

## MINUTES

**Commission Meeting****May 26, 2009**

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 )	
William E. Laine )	
John R. McConaugha )	Associate Members
Richard B. Robins, Jr. )	
J. Kyle Schick )	
John E. Tankard, III )	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Michele Guilford	Acting Recording Secretary
Linda Hancock	Manager, Human Resources
Jane McCroskey	Chief, Admin/Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Alicia Nelson	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt., Manager, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Chris Williams	Fisheries Mgmt. Technician
Lewis Gillingham	Head, Saltwater Fishing Tournament
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Tim Litz	Marine Police Officer
Javier Arce	Marine Police Officer

Commission Meeting

Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Dan Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Tech.

Virginia Institute of Marine Science (VIMS)

Lyle Varnell	Roger Mann	Rom Lipcius
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Other present included:

Chris Boynton	Chris Turner	Jason Schaffler	Keith Lockwood
Mike Mundy	Rebecca Francese	Joseph Scott	Richard Wineland
Ryan Tibbs	Becky Kubin	Gregg Williams	Lucy Whittew
Brandon Hatfield	John Wyatt	G. G. Crump	Roy Insley
Pete Brunk	Joe Couch	Ellis W. James	Butch Wygans
Beth Fenwick	Michael Avery	Scott Harper	LeeAnne Washington
Jim Princefield	Jack Reynolds	Ken Smith	Robert Hollowell
Steve Wray	John Tubbs	Frank Kearney	Peter N. Aon
Lindsey Roberts	Harry Doernte	Don Honeycutt	Karl Vandegrift
Chuck Churn	Tom Walker	Pete Terry	Patty J. S.

and others.

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Commissioner Bowman called the meeting to order at approximately 9:30 a.m. He announced that a quorum was present.

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

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**APPROVAL OF AGENDA:** Commissioner Bowman asked for any changes to the agenda.

Bob Grabb, Chief, Habitat Management, stated that Ms. Mary Hill had asked staff to request a continuance for her application for an oyster ground lease until the June 23, 2009 Commission meeting. He explained that Ms. Hill’s attorney had been offered a judicial position and would not be able to represent her in this case. He said that staff recommended that a continuance be granted for two months, until the July Commission meeting and that it be stipulated that this would be the last continuance that would be granted and the hearing would proceed even if she were not present.

Commissioner Bowman asked for a motion to approve the amended agenda. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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**MINUTES:** Commissioner Bowman asked for a motion for the approval of the April 28, 2009, if there were no changes or corrections. **Carl Josephson noted that near the bottom of page 24 he made comments for items 11 and 12 concerning the Commission approval of the terms and conditions of the deeds and the word ‘times’ should be changed to ‘terms’. Associate Member Holland moved to approve the minutes, as corrected. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

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Commissioner Bowman swore in the rest of the VMRC staff 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, summarized the nine page two items, 2A through 2I, for the Commission.

Commissioner Bowman opened the public hearing. There were no public comments. The public hearing was closed. He asked for a motion from the Board.

**Associate Member Tankard moved to approve items 2A through 2I. Associate Member Robins seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Commission Meeting

2A. COASTAL PRECAST SYSTEMS, #09-0391, requests authorization to dredge 7,875 cubic yards of new material, with 4,000 cubic yards of future maintenance dredging, as needed, to create berthing areas possessing maximum depths of minus five (-5), minus twelve (-12), and minus fifteen (-15) feet at mean low water, and install three (3) 13-pile cluster mooring dolphins adjacent to their commercial barge loading facility on the Southern Branch of the Elizabeth River at 1320 Yacht Drive in Chesapeake. All dredged material will be transported to and disposed of within the Craney Island Rehandling Basin. Recommend standard dredging conditions and a royalty in the amount of \$3,543.75 for the new dredging of 7,875 cubic yards of material at a rate of \$0.45 per cubic yard.

Royalty Fees (7,875 cu. yds. @ \$0.45/cu. yd.).....	\$3,543.75
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,643.75

2B. MARINE CORPS BASE QUANTICO, #08-2224, requests authorization to construct 100 linear feet of rip-rap revetment extending a maximum of 10-feet channelward of mean low water to support a shotcrete bank stabilization barrier adjacent to the Marine Corps Base Quantico in Chapowamsic Creek in Stafford County.

Permit Fee.....	\$ 100.00
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2C. MARINE CORPS BASE QUANTICO, #09-0119, requests authorization to construct a 125-foot long by 50-foot wide clear span bridge for the expansion of Russell Road and to install new water and telecommunication utilities crossing approximately 35-feet of Chapowamsic Creek in Stafford and Prince William Counties. The utility lines will be installed by directional bore method and buried a minimum of 4-feet beneath the streambed.

Permit Fee.....	\$ 100.00
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2D. VIRGINIA ELECTRIC & POWER COMPANY, #08-1688, requests authorization to modify their previously issued permit to replace an existing aerial 230 kV and 500 kV electric lines, the two (2) additional stream crossings are over 60 linear feet of Town Run in Fauquier County. Staff recommends an additional royalty of \$540.00 be assessed for the additional encroachment over State-owned subaqueous bottom at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 180 lin. ft. @	
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\$3.00/linear feet).....	\$ 540.00
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**2E. BUCHANAN COUNTY PUBLIC SERVICE AUTHORITY, #09-0422,** requests authorization to install an aerial water line across 81 linear feet of stream channel and a submerged water line beneath 241 linear feet of stream channel to facilitate construction of the Hurley Regional Water Project – Phase II in Buchanan County. Recommend approval with VMRC standard instream permit conditions and an agreement to conduct any necessary mussel and fish surveys/relocations and adhere to any instream work time-of- year restrictions as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$ 100.00
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**2F. BUCHANAN COUNTY PUBLIC SERVICE AUTHORITY, #09-0425,** requests authorization to install a submerged water line beneath a total of 399 linear feet of stream channel, at nine locations, to facilitate construction of the Haysi to Big A - Phase III Water Project in Buchanan County. Recommend approval with VMRC standard instream permit conditions and an agreement to conduct any necessary mussel and fish surveys/relocations and adhere to any instream work time-of- year restrictions as recommended by the Department of Game and Inland Fisheries.

Permit Fee.....	\$ 100.00
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**2G. CITY VIEW TWO, L.L.C./CITY OF VIRGINIA BEACH, #07-0645,** requests authorization to construct a bridge over Thalia Creek that will extend Constitution Drive and connect it to Bonney Road in Virginia Beach. The proposed bridge will completely span an approximate 90-foot by 35-foot section of the creek and will involve no in-water construction. The bottom of the bridge will maintain a minimum vertical clearance of 3 feet above mean high water. The applicant also seeks authorization to install an 8-inch water line by directionally drilling under an approximate 230-foot section of Thalia Creek directly adjacent to the new bridge. The proposed water line will remain a minimum of 15 feet below the creek bottom.

Permit Fee.....	\$ 100.00
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**2H. DEPARTMENT OF THE NAVY, #09-0389,** requests authorization to install approximately 2,200 linear feet of steel sheet pile bulkheads, aligned two feet channelward of existing deteriorated bulkheads; to include concrete caps, concrete-pile fender system and installation of approximately 550 linear feet of riprap scour protection at the base of the bulkheads, and the extension of all existing outfalls and utilities through the proposed bulkheads, all of which will be

located along the existing W305 and W306 bulkheads between Piers 7 and 11 at Naval Station Norfolk, situated along Hampton Roads in the City of Norfolk.

Permit Fee.....	\$ 100.00
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- 2I. CITY OF CHESAPEAKE, #09-0432,** requests authorization to replace the existing two-lane Saint Brides Bridge with a new, double-box culvert bridge, including wing walls and riprap slope protection, and involving 280 cubic yards of streambed excavation in an unnamed tributary to the Northwest River west of Battlefield Boulevard in Chesapeake. Recommend approval with our standard instream work conditions.

Permit Fee.....	\$ 100.00
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- 3. CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board). There were no consent items.

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- 4. CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.**

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

Agenda Item 6, Corps of Engineers/City of Virginia Beach  
Civil Charges for Mr. Holloway

**Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.**

**Associate Member Robins moved for the following:**

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

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

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

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

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

**AYES: Bowden, Bowman, Fox, Holland, Laine, McConaugha, Robins, Schick, and Tankard.**

**NAYS: NONE**

**ABSENT DURING VOTE: NONE**

**ABSENT DURING ALL OR PART OF CLOSED MEETING: NONE**

**The motion carried, 9-0. The Chair voted yes.**

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**Michele Guilford, Acting Recording Secretary**

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5. **RICHARD WINELAND, #09-0132.** Appeal of the March 12, 2009, decision by the Lancaster County Wetlands Board to deny his request to install 250 linear feet of quarry stone riprap revetment along his shoreline on Taylor Creek at 711 Peake Road in Lancaster County.

Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward stated that he had some orientation slides to show the Board to help them in understanding the location of the project and felt that they did need to open the record to view them, which was allowed.

Mr. Woodward explained that the project was to be located on a cove-section of shoreline on Taylor Creek, tributary of the Corrotoman River, approximately 3 miles from the confluence of the Rappahannock River in Lancaster County. The property consisted of a point with riprap, groins, and a low sill along the shoreline, as well as, the un-armored cove section in question.

