associate Member Garrison asked Mr. Whitney to discuss the Youth Programs that were established by the Museum. Mr. Whitney discussed these programs and explained that the floating pier will be used with this program as well as other programs established for adult and family participation.

Associate Member Jones noted that in reading the VIMS' report said that this pier was only 30' from a fringe marsh and that they had recommended that no motorized boats be allowed to utilize this pier. She asked how they planned to address this issue. Mr. Whitney explained that they would utilize signs indicating that no motorized boats were allowed, only kayaks and canoes.

Commissioner Pruitt asked if there was any other opposition to the project. There being none he placed the matter before the Commission.

Associate Member Garrison moved to approve the permit modification as recommended by staff. Associate Member Jones recommended that the permit include a requirement to post signs that no motorized boats use the floating pier. Associate Member Schick seconded the motion. Mr. Schick further stated that this was a good example of a community's efforts to provide access to the water for the public's enjoyment. The motion carried, 6-0.

Permit modification, fees not applicable.

6. **CITY OF NEWPORT NEWS, #04-2261**, requests authorization to reconstruct the Hilton Pier, a 410-foot long open-pile timber municipal pier damaged by Hurricane Isabel, approximately 42 feet east-southeast (downstream) of the original pier centerline at their property situated along the James River immediately behind Hilton Elementary School in Newport News. The project is protested by several nearby property owners.

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

Mr. Owen explained that the project is located along the northern shoreline of the James River, approximately one mile upstream of the Route 17 James River Bridge, behind Hilton Elementary School in Newport News.

Mr. Owen said that according to City documents, the Hilton Pier was built around 1919 by the Hilton Village Fire Department. Significant repairs to the structure were undertaken in 1977 and again in 1998. Hurricane Isabel destroyed the pier in September 2003.

Mr. Owen stated that the City, in response to concerns raised by the upstream adjacent property owner, proposes to reconstruct the structure to its previous dimensions but 42-feet east-southeast (downstream) of its original alignment. Had they sought authorization to reconstruct the pier on its original alignment, no VMRC permit would be required pursuant to the Governor's Executive Order No. 66. This Order allows for the reconstruction of previously authorized structures damaged by Isabel provided the construction is in the same location and in identical or smaller dimensions.

Mr. Owen said that staff has received four letters of opposition to the project from four nearby property owners. All support the City's desire to reconstruct the pier but object to any realignment from the original footprint. Additionally, the City indicates that 17 residents expressed their opposition to the project during an October 18, 2004 public meeting held at Hilton Elementary School.

In support of their argument, Mr. Owen said that the protestants indicated that the proposed realignment will negatively impact the pier's historical location and reduce the size of the recreational beach located immediately downstream. Additionally, they argue that a southerly realignment will result in use conflicts between the public and the students and staff of Hilton Elementary School.

Mr. Owen said that the Virginia Institute of Marine Science (VIMS) Shoreline Application Report, dated December 7, 2004, indicates that the project's individual and cumulative adverse impacts to the marine environment will be minimal. No other State agencies have raised objections to the project.

Mr. Owen explained that the Environmental impacts associated with the reconstruction of the Hilton Pier are anticipated to be minimal regardless of the pier's alignment. Shifting the pier 42-feet downstream will increase the separation distance from the upstream private riparian pier to approximately 107.5 feet. This should reduce the potential for use conflicts between the municipal pier and the adjacent private property owner. The recreational beach area between the pier and the downstream property line will be reduced from 464 linear feet of shoreline to 422 feet.

Accordingly, Mr. Owen stated that in light of the Hilton Elementary School's support for the proposed realignment and the minimal adverse environmental impacts anticipated, staff recommends approval of the project as proposed.

Michael Poplawski, Director of Parks, Recreation, and Tourism, was representing the city and his comments are a part of the verbatim record. He said he had no comments and would be glad to answer any questions. Mr. Poplawski responded to a number of questions by the members of the board. He explained that the pier was used for the before and after school programs as well as for the science classes. He said he did not have any exact figures on how much use was made of the pier, but there was considerable use by both the public and the school. He said that the pier was approximately 100 years

old and the first 50 years it was used mostly for offloading purposes and the second 50 more for recreational purposes, such as swimming and fishing. He explained that if it was moved halfway on the property other activities would interrupt school activities, would put it away from the playground and for the safety of the students the new location would make them more visible for easier supervision. As to the handling of the use by both the public and school, it would be left up to the school officials, as this was school property. He said the proposed location would actually improve the situation making for less conflict than just a few years ago.