Mr. Woodward further explained that Dr. Wineland's application included nourishment of an existing sand beach, armoring an existing stone groin, installing two (2) 25-foot long return sections at an existing revetment, a gravel boat ramp and the new, 250-foot long section of revetment. All of the proposed work was approved by the Board except the new revetment and the ramp.

Mr. Woodward said that Dr. Wineland's letter of appeal was received on March 23, 2009. As a result, his appeal was considered timely under the provisions of Section 28.2-1411 of the Code of Virginia. In his letter, Dr. Wineland stated that the Board's decision to deny the 250-foot revetment had prejudiced his rights as an applicant because the findings and decision were unsupported by the evidence on the record considered as a whole and were arbitrary, capricious and an abuse of discretion. His letter stated there was a visible undercutting of the bank, with exposed root systems and downed trees indicated erosion at the site. He disagreed with the comment by the Board member who made the motion to deny the revetment that there was "no active, detrimental erosion" occurring there. He also stated that there was very little discussion regarding denial of the revetment, or consideration of modifying the revetment before it was put to a vote. He stated that his agent felt that proper consideration was not given to the current state of the shoreline by the Board members before it was put to a vote. Furthermore, he believed that the design of the revetment minimized environmental impacts while offering cost-effective protection for his property.

Mr. Woodward stated that the Lancaster County Wetlands Board held their hearing on March 12, 2009. Mr. Joey Scott of the Salt and the Earth, Inc. as an agent represented Dr. Wineland. At the beginning of the hearing, the VIMS shoreline permit application report was read into the record. The VIMS report was apparently based solely on a desktop review without the benefit of an on-site inspection. The report indicated that the area of the proposed revetment was not at risk from erosion, and was indicative of low energy conditions. According to VIMS, the preferred approach was for the applicant to grade any unstable bank areas, deposit sand, plant marsh grass, and trim the overhanging tree limbs rather than install a revetment. Wayne Cannon a Wetlands Board member began the discussion and asked Mr. Scott about the planting vegetation in the beach area. He also stated that he had not noticed any active erosion above the mean high water line that would warrant a riprap revetment on the cove side of the property, nor did he feel a gravel ramp was necessary since the homeowner already had space for dockage. Mr. Scott responded by stating that it was the wave action from the boats that was the major concern and that this portion of the shoreline did not have direct sunlight all day and therefore it might not be feasible to plant vegetation

Mr. Woodward said that additional discussion of the potential for planting wetland vegetation and the need for the ramp followed, with Mr. Scott stating that the 250-foot revetment was proposed in an area where two large oak trees were down and there were other trees the homeowner wanted to take out. A discussion of the ramp portion of the project followed. Mr. Brian Barnes, staff to the Board, stated that according to the County's zoning ordinance, private boat ramps were a by-right use, but that the Bay Act would have the final say regarding approval of the ramp by the County.

Mr. Woodward explained that at the conclusion of the discussion, Mr. Cannon made a motion to deny the 250-foot section of riprap revetment and the gravel ramp, but to approve the remainder of the application, to include the two 25-foot riprap returns, the re-armoring of the existing groin, and the beach nourishment. Ms. Marsha Sitnik a Wetlands Board Member seconded the motion, which passed unanimously (5-0).

Mr. Woodward stated that VMRC staff was present at the March 12, 2009, Lancaster County Wetlands Board public hearing. Based on that attendance, and staff's review of the record as provided by the Board, staff could not agree that the Board acted in a manner that prejudiced Mr. Wineland's rights as an applicant or that their findings and decision were unsupported by the evidence on the record, considered as a whole. Staff also did not believe the Board's decision was arbitrary, capricious or an abuse of discretion.

Mr. Woodward said that as they did with all wetland applications they considered, the Board members had all gone to the site to look at the proposal prior to the hearing. They each observed first hand the condition of the shoreline at the site of the propose revetment and boat ramp. Although VIMS personnel never conducted a field inspection of the site, the report they provided to the Board conveyed their conclusion that there was no active, detrimental erosion occurring at the site. In staff's opinion, there was substantial discussion of the proposed revetment, as well as the boat ramp. While there certainly might have been design modifications that could have made the project more favorable to the Board, none were offered by the applicant's agent at the time of the hearing.

Mr. Woodward stated that as a result, based on staff's review of the record, and finding no procedural error, staff believed the Lancaster County Wetlands Board decision did not substantially prejudice the rights of the applicant, nor was their decision to deny the 250-foot revetment and the gravel boat ramp arbitrary, capricious or constitute an abuse of their discretion. Accordingly, staff recommended that the Commission uphold the Board's decision in this matter. Under the provisions of the Wetlands Zoning Ordinance the applicant was entitled to reapply in modified form.

Commissioner Bowman asked for questions of staff. Associate Member Schick said that the Board did not feel he needed a ramp as well as a boat slip and lift. Mr. Woodward said that was correct, they felt the boat slip and lift met his needs for accessing the water.

Associate Member Fox asked about the nearest public ramp. Mr. Woodward said there was a larger one at Yankee Pt. and a smaller one in Carter's Creek. He said Yankee Pt. was about 5 miles by road. Associate Member Fox stated that it would be quite a distance from Yankee Point. Mr. Woodward agreed that it would be by water but not by roadway.

Associate Member Robins stated that the appellant was concerned that no other options were discussed, but he felt there had been from what the VIMS Report said and the transcript. He said that they had discussed a living shoreline option. Mr. Woodward stated that was correct, they did not discuss other designs but they did discuss other approaches such as a living shoreline. He said the appellant's agent did not feel the living shoreline would work better than what was proposed.

Commissioner Bowman asked if the applicant or his representative wished to comment.

Joseph Scott, agent for the applicant, was sworn and his comments are a part of the verbatim record. Mr. Scott noted that he had been at the Wetlands Board hearing representing Dr. Wineland who did not attend. He said that Dr. Wineland was present at this hearing. He reviewed his business background and how he operates for these types of projects. He said he felt it was important to have these citizen boards to protect the wetlands and properties, but the members not being of a scientific background rely on the scientific advice of the Virginia Institute of Marine Science. He said that as staff stated that because of various budget cutbacks, the site reviews by VIMS were now done by remote means. He said as a result of this method it seemed to have become a cut and paste recommendation with talk of the living shoreline approach. He said he felt that in Dr. Wineland's case the Wetlands Board had acted in haste and not in their usual manner; and there were other options discussed, which is in the record, but there was no opportunity to maybe table the matter until a modification could be proposed for the revetment. He said Dr. Wineland had owned the property for about 30 years and had done some erosion control projects on an as-needed basis. He said the revetments had been used in other areas, but not in this particular area. He said that Dr. Wineland felt that the creek was a hotspot for boating, jet skis and such and he had felt that the wakes from this activity had caused the erosion problems in this area.

Mr. Scott explained that they had photographs that had not been presented at the Wetlands Board meeting that they felt showed the erosion problems. He said he guessed they were asking that the record be opened. He said that there had been similar projects approved by the Wetlands Board before and since this application.

Commissioner Bowman referred and read from Section 28.2-1313 of the Code of Virginia which sets forth what the Commission had to do and that was to look at the same things as the Wetlands Board did.

Commissioner Bowman asked if Dr. Wineland wished to make comments. Mr. Woodward reminded the Commissioner that Dr. Wineland had not attended the Wetlands Board hearing.

Dr. Richard Wineland, applicant, was sworn in and his comments are a part of the verbatim record. Dr. Wineland explained that he had owned the property for 25 years and it had been in his family for 30 years. He explained that there were trees that had fell because the shoreline had eroded about 7 to 8 feet. He said he did what he had to do and that was to apply for a wetlands permit. He said that there was a drainage field about 35 feet from the cove. He said he had applied for putting in riprap along the shoreline. He said the trees were down and he could see an undercutting occurring along the bank. He said he had asked his agent if it was necessary for him to be present at the Wetlands Board meeting and was told this was a pretty standard request that the Board had approved in previous cases. He said he had spoken with a board member who was not at the site at low tide and he indicated he felt that if he had he would have seen the erosion problem. He said he was told the board members felt that the VIMS directive tied their hands. He said he spoke with the Chairman who said he hoped it would be remanded so they could correct their error.

Commissioner Bowman stated that any more comments by Dr. Wineland might require that the Commission open the record. He asked if a representative from the Wetlands Board was present who wished to comment.

Brian Barnes, the Wetlands Board Environmental Compliance Officer, was sworn and his comments are a part of the verbatim record. Mr. Barnes explained that he was the Wetlands Board staff person, who gathered the evidence and information and made a presentation to the Board. He said he would answer any questions from the Commission.

Commissioner Bowman asked Mr. Barnes if some of the Wetlands Board members were willing to rehear this application for permit in a modified state.

Mr. Barnes responded that some of the members do feel that upon further review it would be more apparent that there was a serious erosion problem because the cove area was narrow and shallow and when considering the proximity of the draining fields. He said they felt that this could change the results of the hearing.

Commissioner Bowman stated that arbitrary was not always a negative and in this case it could be just one opinion versus another.

Associate Member Tankard referred to 28.2-1313 of the Code where it states, "...unsupported by evidence..." and stated that since the Wetlands Board members had made site visits separately they never seemed to have considered what they had all observed.

Mr. Barnes stated that these matters were handled on a case by case basis as there were differences from one site to another. He said if some information changed it might change some of their ideas.

Commissioner Bowman asked for comments from the Board.

Associate Member Tankard said he felt the decision was unsupported by evidence and had not been seen the same by the Wetlands Board members. Associate Member Schick said that also the applicant was not present so that a modification was not apparent and this case might have been tabled to consider it.

Associate Member Holland asked if the Chairman was ready for a motion. Commissioner Bowman responded yes.

**Associate Member Holland moved to remand the case back to the Wetlands Board for the reasons discussed. Associate Member Schick seconded the motion. He noted that all individuals involved could use another look at this matter. Associate Member Tankard referenced Section 28.2-1313 of the Code and said that it could be remanded. The motion carried, 8-1. Associate Member Robins voted no.**

Commissioner Bowman stated that this was no reflection on the Wetlands Board and he agreed with Associate Member Schick that it needed to be looked at again by all parties.

Wetlands Appeal – Remanded pursuant to Section 28.2-1313 of the Code of Virginia.

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- 6. U.S. ARMY CORPS OF ENGINEERS/CITY OF VIRGINIA BEACH, #09-0427**, request authorization to nourish the Cape Henry beach area of Virginia Beach with approximately 250,000 cubic yards (per cycle) of beach quality sand to be maintenance dredged from the Lynnhaven Inlet Federal Navigation Channel.

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

Mr. Worrell explained that the Corps of Engineers typically dredges the Lynnhaven Inlet Federal Channel about every three years. The last two dredging cycles occurred in the fall of 2002 and the summer of 2006. Dredging for this specific cycle was proposed to begin in July of 2009. In the past the sand had been hydraulically pumped directly to the west of the Inlet, onto the Ocean Park Beach, which was congressionally authorized to receive the dredged sand from the periodic maintenance dredging activities. In this instance, the Corps and City proposed to pump sand onto a section of the Cape Henry Beach, which was east of the Inlet, situated along the Chesapeake Bay between First Landing State Park (eastern limit) and Jade Street (western limit).

Mr. Worrell stated that the Commission authorization was not required for either the dredging of the designated federal project channel or the placement of the sand along the Ocean Park Beach. Nourishing the Cape Henry Beach in an attempt to widen the beach beyond the existing mean low water mark, however, did require a Commission permit since it was not part of the congressional authorization.

Mr. Worrell said that along the Cape Henry Beach area there were publically and privately owned parcels that extended down to the water. A mean low water (MLW) survey was conducted by the City during the week of April 13-17, 2009. As with any property situated along the tidal waters of the Commonwealth, MLW established the boundary line that separated the City's and private property from the Commonwealth's submerged-land. In this case, however, according to the plans submitted by the City, platted parcels (both City and privately owned) in certain locations along the beach were shown to extend out into the Bay channelward of MLW. In fact, several whole parcels were shown to be located in the Bay channelward of MLW.

Mr. Worrell stated that the City maintained that they had a prescriptive easement over all existing private beach parcels that allowed access for police and maintenance activities and that easement allowed them to act as the *applicant* for a beach nourishment request. The City had also apparently acquired a few of the parcels that were on the beach outright. Several of the privately owned parcels that were between the Inlet and the Jade Street right-of-way had legally challenged the City's position that an easement existed over their beach property that would allow public activities, such as nourishment. While the City had initiated condemnation proceedings, they had elected to remove that portion of the shoreline (from Jade Street to the Inlet) from the current nourishment proposal.

Mr. Worrell said that to date, staff had not received any outright objections to the project. Staff had, however, received four e-mails from property owners in the area that was removed complaining that they were now not included in the nourishment plans. It was also evident from some of the other comments that staff had received that some of the private landowners that were benefitting from the nourishment had not entirely relinquished prospective claims to the property being created.

Mr. Worrell explained that the Virginia Institute of Marine Science report expressed no opposition to the proposal. The U.S. Coast Guard had no objections other than asking the applicants to contact them three weeks prior to initiating any dredge activities. The Department of Conservation and Recreation had no objections to the project. Finally, a local Wetlands Board dune and beach permit was not necessary since sand replenishment activities by a local government were exempt from permitting requirements.

Mr. Worrell said that the dredging of the federal project channel was a necessary undertaking, and use of the dredged quantities of beach quality sand for beach nourishment was both a logical and beneficial activity for the City of Virginia Beach. That dredging would occur regardless of where the resulting dredged material was placed.

In general, staff had no objection with the nourishment concept. As a matter of fact, §10.1-704 of the Code of Virginia states that the beaches of the Commonwealth shall be given priority to receive beach quality sand for nourishment, as a result of dredging activities. In the past, staff had consistently recommended, and the Commission had required, that nourishment from dredging activities occur to benefit and protect the public beaches.

Mr. Worrell stated that complicated legal and property rights issues arise, however, when proposed government sponsored nourishment appeared to benefit privately owned parcels. Admittedly, the City had apparently been working to address some of these legal issues for years. The current application, however, was only received by VMRC on April 6, 2009. Although it appeared the City might own a majority of the parcels that extended down to the MLW mark, there were some private parcels that would undoubtedly grow seaward as a result of the nourishment activities. The City maintained that no matter how far channelward the beach “grows,” their prescriptive easement would grow with it. This they believed would allow them to continually limit and control beach activities while normal maintenance activities occur. While that may be true, an easement alone did not address the question of fee simple ownership of the real property that would be created.

Mr. Worrell also stated that since the beach would be extended channelward of MLW, as a result of the nourishment activity itself, and not through natural accretion, staff did not believe that the existing property boundaries would shift. This was in keeping with the law and previous Supreme Court decisions. Regardless of the public-private boundary line, staff did believe it was appropriate and necessary for the City to manage and police the created beach area. Staff questioned, however, whether private property owners can grant, or the City can legally accept or extend their existing easement or a future easement, over what was presently or would become State-owned upland property, i.e. that real property which would arise channelward of the April 2009 surveyed MLW line.

Mr. Worrell said that perhaps the biggest concern, however, was the potential perception of the current private upland property owners that “my property” was now enlarged, restored, or re-established to what might have been the previously platted and recorded parcel dimensions that extended channelward of MLW. This sort of confusion would guarantee future legal wrangling regarding property sizes, boundaries, and even riparian rights issues, as the fill itself would seem to effectively serve to sever whatever riparian rights the current upland property owners might enjoy. Such arguments, and the potential of legal suits, could easily entangle the Commission and Commonwealth.

Mr. Worrell explained that in light of the existing property issues, staff recommended the Commission consider conditionally permitting the nourishment only if the City of Virginia Beach and all other private riparian property owners acknowledged and agreed that all parcel boundary lines that were currently shown channelward of the MLW mark as depicted on the April 2009 survey were null and void. The location of the mean low water survey line should be permanently recorded on the City’s tax maps and on all

affected property plats. While this action would not necessarily preclude or prevent any future private claims to the “increased” beach property generated from the proceeds of governmentally sponsored beach nourishment, it might certainly bolster the Commonwealth’s legal position in Court. It would also put any future property owner on notice of the Commonwealth’s claim at the time of purchase or property transfer. This action should also negate the City from having to extend its existing easement channelward of the surveyed MLW mark.

Mr. Worrell also explained that if the City could not verify that all legal issues had been addressed or resolved and that all channelward extensions of boundary lines had been nullified or abandoned before nourishment was set to occur, staff would recommend that nourishment for the Cape Henry Beach area not be permitted for this dredge cycle. Nourishment would then continue to be along the Ocean Park Beach area as it had in the past. Although unfortunate, this delay would preserve the Commission’s public trust responsibilities and afford the City with additional time in which to further examine and address the legal issues regarding potential nourishment projects along the Cape Henry Beach.

Mr. Worrell stated that there had been numerous calls recently between the City and VMRC’s counsel and it was his understanding that the City will present a solution to the concerns of the Commission as far as maintaining the State’s ownership of the subaqueous bottom that would be filled channelward. He suggested that it be stipulated that staff would have the opportunity to review the documentation.

Keith Lockwood, representing the Corps was sworn in and his comments are a part of the verbatim record. Mr. Lockwood stated that he would be brief and make two points. He said the purpose of the dredging project was to provide safe navigation and it was reasonable to put the nourishment at Cape Henry as the opportunity existed now, as they only dredge the channel every three years. He said if this was not done and a storm should hit the area it would allow the infrastructure to be damaged.

Chris Boynton, attorney for the City of Virginia Beach was present and his comments are a part of the verbatim record. Mr. Boynton explained the west side was not on the application and for the east side they had all documents regarding the easements which are a part of the deeds. He said the easement document said that the areas were not to be used in any way. He explained that the City had agreed to have an agreement with the Commonwealth regarding the subaqueous bottom portion of the filling establishing the State retains ownership of the subaqueous bottom. He said they also agreed with establishing the indemnity clause to hold harmless.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel stated that it had been correctly summarized. He suggested that the Commission condition the permit on the execution of the agreement and that they authorize the Commissioner to sign off on the agreement upon completion.

Associate Member Robins moved to approve the permit with conditions that the agreement between the City and the Commonwealth would be fully executed, the indemnity, hold harmless clause be added to provide further protection for the Commonwealth, and that all property owners do not object that are included in the project. Associate Member Tankard seconded the motion. The motion carried, 9-0.