Kelly Place, speaking on behalf of other residents in the project location, was present and his comments are a part of the verbatim record. Mr. Place said the protestants main objection was the change in location of the pier. He said they had several concerns he wished to report to the Commission, the first being that this would provide an excuse for strangers being in the area and putting the children at risk. He said further that they were concerned that city funding was being inappropriately spent just for the benefit of two residents. And finally, he said they wanted the city to explain the cost difference for the construction of the pier in the two different locations. Mr. Poplawski responded that the cost had been addressed in their report. He said the construction cost would be the same for either location, except for the permit fee required by the Virginia Marine Resources Commission because the pier was not being constructed in the original location and the fact that \$15,000.00 had already been invested in the rebuilding of the pier in its original location. He said this was before any public objections had come to their attention regarding the location of the pier. He said the materials had been purchased and installation of the pilings had begun so when they had to stop rebuilding the pier these materials had to be stored and any construction activity stopped.

Commissioner Pruitt asked Mr. Place to give him the names of the individuals he was speaking for at this meeting. Mr. Place responded he could not as those individuals were very concerned with upsetting one of the property owners who had asked for the change in location.

Commissioner Pruitt asked if there was any other opposition to the project. There being none he placed the matter before the Commission.

Associate Member Garrison moved to approve the request as recommended by staff. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

Permit Fee.....\$100.00

- 7. **MARTHA S. BAUER, #02-2020**, requests after-the-fact authorization to retain a 10-foot long by 10-foot wide open-sided gazebo at her property situated along the Hampton River in Hampton.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides and her comments are a part of the verbatim record.

Ms. West explained that Dr. Bauer's property is situated along the Hampton River between the Pembroke Avenue Bridge and the Mercury Boulevard Bridge in the City of Hampton.

Ms. West said that in 2001, Dr. Bauer sought authorization to construct a 75-foot long by 5-foot wide private, non-commercial, open-pile pier with a 16-foot by 20-foot "L" head under application number #01-2226. The pier met the requirements for statutory authorization contained in State Code at that time and a "no permit necessary letter" was issued on January 17, 2002. Authorization for a roofed structure was not requested in the application.

Ms. West explained that on August 21, 2002, Dr. Bauer submitted an application to install riprap in front of the existing seawall on her property (#02-1657). In response to that application, staff conducted a routine site visit in September 2002 and discovered that a 10-foot by 10-foot covered structure had been installed over a portion of the L-head part of the pier.

Ms. West said that staff discussed the covered structure with Dr. Bauer at the September 24, 2002, Hampton Wetlands Board meeting. A Sworn Complaint and a Notice to Comply were issued on the following day, directing removal of the roofed structure within 30 days of her receipt of the notice. In lieu of removal, however, Dr. Bauer was given the option of submitting an after-the-fact application with drawings that accurately reflected the dimensions of the covered structure. Additionally, the Notice to Comply requested statements explaining who performed the work and why the work was conducted without the necessary authorization and permit.

Ms. West went on to explain that on October 19, 2002, VMRC received a joint permit application from Dr. Bauer requesting authorization to retain the roof structure. The applicant's after-the-fact request was subjected to a public interest review. No other parties or agencies have expressed any opposition to the structure.

Ms. West said that as we further examined Dr. Bauer's pier, staff also noted that the pier was not built in accordance with the application drawings submitted with JPA #01-2226. Construction of a 16-foot by 20-foot L-head was applied for and determined to qualify for statutory authorization under Section 28.2-1203 of the Code. Staff found that the actual dimensions of the L-head are a third larger, measuring 16-foot by 30-foot. In addition, an uncovered boatlift, which was not indicated in the application drawings, is installed at the pier. While these latter items do not represent violations per se, they are further evidence of a departure from the project plans that were submitted to this agency for review.

Ms. West said that when reviewing proposals to build over State-owned submerged lands the Commission's Subaqueous Guidelines direct staff to consider, among other factors, the water dependency and necessity of the proposed structure. Furthermore, when considering authorization for such structures for private use, §28.2-1205 of the Code of Virginia stipulates that: "In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to §1-10 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."

Ms. West stated that the applicant and her agent/contractor were well aware that authorization for encroachment over State-owned subaqueous lands were required given the fact that a Joint Permit Application requesting authorization for the construction of the pier was submitted. The addition of the roof, which was not shown in the application drawings, represents a clear departure from the original proposal considered by this agency and, is an unauthorized encroachment over State-owned submerged lands. Although the pier L-head is also larger, we are not considering that to be a violation give the code at the time the construction occurred. Nevertheless, staff recommends **denial** of the covered roof/deck structure and direction that it be removed within 60 days.