Permit Fee.....	\$ 100.00
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7. **MARY HILL AND MARIE HILL, OYSTER PLANTING GROUND APPLICATION #2006-176**, request to lease approximately 160 acres of oyster planting ground within Chuckatuck Creek on both sides of the Chuckatuck Creek, Route 17, Highway Bridge in the City of Suffolk and Isle of Wight County. The application is protested by a nearby oyster ground leaseholder.

Final continuance granted until the July 28, 2009 Commission meeting.

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At the completion of the Habitat items, the Commission was adjourned for lunch at approximately 11:15 a.m. The meeting was reconvened at approximately 12:15 p.m.

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8. **PUBLIC COMMENTS:**

**Blue Catfish** – John Wyatt, upper James River waterman, was present and his comments are a part of the verbatim record.

Mr. Wyatt asked the Commission to take jurisdiction of the blue catfish from the Virginia Department of Game and Inland Fishery and to eliminate the current 32-inch maximum size restriction.

When asked by Commissioner Bowman to comment, Carl Josephson, Senior Assistant Attorney General and VMRC Counsel said that the Commission was not authorized by the Code of Virginia to take such action; and that the General Assembly would have to make that change.

Associate Member Bowden moved to hold a public hearing on the blue catfish. Commissioner Bowman called for a second and the motion failed for a lack of a second.

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**9. PUBLIC HEARING:** Proposed 2009 regulations for the commercial and recreational harvest of blue crabs.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead provided additional comments received since the packages were mailed out to the Commission members. He said that the VIMS report had been received and that they supported the continuation of the current regulations for two years as it gives them the opportunity to see the impacts on recruitment and future spawning. He said that there were eleven public comments and out of those six supported the staff recommendations. He said the proposed change for 2009 was for the fall closure to be shortened and set for November 21 to November 30.

Mr. Travelstead explained that the Bay-wide Winter Dredge Survey had indicated a significant increase in the spawning-age crabs from 2008. He said the overall crab abundance increased by only 35% because the recruits, age zero, increased slightly by only 6% and still remain well below average abundance. He said the last highest year was in 1993. He stated that efforts last year had been successful and should be continued at least one more year.

Mr. Travelstead stated that there was also other good news as the number of female crabs had double. He said that male crabs had improved about 50% and there was a need to see more improvement.

Mr. Travelstead said that over the years there had been much criticism of the Winter Dredge Survey, but officials along the east coast consider it the best information for making management decisions.

Mr. Travelstead explained that the harvest was slightly above the target of 46%, at 48%, which could be used as an argument to maintain the 2008 regulations in order to keep harvest at a safe level. He said that a 32.4% reduction in harvest resulted from the 2008 regulations below the staff estimate of 38%. He said the cull rings were not introduced until July 2008 and was not used the full season and in 2009 the season started out with the cull rings in the pots. He stated the Commission had closed the sanctuary earlier this year on May 1 and there was a 30% reduction in the number of pots. He said all of these measures offered this year are different.

Mr. Travelstead said, that in talking to buyers, they indicated the 2008 regulations were not totally responsible for the reduction as the market impacts the catch as well. He said it could have had more impact but there was no way to know. He said the buyers surveyed anticipate that the market demand for crabs would be down the same in 2009.

Mr. Travelstead said staff also asked the buyers about how the lack of migrant workers impacted them. He said some thought theirs had improved and some did not so it was a wash actually between the two years.

Mr. Travelstead said that staff asked the buyers how much they felt the regulations had impacted them. He stated over half thought not much and the rest identified at least one regulation that affected them. He said the one that most impacted them, was the late fall closure of the pot fishery.

Mr. Travelstead stated that meetings had been held with the Blue Crab Management Advisory Committee (BCMAC). He said the Committee felt that shortening the fall closure would give some back to the industry. He said if this is done then it must be made by other options so that this year's results will be the same as the last. He said they were suggesting a ten-day closure in November. He said that Maryland closed their season on November 10<sup>th</sup> so Virginia will get to catch some of those crabs.

Mr. Travelstead stated that bushel limits had been discussed to replace the shorten fall closure, but the Committee was not supportive. He went on to say that enforcement of a bushels limit was difficult and it seems to impact the highline crabbers more than the rest very severely. He said it reallocates crabs. He said also that the number of landing places along the Bay also impacts enforcement. He stated that the Committee and staff support the 10-day closure.

Mr. Travelstead stated that staff recommended continuing the winter crab dredge fishery closure. He said that as a result of the suit brought against VMRC for closing this fishery, Judge Dole ruled that the Commonwealth could only close one season at a time. He said that staff recommended a closure from December 1 through March 31. He gave reasons why this should be done:

- 1) Highest percentage of females, especially pregnant ones, are caught in this fishery.
- 2) Highest degree of wastage.
- 3) Dollar value was the lowest.
- 4) Effects the smallest number of crabbers, last time there were 53.
- 5) If do not close, need to take other measure(s) to achieve the reduction needed, such as a closures of the pot fishery for several months.

Mr. Travelstead explained that the original measures for 2008, there was fall closure in October and November. He said this action contributed 7 to 8% to the needed percentage of reduction for the crab fisheries. He said if there was a closure in September, October and November for the peeler pot fishery, 500 to 600 watermen would be impacted. He said if there is no dredging for crabs then the crabs are available to the crab potters before the market gets glutted with crabs and they can make more money. He said during the time period 2004 to 2007 the average dockside value for crabs caught during the crab dredge season was \$12,000.00. He said that with the Ghost Pot Project, financed by the crab disaster funding, provided individual fishermen with an average income of \$15,000.00 to \$17,000.00.

Commissioner Bowman noted that the Waterway Improvement funds were used to finance this activity and Federal Funds will be received that will reimburse the State.

Mr. Travelstead explained that in 1988 and 1989 staff went out and did a sampling project to determine the wastage caused by the Winter Dredge Fishery and estimated that 24% of the crabs sampled were damaged or dead not including those that were left on the bottom.

Commissioner Bowman said that he remembered that someone last year had explained to him that when 21 barrels of crabs were brought into shore, only 7 barrels of crab were usable.

Mr. Travelstead said that there were other issues to be considered. He said the 5-pot recreational license had been stopped and was to be reconsidered when the crab population reached the 200 million crab level. He said that staff recommended reinstating the license, but to establish an open season from June 1 through September 15. He said this measure had been approved to make the impacts of the crab regulations equitable for both the commercial and recreational fisheries.

Mr. Travelstead said that next was the issue of agents who commit violations and get summonses while working for a license holder. He said staff was recommending that two violations would mean coming before the Commission and revoking the privilege to act as an agent. He said that if an agent continues to commit violations, then the licensee will be brought in to appear before the Board. He said also that there was a recommendation to make June 9<sup>th</sup> the cutoff date for hearing anymore appeals for those on the waiting list. He said the number of appeals was about 30 plus each month and this month there were only 6. He said that all crabbers were notified of the deadline proposed.

Mr. Travelstead said that the Commission had requested that staff advertise for turtle exclusion device and because of an oversight on his part this was not done. He said that VIMS was writing a report on this issue and suggested that the Commission look at the report next month and then approve to advertise for a public hearing later in the summer.

Rom Lipcius, representative for VIMS, was present and his comments are a part of the verbatim record. Dr. Lipcius reviewed some points in the Winter Dredge Survey and used a PowerPoint presentation. He also stated that there was other information available to assist the Commission in their decision making at other times of the year, such as the Trawl Survey, Recruitment Data and they would be revisiting the Turtle Exclusion Study and provide VMRC staff with a report by the next week.

Commissioner Bowman opened the public hearing.

John Tubbs, commercial fisherman, was present and his comments are a part of the verbatim record. He was concerned that they were returning the recreational potters their gear license back and taking his pots away. He said he depends on this to make a living

and to feed his children. He said the Commission should take the pots away from those who don't use them and don't sell any crabs and have other jobs. He said the Commission could get the 33% cutback you need. He said the Ghost pot project was good, but he was sure that they would much rather be dredging for crabs. He said they are not like the farmers who get paid not to raise corn, but nobody was going to pay him like that. He said they need their pots back, because 300 pots is nothing. He said the recreational guys do not need their pots back, they have other jobs.

Peter Nixon, President of the Lower Chesapeake Watermen's Association, Vice President for the Virginia Seafood Council, and a member of the Blue Crab Management Advisory Committee for over 20 years, was present and his comments are a part of the verbatim record. He said that he saw the signs back in 1993 and he saw that certain sectors of the fishery were not going to be sustainable. He stated the peeler pot fishery had grown quickly since. He said even in the late 70's when they lifted the Kepone ban off crabs, the peeler pot fishery started to grow even back then. He explained that the spring fishery in the lower Bay grew and boats out of Maryland were coming down to work. He said at that time the Commission established a 51 bushel limit. He said that all of the crabs were going to Maryland and Virginia was not getting any benefit from this harvest. He said when he first started crabbing the crab dredge fishery grew from about 50 watermen to 300 and he and others thought that there should be a limit on the sale of these licenses, which was evidently done. He said it was too little, too late that was done to help.

Ken Smith, President of the Virginia State Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith asked about the dates for the fall pot season closure. Mr. Travelstead said it was November 21 through November 30. Mr. Smith stated he had no problem with that time period. He stated that in 2008 a crab disaster had been declared and a letter was sent to the Department of Commerce and was signed by both the Marine Resources Commission and the Maryland Department of Natural Resources. He read from the letter. He said that in the Code it said that the Commission shall implement a management plan and to also look at the economic impacts, environmental impacts, predation and water quality. He said the watermen only see that what is being done impacts them as they seem to be taking the blame. He said in Section 28.2-203 of the Code of Virginia the Marine Resources Commission is give its authority. He said that no one knows what is there in the Bay so how did it know if it was overfished. He said the public thinks the crabbers are doing something wrong. He said the watermen are the biggest conservationist because they want an abundance of crabs and the Commission needs to let the public know that the watermen are not to blame. He said the Commission's job is to protect the industry and to provide crabs for the industry to harvest.

Lee Ann Washington, Attorney for the Virginia State Watermen's Association, was present and her comments are a part of the verbatim record. Ms. Washington said they questioned the methodology of the Winter Dredge Survey as the method of survey had not changed since 1992/93. She noted that in the 2009 publication published by the

Chesapeake Bay Foundation they graded the improvement of the Bay very badly. She spoke about the various charts of data provided by staff and questioned the validity of the information for making decisions. She stated that from the information provided by staff the 46% did not seem to have any impact on the stocks the following years. She stated that according to the information overfishing was not the problem. She said from looking at the information overfishing causes an increase more than under fishing. She said there was more needed than the 46% target suggested by staff.

Ms. Washington stated that according to one of staff's charts showing the Virginia and Maryland catch, historically the Maryland watermen catch more than the Virginia watermen. She said that the Commission must consider Maryland regulations to manage equitability. She stated that the Maryland jimmies get a better price than the Virginia sooks. She said the Commission was failing to get the optimal yield for Virginia and the watermen were getting the short end of the stick.

Ms. Washington explained that in a 1983 JLARC study they had praised the crab dredging industry and had suggested enhancing the profitability, thereby, managing the industry's resource to make the industry competitive worldwide. She said the catch will decrease with there being few crabbers and there would be fewer crabs caught.

Ms. Washington stated that the Commission must make a decision based on relative data points. She said that other issues must be considered such as predation. She suggested that the striped bass fishery population being up was a reason the crabs were down.

Ms. Washington stated that the 2001 – 2008 crab population being overfished and over the threshold was depriving the dredgers and crab potters. She said that it seems that 53 crab dredgers had lost their jobs for nothing. She said that it was pointed out by Associate Member Robins by his report that the scientific data showed that the regulations in the past had been ineffective and the 22 point regulation plan did not achieve optimum yield. She said no one knows if another regulation would actually work.

Ms. Washington stated that it was insanity to do they same thing and expect a different result. She said she suggested that the Commission take a new and fresh look for a better way. She stated that unfortunately the crab regulations are political and the method of harvest is not on the list of things that the Commission must consider. She said the actions taken by the Commission were impacting the livelihood of these watermen.

Dr. McConaugh said he had been on the Crab Management Advisory Commission and on the Board and had had 30 years of experience on the Blue Crabs. He said that Ms. Washington had gone back far enough to 1945 where it showed the variable population. He said that one factor was the wind and larval transport variable. He said since 1990 more consideration had been given to predation. He said in early 1990 they saw a decline in recruitment and there had been a steady decline in the fishery in the 1990's, actually 7

out of 12 years. He stated now we were at the point of rebuilding the stocks. He said if the regulations were established for the watermen then the crabs would be caught up in 2 or 3 years, but there was a need to rebuild for the future generations not just for now. He said if you ignore history you can come to a different conclusion, but there was a need to look at the overall picture. He said environmental impacts are just a part of the process. He stated the crabs are a key component of the ecology of the Bay and they were important to the Bay overall. He said they were not looking at the habitat as that was a long term process and others were looking at this part. He said the Commission was doing its part, by working on seagrass and oyster restoration projects to restore habitat. He said it cannot be changed overnight. He said that the problem had not been caused 100% by fishing, but now looking at the data fishing does have an impact as they see the number of crabs went up. He said this does not mean that they can reverse back to where it was just because of the one good year. He said the stocks need to be rebuilt back to what they were in the 70's and 80's. He said that low oxygen can be a problem for crabs, but crabs can survive in low oxygen. He said they were looking at 15 years of decline of the population.

Associate Member Robins said the comments made were an affront to the scientific community. He said 53% would be an indication of being overfished, and 46% was the target amount. He said when talking about the Code they are considering the best available data and the 46% is where the restoration of stocks will be at an optimal success. He said the 200 million was a modest target and it was last seen in the 1990's so it is not unattainable.

Associate Member Schick asked how many watermen were in the association. Mr. Smith stated the Virginia State Watermen's Associate consisted of various chapters. He said the Virginia Watermen's Association had over 200 members. Ms. Washington stated she was speaking for the Virginia State Watermen's Association. Associate Member Schick stated that 5 days for reviewing the information was not good as assumptions were made. He said decisions were based on science and the economy. He said if there are no crabs there would be no watermen so the regulation cannot be relaxed. He said that statistics do not lie, but interpretation can incite people to anger and that was wrong. He said these regulations cannot stop other impacts, such as outfalls and farm runoff, but the Commission stops what they can. He said the first half of the meeting is Habitat Management and they try to balance everything for the public and the fishing community. He said that VMRC does all that it can as they cannot control other agencies. He said Ms. Washington needed to come to all meetings to see what they do.

Commissioner Bowman explained that the Governor had allowed for a \$30 million bond to improve water quality, such as nutrient removal, improving sewage plants, and non-point pollution. He said the administration was making efforts to improve the water quality.

Associate Member Schick stated that the crab committee included members of the industry, scientific community and processors who support these efforts. He stated further that there was need for others to get involved and bring solutions to the meetings.

Associate Member Bowden said he was the representative for the watermen on this board. He said he was a successful waterman but he had problems with the politics. He said he tends to speak his mind. He said that the regulations were to increase the female population, but he asked how is it that there was a 50% increase in the male population and such a good peeler season, when the survey numbers said the stocks were so low. He said the Commission is taking issues and trying to fit them in a puzzle was political. He stated that science can be good and he understands the data. He said he had no problem with the crab dredge fishery season closure if it was necessary. He said there was just too much negative looked at and nothing positive. He stated again that politics were a problem for the watermen. He said he had tried to make a motion for blue channel catfish problem and he could not get a second. He said from what Ms. Washington explained the Commission does have the authority to do something about the problem. He said the General Assembly tells the Commission what it can consider and what it cannot consider. He said she had made a good presentation.

Commissioner Bowman said that he had heard about politics being a problem, but it was not politics, it was doing what is right. He said he had been at the Commission for 16 years and he had seen the decline in the catch per unit effort (CPUE) and there was a need to do something to correct the situation. He said the resource was a part of the public trust for all Virginia citizens for the present and the future. He said there were comments alluding as to how the Commission should read the law. He said the order in the Code was not to set a priority on how to consider them. He also stated that if there were no crabs, there would be no crabbers. He said they were trying to improve the crab stocks and they did not take any pleasure in doing what was needed. He said the Winter Dredge Fishery impacts the females and the numbers reported in the winter dredge survey show they are doing the right thing. He said the Commission was doing a good job.

Commissioner Bowman asked for others who wish to make comments.

Robert Hollowell, Commercial Fisherman, was present and his comments are a part of the verbatim record. Mr. Hollowell stated that he did not have any degree and that he worked as a crab dredger in the winter. He said this did not cause the decline. He said in recent years the number of fish had been massive in the Hampton Roads Harbor. He said for 5 or 6 years there had been a number of croaker and red drum. He said he had seen a gill net that was full of fish when it was taken up. He asked how much did it take to feed all these fish and all the blame is put on the watermen. He said he had made an investment in his boat. He said for 6 or 7 winters he had not seen any small crabs and no soft shell crabs, but the problem has been that the blue catfish were eating everything. He said in the spring of 2007 during haul seining season he saw baby crabs all over and then in the spring of 2008 there were more crabs. He said when you are crabbing the tide had to be

right, but when there was a storm you do not see any in the Bay. He stated that Mother Nature was in control not the scientist. He said he wanted to dredge for crabs and when he retires he wants to be able to sell his license and boat. He said he knew a man who wrote a letter to the staff and had told them he could not make a living on just \$300.00 a day they were paying and he asked for additional money. He said staff never responded. He said there are seven million people living in Virginia that have caused the problems on the Bay. He stated that it was politics and it was not right what was going on.

As no one else offered to comment, Commissioner Bowman closed the public hearing. He asked for discussion or action by the Board.

Associate Member Bowden said he did not say there should be no regulations, some are needed. He said that predation is a problem. He said he was glad to hear what Ms. Washington had to say, as it makes the job easier. He said actually in a lot of the fisheries the ASMFC have the control. He said it would seem to the watermen that they were getting punished because they are the ones that need to feed their families. He said the average age in his watermen's association is probably 60 years old. He said there were probably 3 watermen younger than he was and he was 55. He said this was pretty much all that watermen have to do on the Eastern Shore to make a living. He said he agreed with Pete Nixon about the buy out that it would just get rid of the ones who do not harvest. He said the fish regulations make it bad on him, but he can support most of them as he can see the necessity. He said there needed to be some consideration for the crab dredgers like they did for the crab pot licensees. He said the decision last year to close the winter dredge fishery was to be permanent, but the Court decision changed that. He said a trigger needed to be set for the crab dredging fishery so they will know when something might have to change. He said the 15% reduction in pots was more than enough. He said he agreed that no matter how many crabs there were, you have to be able to sell them. He said another problem is the overseas market is cheaper because the work force is less expensive and the public did not care as long as they had crabs to eat.