Ms. West recommended, in the event that the Commission elects to grant after-the-fact approval for the roof structure, that an appropriate civil charge be considered based upon minimal environmental impact and significant degree of deviation or non-compliance.

Dr. Martha Bauer, applicant, was present and her comments are a part of the verbatim record. Dr. Bauer explained that she resides in Maryland and she and her father discussed adding a pier to the property on the Hampton River, which was purchased for her retirement. She explained that when they looked in the area for samples of piers located at other properties on the river, there was one that seemed to be what they needed to construct also. She said Bob Eastman, the contractor, agreed to do the job. She explained that the covered portion was actually done by the applicant's father and the contractor constructed the rest. She said the reason it was added was to provide protection for her elderly parents and other elderly and handicapped family members when they want to enjoy the pier and fish, which they all like to do. When she received the sworn complaint and notice to comply, she said she responded by applying for the after-the-fact permit to keep the roof structure. She explained that she had requested a copy of the existing permit from her contractor and that was when she discovered that the cover was not permitted. She said they wanted to retain this covered boathouse and asked the Commission to approve this request.

Associate Member Garrison stated that this kind of request keeps coming before them and always seems to it relatesto doing this to meet the needs of the elderly and it is a violation

of the law to do it. He suggested that they utilize a large umbrella to provide protection from the elements. He said it was the contractor who was actually at fault here and the applicant should be able to depend on their contractor to keep everything legal and proper.

Associate Member Robins said that he agreed with Mr. Garrison and proceeded to read the decision of a recent court case as relates to this matter and supported the Commission that such a structure was not water dependent. He further said that to approve such structures because of elderly/handicapped individuals could mean everyone would want to have one on their pier for this same reason.

Commissioner Pruitt asked if there was any opposition to the project. There being none he placed the matter before the Commission.

Associate Member Robins moved to deny the permit and stipulate the removal of the structure to be done within 60 days as recommended by staff. Associate Member Garrison seconded the motion. Associate Member Bowden asked if this included removal of all the additional structure. Associate Member Robins stated that it was simply the roof structure. The motion carried, 6-0.

Enforcement action taken, no fees applicable.

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8. **JOAN T. KARTER AND RONALD M. PONT, #2003-011S**, requests authorization to lease 4.46 acres of Oyster Planting Ground along Chincoteague Channel in the Town of Chincoteague, Accomack County. A Relay Plan as specified by the Commission at its December 22, 2003, meeting was not received within the required 90 days.

Hank Badger, Environmental Engineer, Sr., gave the presentation and his comments are a part of the verbatim record. Mr. Badger explained that he would be very brief and only present slides if the Commission wanted him to do so. No slides were presented.

Associate Member Jones was absent from the meeting during this presentation.

Mr. Badger explained that the Commission at its December 22, 2003, meeting approved a 4.46-acre oyster planting ground assignment, starting 300 feet north of and parallel to the adjacent property owners pier. The adjacent property owner had protested the lease.

Mr. Badger said that although staff did not receive any portion of a Relay Plan until almost one year after the Commission's authorization of the lease, staff now has an acceptable plan. Therefore, staff recommends approval of the assignment of an oyster

planting ground lease, containing 4.46 acres, as approved by the Commission at its December 22, 2003, meeting.

Associate Member Bowden stated that staff had two letters from both applicants saying that they did not think the lease approval was dependent on the relay plan and he had understood that it was. He said this should always be considered when a lease request involved a shellfish lease that is within a polluted area.

Associate Member Bowden moved to grant the lease. Associate Member Garrison seconded the motion. The motion carried, 5-0. Associate Member Jones had not returned to the meeting.

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15. REPEAT OFFENDER:

Andrew Parks, Sr. (DOB 4/18/42)

March 11, 2004: Guilty-Unlawful use of subaqueous beds, fine \$500.00.

Lt. Col. Lewis Jones, Deputy Chief, Law Enforcement, gave the presentation and his comments are a part of the verbatim record.

Lt. Col. Jones stated that Mr. Parks had been before the Commission January 27, 2004 as a repeat offender and received a 12-month probation for his fisheries violations. He explained that the following February Mr. Parks was cited in accordance with 28.2-1203 for unlawful use of subaqueous beds. Lt. Col. Jones explained that Mr. Parks was using his boat propeller to cut a channel that was on someone's lease to someone else's highland property and he was convicted and fined \$500.00 by the court, which put him in violation of his probation. Commissioner Pruitt asked if it was a lease and if the leaseholder was involved. Lt. Col. Jones said that it was a lease and the leaseholder was not involved to his knowledge.