Associate Member Tankard asked about the staff recommendation and the public comments regarding the upriver closure and the sanctuary being closed year round.

Mr. Travelstead explained that the sanctuary had been taken care of a month or two back. He said on the crab committee only one member had wanted the May 15<sup>th</sup> closure date. He said Mr. Nixon wanted the year round closure and so did the Chesapeake Bay Foundation. He said the sanctuary closure was to protect the spawners. He said it was found that the crabs start spawning in May so that was the reason for the closure date. He said that the females can be exploited before that in March and April. He said they were hoping to save some crabs for the watermen to recoup in the spring what they lost in the winter. He said the premise for the action was to protect them while they were spawning.

Associate Member Tankard asked about the upriver closure.

Mr. Travelstead explained that Pete Nixon wanted to keep the pot numbers the same, which some of the crab committee argued against, but others supported it. He said that last year's savings helped this year. He said the decrease in the number of pots saved some of those same crabs that were saved by closing the dredge season.

Mr. Travelstead said in response to concerns of whether the buy-out would help, he explained that if the buy-out did not work the percentage of the pot reduction might need to stay at 30%. He said that the transfer of a crab license was allowed and when these inactive licenses were transferred, they could possibly become active since the person would need to recoup the cost of obtaining the license. He explained that staff believed that the buy out of the marginal licenses eliminated any future harvest with those pots.

Associate Member Fox asked about the Maryland watermen coming to Virginia and catching a lot of crabs. Mr. Travelstead explained that you cannot exclude out of state watermen from coming into the fishery. He said a number of years ago there was a court case that said that Virginia could not do that. He said that Virginia had tried to prohibit them from coming to Virginia because Maryland watermen prior to that court case would come down with a large number of pots and several crews and practically work 24/7 and take it all back to Maryland to sell. He said that was why the bushel limit was changed to 51 at that time. Associate Member Fox asked if the Maryland watermen could have 1,200 pots. Mr. Travelstead responded no, that they had to follow the same rules as Virginia watermen as they were required to have a Virginia license.

Associate Member Fox explained that with the 5-pot recreational license elimination it was meant to send a message to the general population about the pollution problem in the Bay. He said that he thought that the recreational license should be for less than 5 pots even with the time limit suggestion. Mr. Travelstead said that they were recommending reinstating the license because the way the regulation was written it was to be reinstated when the population level hit 200 million. He explained that the regulation should have been written to say when it hits that level and stays for there for at least three years. He said the staff recommended these closures in the spring and fall to protect the females.

Commissioner Bowman explained that from his law enforcement experience a seasonal closure's effectiveness was better than limiting pots.

Mr. Travelstead said that he would like to respond to some of the public comments. He said that the seagrass was habitat for crabs and the Commission was being criticized for not doing enough for the habit. He said that \$1 million of funding had been used by Dr. Orth in his efforts to restore SAV. He said that regulations had been established to enhance the SAV. He said in the Code, Section 28.2-204.1 it said the Commission could consider measures to limit licenses and this was done in 1998 when limited entry was established. He said all of this was in the evaluation that year and the best available data was presented and considered. He said this data had been evaluated by the CBSAC who had the best scientist so it was not just the VMRC staff. He said that 46% was the

preferred level of removal of stock and above 53% was considered overfishing. He said that 7 out of 10 years the crabs had been overfished. He said that harvest does impact stocks as well as other things. He stated that one year of data could not determine success. He said that 200 million was not a simple average. He said that scientist said if it was consistently above 200 million then there should be good recruitment.

Associate Member Robins said that the regulation package included biological information, it was not political. He said it included the best available science in determining the rate of removal. He said a generous level of exploitation had been established and science have said the stock could stand it. He said there had been 15 years of consistently being over the target and fishing limits. He said in addition to the scientific review the process involved public input. He said in the Winter Dredge Survey report it said that there was an increase in the stock and in the recruitment. He said the Commission did a deliberate process and made some difficult decisions. He said that it was important to continue with what had been done and that the crab committee members were in consensus with the staff. There had been a number of meetings with the committee and a neutral approach with a few trade offs was being offered. He said these were to shorten the fall pot season, the cull ring which was used for only a part of the season to be continued, and to put the gear reduction back to 15% were it was in 2008. He said the Code Section 28.2-203 sets forth what the Commission needed to do to prevent overfishing and to achieve optimal yield. He said that the crab committee was concerned that the full-time watermen would bear more of the impact than the part-time and they had suggested the shortened season to help those full-time watermen. He said it was representatives of the public that attended the committee meeting that had suggested the 10-day closure.

**Associate Member Robins moved to adopt the staff's six recommendations. Associate Member Fox seconded the motion.** He said he wanted to thank Ms. Washington for causing them to look at the law and he felt they had complied with the requirements and taken the right steps, which were the staff recommendations. He said closing the Winter Dredge Season was a trade off for achieving the goals, because closing the pot season in September would have impacted more individuals. Associate Member Bowden asked if gear reduction of 36.4% was achieved. Mr. Travelstead explained that each measure was associated with a percentage of the total reduction and the gear reduction was not zero. He said there was not a one to one relation of number of gear compared to the harvest, because of pot saturation. Associate Member Bowden stated that the pot limit had helped and he agreed with the pot saturation statement. Mr. Travelstead explained that staff tried to get that answer, but could not. He said it was decided on that a total reduction of the fishery be used rather than on each fisherman as it would impact the full-time waterman. Associate Member Bowden said he did not agree with the indefinite closure that had been approved for the Winter Dredge Fishery and there needed to be a trigger set for any future closures. Mr. Travelstead explained that there would be another winter dredge survey to look at and he did not know what the trigger should be but it would be somehow related to the Winter Dredge Survey.

**The motion carried, 9-0.**

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Commissioner Bowman called for a 5-minute recess. Associate Members Holland and Schick did not return until later from the break.

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**10. PUBLIC HEARING:** Proposed amendment to Regulation 4VAC20-450, "Pertaining to the Taking of Bluefish", to establish the 2009 commercial harvest quota.

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

Mr. Johnson explained that this proposal had been advertised for a public hearing today. A copy of the Public Notice was a part of the evaluation.

Mr. Johnson said that the current VMRC Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," established the commercial 2008 quota as 1,048,366 pounds, and staff was requesting that this regulation be amended to establish the new 2009 commercial quota.

Mr. Johnson stated that staff recommended the adoption of the amended Regulation 4 VAC 20-450-10 et seq. to set the 2009 bluefish commercial quota, for Virginia, as 1,155,945 pounds.

Mr. Johnson further stated that the National Marine Fisheries Service (NMFS) had announced the 2009 Atlantic bluefish specification (attachment) setting the Virginia 2009 commercial quota for bluefish at 1,155,945 pounds

Mr. Johnson said that staff had not received any public comments.

Commissioner Bowman opened the public hearing. As there were no public comments, he closed the public hearing. He asked for action by the Board.

**Associate Member Robins moved to approve the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 7-0. Associate Members Holland and Schick had not returned to the meeting.**

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**Commission Meeting**

11. **PUBLIC HEARING:** Proposed amendment to Regulation 4VAC20-320, "Pertaining to the Taking of Black Drum", to authorize the Commissioner to grant exceptions and transfer requests.

Joe Grist, Head, Plans and Statistics gave the presentation. His comments are a part of the verbatim record.

Associate Member Schick returned to the meeting.

Mr. Grist explained that currently, Regulation 4 VAC 20-320-10 et seq. only provided authorization to the Commission to grant requests for exceptions or transfers within the black drum fishery. All transfers had been approved by the Commission with one transfer request pending, and all but 4 exception requests, since 1995, had been denied, as noted in the table below.

Mr. Grist stated that on April 28, 2009, the Commission requested a public hearing to provide the Commissioner, or his designee, the authority to grant exceptions and transfers requested based on VMRC Regulation 4 VAC 20-320-70A. This would allow requests for Black Drum Harvesting Permit exceptions and transfers to be processed by staff without the need for a Commission hearing.

Mr. Grist said that this was a public hearing and staff had not received any public comments.

Commissioner Bowman stated that Associate Member Fox had requested this change in the regulation. He then opened the public hearing for comments on this matter. As there were no public comments, the public hearing was closed.

**Associate Member Fox moved to approve the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 8-0. Associate Member Holland had not returned to the meeting.**

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12. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-1120, "Pertaining to Tilefish and Groupers", to establish new recreational and commercial possession limits, and permit and reporting requirements.

Joe Grist, Head, Plans and Statistics gave the presentation. His comments are a part of the verbatim record. Mr. Grist handed out additional public comments that had been received.

Mr. Grist explained that the Commission had approved a regulation in April 2007, which provided for a recreational daily possession limit of 7 tilefish per person, one grouper per

person, a commercial daily possession limit of 300 pounds of tilefish per vessel, and 175 pounds of grouper per vessel. He said that Virginia's grouper and tilefish fishery was a relatively new recreational fishery which occurred primarily in waters deeper than 40 fathoms.

Mr. Grist said that at the February 2007 FMAC meeting, staff invited scientist to address the committee about the biological concerns that surround the management of the tilefish and grouper. He said that Dr. Roy Pemberton, from VIMS, spoke about the blueline tilefish, their life history and notable downward shifts in size frequencies seen off the Carolinas.

Mr. Grist stated that blueline tilefish were considered for a complete stock assessment in 2004 as a part of SEDAR 4 (Southeast, Data, Assessment and Review). But there was not enough data for a complete modeled assessment.

Mr. Grist said that Dr. Erik Williams, NMFS (National Marine Fisheries Service), spoke about the susceptibility of the snowy grouper to exploitation. The SEDAR 4 assessment determined that snowy grouper are currently overfished and overfishing was occurring. He said that snowy grouper are protogynous hermaphrodites, which means they start out as a female then switch to male, and these are very susceptible to overexploitation during aggregation formations. He explained that the South Atlantic head boat data indicated that, since 1960's, the average size of snowy grouper has 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 one percent of the population in the mid-1990. He said Dr. Williams included an example of specific site exploitation where 80% of the snowy grouper were removed in one year during the mid-1980.

Mr. Grist stated that there were 164 blueline tilefish citations registered in 2007, with 137 in 2008, and 271 for 2009 as of May 13.

Mr. Grist explained that recreational landings data for tilefish and grouper in Virginia was very poor. He said from 1981 through 2008, blueline tilefish, golden tilefish, and wreckfish only appear one year of the Marine Recreational Fisheries Statistics Survey (MRFSS), 2007.

Mr. Grist said that staff had utilized VMRC's Marine Sportfish Collection Project to collect biological samples from the tilefish and grouper fishery. He explained that to date 111 blueline tilefish, 13 snowy grouper, and 6 wreckfish have been donated by anglers to the project for age and sex determination. He said that there was only one lab that can perform the work and that was at the NMFS lab in North Carolina, which has a one-year backlog. He said that staff had received some sub-sample of age data from NMFS on the tilefish and grouper landed in Virginia.

Mr. Grist stated that Amendment 17 proposes to reduce the recreational Annual Catch Limit for snowy grouper to 523 fish for the entire coast wide. He said it also proposes a preferred option that would prohibit fishing for, and possession of all deepwater snapper-grouper species seaward of 40 fathoms. He stated that amendment 18 which was being developed concurrently with 17 included a proposed expansion of the Snapper Grouper Fishery Management Unit to include northward through the Mid Atlantic Fisheries Management Council waters and beyond. He said this had been done before with the Mackerel FMU and Dolphin/Wahoo FMU when the MAFMC waters were included in those units. He explained that the SAFMC is required by the Magnuson-Stevens Act to account for all sources of mortality in their stock assessment analyses and management plans to include catches from waters traditional managed by the MAFMC. He said in April 2009 the MAFMC sent a letter to the SAFMC requesting that alternative be proposed for Amendment 18 for its Snapper Grouper FMP for a northern unit for the deepwater species managed by MAFMC in consultation with the SAFMC.

Mr. Grist stated that staff had contacted Roy Crabtree, Regional Administrator for the SE Regional Office for NMFS, concerning co-council management option proposed by MAFMC. He said that Mr. Crabtree had indicated that it could be possible, however, all ACL's, such as those for snowy grouper, are for the entire stock along the Atlantic Coast and include the waters off of Virginia and northward and cannot be exceeded. He said the 523 catch limit would still be in effect.

Mr. Grist explained that there were 4 options to be considered.

Option 1, Status Quo, which means the fishery continues as it is. He said because there would a continuation of inaccurate accounting of harvest, that Virginia regulations were more liberal than SAFMC and would be of no additional negotiation value for MAFMC at the June SAFMC meeting for a separate FMU.

Option 2, Recreational mandatory harvest permits and reporting, which meant that the fishery continues as it is, but there would be harvest accounting for private, charter, and head boats giving staff the ability to compare and contrast to MRFSS and NERO VTR data. He said again that the Virginia regulations were more liberal than the SAFMC and there would be low negotiation value for MAFMC at the June SAFMC meeting for a separate FMU. He said that staff preferred option 2.

Option 3, Recreational mandatory harvest permits and reporting and additional grouper limitations to be implemented.

Option 4, Recreational mandatory harvest permits and reporting and additional grouper and tilefish limitations would be implemented.

Mr. Grist explained that staff presented these options to FMAC at their meeting on May 12, 2008. He stated they voted unanimously to endorse option 2. He said that staff had received public comments which included no change to the current regulations; concerns about serious harm further regulations would do to the charter boat and heat boat industry, concerns about Virginia regulating tilefish and grouper, but states up North, such as Maryland, have no regulations for these species allowing for unlimited harvest; developing a limited entry fishery, developing limits based on vessel capacity, and concerns about the lack of scientific information.

Mr. Grist said that from discussions with the SAFMC, MAFMC, and NMFS, staff's impression was that it was more likely that the MAFMC will receive a favorable reaction to their joint management proposal if the Virginia regulations are similar to SAFMC Snapper Grouper Amendment 16. He said that staff will continue to press Maryland, Delaware, and New Jersey on the importance of an equitable multistate management effort. He said these states have given no indication of moving forward on this issue. He said that staff will be attending the SAFMC meeting in June to support the MAFMC proposal for a separate FMU and will request that some of the public hearings be in Virginia in regards to Amendments 17 and 18.

Mr. Grist stated that staff was recommending option 2 with an effective date of July 1 in order for staff to prepare for providing a recreational landing permit and recreational mandatory harvest reporting for tilefish and grouper.

Associate Member Holland had returned to the meeting.

Commissioner Bowman asked for comments or questions of staff.

Associate Member Robins asked about the data processing for tilefish and grouper. Mr. Grist stated that parts had been process, but the lab was backlogged.

Associate Member Tankard asked if staff would be confident of the private industry reporting. Mr. Grist stated that with the permit staff would know who to contact. He said also that Law Enforcement would be making periodic field inspections.

Associate Member Fox asked whether Maryland boats would have to report. Mr. Grist stated this only applies to Virginia fishermen as Maryland fishermen can avoid this if they go out into the Federal waters and avoid entering Virginia waters.

Commissioner Bowman stated that there were comments earlier about the best available scientific data being used and this was not perfect, but it was the best that was available.

Commissioner Bowman opened the public hearing.

Beth Fenwick, recreational angler was present and her comments are a part of the verbatim record. Ms. Fenwick said he was concerned that 3 fish limit would impact charter boats. She said she suggested that closed seasons be established for when the fish are spawning. She also stated that she felt the regulations should be left as they are.

Jack Reynolds, recreational fisherman was present and his comments are a part of the verbatim record. Mr. Reynolds that he fished grouper from waters off Virginia and down to Florida. He said with the southern region becoming involved that Virginia would be forced to do the same. He also said there was not enough data. He said he agreed with the proposed ODU study and effort by everyone should be put into this study. He said that this fishery was incredible and Virginia held the world record for the snowy grouper. He said that Maryland fishermen are big violators and they have no limitations. He said Maryland fishermen when they find a spot, go to it and clean it out. He stated that Maryland had no regulations and now Virginia would have more regulations. He said others he knew felt the same way. He said he would be glad to help by reporting his catch. He stated that if there was information available showing it was a bad situation then he would be glad to stop. He said in Maryland they caught 2,000 pounds, which Virginia was limited to 300 pounds. He said there should be no more regulations as Virginia would eventually be kept out of the fishery and no other states would be impacted the same.

Jim Brincefield, Charter Boat Captain was present and his comments are a part of the verbatim record. Mr. Brincefield said he had submitted three letters of comments. He said he agreed with option 2, but there would have to be more done. He said he had applied for a seat on the SAFMC and he was asking that VMRC help him get this appointment. He said there was no rush on establishing the regulations as the amendments would not be effective until 2010. He said he suggested that an Ad hoc Committee be formed. He said the suggestion for closed seasons for spawning was a great idea, but the charter boats would be impacted. He said with a committee issues such as this could be worked on. He suggested that they be given fish tags and they could return the fish, such as grouper back. He stated that 523 fish limit would not last a week.

Mr. Brincefield stated that there were no regulations to the north of Virginia and it was not fair. He said he supported the proposal of the ODU study and he was willing to send a letter of support. He said as far as the data, they were not always aware of the federal license requirement and did not find out about it until 2006 and they did report that year. He said he did not know why there was an issue with the reporting. He said he had always considered wreckfish as a grouper fish and was embarrassed when he found out, that it was not. He said that there were not many golden tilefish left and he agreed with the one golden tilefish per person, but the bluefish tilefish were in good shape and they did not need the 3 fish limit. He said with a committee they could see what happens and what Virginia needed to do.

Mike Avery, recreational angler was present and his comments are a part of the verbatim record. Mr. Avery explained that he belonged to a couple of angler clubs and they agreed with him. He said these bottom fish were not easy to access. He said the southern States did not have to go out as far and Virginia was different as they had to go further out, as much as 75 miles. He said because grouper was not easy to catch, he had caught none in the last three years he fished. He said the Virginia fishermen have not slaughtered the fish and there have not been many snowy groupers caught. He said the recommendation for a 3 and one limit would close the recreational fishery. He said that he supports option 2 and he promised to faithfully report his catch.