Andrew Parks, Sr., defendant, was present and his comments are a part of the verbatim record. Mr. Parks explained that he did not realize that he was doing anything illegal. He said he was trying to help someone else and used his boat and propeller to dredge a channel. Commissioner Pruitt asked if he had any finfish or shellfish. Mr. Parks responded no. Commissioner Pruitt asked him if he had gone to court and he responded no, he and the officer did not realize this was such a big deal and a light fine.

Associate Member Jones returned to the meeting.

Commissioner Pruitt asked what he was actually charged with. Colonel Steve Bowman, Deputy Commissioner, was present and his comments are a part of the verbatim record.

He said Mr. Parks was charged with unlawful use of subaqueous beds by cutting a channel to the landowner's property on a lease. Commissioner Pruitt asked if Mr. Parks had been cooperative with the officer and Colonel Bowman responded, yes.

Commissioner Pruitt stated this is not a usual case and asked counsel's advice.

Carl Josephson asked what were the conditions of the probation. Colonel Bowman explained that the first appearance before the Commission is usually just to put the individual on a 12-month probation and there can be no further violations that relate to Title 28.2 during this 12-month period. He said if there is a violation of his probation he then comes to the Commission and the matrix is established to revoke his licenses. He said usually the violation involves a fishery issue or safety issue. He said they determined it was impacting the lease, therefore it was a violation.

Officer David Lumgair was sworn in to give testimony. Commissioner Pruitt asked him what was on the ground? Officer Lumgair said that there were some oysters on the opposite side. Commissioner Pruitt asked if the leaseholder was involved? Officer Lumgair said the leaseholder was not involved. Commissioner Pruitt asked if Mr. Parks cooperated? Officer Lumgair said that Mr. Parks was very respectful and courteous in all his dealings with him.

Associate Member Bowden stated that he did not realize this was leased ground until now. He said that he has used his motor before too to kick his slip out. He said that this was a different case than usual in that it did not involve a fisheries or a simple safety violation.

Carl Josephson said this is an administrative proceedings so it was not bound by strict rules of a criminal case. He said that this was not a violation of the probation conditions.

Associate Member Garrison stated that he felt Mr. Parks had been punished enough being he was a working waterman and had to pay the \$500.00 fine. He made a motion to excuse Mr. Parks from the charge. Commissioner Pruitt asked if any eelgrass was involved. Someone responded no. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

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Commissioner Pruitt made a few announcements at this point.

Mr. Schick would serve on the Habitat Committee as chair in place of Mr. Ballard.

Mr. Bowden would serve in Mr. Birkett's place on the Finfish Committee as co-chair with Mr. Garrison.

Mr. Cowart would still serve on the Crab Committee.

He explained that all these meeting are open to the public and the Commission Members can attend them if they want.

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9. PUBLIC COMMENTS

Edward Bender was present and his comments are a part of the verbatim record.

The Commission received comments from Edward Bender who indicated the recently adopted pound net siting regulation would be costly to him, as he would need to advertise each time he wished to move a pound net. He asked for a recession of the regulation, but the Commission took no action.

Brian Peele, Sea Bass Fisherman in the bycatch fishery, was present and his comments are a part of the verbatim record.

The Commission received a request from Brian Peele to receive an exception for commercial black sea bass quota. He explained that he was too young to work in the fishery during the qualifying period. He said that he has been working for someone else, but now he had his own boat and wanted to get into the fishery. He said there was 17,000 pounds going to waste because it was being held for a medical exception and also losing revenue for the State.

Jack Travelstead, Chief, Fisheries Management, explained that he did not have the regulation in front of him, but he believed there was 17,000 pounds set aside for a medical exception. He told the Commission that the individual expected to apply for this exception did not and the 17,000 pounds were just sitting there. He said that the way it is set up in the regulation this poundage would eventually go into the bycatch fishery, if not applied for. He further said the regulation had been amended to increase the bycatch trip limit and allowed for the transfer of quota in the directed fishery. He explained that this was done in order to utilize Virginia's quota better. He stated there was nothing in the regulation to allow Mr. Peele an exception. Commissioner Pruitt asked the Assistant Attorney General to review the regulation with Jack.

Commissioner Pruitt asked for other comments.

Kelly Place said he agreed with Mr. Peele's request and felt this was an example of age discrimination when there were no exceptions for this purpose. He said the Commission should consider cases like this.

Associate Member Garrison said that the staff needed to research this and that it was unfair to the young people who want to get into the fisheries. He said something needed to be done to encourage them to go into business for themselves.

Associate Member McLeskey stated that he agreed with Mr. Garrison and the Commission needs to give this matter its every consideration.

Associate Member Jones expressed her concerns with the limited entry in that it precluded young people from getting into the fisheries, which could mean the death of Virginia fisheries eventually.

Commissioner Pruitt said that the Commission would break for lunch until 1:00 p.m. and return to this issue then for a decision.

Carl Josephson, Assistant Attorney General, said that the agency was bound by its regulations and this one allows for a medical exception only. He said the regulation would have to be amended to expand on the exceptions allowed.

Associate Member Garrison suggested that staff in the next 30 days research how the Commission can encourage new people into the fishery. He said we are always dividing up quotas between who is in the fishery versus allowing new individuals into the fishery.

Associate Member Jones explained that the issue is more complicated than it appears to be at first. She said individuals now in the fishery who have deferred catch in hopes that the stocks will improve need to be considered and rewarded. She said it needs to be looked at in broader terms so the Commission has a plan of action for not just this fishery but also other fisheries as the stocks rebuild and in order to be fair and equitable. She said there was quite a lot to consider.

Jack Travelstead said this has been discussed in the past, allowing younger people into the fishery. He said staff has suggested waiting until the quotas have increased to allow for younger people to enter the fisheries. He said this would be new quota not assigned to anyone and could be divided to include new people. He said this is not going to happen soon but this fishery has shown signs of recovery. He said we could go ahead and look at this before it does happen. He said if there is a strong desire by the Commission to allow someone like Mr. Peele into the fishery, then there is the 17,000 pounds available for a medical exception and the regulation could be amended to allow other exceptions.

Associate Member Jones asked how are other States handling this issue? Jack said they are not doing anything different from Virginia and are struggling with this issue as well.

Associate Member McLeskey moved to hold a public hearing in January to determine whether exceptions, other than medical, can be allowed for this fishery. Associate Member Bowden seconded the motion. The motion carried, 6-0.

Associate Member Garrison asked what poundage it would take to be commercially feasible to get into the fishery? Associate Member Bowden said at 17,000 pounds it would be marginal and would require working in other fisheries to supplement it. Brian Peele said his first year he caught 19,000 pounds and when it is supplemented with other fisheries was an adequate income.

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10. REQUEST FOR PUBLIC HEARING: Establish 2005 commercial bluefish quota.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He said this is just to establish the 2005 commercial quota of 1,253,310 pounds. He said staff is asking that this be advertised for a public hearing at the January meeting.

There were no public comments.

Associate Member Garrison made a motion to go to public hearing to establish the 2005 commercial quota. Associate Member Robins seconded the motion. The motion carried, 6-0.

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11. REQUEST FOR PUBLIC HEARING: Establish 2005 striped bass measures including recreational and commercial quota changes, update monitoring of quota procedures, and enforcement of tag use.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record. He said there are four items for amendment. He explained that staff had talked and decided that there were problems with the current regulation, mainly, there are many reports of anglers taking two or more trips per day because the current language is not clear enough on this restriction. He said the change to the possession limit would be to make it for a 24-hour period and Law Enforcement felt this would help. He said the second change is relating to tag use and the remaining changes are regarding quota monitoring. He stated that there is a need to be tighter on quota monitoring because of the separate quotas. He said staff believes the monitoring needs to be tighter in order to prevent overages. He said staff is requesting advertisement for public hearing in January on these four amendments and the proposed change in quota. He explained that the quota for 2005 needs to be amended to 3,009,854 pounds for the Chesapeake area or 1,504,927 pounds each for the recreational and commercial fisheries.

The following are proposed amendments:

- 1) “It shall be unlawful for any person fishing recreationally to land and retain any striped bass in excess of the possession limit applicable for the area and season being fishes, within the 24-hour period 12:00 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately”.
- 2) “All permitted commercial harvesters of striped shall report to the Commission, in accordance with 4VAC 20-610-10 et seq., all permitted commercial harvesters of striped shall record and report daily striped bass tag use and specify the number of tags used on striped bass harvested in either the Chesapeake area or Coastal area. Daily striped bass tag use on striped bass harvested from either the Chesapeake area or Coastal area, within any month, shall be recorded on forms provided by the Commission and shall accompany the monthly catch report submitted no later than the 5th day of the following month.”
- 3) “Prior to receiving any commercial season’s allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the Commission. Any unused tags that cannot be turned in to the Commission shall be accounted for by the harvester submitting an affidavit to the Commission that explains the disposition of the unused tags that are not able to be turned in to the Commission”.
- 4) “Any buyer permitted to purchase striped bass harvested from Virginia tidal waters shall provide written reports to the Commission of daily purchases and harvest information on forms provided by the Marine Resources Commission (VMRC). Such information shall include the date of purchase, buyer’s and harvester’s striped bass permit numbers and harvester’s Commercial Fisherman Registration License number. In addition, for each different purchase of striped bass harvested from Virginia waters, the buyer shall record the gear type, water area fished, city or county of landing, weight of whole fish, and number, and type of tags (Chesapeake area or Coastal area) that applies to that harvest. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the 5th day of the following month. In addition, during the month of December, each permitted buyer shall call the VMRC Interactive Voice Recording System, on a daily basis, to report his name and permit number, date, pounds of Chesapeake area striped bass purchased and pounds of coastal are striped bass purchased.”

Associate Member McLeskey, acting chair at this time, asked for questions for staff.

Associate Members Schick said that the staff is currently collecting information on number of tags landed and total weight of the fish and that collecting unused tags will help to double check. Mr. O’Reilly said this would help them to balance the books on tags.

Associate Member Bowden said it needed to be added in the regulation that in case an overage has to be paid back, the people who exceeded their allotment would pay it back

based on the percentage exceeded. He said it was unfair to close the fishery for those who did not go over. Mr. O'Reilly stated this would be feasible at some point if looking at a weight quota, but it would need to be discussed by the Committee. He said this would alter the regulation substantially and needs a lot of thinking. He stressed this was just his opinion.

Commissioner Pruitt asked if this should go the committee that Mr. Bowden and Dr. Jones co-chair. Associate Member Garrison said this should be taken to the committee. It was the general consensus to have the committee look into Mr. Bowden's recommendation.

Associate Member McLeskey asked how this possession limit change would affect the charter boats. Mr. O'Reilly said this would not affect them.

Associate Member Garrison moved to take the matter to public hearing in January to discuss amendments that would allow better quota monitoring of this fishery and better adherence to the recreational possession limit. Associate Member Robins seconded the motion. The motion carried, 6-0.

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12. PUBLIC HEARING: Industry flounder request

Lewis Gillingham, Fisheries Management Planner, gave the presentation and his comments are a part of the verbatim record. He said staff has advertised industry's requests that were presented at last month's Commission meeting. He said that no comments, pro or con, have been received. He explained that industry justified these requests due to higher fuel costs and a larger possession limit of summer flounder will result in a more profitable trip. He said the quota will increase for 2005 and a further increase is proposed for 2006. He said any overages or underages in the first 3 quarters would be recovered in the fourth quarter.

The following are the modifications requested by industry:

- 1) Increase the first quarter possession limit from 7,500 pounds to 12, 500 pounds
- 2) Increase the second quarter possession limit from 2,500 pounds to 5,000 pounds
- 3) Open the first quarter the last Monday in January instead of the first Monday in February.

Commissioner Pruitt opened the hearing to the public.

Bob Pride was present and his comments are a part of the verbatim record. He said there is a potential here that if the increased harvest in the first quarter was approved it could impact the recreational fishery substantially.

Associate Member Robins pointed out to Mr. Gillingham a discrepancy in the staff recommendation and the industry request regarding the starting date of the first quarter. He said the industry requests the 4th Monday in January as the start date and that is not the last Monday of the month as staff recommended. Mr. Gillingham said he had misunderstood industry's request and he was in error. Mr. Robins said to answer Mr. Pride's question, does this increased quota in the first quarter cause problems for the recreational fishery? Mr. Gillingham said no because these are two separate fisheries and are handled separately.

Associate Member Robins declared a business relationship with a summer flounder business, which he does not get any benefit from financially and explained that he would be able to look at this issue objectively and fairly in the public's interest. He said that he has had calls from both sides, which included the same information as presented at this meeting.

Associate Member Robins moved to approve the industry requests, for higher commercial possession limits for the first and second quarters and to make the starting date the 4th Monday of January in Quarter 1 of 2005. Associate Member Bowden seconded the motion. The motion carried, 6-0.

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13. PUBLIC HEARING: License fee increases

Jack Travelstead, Chief, Fisheries Management gave a report to the Commission as requested at a previous meeting. His comments are a part of the verbatim record.