Harry Doernte, commercial hook and line fisherman was present and his comments are a part of the verbatim record. Mr. Doernte said that he had sent a letter with his comments. He said his main concern was the possible closing of the fishery for spawning. He said for the recreational fishery for the grouper should be treated separately from the commercial fishery. He said the 300 pounds would be in conflict with the federal rules. He said something had to be done to impress the SAFMC, limit the recreational fishery to three grouper per boat or one per person with a 5 tilefish limit. He said for commercial it should be a limit of one grouper for each 2 passengers and 5 tilefish per person. He stated he had been in the grouper-tilefish fishery for 15 years and he had provided someone at VIMS some time back a record fish, as long as he promised never to tell and he never told.

Donald Honeycutt was present and his comments are a part of the verbatim record. He said he agreed with option 2.

Commissioner Bowman asked for discussion or action by the Board.

Associate Member Robins stated that from the correspondence you can see that these fish are the jewel of the fishery and Virginia needed to do all it could at the Council level. He said there was not a lot of time to act as the snowy grouper was overfished and the deadline to act was 2010. He said with the Amendments 17 and 18, Virginia needed to act yesterday. He said if a North Management Unit was not established then Virginia would be stuck with coast-wide management. He said there was no data for Virginia and we were constrained by the 523 limit. He said eventually there would not be a directed fishery, if nothing was done. He said a stock assessment took a lot of time and the ACL would go into effect before it could be done. He said he was concerned that the wreck fish was not separated in the data at the Northeast office, as they consider the category as other. He stated that Virginia's share was based on that data. He said he was going to send a letter to the Northeast office about the wreck fish. He said biologically, the South Atlantic grouper was of concern and the tilefish was of less concern. He said action was needed on the grouper so there would be something in place for when there was the expansion of the working group. He said when there was a small number of fish, it was difficult to divide it up. He said there should be an update provided by staff at the June Commission meeting since staff will be attending the meeting of the Mid Atlantic

Council. He said action should be taken to form a committee. He said accountability is necessary because of the small amount of catch limit for the grouper.

Commissioner Bowman asked for action by the Commission.

**Associate Member Holland moved to approve option number 2** (Option Number 2: Requires a free recreational landing permit and mandatory reporting of harvest for tilefish and grouper landed in Virginia.). **Associate Member Bowden seconded the motion. The motion carried, 9-0.**

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**13. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-650, "Establishment of Oyster Sanctuary Areas", to establish five new shellfish sanctuaries on the Seaside of the Eastern Shore.

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

Dr. Wesson explained that most of this had been discussed at last month's meeting.

Dr. Wesson stated that the Commission had been working with The Nature Conservancy for the last seven years. He said the funds were spent to build oysters reefs on TNC riparian lands and public oyster beds and at the April meeting the Commission approved the Memorandum of Understanding between the VMRC and TNC.

Dr. Wesson said now the sanctuaries need to be protected. He said there had been one area in the Smith Island Sanctuary area that was leasable and staff felt that all leasable ground within these areas had been designated. He reviewed each sanctuary area map.

Commissioner Bowman asked for questions of staff. Associate Member Tankard asked how staff determined the low water line in these areas. Dr. Wesson explained that to get it exactly was very expensive and the only way it could be done now was by making a good estimate. Associate Member Tankard asked how expensive. Hank Badger, Environmental Engineer, Sr., said that staff had not priced the equipment, but it would cost about \$5,000 to \$6,000 to make one survey. And he said that it would be very time consuming as six surveys would take 6 months. He said what they use are real-time tide gauges and keep checking them, which gets very close to what it actually would be. He stated that even though the lease is at the mlw, it was still the property of the State. He said that low water does not always define property lines in these areas.

Commissioner Bowman opened the public hearing.

Pete Terry, representing H. M. Terry Co., Inc. was present and his comments are a part of the verbatim record. Mr. Terry said that the VIMS report promotes aquaculture and water quality is important. He said they are running out of leasable area which is important to the industry. He said they do not need to continue to lose ground. He said he supported these projects but they cannot keep losing ground. He said he realized that the low water mark was difficult to determine, but he did not understand why landowners needed plus or minus 1 to 2 inches as the low water mark should be used. He said that 1 to 2 inches could mean 30 acres to as much as 50 acres that would be lost to leasing. He said he can maintain one million clams on an acre of bottom.

Commissioner Bowman stated that Baylor grounds needed to be reexamined as the business of today had changed.

Tom Walker, representing J. C. Walker Bros. was present and his comments are a part of the verbatim record. Mr. Walker said for 30 years they had cooperated with VIMS and VMRC and the industry had grown in those 30 years. He said that Virginia was a #1 producer, especially of clams. He said they can use a few of the lower creeks on the Bayside of Eastern Shore, but the Seaside was their fallback spot. He said the industry is losing ground on a daily basis and for the first time there are user conflicts on the ocean side. He said there were eelgrass sanctuaries that were moving and continue to move and oyster sanctuaries were being developed. He said every square foot counted to the industry. He said they have a six year program where they plant 45 to 75% of the lease and after they were harvested they were replanted. He explained that following a 3 year production layout they can realize \$24,000 for a year and there is \$1,300 tax revenue per acre that the local government gets. He said they need to be more efficient in using the grounds and that decisions now would affect the future of aquaculture. He said he just hoped his family's next generation would get a chance to do what they do now.

Commissioner Bowman stated that sanctuaries were an important use of the grounds for environmental purposes and he could also see the industry's side and it did need to be used more effectively.

Associate Member Tankard stated the mean low water was important to the leaseholder and the riparian owner on the Eastern Shore. He said that the Commission needed to make an investment and acquire this equipment as indicated by staff.

Associate Member Holland stated the Commission was not determining riparian property lines, only putting polygons around the sanctuaries. Dr. Wesson responded, right. He said the polygons remove the uncertainty of whether this area was a sanctuary.

**Associate Member Tankard made a motion to move forward with the MOU. Associate Member Laine seconded the motion. The motion carried, 8-1. Associate Member Bowden voted no.**

Mr. Travelstead stated that the motion needed to be for approval of the amended regulation.

**Associate Member Tankard in a modified motion moved to adopt the regulation. Associate Member Laine seconded the motion. The motion carried, 8-1. Associate Member Bowden voted no.**

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**14. REQUEST FOR PUBLIC HEARING:** Amendments to Regulation 4VAC20-260, "Pertaining to the Designation of Seed Areas and Clean Cull Areas", to exempt hatchery raised oysters grown in caged aquaculture from the three-inch size limit.

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

Mr. Travelstead explained that this was a request of industry. He said it was not clear in the regulation now that the 3-inch minimum size limit did not apply to caged aquaculture oysters. He stated that the exemption needed to be added to the regulation as it was not the intent originally to include them. He said that no summons had been issued for any violations.

Commissioner Bowman stated that he felt this should be an emergency regulation to make sure that no problems arise in the meantime. He asked for a motion of the Board.

**Associate Member Tankard moved to adopt the emergency regulation and advertise for a public hearing next month. Associate Member McConaugha seconded the motion. The motion carried, 9-0.**

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**15. APPEALS:** Consideration of those individuals whose crabbing licenses have been placed on the waiting list.

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

Mr. Travelstead explained that there were six appeals before the Commission at this hearing. He stated that the first group of watermen was appealing based on the fact that an error was made in their mandatory harvest reports.

**Lewis G. Thomas**

Mr. Travelstead said that prior to 2008 Mr. Thomas had never indicated using POT gear to harvest crabs but he told staff that he had in fact used POTS to harvest jimmies for baiting the peeler pots. He said staff recommended approval.

**Brandon E. Hatfield**

Mr. Travelstead explained that staff had received harvest information for 2006 on February 27, 2009, which appeared to be legitimate and were on the VMRC forms. He explained further that Mr. Hatfield claimed that the reports were possibly stolen from his mailbox. He said staff recommended approval.

**Brock J. Williams**

Mr. Travelstead stated that there was no harvest data in the VMRC reporting system for Mr. Williams and staff recommended denial.

Commissioner Bowman asked if any of the three watermen were present. Mr. Hatfield announced his presence.

Commissioner Bowman asked for action by the Board. **Associate Member Robins moved to accept the staff recommendations. Associate Member Tankard seconded the motion. The motion carried, 9-0.**

**Dwayne Alan Daniels**

Mr. Travelstead said the next waterman did not harvest during the qualifying period, 2004 – 2007. He explained that Mr. Daniels had been present at the last meeting and said that he had during the qualifying period been building aquaculture tanks for scientific study for VIMS and the University of Maryland. He said it had been noted that the Commission had granted appeals where individuals were engaged with work with those types of institutions. He said that Mr. Daniels had provided verifying information to staff today that staff did not have before when the evaluation was done. He said in order to be consistent with prior actions taken by the Commission staff would now recommend approval. He noted that Mr. Daniels was present.

Commissioner Bowman asked for a motion.

**Associate Member Holland moved to approve the appeal. Associate Member Robins seconded the motion. The motion carried, 9-0.**

Karl Vandergrift

Adron W. Williams

Mr. Travelstead explained that the next group of watermen, Mr. Vandergrift and Mr. Williams claimed that they had misidentified the harvest gear on their reports and staff had found plenty of information in the system to support their claim. He said that to be consistent the Commission had approved these types of appeals.

**Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 9-0.**

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There was no further business and the meeting was adjourned at approximately 5:30 p.m. The next regular meeting will be Tuesday, June 23, 2009.

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Steven G. Bowman, Commissioner

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Michele Guilford, Acting Recording Secretary

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Linda Hancock, Acting Recording Secretary

Minutes prepared by:

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Katherine Leonard, Recording Secretary