Jack Travelstead, Chief, Fisheries Management, said this is a preliminary hearing to increase licenses fees for all recreational and commercial licenses and to add new fees for permits that are currently free of charge. He said the only written comments were received from John Forest and the other is a list of the various permits that we issue for various activities and the number issued this year just to give you an idea of how many there are. He said that behind the evaluation there is a table that lists all the commercial and recreational licenses issued by the Commission. He said a lot of these have not been changed since 1979 and some since 1993 when the Commercial Registration License started. He said the second table shows the new revenue that would be collected if we raise the license fees the maximum allowed. He said the Roundtable Committee suggested a \$25.00 fee for all the permits that were previously issued for no charge.

Associate Member Garrison asked if we make these changes are there plans for this increased funding for making changes in the agency. Commissioner Pruitt said that in Law Enforcement there were already new positions in the works but each of the other divisions needs more manpower, which are core, not new positions. Mr. Travelstead said that any revenue resulting from the increased fees are placed in certain accounts in accordance with the Code to be used for the purposes established for them. Commissioner Pruitt explained that even doing this is not going to give the Commission their in-house needs immediately.

Commissioner Pruitt opened the hearing to the public.

Kelly Place, representing CCA and numerous Watermen Associations, was present and his comments are a part of the verbatim record. He said he supported the increase in fees, but he and the others were concerned about how this will be handled and want 1/3 of the commercial funds be used in a fund to be administered by the various Waterman Association Presidents. He explained that he understands that the Commercial Board has been suspended as all funds collected are used for administrative costs. He said they want the commercial watermen to have input into how these new revenues are utilized.

Tom Powers was present and his comments are a part of the verbatim record. Mr. Powers read the following comments into the record:

“I was a member of the license round table. We reviewed the programs and funding needs of the agency as well as the programs that have been historically been funded by the Saltwater Recreational Fishing Development and the Marine Fishing Improvement Funds. My impression of the results of those meetings is the following:

- 1) The agency budget exceeds the funds available were the license fees increased by a factor of five to ten, thus it should continue to be funded by the General Fund.
- 2) The mandatory reporting program, research, habitat improvement, access, education and enforcement projects, which are currently supported by the license fees are worthy projects that should continue to be funded.
- 3) There is a legitimate need for increased revenue for both funds.
- 4) It is important that any fee increases not be used to supplant general funds supplied to the agency.
- 5) Any fee increases should be equitable between the user groups.
- 6) The 24% commercial fee increase structure that was proposed in the round table report was a compromise because we did not have the time nor did all the members

have the desire to review the fee structure on a license by license basis and to compare them to the programmatic needs.

I supported the legislation that enables this Commission to raise the license fees as well as to create new permit fees for specific agency services and programs. I still support these concepts, just so long as the increases go to the respective funds and are not used to provide general operating funds to the agency. That being said, I do feel that the agency should be able to tap the funds for worthy projects that last a finite period of time.

On the recreational increases, it is my opinion that the maximum allowed fee increases of \$5.00 or 25% should be applied to the all of the recreational fees with the exception with the exception of the 10-day license, which should remain at \$5.00 s as to continue to encourage tourism an the \$29.00 crab pot license which is already excessive for a 5-pot license. By my calculations that should provide about \$750,000 of increased funds for worthy projects that go through public review process of the Recreational Fishing Advisory Board.

On the commercial fee increases, it is my opinion caution should be taken. Once the fees are increased the CPI baseline will be reset and future increases will be severely limited. I feel that the Commission should thoroughly review the programmatic needs such as a crab pot-tagging program or the weight based ITQ for the striped bass fishery, determine those costs, make a decision to implement the programs, or not, then review or have a Committee review the specific fee increases with goal of funding these new programs as well as to provide an additional \$300,000 to \$500,000 annual which would be used to address such programs such as research, education, the increased costs of the mandatory reporting program as well as general improvements to the marine resources and commercial fisheries as allowed in state code and as managed by the Commercial Fishing Advisory Board.”

Doug Jenkins, Twin Rivers Watermen Associations, was present and his comments are a part of the verbatim record. He said he hopes the Commission would keep the increases at a minimum and set up a committee of Watermen Association Presidents to administer these funds. He said that they want to use these funds to benefit the watermen and help them counteract the effects of fish advisories issued by agencies such as the Health Department.

Bob Pride, representing CCA, was present and his comments are a part of the verbatim record. He said that they have e-mailed their comments but there have been problems and no one at VMRC had received any of these e-mails. He said that the CCA of VA supported the house bill (HB 1024) that gave the VMRC the authority to raise license fees. He said it was done this way because the legislators did not want to deal with the complexity of this type of issue. He said that they wanted some of these funds to go for research. He stated that they felt the appropriate boards should administer these funds. He said that the Commission should get their long-term plans out to the public to

eliminate the suspicions of the license money replacing general funds. He said there would be more of the public to support this increase if they know what is planned. He said that this increase in commercial license fees would probably put some of the watermen out of the business. He explained that at the present only about 800 of the licensed commercial watermen are active in the fisheries and over 2,200 license holders report little or no landings.

Russell Gaskins, representing himself, was present and his comments are a part of the verbatim record. He said that everyone that he talks to says the license fees need to go up a little bit, but they do not want the Commercial Fisherman Registration License to go up any more and want it kept at \$150.00. He said the \$150.00 is a burden on a lot of watermen now and should not be increased.

Carol Wilson, representing the Virginia Charter Boat Association, was present and his comments are a part of the verbatim record. He said the fees now, they do not get any benefit from and they should if they have to pay it. He said putting a fee on the Charter Boat permit would be just another burden for them.

Commissioner Pruitt established a subcommittee comprised of Associate Members McLeskey and Robins as Co-Chairmen, staff (Jane McCroskey, Jack Travelstead, Rob O'Reilly or Roy Insley), and representatives of the commercial and recreational industries (Bob Pride, Doug Jenkins, and the President of the Charter Boat Association) to review all issues and report to the Commission. No further action was taken.

Associate Member Robins said this is a very complex issue and effects so many that it is very important that the Commission hear from all stakeholders.

Associate Member Bowden said he and Mr. Holland had plans to get with their legislators at this 2005 session to discuss funding and support for the resources. He said everyone present that spoke at this meeting should do the same. He continued by saying that it is clear the fee increases are not going to be enough to do what needs to be done.

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14. REQUEST FOR PUBLIC HEARING: 2005 Scup measures

Joe Cimino, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record. He said that staff is recommending adoption of the Emergency Regulation. He said that there has been a change in the Winter I trip limit, the possession limit will start on Sunday, January 2, 2005 and the trip limit is going to 30,000 pounds for a two week landing limit. He said staff was requesting approval to advertise for a January public hearing.

Commissioner Pruitt asked for comments from the public. There were no public comments. He expressed his concern in getting this emergency regulation out in a timely manner.

Jack Travelstead said that the emergency regulation could be made effective January 2nd and the hearing would be held at the January meeting.

Associate Member Garrison moved to adopt the emergency regulation and to change the amount and allowable landing time, for the Winter I commercial scup fishery; and, to have a public hearing regarding this matter at the January meeting. Associate Member Robins seconded the motion. The motion carried, 6-0.

Associate Member Garrison left at this point for the rest of the meeting.

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BERNARD GREEN, requested reinstatement of striped bass tags for 2005.

Ellen Cosby, Fisheries Management Planner, explained that Mr. Bernard has a problem reading and did not know that he had to actually transfer the tags with the Commercial Registration License when he transferred it to someone else in early 2004. She explained further that Law Enforcement had confiscated these tags. She said that Mr. Bernard had stored the tags in his brother's truck and his brother had since passed away. She said that he had had somewhat of a bad year. She said that the individual who had gotten his card had taken a land job and was going to transfer it back to Mr. Bernard. She stated that the tags were essentially lost and he was requesting the Commission to reinstate the striped bass tags to him for 2005. Her comments are a part of the verbatim record.

Commissioner Pruitt said that if there was no problem from Law Enforcement, he felt this matter could be taken care of administratively.

Col. Steve Bowman asked if a ticket was issued and who had the tags. It was established that no summons were issued and the Gloucester Sheriff's Department had taken the tags.

No further action was taken. A ten-minute recess was taken.

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CONFLICT OF INTEREST ACT/PROCUREMENT ACT TRAINING

Carl Josephson explained that this training was mandatory because it was new. He said that there is a DVD to show them. He said that the General Assembly had amended the Conflicts Act this past year and required semi-annual training provided by the agency for every official that has to file a disclosure statement. He said it is an hour and 15 minutes

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presentation and it all has to be shown, as this is a contracting agency. He said everyone hearing this today has to sign a certification that they saw it. The video presentation was shown to those present. Associate Member Garrison left before the presentation. Associate Members Cowart and Holland were both absent.

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There was no further business, the meeting adjourned at approximately 3:15 p.m. The next meeting will be Tuesday, January 25, 2005.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary