

MINUTES

Commission Meeting

June 27, 2006

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:

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| William A. Pruitt | Commissioner |
| Ernest L. Bowden, Jr.) | |
| J. Carter Fox) | |
| Russell Garrison) | |
| J. T. Holland) | Associate Members |
| Cynthia Jones) | |
| Wayne McLeskey) | |
| Richard B. Robins, Jr.) | |
| Kyle Schick) | |
| Carl Josephson | Sr. Assistant Attorney General |
| Steve Bowman | Deputy Commissioner |
| Katherine Leonard | Recording Secretary |
| Wilford Kale | Senior Staff Advisor |
| Ginny Chappell | Secretary to the Commissioner |
| Jane McCroskey | Chief, Admin./Finance Div. |
| Andy McNeil | Programmer Analyst, Sr. |
| Rob O'Reilly | Deputy Chief, Fisheries Mgmt. Div. |
| Jim Wesson | Head, Conservation/Replenishment |
| Eric Robillard | Head, Plans and Statistics |
| Joe Cimino | Fisheries Mgmt. Specialist |
| Sonya Davis | Fisheries Mgmt. Specialist, Sr. |
| Kelly Lancaster | Fisheries Mgmt. Specialist |
| Carter Shackelford | Fisheries Mgmt. Specialist |
| Claude Bain | Director, Saltwater Fishing Tournament |
| Warner Rhodes | Acting Deputy Chief, Law Enforcement Div. |
| Allen Marshall | Marine Police Officer |

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Thomas Fitchett
Brandy Battle

Marine Police Officer
Admin. and Office Specialist

Bob Grabb
Tony Watkinson
Chip Neikirk
Jeff Madden
Traycie West
Ben Stagg
Justin Worrell
Randy Owen
Benjamin McGinnis
Hank Badger
Elizabeth Gallup
Sean Briggs

Chief, Habitat Management Div.
Deputy Chief, Habitat Mgt. Div.
Environmental Engineer, Sr.
Project Compliance Technician

Virginia Institute of Marine Science (VIMS)
Lyle Varnell

Other present included:

Bert Parolari
Ed Walendy
David Hay
Steve Bennett
Hal Goodman
Alex Martin
Richard Calvert
Tim Hayes
Don Marx
Katie Branch
Michael Kay
Douglas Alexander
Jim Salmons
Ellis W. James
Chris Moore
Bill Carson
Max King
Frances Porter
Jim Parks

Tom Saunders
Linda Walendy
Mark Granville Smith
B. K. Wilson
Albert Williams
Tom B. Langlely
Rebecca Henley
Ed Bowden
William J. Park
Tommy Leggett
Mike Ware
Tony English
Clyde Seeley, Jr.
Mary Hill
Andrew Strul
John Ridley
Bob Hutchinson
Tommy Mason
Marie Hill

Julius C. Forrest
Jonathan Johnson
Bob Hagel
S. H. Lowe
Richard Williams
Marvin Milton
Mark Horner
John Breckner
Joe Anson
Myles Raetz
Robert Holloway
Ted Warner
Sherry Hamilton
Marida Phillips
Douglas F. Jenkins, Sr.
David Bushett
Jim Sutherland
G. D. Fleming, Jr.
Kelly V. Place

and others

Commissioner Pruitt called the meeting to order at approximately 9:35 a.m. All Associate Members were present.

Associate Member Holland gave the invocation and Mr. Carl Josephson led the pledge of allegiance to the flag.

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

APPROVAL OF AGENDA: Commissioner Pruitt asked if there were any changes to the agenda. He then explained that the applicant for Item 6, Harbour View Limited Partnership (00-0476) had requested a 60-day deferral until the July meeting instead of 30-day as stated at last month's meeting. Bob Grabb, Chief, Habitat Management, explained that the applicant for Item 11, Brian L. Parker (05-2618) had requested an indefinite deferral or until such time as was necessary to meet with the Homeowners Association to discuss and satisfy the covenants and satisfy the covenants and deed restrictions.

Associate Member McLeskey moved to approve the agenda, granting the requests for hearing deferrals for Items 6 and 11. Associate Member Robins seconded the motion. The motion carried, 8-0.

MINUTES: Commissioner Pruitt asked for a motion to approve the May 23, 2006 meeting minutes.

Associate Member Robins moved to approve the minutes as presented. Associate Member Fox seconded the motion. The motion carried, 7-0-1, with Associate Member Schick abstaining, since he was absent at the last meeting.

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

Bob Grabb, Chief, Habitat Management Division, gave the presentation for the page two items, A through J. Mr. Grabb reviewed all items and corrected 2D for an error in the floating pier dimensions, which was not 15-foot long X 10-foot wide but should be 150-foot wide X 10-foot long. His comments are a part of the verbatim record.

After some discussion on the items, Commissioner Pruitt asked if anyone was present pro or con on these items to address the Commission.

Timothy Hayes, Attorney representing East-Coast Transport Public Service, was present and his comments are a part of the verbatim record. Mr. Hayes explained that the public service was authorized by the Department of Environmental Quality to take water for the Natural Gas Power Plants, but the entire 18.1 MGD would not be for just this purpose but to also provide drinking water for Buckingham County.

Associate Member Robins moved to approve Page Two items, A through J, as presented by staff. Associate Member McLeskey seconded the motion. The motion carried, 8-0.

2A. L.T.M. DEVELOPMENT, LLC, #05-2789, requests authorization to install and backfill 126 linear feet of vinyl bulkhead up to six (6) feet channelward of a failing bulkhead and replace the existing dock with a 6-foot wide by 110-foot long floating dock facility with 4-foot wide finger piers providing a maximum of eight wet slips adjacent to commercial property at 900 Laskin Road, situated along Little Neck Creek in Virginia Beach. Recommend a royalty of \$1,512.00 for the filling of 504 square feet of State-owned bottom at a rate of \$3.00 per square foot and an additional royalty of \$6,792.00 for the private use marina's encroachment over 4,528 square feet of State-owned bottom at a rate of \$1.50 per square foot.

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| Royalty Fee (filling 504 sq. ft. @\$3.00/sq. ft.)..... | \$1,512.00 |
| Royalty Fee (encroachment 4,528 sq. ft. @ \$1.50/sq. ft.)..... | \$6,792.00 |
| Permit Fee..... | \$ 100.00 |
| Total Fees..... | \$8,504.00 |

2B. CITY OF VIRGINIA BEACH, #04-1181, requests authorization to modify their existing dredge permit for Rudee Inlet by shifting the Outer Channel Deposition Basin channelward 40 feet, creating a 40-foot wide transition between the Deposition Basin and the Inlet Project Channel with a maximum depth of minus – 16 feet mean lower low water; and increasing the permitted depth for a 260-foot section of the Channel, directly west of the new basin, to a maximum depth of minus –16 feet mean lower low water. These modifications are requested to

maximize the effectiveness of the deposition basin without endangering the existing jetty and breakwater protecting Rudee Inlet in Virginia Beach.

No applicable fees, permit modification.

2C. SCOTT COUNTY PUBLIC SERVICE AUTHORITY, #06-0984, requests authorization to install a submerged 8-inch diameter water line beneath Cove Creek to provide potable water to the Rye Cove High and Middle Schools in Scott County. Recommend our standard in-stream construction conditions apply, as well as any necessary time-of-year restrictions and mussel surveys/relocations as recommended by Department of Game and Inland Fisheries.

Permit Fee..... \$100.00

2D. NAVAL FACILITIES ENGINEERING COMMAND, #06-0122, requests authorization to install a 150-foot long by 10-foot wide floating pier with four (4) 40-foot by 5-foot finger piers to provide mooring for U.S. Navy security forces adjacent to federal property along the Southern Branch of the Elizabeth River in Portsmouth.

Permit Fee..... \$100.00

2E. VINCE BOWHERS, ET AL, #05-2652, requests authorization to dredge approximately 2,878 cubic yards of State-owned submerged bottom to achieve maximum depths of minus three and a half (-3.5) feet mean low water to improve navigation for riparian properties located at 1000 and 1001 Briarwood Point along Hebden Cove in Virginia Beach. All dredged material will be offloaded at the Laskin Marine facility at 944 Laskin Road and transported to the Higgerson Buchanan landfill in Chesapeake. Recommends a royalty of \$1,295.10 for the dredging of 2,878 cubic yards at a rate of \$0.45 per cubic yard.

Royalty Fee (2,878 cu. yds. @ \$0.45/cu. yd.)..... \$1,295.10
Permit Fee..... \$ 100.00
Total Fees..... \$1,395.10

2F. VIRGINIA ELECTRIC & POWER COMPANY, #06-0180, requests authorization to modify a previous permit for a coal vessel offloading facility on the Southern Branch of the Elizabeth River at the Chesapeake Energy Center in Chesapeake to widen the trestle from shore to the pier by two (2) feet from 20 to 22 feet in width. Recommend approval with all terms and conditions of the original permit to remain in effect and an additional royalty of \$1,000.00 for the encroachment over an additional 500 square feet of State-owned subaqueous bottom at a rate of \$2.00 per square foot.

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Royalty Fee (encroachment 592 sq. ft. @ \$2.00/sq. ft.)..... \$2,960.00
No additional fees, permit modification

2G. ROSANN, LLC, #06-1105, requests authorization to reconstruct the outer 30 feet of an existing, deteriorated, 410-foot long by 80-foot wide timber and concrete commercial pier, using concrete piles, caps and decking, and construct three (3) 24-foot wide access ramps from the adjacent upland at their facility along the Southern Branch of the Elizabeth River at 700 Rosemont Avenue in Chesapeake. All of the new construction will be within the footprint of the existing facility, including an associated pile cluster fender system on the outboard side of the pier, with no additional channelward encroachment into the river. Recommend approval with triple permit fees and consideration of an appropriate civil charge, pending expiration of the public interest review period.

Civil Charge.....\$1,800.00
Permit Fee (triple fees).....\$ 300.00
Total Fees.....\$2,100.00

2H. PURDUE FARMS, INC., #05-2483, requests authorization to install and backfill a total of 272 linear feet of replacement timber bulkhead, aligned no more than three feet channelward of an existing deteriorated bulkhead, adjacent to their property situated along the West Yeocomico River in Westmoreland County. Staff recommends a royalty in the amount of \$2,960.00 for the filling of 592 square feet of State-owned subaqueous land at a rate of \$5.00 per square foot.

Royalty Fee (filling 592 sq. ft. @ \$5.00/sq. ft.).....\$2,960.00
Permit Fee.....\$ 100.00
Total Fees.....\$3,060.00

2I. EAST COAST TRANSPORT, INC. #01-1282, requests authorization to modify a previously issued permit to excavate 2,436 cubic yards of State-owned submerged lands with upland disposal to install three (3) 20-foot long by 10-foot wide by 13½ foot deep, pre-cast, concrete vaults which will contain three (3) conventional raw water intake structures with maximum 1mm screens, a maximum intake velocity of 0.25 feet per second and associated riprap side slope stabilization. The additional intake structures are intended to augment the previously permitted intake structure to insure that the 18.1 MGD withdrawal capacity is maintained. No change in the water withdrawal volume or previously established Commission or Virginia Water Protection Permit conditions is requested. Staff recommends approval of the modification with our standard instream construction conditions; an instream time-of-year restriction from March 15 to June 30 to protect spawning anadromous fish; the requirement to conduct and submit a mussel survey to Commission staff, encompassing the area 100

meters upstream to 400 meters downstream of the project site prior to instream construction which includes a strategy for relocating any identified threatened or endangered species in the project area; and should the survey reveal the presence of a threatened or endangered mussel species, an additional time of year restriction from April 15 to July 31 will be imposed; a dredge royalty of \$1,096.20 (\$0.45 per cubic yard); and an encroachment royalty of \$1,254 for the encroachment over 627 square feet of State-owned submerged lands at a rate of \$2.00 per square foot. The project is in the James River in Buckingham County.

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| Royalty Fees (dredging 2,436 cu. yds. @ \$0.45/cu. yd.)..... | \$1,096.20 |
| Royalty Fee (encroachment on 627 sq. ft. @\$2.00/sq. ft.)..... | \$1,245.00 |
| Permit Fee..... | \$ 100.00 |
| Total Fees..... | \$2,441.20 |

2J. PRESIDENTIAL GOLF PARTNERS, LLC, #06-1208, requests authorization to construct six (6) 13-foot wide pedestrian/cart bridges spanning a total of 257 linear feet of Broad Run in Loudoun County at the Presidential Golf Club. Staff recommends a royalty of \$6649.50 for the encroachment over 4,433 square feet of State-owned bottom at a rate of \$1.50 per square foot.

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| Royalty Fee (encroachment 4,433 sq. ft. @ \$1.50 sq. ft.)..... | \$6,649.50 |
| Permit Fee..... | \$ 100.00 |
| Total Fees..... | \$6,749.50 |

3. 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:

1. Item 4 – Ocean View Builders (06-0366).
2. Salmon’s Dredging – decision at May 2006 meeting.
3. 2004 Acts of Assembly regarding Water Column leases.

The motion was seconded by Associate Member Holland. The motion carried, 8-0.

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 Pruitt held a Roll Call vote:

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

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried, 9-0.

**Katherine Leonard, Recording Secretary
Virginia Marine Resources Commission**

Commissioner Pruitt announced that at a previous meeting Mr. Lake Cowart, Jr. had requested that the Commission ask the Attorney General’s office for an opinion on the status of the Water Column Lease Legislation; and, it was the Attorney General’s opinion that this legislation was no longer active and needed to be reprocessed in the General Assembly.

Commissioner Pruitt stated that the letter from Mr. Tim Hayes requesting review of the Commission's decision at the May 2006 Commission meeting in the case of Salmon's Dredging would be taken into consideration when the related agenda item was heard.

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4. **OCEAN VIEW BUILDERS, #06-0366.** Commission review, on appeal by 74 freeholders of property within the City of Virginia Beach, of the March 20, 2006, decision by the Virginia Beach Wetlands Board to approve a proposal to construct a residential duplex on property along the Chesapeake Bay in the Ocean Park subdivision in Virginia Beach. Deferred from the April 2006 Commission meeting.

Justin Worrell, Environmental Engineer, Sr., gave the presentation and his comments are a part of the verbatim record. Mr. Worrell requested that the record be opened, so that he could explain the compromise.

Commissioner Pruitt asked for a motion to open the record. **Associate Member Robins moved to open the record for the additional information. Associate Member Bowden seconded the motion. The motion carried, 8-0.**

Mr. Worrell explained that although all parties, including the City Attorney for the Wetlands Board, had requested that the Commission in this instance modify the Board's decision and approve the permit for the relocated duplex, staff did not believe this was either appropriate, or in keeping with past Commission practices and procedures. Section 28.2-1412 of the Code of Virginia provides that Commission review on appeal shall be based on the record transmitted by the board. While the Commission may entertain additional evidence to resolve any controversy in the record, or as the ends of justice might require, the proffered realignment in this instance would seem to satisfy neither of those criteria. In fact, the twenty-foot (20) landward relocation of the structure seemed more like a proffered conditional settlement agreement than anything else. Whenever a substantial modification had been proposed during a Commission review on appeal in the past, the Commission had invariably chosen to remand the matter back to the wetlands board for reconsideration of that new information and the modified proposal.

Mr. Worrell said that while the Commission can clearly uphold, reverse or remand a decision of a wetlands board, staff questioned whether the Commission could actually modify the Virginia Beach Wetlands Board's March 20, 2006, decision and approve the permit as the parties were asking the Commission to do. In reviewing the legal criteria set forth in §28.2-1413 of the Code of Virginia, staff was unable to conclude that the proposed modification provided any grounds for the Commission to "modify" the board's decision in this matter. Notwithstanding the fact that all of the parties involved were requesting it, and with a clear understanding that the board was likely to approve the proffered modification, staff still remained convinced that the only prudent course of

action would be for the Commission to remand this matter back to the Virginia Beach Wetlands Board for reconsideration of the modified proposal.

Mr. Worrell stated that all parties were present at the hearing.

Edward Bourdon, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Bourdon explained that the Commission must make its decision based on the record, but find that the board did fail in its responsibilities set forth in Section 28.2-1413. He stated that to remand would open the case up to other public comments once it was returned to the Wetlands Board for their review. He said that they were asking that the decision of the Wetlands Board be upheld and to let them appeal it to the Circuit Court. He said there was no basis to send it back or to reverse it. He said such a process would get in the way of a quick resolution. He said if the Commission did not want to modify the project, then they should uphold the decision of the Wetlands Board. He explained that if this were done they could take the matter to court and resolve the matter within 2 weeks.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that the Commission does have the authority to modify as an option if, after today's hearing, they determine the Wetlands Board failed in its responsibilities.

Associate Member Bowden stated the Commission should go forward and stipulate that, so the process can move forward; and, if the Commission cannot modify, the decision, then it should uphold the Wetlands Board decision. He stated that to remand it back to the Wetlands Board would not be good.

David Hay, Attorney for the Freeholders, was present and his comments are a part of the verbatim record. Mr. Hay explained that Section 28.2-1413 of the Code of Virginia, says that the Commission shall modify, remand, uphold, or reverse the decision of the Wetlands Board if it failed to fulfill its responsibilities. He said that if they failed then the Commission should modify the project.

Associate Member Robins stated that he agreed with Associate Member Bowden that the fastest route would be to uphold the Wetlands Board's decision.

Mr. Hay stated that he did not agree with upholding the Wetlands Board's decision, as either party would certainly appeal the matter to the court.

Ms. B. K. Wilson, Associate City Attorney representing the Wetlands Board, was present and her comments are a part of the verbatim record. Ms. Wilson stated that in the interest of good public policy she could agree. She said she felt the Wetlands Board made a satisfactory decision when it decided to require the structure be moved landward. She said if the Commission felt it was in the best interest of both parties, then modify the decision, but if it could not modify, then it should uphold the Wetlands Board's decision.

Commissioner Pruitt stated that he agreed with Ms. Wilson.

Associate Member Robins moved to remand the matter back to the Wetlands Board with an expression of support for the settlement agreement, as he did not feel the Commission was authorized to modify it. He said in the staff recommendation, they had assessed that no error was made and he agreed. Associate Member Schick seconded the motion.

Associate Member Garrison stated that he agreed with Commissioner Pruitt and he could not support the motion because getting people together in agreement was important.

The motion failed, 4-5. Commissioner Pruitt voted No to break the tie.

Associate Member Schick stated that he could not see that the Wetlands Board erred in any way. Commissioner Pruitt asked VMRC Counsel if the additional information received when the record was opened gave the issue more legal standing? Mr. Josephson said the project was more environmentally benign or beneficial to the coastal primary sand dune and VMRC could make a factual determination where all parties agreed to stipulate it.

Ms. Wilson stated that this was not addressed with the Wetlands Board, as it only discussed that she would ask for a modification by the Commission. She agreed that she could see that the modification would be less damaging to the environment and since the Wetlands Board did not consider that in their review then that could be accepted as an error. Commissioner Pruitt asked her if the compromise was a good one and she agreed that it was.

Associate Member Schick said that now that there was more information, the project was more environmentally friendly. He asked that since the Wetlands Board did not pursue that alternative, was that how the Wetlands Board erred? Mr. Josephson stated that the Commission could make that a factual decision.

Associate Member Schick moved to approve the modification in accordance with the compromise between all parties, as the evidence showed the project to be more environmentally friendly.

Commissioner Pruitt asked the representatives for the two sides involved in the appeal, if they agreed.

Mr. Bourdon, Attorney for the applicant, said they agreed with the stipulation.

Mr. Hay, Attorney for the 74 freeholders, said they agreed with the stipulation.

Associate Member Garrison seconded. The motion carried, 6-2. Associate Member Robins and Fox both voted no.

No applicable fees – wetlands appeal

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5. **BAYMARK CONSTRUCTION CORPORATION, #05-2610**, requests authorization to construct a 1,375-foot long by 10-foot wide open-pile, concrete fishing pier with a 116-foot long by 30-foot wide modified T-head and a 30-foot wide octagonal covered shelter and two (2) floating docks for water taxis and boat rentals at their property situated along the Chesapeake Bay in the Town of Cape Charles. The project is protested by a nearby licensed pound netter and the Arlington Plantation Home Owners Association. Deferred from the May 2006 Commission meeting.

Associate Member Holland stated that he was recusing himself from this matter.

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

Mr. Badger explained that Bay Creek was a 1,700-acre, mixed-use, residential development with a 224-slip marina in Kings Creek, two golf courses, and a community beach. Baymark's future plans were to build a hotel and conference center along the Bay just south of the proposed pier. The development surrounded the Town of Cape Charles from Kings Creek to Plantation Creek. The proposed pier would extend over 1/4 (0.25) of a mile into the Chesapeake Bay with a height of over 16 feet at mean low water. The covered shelter would be over 30 feet above mean low water. A licensed pound net was located approximately 400 feet south of the project. A proposed water taxi service would run between the proposed pier, Cape Charles Harbor and the Kings Creek Marina. All residents and guests of the development would be able to use the proposed fishing pier and water taxi.

Mr. Badger stated that the project was protested by Mr. Keith Like, who had two (2) licensed fixed fishing devices (pound nets) adjacent to the project. Mr. Like had stated that the two traps were his best inshore traps and had been productive every spring and fall. Mr. Like believed the proposed fishing pier would interfere with his catch and could render these two traps worthless. He stated the traps were constructed to last more than one year and would be expensive to remove or rebuild. Mr. Like also had concerns that he might not be able to find suitable sites to relocate the traps and therefore, would be starting the trial and error process over again, which would require more time and money.

Mr. Badger stated that a letter of protest had also been received from the Arlington Plantation Home Owners Association, a subdivision on the south side of Plantation

Creek. They had expressed concerns over the size of the fishing pier and felt that the proposed pier would interfere with navigation up and down the shoreline from Cape Charles to Old Plantation Creek.

Mr. Badger said that the Virginia Institute of Marine Science (VIMS) had reviewed the application and stated that the individual and cumulative adverse impacts resulting from the proposed community pier warrant careful consideration. They believed that the overall length and width of the structures was excessive, and recommended that the applicant reduce the dimensions of the structure to minimize impacts to the marine environment and shading of SAV while still providing recreational water access for the community.

Mr. Badger stated that staff requested additional information from the applicant and their agent to address these issues. The applicant responded by reducing the overall length of the pier by 393 feet to 1,375 feet and the width from 20 feet wide to 10 feet. Baymark also withdrew their request to deploy 300 feet of reef balls under the proposed pier to minimize any impediment to the free movement of sediment and organisms across the area as suggested by VIMS. The modified pier would now extend no further channelward than the existing pound trap to the south.

Mr. Badger explained that the Cape Charles Wetlands Board approved their portion of the project as modified on January 27, 2006. The Board wanted the other agencies to understand that the Board's approval was based only on the area that was within their jurisdiction, which had minimal impacts.

Mr. Badger further explained that the Health Department had stated that the applicant had submitted an approved plan for sanitary facilities and they had no objection to the project. The U. S. Coast Guard had informed staff that they would require that the pier lighting be shielded so that it did not shine or cast glare into the pilothouse of the vessels transiting the federal navigation channel. No other agency had expressed opposition to the project.

Mr. Badger stated that staff believed Mr. Like had a legitimate concern that his catch would decrease as a result of the pier. His southern pound net was approximately 400 feet south of the proposed pier. §28.2-307(B) of the Code of Virginia states that it is unlawful to place a net within 300 yards of the side or end of any fixed fishing device, unless in the same row. The pier's structure itself and the activity surrounding the fishing pier, water taxis, and boat rentals would most likely change how fish move up and down the shoreline.

Mr. Badger said that the VMRC Subaqueous Guidelines, Section 1(C)(2), states that in granting or denying any permit for use of State-owned submerged lands and the waters overlying those lands that the Commission will consider, among other things, the effect of the proposed project upon: other reasonable and permissible uses of State waters and State-owned submerged lands, marine and fisheries resources, wetlands, adjacent or

nearby properties, anticipated public and private benefits, submerged aquatic vegetation, and water quality. The Commission will also consider the water-dependency of the project and alternatives for reducing any anticipated adverse impacts. The construction of a fishing pier was normally considered water dependent, however, in this case there were two public fishing piers nearby. The public fishing pier at the mouth of Cape Charles Harbor was 1.3 miles north of the proposed pier, and Kiptopeke State Park had a public fishing pier that was less than six miles south of the project. The need for a water taxi was also unclear. The applicant could easily run a trolley service along the 2 to 3 mile route to downtown Cape Charles and their marina on Kings Creek. This service would not be interrupted by high winds or bad weather, as any water taxi would be. Furthermore, the sheer size of the concrete pier would be larger than any other structure along the Chesapeake Bay in both Northampton County and Accomack County, except for the public fishing pier at Kiptopeke State Park, which was originally built as a car ferry terminal, and the Chesapeake Bay Bridge Tunnel.

Mr. Badger said that therefore, based on the effect of the proposed project upon Mr. Like's two (2) licensed fixed fishing devices and the other alternatives available for reducing the anticipated adverse impacts, staff could not support the project as proposed and recommended the project be denied.

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

Tom Langley, of Langley and McDonald Engineering, and the representative for the applicant, was present and his comments are a part of the verbatim record. Mr. Langley explained that in the Commission's packets there was a letter from Mr. Like stating that he conditionally withdrew his protest. He said the applicant accepted the conditions in their entirety. Mr. Langley read a portion of the Mr. Like's letter into the record, which was as follows:

"In the event of the Baymark Construction's fun fishing pier, directly or indirectly, causes the relocation of two of my pound net fishing traps in/near Plantation Creek, Baymark Construction will bear 100% of the cost of the relocations of the traps. In addition, Baymark Construction agrees that if I decide to move the trap to any point along their waterfront, south of the pier, they will not protest the issuance of a permit to VMRC, as long as it is at least 900' away from the pier in compliance with VMRC guidelines."

Mr. Langley stated that the applicant was trying to comply with all conditions of Mr. Like, when they made modifications to the pier, withdrew plans for placement of reef balls, limited the impacts on the SAV, and VIMS comments prior to the revision and modification. He stated further that the applicant had not been able to resolve all of Mr. Milton's issues with the project.

Associate Member Garrison asked Mr. Langley about the water taxi. Mr. Langley stated that the applicant was only providing maritime access, which was natural for this area as well as an asset to the business.

Jack White was sworn in and his comments in support of the project are a part of the verbatim record. Mr. White stated that he was speaking on his own behalf. He said he had watched the progress and felt the project reflected the ideas of a visionary for the Cape Charles area. He said he had been a resident there for 22 plus years, had served on the Board of Supervisors and worked also to attract tourists to come to Cape Charles. He said that Cape Charles was now considered “a place to go” and he had not heard from any others in the area. He said he gave his whole-hearted support for the project.

Kenneth Like, pound net fisherman, was sworn in and his comments are a part of the verbatim record. Mr. Like stated that he was more than satisfied with their willingness to work with him.

Commissioner Pruitt asked if anyone in opposition wished to address the Commission.

Marvin Milton, representing the Plantation Homeowners Association, was sworn in and his comments are a part of the verbatim record. Mr. Milton explained they were concerned with the size of the project and the amount of State-owned bottom that was being taken up. He said this was taking the area and tying it up so others could not use it. He said there would be increased boat traffic, it would interfere with the Community’s view, and cause increased noise. He said they were opposed to the approval of the project, as this would set a precedent for other developers.

Associate Member Garrison moved to approve the application for permit (05-2610). Associate Member Schick seconded the motion. Associate Member Fox spoke in regards to VIMS comments and asked if the pier was shorter or less wide would that be a lesser impact. Lyle Varnell, Virginia Institute of Marine Science, responded that there was no magic line, the area was definitely dynamic and a higher or wider pier would provide less impact and increasing the distance between pilings would also help. He said he could not say that these changes would reduce or eliminate all impacts to the environment, but it would be an improvement. Associate Member Garrison explained that the motion was based on the pier being higher and wider, that Mr. Like had stated that it should not affect the sand, and the fact that it was a good plan. **Carl Josephson stated that the motion could also be amended so that Mr. Like could keep his pound nets in accordance with 28.2-302 of the Code of Virginia. Associate Members Garrison and Schick both agreed to the amendment.** Associate Member Jones questioned the need for the structure on the end of the pier. Mr. Langley said this was for the water taxi service to be provided for patrons. Associate Member Fox stated that it was well designed and attractive, but he was concerned there was a need for a restriction to allow for private use only and to protect the SAV beds. Associate Member Robins stated that as to the question about the structure at the end of the pier, the Commission’s

policy had been to consider and allow it if it was a benefit to the public. He said to be consistent, the policy had been that if it was private it should be required to be landward of MLW. **Associate Member Robins stated that he wished to modify the motion to require the structure proposed at the end of the pier be placed landward of MLW. Associate Member Jones agreed with the amendment. Associate Member Fox suggested that it also be stipulated that no more piers would be allowed on both sides of the property.** Mr. Langley stated that they would agree to the stipulation for those areas under their control.

Associate Member Robins was asked to clarify the motion. He said the motion was to approve the project but to prohibit the placement of any piers on the southern shoreline of the property, moving the location of the gazebo landward of MLW, the existing pound nets not being prohibited and with reduced dimensions in the width and length of the pier. Mr. Langley asked that the motion include that no piers would be allowed on the Chesapeake Bay shoreline only. **Associate Member Robins agreed. The motion carried, 7-0-1. Associate Member Holland abstained.**

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| Royalty Fees (encroachment on 18,169 sq. ft. @ \$1.50/sq. ft.).... | \$27,253.50 |
| Permit Fee..... | \$ 100.00 |
| Total Fees..... | \$27,353.50 |

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- 6. **HARBOUR VIEW LIMITED PARTNERSHIP, #00-0476.** Formal Restoration Hearing concerning the construction of a 30.5-foot by 30.5 foot gazebo structure (approximately 730 square feet) channelward of mean low water adjacent to a riverfront park at the confluence of Knotts Creek and the Nansemond River in the City of Suffolk. Deferred from the May 2006 Commission meeting.

Deferred until the July 2006 Commission meeting.

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- 7. **CITY OF VIRGINIA BEACH, #96-0083.** Formal Restoration Hearing regarding the overdredging of the Lynnhaven Boat Ramp and Beach Facility municipal channel situated along Crab Creek near the Lynnhaven Inlet in Virginia Beach.

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

Mr. Worrell explained that the Lynnhaven Boat Ramp and Beach Facility provided public access into Crab Creek, which is located near the mouth of the Lynnhaven River system, just southwest of the Lesner Bridge in Virginia Beach. The ramp provides immediate

boating access to both the Eastern and Western Branches of the Lynnhaven River and the Chesapeake Bay.

Mr. Worrell stated that the Commission authorized the construction of the ramp, tending piers, and a connecting navigational channel in May 1996. The authorized channel extends from the head of Crab Creek in a southerly direction down to the mouth, and then makes a turn back to the north, paralleling the shoreline until it ends just south of the bridge over Lynnhaven Inlet. The channel, as permitted, was approximately 2,600 feet long, 50 feet wide, and was authorized to allow a maximum depth of -6 feet at mean low water (MLW).

Mr. Worrell said that to help combat shoaling that occurs in the channel, the permit, which expired on May 31, 2006, allowed for necessary maintenance dredging to a depth of -6 feet mlw during the five month period of October 1 through February 28. A time-of-year restriction of March 1 through September 30 precluded dredging in the channel to protect juvenile summer flounder recruitment and shellfish spawning periods. Since 1996, the original permit has been modified several times. Modifications included adding a turning basin to the channel as it turns to enter the Lynnhaven, and temporary one-time extensions of the dredging window with the concurrence of the Virginia Institute of Marine Science. The Commission may recall its most recent modification of June 30, 2005, in which the City was granted a one-time authorization to maintenance dredge the eastern half of the channel within the time-of-year restriction on an emergency basis. The City never performed the maintenance dredging authorized per that approval.

Mr. Worrell stated that on January 13, 2006, Salmons, Inc. notified the Commission that they would begin the maintenance dredging of portions of Crab Creek. On February 24, 2006, the City notified staff that portions of the channel, including the turning basin, had been accidentally overdredged. According to the City, their inspectors became concerned that the channel was being overdredged after unusually large amounts of dredged sand were being offloaded. Those concerns were confirmed based on the completion of an interim bathymetric survey of the dredged area. The City advised the contractor to stop work and required him to readjust the controls for the dredging. After this correction, the final section of the channel that ties into the federal project channel was completed. According to the post-dredge survey, this section complied with the six-foot maximum depth requirement. However, according to the interim-dredge survey performed after the initial dredging, several areas of the permitted channel had been dredged deeper than -6 feet MLW. The majority of the area is a foot deeper (i.e. -7 feet) with some spots exceeding the permitted depth by two to three feet (i.e. -8 and -9 feet). This area of overdredging includes a portion of the channel directly to the west of the turning basin, the turning basin itself, and approximately one half of the channel on the eastern side of the disposal location.

Mr. Worrell said that Mr. Jim Salmons maintains that this was simply an operator error, and that there was no intent by his company to dredge Crab Creek deeper than that

permitted, nor did the City request that he do so. In correspondence submitted on behalf of Mr. Salmons, his attorney, Mr. Tim Hayes, explained that the overdredging was due to the improper calibration of a tidal gauge. Furthermore, Mr. Hayes pointed out that as a result of the overdredging, the project actually cost Salmons, Inc. money by exceeding the City contract price.

Mr. Worrell stated that the City of Virginia Beach had confirmed that the contract for Salmons, Inc. to maintenance dredge was not to exceed -6 feet MLW. Accordingly, the City would not pay Salmons, Inc. for the additional material dredged deeper than -6 feet MLW. The City calculated that of the total 6,469 cubic yards of material removed, approximately 1,980 cubic yards was removed beyond the allowable depth.

Mr. Worrell said that the Department of Environmental Quality issued a Notice of Violation on May 19, 2006, stating that the dredging activities might be a violation of State Water Control Law and Regulations. Their enforcement action was currently ongoing.

Mr. Worrell explained that in reviewing past requests to maintenance dredge this channel, the Virginia Institute of Marine Science had stated that Crab Creek was "an integral part of the Lynnhaven River ecosystem which supported numerous commercially important finfish species, including and in particular, summer flounder." Therefore, dredging much deeper than the permit allowed, or than necessary to accommodate boat traffic, should not be taken lightly.

Mr. Worrell said that although the City and the contractor claim there was no intention to overdredge the permitted channel, staff was concerned why areas of the channel and turning basin were dredged so deep; in some places up to three feet (3+) deeper than the maximum allowed depth. Furthermore, according to the pre-dredge survey, several areas of the channel and turning basin were already at depths of six feet MLW or greater. These areas should not even have been considered for maintenance dredging in the first place.

Mr. Worrell stated that unfortunately, Salmons, Inc. had a recent history of dredging discrepancies and disregarding the authority of this Commission to permit the appropriate use of State-owned bottoms. As recently as last month, the Commission considered numerous problems associated with the Tanners Landing project in Norfolk. Given that this appeared to be solely an error by the contractor, not the applicant, staff recommended that significant civil charges be considered for the contractor of up to \$10,000 for each violation in lieu of further enforcement as permitted by §28.2-1213 of the Code of Virginia. While staff did consider this violation to have resulted in a significant degree of environmental impact, it was definitely a major degree of deviation and non-compliance. Clearly, Salmons, Inc. had violated the conditions of a Commission permit and could be subject to the assessment of civil penalties by the appropriate circuit court in amounts not to exceed \$25,000 per day for each violation. By code, the City was exempt from

royalties for the permitted dredging, but the contractor was not exempt for dredging deeper than the permitted depth. As such, staff also recommended the assessment of triple royalties to Salmons, Inc. in the amount of \$3,564.00 for the unauthorized dredging of 1,980 cubic yards of material at the maximum allowable rate of \$0.60 per cubic yard.

Commissioner Pruitt asked about the impact as regards to the time of year for dredging. Mr. Worrell stated that he did not know, but VIMS could explain.

Lyle Varnell, VIMS representative, was present and his comments are a part of the verbatim record. Mr. Varnell said that the dredging impacts were generally considered temporary. He said when benthic organisms are removed it takes longer to recover and is they are an important habitat and food source that is utilized by various species, both adult and juvenile. He said there was concern with dredging too often but in some cases overdredging could be recommended. It all depended on the area, materials, etc. He said in this particular area it could be recommended, as it was a sandy area where the benthic organisms should recover quickly. He said the time of year restriction was just for flounder juveniles, as there were adult fish at all other times in the area. He said to explain it simply, this area does not want to be 9 feet deep so it had to be continually dredged and the deeper it was dredged the longer it would take to fill in again.

Associate Member Fox asked if the fine was \$25,000.00 for each day of the violations, how does the number of days for a violation get counted with overdredging. Commissioner Pruitt stated that the court would actually make that determination.

Commissioner Pruitt asked if a representative for the City was present to address the Commission.

Michael Kay, Engineer for the City of Virginia Beach, was sworn in and his comments are a part of the verbatim record. Mr. Kay stated that he agreed with staff's comments. He said the area by the bridge was a dynamic area and it was already filling in again. He said they oversee the project, but only when the contractor was having a problem. He further said that there was an inspector present everyday, but they did not check the depth each time; and, only when they saw that there was more material than had been estimated being dredged, did they realize there was a problem. He said they rely on the contractor to keep track and he was halfway done with the dredging when they realized the problem. He said they did stop it immediately and the rest was done correctly.

Commissioner Pruitt left the meeting, therefore, Associate Member Garrison assumed the chair duties.

Associate Member Schick asked if there had been a predredge survey and was the information passed onto the contractor so that he would work in the right location and was the contractor aware that this area was already 6 feet deep? Mr. Kay explained that

in this project a mechanical dredge was used and that the contractor was in the right location and there were areas that still needed dredging in that location.

Associate Member Garrison asked if the contractor or his representative wished to address the Commission.

Tim Hayes, Attorney for Salmon's Dredging, was present and his comments are a part of the verbatim record. Mr. Hayes said this was clearly a violation and the contractor lost money. He said the gauge was at fault but was fixed and the contractor and subcontractor thought it was set right until the City notified them of the overdredging. He said the situation was corrected and the rest done correctly. He said there was no convincing evidence that anything other than a mistake had been made and it was not the intent of the contractor to violate any laws. He stated that Mr. Salmon and Mr. Seeley were both present.

Associate Member Schick asked if the contractor had been paid by the City to which Mr. Kay responded no.

Commissioner Pruitt returned to the meeting, but Associate Member Garrison continued as chair.

Jim Salmon of Salmon's Dredging Company was sworn in and his comments are a part of the verbatim record. Mr. Salmon's explained that he had lost \$10,000.00 plus any profits he would have made on the contract. He said he could not blame the City. He explained there was a tidal difference of 3 feet and he stuck to the measurement on the equipment. He stated that he had never had a problem with Mr. Seeley before in other jobs, but Mr. Seeley did have limited experience with this type of dredging. He explained that the tide gauge had gotten damaged and he checked on the other side of the island to reset the dredge site.

Mr. Hayes in his rebuttal stated that there was no intent here and the contractor had done dozens of jobs over the years with no problem. He said Mr. Salmon had owned up to the mistake and was asking for leniency.

Mr. Hayes said they were also requesting a modification to the Commission's decision in the case of Tanner's Landing Associates, LLC, which was made last month. He said Mr. Salmon was the subcontractor not the general contractor and he had told them he could not take the spoil material to the Craney Island disposal site. He said the general contractor went to the predredge conference. He did the job when he was told to do so by the site manager. He said they were asking that the Commission not file a letter of complaint with the Contractor's board, asking that it be withdrawn, and the previous decision be reviewed.

Associate Member Robins stated that the issues would be handled separately and they would need to recess into a closed meeting for the second issue. **He said he moved, based on the degree of environmental impact, to accept the staff recommendation requiring the assessment against the dredging contractor of a triple royalty fee in the amount of \$3,564.00 for the 1,980 cubic yards of overdredging of state-owned bottom and a civil charge be assessed in the amount of \$2,000.00.** Associate Member Schick seconded the motion. The motion carried, 8-0.

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| Royalty Fee (1,980 cu. yds. @\$1.80/cu. yd.)(triple)... | \$3,564.00 |
| Civil Charge..... | \$2,000.00 |
| Total fees..... | \$5,564.00 |

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ADDITIONAL 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:

Salmon’s Dredging – May 2006 Commission decision.

The motion was seconded by Associate Member Schick. The motion carried, 7-0.

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,

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,

- (iii) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (iv) 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. Associate Member Garrison held a Roll Call vote:

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

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried, 9-0.

Katherine Leonard, Recording Secretary
Virginia Marine Resources Commission

Associate Member Robins moved to reconsider, as requested, the Commission's decision in the case of Salmon's Dredging made at last month's meeting. Associate Member Holland seconded the motion. The motion carried, 8-0.

Associate Member Robins moved that the letter to the Contractor's Board would be held for three years, placing Salmon's Dredging on probation; and, if there were any further violations of regulations by them, the letter would be sent. Also, payment of the civil charges shall be made in 7 days for the prior violation. Associate Member Fox seconded the motion. Associate Member Garrison asked that a stipulation be added as to whether it was a major or minor infraction. Associate Member Robins said the motion would be amended to include that the matter would be referred back to the Commission. Associate Member Fox agreed with the amendment. Associate Member Schick suggested that the motion be amended that if the funds were not here in 7 days, then the letter would be forwarded to the Contractor's Board. Associate Member Robins agreed. Mr. Hayes stated that Salmon's Dredging was prepared to pay the \$15,000.00 fine today. He said they appreciated the Commission's reconsideration of this matter. The motion carried, 8-0.

The Commission broke for lunch at approximately 12:29 p.m. and was asked to return at approximately 1:10 p.m. The Commission reconvened the meeting at approximately 1:07 p.m.

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8. **ROBERT HOLLOWAY, #02-0012.** Formal Restoration Hearing concerning the unauthorized expansion of a previously authorized boathouse, construction of a storage shed above the boathouse, addition of a step-down walkway and wave break structure, all without prior authorization, at his property situated along the Poquoson River in York County.

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

Ms. West explained that Mr. Holloway's property was situated along the Poquoson River, near the mouth of Moores Creek in York County.

Ms. West said that Mr. Holloway submitted a Joint Permit Application to construct a private pier at his residence in 2000. The project proposal consisted of a 140-foot long by 5-foot wide pier with a 10-foot by 20-foot T-head, a 20-foot by 4-foot step-down, and two (2) mooring pilings. In accordance with Section 28.2-1203 of the Code of Virginia at that time, Mr. Holloway was issued a "no permit necessary" on February 9, 2000. On January 7, 2002, Mr. Holloway submitted another Joint Permit Application, requesting authorization to construct a 32-foot long by 22-foot wide closed-sided boathouse, a 37.5-foot by 5-foot finger pier and a 25.7-foot by 10-foot finger pier at his previously authorized pier. Staff conducted a routine site inspection on January 23, 2002. The addition of the finger piers did not require authorization from the agency because, again, their installation was authorized under §28.2-1203 of the Code of Virginia. Mr. Holloway is a professional marine contractor and his stated need for a closed-sided boathouse was for storage of his construction equipment. Noting that no adjacent property owners objected to the proposal, staff believed that Mr. Holloway had an arguable need for a closed-sided boathouse and subsequently issued a permit to Mr. Holloway in March 2002 for that structure.

Ms. West said that while conducting routine permit compliance inspections in February 2006, staff noted that the pier and boathouse had not been constructed according to the permit document. Staff met with Mr. Holloway on March 14, 2006, at his property to discuss the boathouse and pier. The boathouse, as built, measures 36-foot by 24-foot, 160 square feet larger than authorized by permit. In addition, a 42-foot by 4-foot step down had been added to the pier, two small deck areas had been added to the ends of the finger piers that bracket the boathouse, as well as a wave break structure. Of most concern to staff was the addition of a second story storage area and a covered, elevated deck.

Ms. West stated that a Sworn Complaint and a Notice to Comply were issued on March 20, 2006, directing both the removal of the second story shed and the covered, elevated deck and a reduction in the boathouse to the dimensions of the structure authorized by the permit issued from this agency within 30 days of receipt of the notice. In lieu of removal, however, Mr. Holloway was given the option of submitting an after-the-fact application with drawings that accurately reflected the dimensions of the structures located adjacent to his property. Additionally, the Notice to Comply requested statements explaining who performed the work and why the work was conducted without the necessary authorization and permit. On April 2, 2006, VMRC received a letter from Mr. Holloway in which he explained why he thought his boathouse and second story shed were not in violation of his previously issued permit. In that letter, he acknowledged that the covered, elevated deck area was not shown on the application drawings and he further stated that he had removed that deck and its associated roof. Upon the advice of his attorney, Mr. Holloway refused to allow staff access to his property to obtain more recent photographs of the boathouse with the covered, elevated deck area removed. Staff, with the assistance from our Marine Police Officers, was able to obtain more recent photos from the waterway by boat. To date, staff had not received either the requested Joint Permit Application or the as-built drawings of the structures.

Ms. West explained that when reviewing proposals to build over State-owned submerged lands the Commission's Subaqueous Guidelines direct staff to consider, among other factors, the water dependency and necessity of the proposed structure. Furthermore, when considering authorization for such structures for private use, §28.2-1205 of the Code of Virginia stipulates that: "In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to §1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia."

Ms. West further explained that staff cannot conclusively determine whether the 42-foot by 4-foot step down and the two small deck areas were added before or after the limit of 250 square feet for pier protrusions were introduced into §28.2-1203 of the Code of Virginia. That change took place on July 1, 2003. As a result, staff did not recommend that the Commission consider their addition as a violation per se. However, they did represent further evidence of Mr. Holloway's departure and failure to adhere to his previously submitted and reviewed plans. Given Mr. Holloway's profession as a marine contractor, the construction of a boathouse larger than the stated dimensions on his permit and the addition of the second story storage area with the covered, elevated deck, and the wave break without proper authorization were of great concern to staff. In addition, the cover letter that accompanies all VMRC permits clearly, in capital letters for emphasis, reminds the permittee(s) that any deviations from the permit or attached drawings required prior authorization from the Marine Resources Commission. The cover letter

further indicates that failure to obtain a modification to the permit would be considered a violation and that violation could result in civil charges.

Ms. West said that staff recommended denial of the second story storage area and wave break, and a reduction in the boathouse to the dimensions authorized by the permit. Staff further recommended that this be accomplished within 60 days and that the Commission direct Mr. Holloway to grant staff access to the structures from his property for verification of his compliance with the Commission's directives. In the event that the Commission elected to grant after-the-fact approval of any portion of the structure that was in violation, staff recommended an appropriate civil charge be considered based upon minimal environmental impact but a significant degree of deviation or non-compliance. Staff also recommended that the Commission direct Mr. Holloway to submit drawings of the pier and boathouse that reflect the structures authorized by the Commission's decision.

Michael Ware, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Ware explained that the packet included his correspondence and it was not necessary to look at it a second time. He said that the staff should have coordinated with Mr. Holloway for a site visit, which they didn't and that surprised him. He said the drawings submitted for the project were very simple and the dimensions were not depicted. He said the difficulties on the boathouse resulted from the overhangs and at the time the applicant was not concerned, but in 2003 things were changed and the overhangs were a concern. He provided photos of the decking and the current structure, which showed that the decking had been removed. He stated that the structure referred to as a shed was actually a cupola, which was an addition. He said that since Mr. Holloway was in business he stored his equipment out of sight from the community. He said he was just trying to be a good neighbor.

Robert Holloway, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Holloway stated that he had been in business for 25 years when he started building boathouses. He said he did 3 to 4 permits a year, mostly repair work. He said since 2003 he had built 3 boathouses. He said VMRC staff called him and inquired about the overhangs and was told that no matter what size, there would be a violation. He went on to say that at the time he thought he was in compliance. He said the drawings he provided were not engineering drawings and so not to scale.

Ms. West explained that the problem was that staff was concerned with the second story. Associate Member Garrison stated that he did not see the problem as the deck was removed and that only left a small deviation.

After further discussion, Associate Member Garrison moved for after-the-fact approval of the boathouse requiring that the second story flooring be removed. Associate Member Holland seconded the motion. Associate Member Robins requested that the motion include a stipulation to grant staff access for verification

of compliance. Associate Member Jones asked about including any fines. Associate Member Garrison stated there was no civil charge. Associate Member Jones stated that there was enough deviation to charge triple fees. Mr. Grabb said there was no charge for a modification, but triple fees could be applied to a new permit. Associate Member Robins said he could support the motion if it was amended to include the staff recommendation for a civil charge as the applicant is a contractor and there was some departure from the permit. He suggested a \$1,000.00 fine. Associate Members Garrison and Holland accepted his amendment. Commissioner Pruitt stated that Mr. Holloway had to accept the civil charge, if not, then the matter would have to be sent to the Attorney General's office. The motion carried, 8-0.

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| Permit Fee (triple)..... | \$ 300.00 |
| Civil Charge..... | \$1,000.00 |
| Total Fees..... | \$1,300.00 |

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SPECIAL PRESENTATION:

Commissioner Pruitt announced the appointment of Steve Bowman as the Commissioner for the Virginia Marine Resources Commission, starting July 3rd. He explained that Mr. Bowman had worked hard to earn this appointment and was the right man for the job.

Col. Steve Bowman stated that he thanked Mr. Pruitt and others for their support and expressed his pride in his service with the Commission over the years. He also presented Commissioner Pruitt with the gavel that he had used over the years. He read the inscription added to the gavel, which included the dates of service from February 22, 1983 until July 3, 2006. He went on to explain the reason that the photographs of former Commissioners had been rearranged, which had been noticed by the Associate Members, was so that when Commissioner Pruitt's photograph was added it would be at the beginning, as he had served the longest. He added the photograph to the others.

Commissioner Pruitt expressed his thanks for all the support he had gotten from the watermen and everyone else during his years of service with the Commission. He introduced his family and friends who were present at his last meeting. There was his wife, Diane; his son, Steve Pruitt a Special Agent with the State Police; his younger brother, Guy Olson Pruitt; and his friends, Jim and Lucy Sutherland, Warren Crockett, and the Honorable Jack White.

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9. **TED WARREN, #05-1348**, requests authorization to install a 112-foot by 5-foot private, non-commercial, non-riparian, open-pile pier with a 16-foot by 20-foot T-head and a 24-foot by 14-foot open-sided boathouse with a lift adjacent to property situated along Willoughby Bay in Norfolk. An adjacent property owner protested the project.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. Ms. West made a joint presentation for items 9 & 10. Commissioner Pruitt stated that separate motions would be made for the individual items.

Ms. West explained that Mr. Warren's property was located on Willoughby Spit near the westbound bridge of Interstate 64 in Norfolk. As with a majority of the properties located on this portion of Willoughby Bay, Mr. Warren was not a waterfront property owner and had no riparian rights.

Ms. West stated that Mr. Warren proposed to construct a private pier and boathouse. His lot was 50 feet wide and the pier was proposed to be located in the center of the property. Although the applicant depicted the location of the proposed pier to be between the extended property lines, this designation had no legal foundation since Willoughby Bay Avenue, a City of Norfolk paper street, was located between Mr. Warren's rear property line and mean low water. Since this was not a riparian property, the pier and boathouse did not qualify for statutory authorization under the provisions of §28.2-1203 of the Code of Virginia.

Ms. West explained that the City of Norfolk, however, allowed property owners who were bound by paper streets to obtain encroachment permits. Those authorizations grant property owners permission to encroach onto City property for specific purposes, such as the construction of private piers. Mr. Warren obtained such a City of Norfolk encroachment permit on October 13, 2005.

Ms. West said that Mr. Albert Williams the adjacent property owner protested the project. Mr. Williams had no objection to the pier, per se, but he was concerned that he would not be able to access his own proposed pier if the boathouse was constructed on the east side of the pier. He believed the boathouse should be located at the end of the pier, rather than off to the side, in order to accommodate navigational access for both himself and Mr. Warren.

Ms. West explained that the existence of other non-riparian private piers along this section of shoreline, as well as one authorized but not yet constructed private pier at a nearby property, further complicated the evaluation of this proposal. Staff attempted to consider other piers in the immediate area and the linear footage of shoreline for each property owner when evaluating the proposed pier.

Ms. West said that as previously stated, the applicant was not a riparian property owner. Without the ability to utilize the Circuit Court for a legal determination of the rights of riparian property owners, the Commission is responsible for evaluating the equitable use of State-owned submerged lands along this portion of the waterway.

Ms. West said that in reviewing the designs of nearby piers and boathouses, locating the pier at the center of this narrow property appeared to represent an equitable use of the waterway for both the applicant and the adjacent property owners. In addition, utilizing a T-head design would appear to accommodate typical uses of a private pier while maintaining access to the sides of the pier itself for both the property owner and the adjacent neighbors. As such, staff recommended approval of the pier as proposed. Staff did not believe the proposed location of the boathouse, however, was appropriate. In examining the adjacent piers, it appeared that locating the boathouse at the end of the pier, as was done at 1217 Little Bay Avenue and 1223 Little Bay Avenue, provided the property owner a boathouse while also accommodating access to the sides of the pier for both the applicant and the adjacent property owners. As such, staff recommended denial of the boathouse as proposed.

Ms. West went on to say that staff would support approval of a single-slip boathouse orientated in the same fashion as the boathouses at the adjacent properties, along with reasonably sized finger piers, that would be more consistent with an equitable use of the waterway as described above.

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10. **ALBERT WILLIAMS, #05-0753**, requests authorization to install a 175-foot by 6-foot private, non-commercial, non-riparian, open-pile pier with a 25-foot by 10-foot L-head and a 28-foot by 25-foot open-sided boathouse with a lift and associated 4-foot wide finger piers adjacent to property situated along Willoughby Bay in Norfolk. Two adjacent property owners protested the project.

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

Ms. West explained that Mr. Williams's property was located on Willoughby Spit near the westbound bridge of Interstate 64 in Norfolk. As with a majority of the properties located on this portion of Willoughby Bay, Mr. Williams was not a waterfront property owner and has no riparian rights. Mr. Williams proposed to construct a private pier and boathouse. His lot was 50 feet wide and the pier was proposed to be constructed along the western property line, adjacent to his neighbor, Mr. Warren. Although the applicant had driven pilings into State-owned submerged lands without a permit from this agency in an effort to identify the location of the extended property lines, this designation had no legal foundation since Willoughby Bay Avenue, a City of Norfolk paper street, was located between Mr. Williams' rear property line and mean low water.

Ms. West said that the City of Norfolk, however, allowed property owners who were bound by paper streets to obtain encroachment permits. Those authorizations granted property owners permission to encroach onto City property for specific purposes, such as the construction of private piers. Mr. Williams obtained such a City of Norfolk encroachment permit on November 14, 2005.

Ms. West explained that since Mr. Williams' property was not a riparian property, the pier and boathouse did not qualify for statutory authorization under the provisions of §28.2-1203 of the Code of Virginia.

Ms. West stated that Mr. Ted Warren the adjacent property owner protested the project as well as another neighbor, Mr. Anthony English. Mr. Warren objected to both the proposed pier and boathouse as well as the pilings that Mr. Williams' had driven into State-owned submerged lands on the property line extended. Mr. English's objections focused on the loss of navigable access between the Warren and Williams pier. He was also concerned about pier congestion along the waterway.

Ms. West said that the existence of other non-riparian private piers along this section of shoreline, and one authorized but not yet constructed private pier at a nearby property, further complicated the evaluation of this proposal. Staff attempted to consider other piers in the immediate area and the linear footage of shoreline for each property owner when evaluating the proposed pier.

Ms. West said that as previously stated, the applicant was not a riparian property owner. Without the ability to utilize the Circuit Court for a legal determination of the rights of riparian property owners, the Commission was responsible for evaluating the equitable use of State-owned submerged lands along this portion of the waterway.

Ms. West said that in reviewing the designs of nearby piers and boathouses, it appeared that relocating the pier to the center of this narrow property would allow for an equitable use of the waterway for both the applicant and the adjacent property owners. In addition, utilizing a T-head design would appear to accommodate typical uses of a private pier while maintaining access to the sides of the pier itself for both the property owner and the adjacent neighbors. Lastly, in examining the adjacent piers, it appeared that locating the boathouse at the end of the pier, as was done at 1217 Little Bay Avenue and 1223 Little Bay Avenue, could provide for a single-slip boathouse while also accommodating access to the sides of the pier for both the applicant and the adjacent property owners.

Ms. West stated that since the proposed pier was to be constructed along the western property line rather than in the center of the property, staff recommended denial of the pier and boathouse as currently proposed. However, staff believed that the applicant should be granted authorization to construct a pier at his property provided that the pier design was more consistent with the equitable utilization of the waterway as outlined

above. In this case, the applicant might find it necessary to shorten his proposed pier in order to accommodate navigational access around his brother's pier to the east.

In addition, staff recommended that the Commission direct Mr. Williams to remove the unauthorized pilings he placed on State-owned submerged lands to identify what he thought was an extension of his property lines. The pilings appeared to present a navigational hazard that could hinder Mr. Warren from accessing the eastern side of his pier.

Ted K. Warren, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Warren stated that the staff recommendation was a good compromise. He utilized a staff slide to depict his property for the Commission.

Commissioner Pruitt asked if there was anyone who wished to speak in opposition?

Albert Norris Williams, protestant and resident in the area, was sworn in and his comments are a part of the verbatim record. Mr. Williams explained that he was not opposed to the pier, only to the boathouse proposed by Mr. Warren. He suggested that the boathouse be built at the end of the pier.

Anthony English, protestant and resident in the area, was sworn in and his comments are a part of the verbatim record. Mr. English said that his concerns were for navigating between the piers as it is so congested with pilings, unpermitted pilings. He said for aesthetic purposes the pier should be moved to the property line or put down the middle. He stated this would allow Mr. Warren access to water.

Richard Williams, protestant and resident in the area, was sworn in and his comments are a part of the verbatim record. Mr. Williams said he had lived in the Willoughby area for 55 years and some information was being left out and some was misleading. He said that all the residents had been allowed to build a pier where they wanted to. His brother built on the west line and he had built his pier in the middle. He said if everything was put on the east side it would take his rights away and if Mr. Williams put his in the middle then there would be no room between that pier and his own.

Arthur Martin, protestant and resident in the area, was sworn in and his comments are a part of the verbatim record. Mr. Martin explained some history about how other piers where located, and wherever the piers are put, consideration needs to be given to allowing for getting in and out beside the piers. He said there was a problem with Mr. English, as he did not live there. He suggested that Mr. Warren and Mr. Williams put the piers where each wants it on either side of their property, just be sure to allow room to come in and out on either side of the piers.

Commissioner Pruitt asked that all parties for Items 9 and 10 meet in the library next door for a short meeting to discuss these matters and see if some compromise

could be reached by all parties. After that the Commission would return to these two items and make a decision.

- 11. **BRIAN L. PARKER, #05-2618**, requests authorization to construct a 17-foot by 40-foot open-sided, private, noncommercial boathouse near the channelward end of a 206 foot long pier and to install a single piling to support an osprey nesting platform adjacent to his property situated along the Piankatank River near the mouth of Back Creek in Gloucester County. The project is protested by an adjoining property owner and an oyster ground leaseholder.

Deferred until July 2006 Commission meeting.

- 12. **EDWARD WALENDY, #05-2566**, requests authorization to construct a 35-foot long by 19-foot wide, private, closed-sided, single slip boathouse to replace an existing, storm-damaged, 35-foot long by 28-foot wide, open-sided, dual slip boathouse adjacent to his property on the Western Branch of the Corrotoman River in the Corrotoman-by-the-Bay subdivision in Lancaster County.

Commissioner Pruitt left the meeting at this point and Associate Member Garrison assumed the duties of the chair.

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

Mr. Woodward explained that the project was located on the Western Branch of the Corrotoman River near the confluence of Senior Creek, approximately 4 miles south of the village of Lively in Lancaster County. The subject property was undeveloped except for the remains of a private pier and boathouse, which were damaged by Hurricane Isabel. While the new structure is to be in the same location and smaller in overall dimension than the damaged structure, staff determined that the proposed new structure would not qualify under Governor Warner's Hurricane Isabel Executive Orders since it was to be of a closed-sided design. Accordingly, staff requested additional information and processed the application for a standard Subaqueous Bed Permit.

Mr. Woodward stated that Lancaster County instituted a prohibition on new, private boathouse construction in January 1988. VMRC has only issued two private boathouse permits since that time. Both were for rebuilds and one of those was in this very subdivision, just upstream of the project site. There are several other boathouses within the subdivision both open- and closed-sided, but they were built prior to the current County prohibition. Even though the new structure would have sides, the County

Planning and Land Use Office intended to issue a “renovation” permit, with several conditions, one of those being VMRC approval.

Mr. Woodward said that staff contacted the applicant on several occasions to see if an open-sided design, more in keeping with recent private boathouse permits granted by the Commission, would be acceptable. Mr. Walendy was unwilling to modify his design and believed that the structure would be “pleasing to the eye and representative of Virginia’s coastal history.” Mr. Walendy currently resides in Chicago and would like the security offered by a closed-sided structure while they were away from the property. He currently owns a 17.5-foot inboard/outboard.

Mr. Woodward explained that even though the project was unopposed and would represent a smaller encroachment over State-owned bottom than the existing, deteriorated boathouse, recently only open-sided boathouses had been acceptable to the Commission. Since the applicant was an absentee owner, staff believed that storage of the boat on the upland would be more appropriate given the extended periods of time that he would be away from the property. Therefore, staff did not believe that a closed-sided design was justified in this case. Accordingly, after evaluating the merits of the project, considering past Commission actions on similar projects, and all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff could not support approval of the boathouse as proposed and recommended denial of the project as proposed.

Associate Member Garrison asked if the applicant was present and wished to address the Commission.

Edward W. Walendy, applicant, was sworn in and his comment are a part of the verbatim record. Mr. Walendy explained that he had designed the boathouse to get rid of the blight that was there now and that other boathouses in the area were more like barns. He said he wanted to set an example or provide a model for others. He said he was asking that the project be approved as requested.

There was no one in opposition to this project.

Associate Member Fox explained that Lancaster County did not usually allow close-sided boathouses, but agreed that replacement was okay with sides as long as it did not exceed the footprint. He moved to approve the project as presented. Associate Member Schick seconded the motion. He said he supported the motion as the local government had given it’s okay and there were no protests. He said he would prefer it be closed sided so as not to see the lifts, etc.

Associate Member Robins said that he could not support the motion as it went against the policy of the Commission and the Public Trust. He offered a substitute motion to deny the enclosed boathouse and approve an open-sided boathouse. Associate Member Holland seconded the motion.

Associate Member Schick stated that there had not been a case considered before where there were no protests and no problem with the boathouse being close-sided, as the County had given their approval.

Associate Member Garrison said that there was not anything in concrete that said the Commission could not vary in its decisions.

Associate Member Jones asked what proportion of recent boathouses had open and closed sides. Bob Grabb, Chief, Habitat Management explained that it would require a guess and the vast majority were not considered by the board. He further explained that staff did not approve close-sided boathouses, unless circumstances justified it. He said that the open-sided boathouses minimize the impact on others. He stated that in this case, staff did not believe it was justified.

Associate Member Fox said that in most cases he was opposed to close-sided boathouses. He said that the County was opposed to all of them, but they considered this a replacement. He said he did not believe a precedent was being set.

Associate Member Schick stated that the boathouse planned was smaller than the original so there was less impact. He said the aesthetics and architecture were a local issue and the County was accepting it.

Associate Member Robins stated in the staff comments it said that it was originally an open-sided boathouse.

Mr. Grabb explained that this would have met the Executive Order for replacement if it were proposed as open-sided and not closed.

Associate Member Schick asked that the substitute motion be amended to allow the option of making it the same size, as it was originally. Associate Member Robins agreed to the amendment. The motion carried, 5-3. Associate Member McLeskey, Schick and Fox all voted no.

As approved the project qualified as replacement under the Executive Order; therefore, there are no applicable fees.

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Commissioner Pruitt returned at this point in the meeting and resumed the duties of chairman.

At this point, the Commission continued with the two items, 9, Ted Warren and 10, Albert Williams.

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Commissioner Pruitt asked if the parties were able to come to some solution to the issues. Ms. West stated there was no compromise and they had asked to address the Commission again.

Commissioner Pruitt allowed 2 minutes for each of the two applicants.

Mr. Warren said he would accept the staff recommendation as long as Mr. Williams did the same and he was required to remove the pilings.

Mr. Williams asked that he be given the same privilege as the other 3 parties on his left side and if the pier was put on the line at his west side it would leave him without access to the water.

Commissioner Pruitt asked for a motion for Item 9, Ted Warren.

Associate Member Fox moved to approve the pier placement at the center of the property with the boathouse being placed at the end of the pier and this would be subject to approval by staff of the drawings to be submitted by Mr. Warren. Associate Member Holland seconded the motion. The motion carried, 8-0.

Permit Fee.....\$100.00

Commissioner Pruitt asked for a motion for Item 10, Albert Williams.

Associate Member Fox moved to approve the pier placement at the center of the property with the T-head at the end and this would be subject to approval by staff of the drawings to be submitted by Mr. Williams. Associate Member Holland seconded the motion. Associate Member Robins asked that the motion be amended requiring removal of the pilings. Associate Members Fox and Holland agreed. The motion carried, 8-0.

Permit Fee.....\$100.00

- 13. **GASLIGHT LANDING, LLC, #05-1221**, request authorization to construct a 26-slip community pier facility to include: the installation and backfilling of 22 linear feet of bulkhead; the construction of a 12-foot wide by approximately 257 foot long marginal wharf extending approximately eight feet channelward of mean low water; and the construction of two (2) 8-foot wide by 125-foot long piers with 8-foot wide by 58-foot long T-head platforms, extending approximately 141 feet channelward of mean low water, with a total of two (2) access ramps/gangways, thirteen (13) 3-foot wide by 20-foot long finger piers, twenty-six (26) 3-foot by 3-foot triangular platforms installed adjacent to each finger pier and T-head, and

thirteen (13) free-standing mooring piles, adjacent to the planned Gaslight Landing town home development situated along the Occoquan River in the Town of Occoquan, Prince William County.

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

Mr. McGinnis explained that the proposed project was located on the Occoquan River, just west of the Route 123 Bridge in the Town of Occoquan, Prince William County. This property was the former location of Prince William Marine's commercial marina, prior to their move to another facility downriver. The width of the Occoquan River, in the immediate vicinity of the proposed project, varies from approximately 320 feet to 420 feet.

Mr. McGinnis further explained that the applicant sought authorization to construct a 26-slip community pier to serve a planned 20-unit town home development project. The proposed project would include the installation and backfill of 22 linear feet of bulkhead across the site of an existing boat ramp, the construction of a 12-foot wide by 255-foot long marginal wharf, which would connect to the Town of Occoquan's adjacent Riverwalk, as well as the construction of two (2) 8-foot wide main piers extending approximately 141 feet channelward of mean low water. Each of the two main piers will include an access ramp/gangway connecting to the marginal wharf, an 8-foot wide by 58-foot long T-head platform, and will together provide a total of 26 slips delineated by thirteen (13) 3-foot wide by 20-foot long finger piers, 13 free-standing mooring piles, and twenty-six (26) 3-foot by 3-foot triangular platforms installed adjacent to each finger pier and T-head platform.

Mr. McGinnis said that the Commission's Criteria for the Siting of Marinas or Community Facilities for Boat Mooring (4 VAC 20-360-10 et seq.) clearly states that for community piers appurtenant to residential developments, the number of units on the property did not necessarily predicate the number of slips. The proposed townhome development would include a total of 20 units, of which 10 would be located along the waterfront of the Occoquan River, while the additional 10 would be located further landward and adjacent to Mill Street. As proposed, the community pier would extend a maximum of 141 feet channelward of mean low water; more than one-third of the way across the Occoquan River. The Commission's Subaqueous Guidelines states that such piers should extend no more than one-third the distance across a waterway, except in unusual channel configurations.

Mr. McGinnis stated that the navigable channel of the Occoquan River appeared to be located on the opposite side of the river from the proposed project; however, it was unclear just how close the proposed pier would come to that channel. This was of some concern to staff since there could possibly be navigation issues related to the movement of barges and other vessels past the proposed community pier to or from upriver sites.

Mr. McGinnis said that the Virginia Institute of Marine Science (VIMS) Shoreline Application Report, dated June 14, 2006, recommended that the number of slips be no greater than the number of potential waterfront lots, in order to lessen the potential pollutant load introduced into the river. Their comments also included that the closure of the boat ramp would result in some loss of subtidal and intertidal habitat, and suggested that the proposed marginal wharf be constructed entirely on the upland in order to reduce shading and indirect impacts on subtidal habitat.

Mr. McGinnis explained that the Virginia Department of Health (VDH) found the proposed project in compliance with their Sanitary Regulations for Marinas and Boat Moorings, and have concluded that it will not affect Shellfish growing waters. The Virginia Department of Game and Inland Fisheries (DGIF), in an e-mail dated February 15, 2006, stated that the Occoquan River is a Confirmed Anadromous Fish Use Area, and recommended a time-of-year restriction which would preclude all in-stream construction activities between February 15 and June 30 to minimize potential adverse impacts to anadromous fish during the primary spawning/migration period. They further recommended that strict erosion and sediment control measures be employed. The Virginia Department of Conservation and Recreation (DCR), in a memorandum dated March 6, 2006, stated that the proposed project was located in an area where there were no documented natural heritage resources, and that it should not affect any documented state-listed plants or insects, or State Natural Area Preserves under their jurisdiction. In addition, they stated that all proposed land disturbance, clearing, or grading must comply with the Chesapeake Bay Preservation Area Designation and Management Regulations.

Mr. McGinnis stated that the United States Army Corps of Engineers, Norfolk District, on April 17, 2006, issued a Regional Permit (03-RP-19) for the proposed project.

No other agencies have raised concerns or objections to the project.

Mr. McGinnis explained that in the opinion of staff, the applicant's request for 26 slips appeared to be excessive, when considering the number of waterfront units, as well as total number of units planned for the development. The applicant had, however, pointed out to staff that this site had previously been a commercial marina with far more slips than the 26 they were requesting. Except for the existing bulkhead and boat ramp, all of the previous piers and structures associated with the former marina no longer existed. In this case the community piers provide little public benefit since, by nature, they are for the private, exclusive use of property owners within the community, whereas commercial marinas are intended and open for public use. As such, staff did not believe that the applicant had provided a valid argument to justify the number of slips they had requested.

Mr. McGinnis further explained that for communities with single-family, detached homes, staff had typically provided the Commission with a recommendation for community piers formulated by giving two slips for each waterfront property plus one additional slip intended for guests. However, since the applicant was proposing a more

densely developed town home community, staff felt that one slip per waterfront unit plus one additional slip for guests would be appropriate. This would equate to a total of 11 slips for the planned development. By reducing the number of slips to 11, the length of the two proposed piers could also be greatly reduced, further distancing the piers from the navigable channel and providing safer passage for vessels and barges moving to or from the upriver side of the proposed project.

Mr. McGinnis stated that accordingly, staff recommended the Commission approve the applicant's request, but reduce the number of slips from 26 to 11, to more appropriately reflect the number of waterfront units, rather than the total number of units within the planned development, consistent with the Commission's Criteria for the Siting of Marinas or Community Facilities for Boat Mooring (4 VAC 20-360-10 et seq.) and Subaqueous Guidelines. Staff further recommended a royalty in the amount of \$3,375.00 be assessed for the encroachment and backfill of the bulkhead (\$315.00) over 105 square feet of State-owned subaqueous land at a rate of \$3.00 per square foot and the encroachment of the marginal wharf (\$3,060.00) over 2,040 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot. Staff also recommended the assessment of a royalty for the encroachment of the two main piers and their associated platforms, finger piers, pilings, and access ramps/gangways, at a rate of \$1.50 per square foot, as prescribed by the Commission's Rent and Royalty Schedule adopted November 22, 2005, and based upon revised drawings reflecting the Commission's authorization.

After some discussion, Commissioner Pruitt asked if the applicant wished to address the Commission.

Mark Granville Smith, President of Prince William County Builder's Association, was sworn in and his comments are a part of the verbatim record. Mr. Smith said that the residents in the area were not opposed and there had been extensive review by the local board. He read a letter of support from the Town of Occoquan into the record. He stated that there would be access to the general public. He further stated that most of them are bought for rental properties. He said with staff recommendation of 2 slips per unit, it would result in 40 slips. He said they were requesting approval for 26 slips, a number less than there was previously when the marina existed.

Bob Hagle, Co-applicant, was sworn in and his comments are a part of the verbatim record. He said they had used the townhouse-design, as this was a historic district and the first time anything had ever been built there.

Hal Goodman, Co-applicant, was sworn in and his comments are a part of the verbatim record. Mr. Goodman stated that they had not received anything, but were told by the Baltimore Corps that there was no problem.

There was no one in opposition to the project.

Associate Member Holland moved to accept as submitted because the town had approved it and no one had come forward to oppose it. Associate Member McLeskey seconded the motion. Associate Member Robins stated rule of thumb was to allow slips for potential waterfront lots and asked if this would be setting a precedent for flag lots by allowing slips for them.

Bob Grabb, Chief, Habitat Management, responded, no, as can be seen in the Elizabeth River case last month, that was merely a guideline and it was hard to tell what is permissible as it was not hard and fast.

Associate Member Garrison stated he could not justify approving the project.

Associate Member Jones said she was also concerned with setting precedents and staff needed to address it. She said to be consistent, the Commission needed to match the number of slips to the viable waterfront lots. She further stated that it was confusing about lot size, flag lots, etc.

Mr. Grabb stated that this was being treated as a community pier.

After further discussion, Associate Member Robins offered a substitute motion. He moved to approve the project for 20 slips or a number equal to the number of units requiring new drawings to be approved by the staff. Associate Member Bowden seconded the motion. Associate Member Schick asked that the motion be amended to allow for 2 piers to be built as requested. Associate Member Robins explained that the compromise was trying to minimize the scope of the project and he could not accept the amendment. Associate Member Schick stated he could not support the motion as he was trying to allow for temporary dockage and less permanent slips. Associate Member Robins explained that the T-head would provide for any temporary dockage. The motion failed, 4-5. Commissioner Pruitt voted no in order to break the tie because he felt they needed at least 2 slips for guests.

Associate Member Robins made a new motion and moved to allow 22 slips with approval of new drawings by the staff. Associate Member Bowden seconded the motion. Associate Member Schick stated that there was a design flaw, allowing 22 slips for only 2 piers. At the suggestion of the applicant, the motion was amended to 24 slips, 12 for each pier. Associate Member Robins accepted that amendment. The motion carried, 7-1. Associate Member Garrison voted no.

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| Royalty Fees (encroachment 2,040 sq. ft. @ \$1.50/sq. ft.)..... | \$ 315.00 |
| Royalty Fees (filling 105 sq. ft. @\$3.00/sq. ft.)..... | \$3,060.00 |
| Royalty Fees (community pier to be determined upon receipt and approval of revised drawings) | |
| Permit Fee..... | \$ 100.00 |

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14. PUBLIC COMMENTS:

Commissioner Pruitt opened the public comment period.

Mary Hill, resident of Suffolk and applicant to leasing oyster planting ground, was present and her comments are a part of the verbatim record. Ms. Hill explained that harvesting oysters was a part of her family's heritage, from her brothers and her father and back a number of generations. She said even when oysters were declining from the devastation of disease, her father kept hoping it would come back again. She said they have kept paying rent on leases on that hope also. She said now that seems to have happened and her family had applied for a number of leases in the Suffolk area so that they could get back into the oyster business. She said she was told about some of the expenses involved, such as the cost of advertising their application for public notice, but it was not until she received a bill from the Virginian Pilot that she saw how high the cost of advertising actually was. She said the smaller, local newspaper costs were more reasonable. She explained that she had spoken with the VMRC staff and they agreed that the cost of advertising with the Virginian Pilot was too much and they had provided some relief by allowing her to advertise other applications with just the local Suffolk newspaper.

Ms. Hill explained that her purpose for being here at the hearing was to ask the Commission for some relief from the excessive advertising cost. She said she had tried to get some relief from the Risk Management Department, but they had not helped her very much.

Commissioner Pruitt said he proposed to ask Mr. Grabb's staff, who is in charge of the surveys, and Mrs. McCroskey, who is involved with the tort situation, to take this to the Commission's attorney. He said they would prepare a report on their findings and bring this report back to the Commission, so the Commission would have a full understanding for future policy. He stated the Commission's staff would try to help in any way they could and the newly appointed Commissioner was aware of the situation and prepared to follow it to the end.

No further action was taken.

Robert Jensen, Rappahannock Preservation Society representative, was present, and his comments are a part of the verbatim record. Mr. Jensen provided a powerpoint presentation and made a presentation to Commissioner Pruitt of one of the reef units developed by him, as a present for his retirement from the Commission.

Tommy Leggett, the Chesapeake Bay Foundation representative, was present, and his comments are a part of the verbatim record. Mr. Leggett stated that on behalf of the CBF

President, Mr. Baker, he was presenting Commissioner Pruitt with a letter, dated June 27, 2006, and read it into the record and congratulated him on his retirement.

Captain's Cove – Swan Gut

C. D. Fleming, Jr. of New Church, was present and his comments are a part of the verbatim record. Mr. Fleming offered Commissioner Pruitt his congratulations on his retirement. He explained that, at the Captain's Cove - DEQ public hearing last Thursday there were approximately 500 attendees, with representatives of the County of Accomack present. He said on the Seaside of Eastern Shore there was concern over preserving the Chincoteague Bay – Swan Gut area for the Seafood Industry. He said that there had been a field trip on which Mr. Travelstead accompanied the watermen one Saturday to survey the clam resource in the area.

Tommy Mason of Chincoteague was present and his comments are a part of the verbatim record. Mr. Mason explained that there was a viable resource of clams in the area. He stated the Virginia Seafood Council and Accomack County were both protesting the project. He said the Chincoteague Bay was a pristine area and aquaculture was a very big business in that area, worth \$40,000,000 to the State's economy. He said, with this project, three pieces of the Baylor survey would be condemned, and they were concerned with the developer's proposed outfall. He asked Mr. Josephson for some advice on this matter.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that he could only advise the Commission in such matters, but there was an old Attorney General opinion that he felt might apply to this matter. Commissioner Pruitt stated that staff would look into it.

Associate Member Bowden stated that the group had done a good job in finding alternative ways for the project to go. He said he was also on that field trip with staff when the survey was done. He explained that no one was against the building of the project, only that the waste was proposed to go into the Chincoteague Bay.

Tommy Mason offered Commissioner Pruitt his congratulations on his retirement and presented him with a gift.

No further action was taken.

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Staff requested that Item 16 be heard first. Commissioner Pruitt announced that Item 20 for repeat offenders would be heard after that item.

- 16. PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-252, "Pertaining to the Taking of Striped Bass" to provide an exemption to slot limits or season requirements for recreational striped bass fishing tournaments meeting certain conditions.

Claude Bain, Director, Saltwater Fishing Tournament, gave the presentation. His comments are a part of the verbatim record. Mr. Bain stated the agenda item was a result of a request by FLW Outdoors, a national organization running a striped bass tournament trail, for an exemption to the Chesapeake Bay slot limit prohibition for their December national championship. He further stated that the Commission had reviewed the tournament format in detail at the last meeting, and unless the Commission would like an in depth review again, he would hit the highlights.

Mr. Bain said that there were seven qualifying tournaments with a three-day national championship in Virginia Beach. The tournament requires the live release of entered fish, and the championship will be filmed and televised nationally. He explained that tournament participants would be required to use specially designed live containers.

Mr. Bain said that two qualifying tournaments had been held in Oceanside, New York and Westbrook, Connecticut live release rates for entered fish were 100% and 96%, respectively, at these events.

Mr. Bain said that tournament rules require entrants to weigh fish measuring 28" to 34" fork length these rules were designed to meet most states legal minimum size in ocean waters and a maximum size that FLW Outdoors feels is the largest practical size of striped bass, for viable live storage and release on small boats. He said that tournament officials would like to fish all Virginia waters inside the three-mile limit, including the Chesapeake Bay.

Mr. Bain said that the issue was that the tournament rules partially were in conflict with State regulations, since the Chesapeake Bay fall season regulations contain a prohibited slot of 28"-34" total length. He stated that this had been instituted in order for Virginia to stay within its limit. He said that the slot was instituted last year, and harvest was reduced, but still exceeded its share and might require additional regulatory actions later this year.

Mr. Bain explained that mortality impacts associated with this event appear to be minimal. First, contestants will be allowed to fish in coastal waters, where all fish in the slot limit will be legal to possess under Virginia's coastal regulation. Second, tournament rules use a fork length measurement which means that some of the fish allowed under tournament rules will fall within the legal portion of the Virginia's Bay regulations. Specifically, total length measurements of striped bass are likely to 2" to 2.5" longer than the equivalent fork length measurements. This means that striped bass measured in the 32-34 inch range fork length would be legal to keep under current Bay regulations which

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allow the possession of 1 fish over 34 inches, per person. Since tournament boats must have a minimum of 2 persons on board and can weigh only 2 fish total, all fish allowed under tournament fork length measurements in the 32 –34 inch range would be legal under Virginia regulations, as the fish would have a total length greater than 34 inches. Finally, the use of specially designed live-wells required of tournament participants should minimize mortality of fish kept and subsequently released. In fact, at the first FLW tournament qualifier held in Oceanside, New York on June 3rd, all striped bass presented for weighing were released alive.

Mr. Bain informed the Commission that at the June 20th Finfish Management Advisory Committee meeting members voted in support of the amendments, with a change to include a penalty for dead fish brought to the weigh station.

Mr. Bain informed the Commission that staff had received letters of support for these regulatory actions from both the Mayor of Virginia Beach and the chairman of the Virginia Beach Sportfishing Advisory Council.

Mr. Bain reminded the Commission that at their May meeting, they voted to advertise the proposed amendments to the striped bass regulation to allow the operation of tournaments, including the FLW Outdoors Striped Bass Tournament, that meet certain criteria, which are as follows:

- 1) The tournament operates for a limited duration, with a maximum of 3 days,
- 2) The tournament format provides for the live release of all fish,
- 3) The tournament director submits a written proposal to the Commissioner detailing the measures the tournament will use to ensure the survivability of fish entered in the tournament, to include capture, handling, and storage of fish by tournament entrants on the water during the competition, by tournament officials at the weigh-in, by tournament officials when transporting and returning the fish to the water, and any penalties that will apply to entrants bringing in or weighing dead fish. Such proposal must be submitted no later than 120 days prior to the tournament, and the Commissioner, must determine the proposal adequately addresses potential mortality issues,
- 4) Tournament officials must agree to provide any or all fish entered in the tournament to the Marine Resources Commission, or to any designee of the Marine Resources Commission, upon written request,
- 5) Tournament officials agree to allow Marine Resources Commission staff access to all tournament areas during the event, for the purposes of observation and assessment, upon request, and,
- 6) Its approval does not jeopardize the status of the striped bass stock or prove to be an issue of compliance with the interstate fishery management plan.

Mr. Bain said that staff believed the social and economic benefits of recreational fishing tournaments justify adoption of this amendment. He said staff recommended the adoption of the amendment to Regulation 4VAC 20-252-10, et. seq., "Pertaining to Striped Bass". He said the amendment was shown in draft of section 4VAC 20-252-115.

Commissioner Pruitt stated that these measures being taken by the Commission would be setting a standard for all tournaments.

Commissioner Pruitt opened the public hearing. No one from the public asked to comment. The public hearing was closed.

Associate Member Robins moved to accept the staff's recommendation. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

Bill Carson, Tour Director for the FLW for this tournament, asked to speak and said he appreciated all the Commission had done for them, especially after all the work that had gone into this tournament.

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20. REPEAT OFFENDERS:

Captain Warner Rhodes, Acting Deputy Chief, Law Enforcement, gave the presentation. His comments are a part of the verbatim record.

Julius Forrest – charged with violations of various sections of the Striped Bass Regulation, 4VAC 20-252-10, et. seq.

Captain Rhodes said the two individuals were present to have their cases heard at this hearing. The first one to be heard would be Julius Forrest.

Commissioner Pruitt swore in Mr. Forrest. He asked if this was the first time here at the Commission and if he understood where he was in the wrong. Captain Rhodes responded this was his first time here.

Commissioner Pruitt asked Captain Rhodes for a staff recommendation.

Captain Rhodes said that the staff recommendation was for a 12-month probation.

Commissioner Pruitt asked Mr. Forrest if he understood what it meant to be under 12-month probation, to which Mr. Forrest responded, yes. Commissioner Pruitt told him to try not to get into any more trouble and have to come back before the Commission as he could lose his license.

Associate Member Robins moved to accept the staff recommendation. Associate Member Jones seconded the motion. The motion carried, 8-0.

William J. Parks – charged with violations of Health related regulations and regulations related to crabbing restrictions.

Captain Rhodes said the next was William J. Parks. Commissioner Pruitt sworn in Mr. Parks.

Commissioner Pruitt stated that most of the violations were related to health regulations and there were some for crab violations. He asked Mr. Parks what happened in the case of the crab pot violation.

Mr. Parks said he was working in the Nassawadox area and his pots got pulled by the currents into the channel.

Commissioner Pruitt asked for a staff recommendation. Captain Rhodes said that the staff recommended a 12-month probation.

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

Commissioner Pruitt told Mr. Parks to try not to get into any more trouble and have to come back before the Commission because he could lose his license.

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15. **PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-150, "Pertaining to the Dredging of Conchs" and Regulation 4VAC20-900, "Pertaining to Horseshoe Crab" to comply with certain provisions of the Interstate Fishery Management Plan for the Horseshoe Crab.

Associate Member Robins excused himself from participating in this issue.

Jack Travelstead, Chief, Fisheries Management gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that at the last meeting emergency action for Regulation 4VAC 20-150-10 was approved for advertisement of a public hearing this month. He said the Commission today needed to decide whether to make that emergency section permanent. He said the amendment to Regulation 4VAC 20-900-10 was being requested to come into compliance with the Fisheries Management Plan of the ASMFC. He said there was concern that predators in the Delaware Bay were consuming the horseshoe crabs. He said staff was trying to encourage ASMFC to get other states to take measures to conserve the horseshoe crab as they wanted to put a moratorium on the crabs, and staff convinced them to accept the proposed regulations.

Mr. Travelstead explained that they wanted to redesign the horseshoe crab fishery as the trawlers in the federal waters catch the majority of the harvest. They wanted to move away from trawling and move the fishery into the Bay.

Mr. Travelstead stated that when addendum 4 was adopted by ASMFC this year, it included the following management measures:

- a) a prohibition on the landing of horseshoe crabs in Virginia from federal waters, from January 1 through June 7, in any year, and
- b) a division of Virginia's quota such that no more than 40% may be harvested east of the COLREGS line, and these landings must be comprised, at a minimum, of a male to female ratio of 2:1.

Mr. Travelstead said that the only comments received were from the American Bird Conservancy. (A copy of those comments was provided, as a handout.)

Commissioner Pruitt opened the public hearing. There were no public comments. The hearing was closed.

Associate Member Holland moved to accept staff recommendation for Regulation 4VAC 20-150-10. Associate Member Schick seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained.

After some discussion, Associate Member Holland moved to accept staff recommendation for Regulation 4VAC 20-900-10. Associate Member Fox seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained.

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17. RECOMMENDATIONS OF THE COMMERCIAL FISHING ADVISORY BOARD: Funding of certain projects.

Associated Member Jones excused herself from participating in this issue.

Sonya Davis, Fisheries Management Specialist, gave the presentation. Ms. Davis explained that more money was requested than was available. Copies of the revised evaluation were given to the Commission as a handout.

Ms. Davis explained that the Commercial Fishing Advisory Board (CFAB) completed its reviews of pending applications on Monday, June 26, 2006. The estimated amount available for project allocation in the Marine Improvement Fund (MIF) was \$319,494.

Ms. Davis stated that staff concurred with the funding recommendations of the CFAB.

The following projects were recommended for approval by the CFAB (Total \$316,276):

A. Continuation of the Evaluation of Alternative Baits in the Virginia Whelk Fishery (Year 1). Robert Fisher, VIMS. \$6,000. VOTE: 6-0 to fund \$6,000.

B. Federal Assistance Match (Wallop-Breaux) Funds FY 2007. Jack Travelstead, VMRC. \$325,000. VOTE: 6-0 to fund \$100,000.

C. Project Manager for the Re-examination of Feasibility Study on One-year Grow-out of Triploid *Crassostrea ariakensis*. Frances Porter, Virginia Seafood Council. \$26,318. VOTE: 6-0 to fund \$26,318.

D. Hampton Roads Clam Project. H. Kator, K. Reece, R. Croonenberghs, R. Wittman, VIMS/VDH. \$71,645. VOTE: 6-0 to fund \$25,000. The CFAB intends to review the additional funding requested (\$46,645), when additional Marine Improvement Funds become available. Bob Croonenberghs indicated that this amount was sufficient to begin the project. A substitute budget will be requested.

F. Towards Validation of Juvenile Indices of Abundance for Several Fish Species in Chesapeake Bay. R. Latour, C. Bonzek, M. Fabrizio, VIMS. \$30,458. (Note: Total project \$60,916 – 50% recreational funding already approved in May). VOTE: 6-0 to fund \$30,458.

G. Fisheries Stock Assessment and Mature Female Survival of the Blue Crab. R. Lipcius, J. Hoenig, VIMS. Up to \$171,280. VOTE: 6-0 to fund \$80,000. The CFAB recommends priority funding of the winter dredge survey portion of this three part project. A substitute budget will be requested.

I. Product Development for Cownose Ray. R. Fisher, T. Murray, S. Estes, VIMS/VMPB. \$56,563. VOTE: 6-0 to fund \$48,500. The CFAB intends to review the additional funding requested (\$8,063), when additional Marine Improvement Funds become available. Shirley Estes indicated that the VA Marine Products Board could focus marketing efforts on the fresh market this year. Marketing efforts for frozen product could be delayed until additional funding becomes available. A substitute budget will be requested.

Funds set aside for travel expenditures for CFAB members have been exhausted. Staff recommends designating \$1,000.00 for this purpose.

The following projects were not recommended for approval by the CFAB:

E. Impact of Mycobacteriosis on the Recreational Striped Bass Fishery in Chesapeake Bay. Year II: What is the Fate of the Infected Fish? J.

Hoenig, W. Vogelbein, D. Gauthier, VIMS. \$44,250. (Note: Total project \$88,500 – item tabled by RFAB to see if other funding sources were located). VOTE: 6-0.

H. Monitoring Mycobacteriosis in Chesapeake Bay Striped Bass *Morone saxatilis*: Tracking the State of the Epizootic. D. Gauthier, W. Vogelbein, K. Reece, VIMS. \$59,312. VOTE: 6-0.

Associate Member Robins moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 7-0-1. Associate Member Jones abstained.

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18. REQUESTED AMENDMENTS TO REGULATIONS: Pertaining to the use of gill nets in Virginia waters, for the conservation of bottlenose dolphin.

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

Commissioner Pruitt asked if a public hearing would be held on this matter. Mr. Travelstead said that more than a public hearing was required on this issue. He said the Final Rule was affecting Virginia’s fisheries and the Commission needed to decide what to do about it.

Commissioner Pruitt asked about the time frame. Mr. Travelstead explained that there was still no reply to the Commissioner’s letter, dated May 18th to Dr. Hogarth, and it was important to see a response to that letter, as that would provide some direction.

Associate Member Bowden said that it had taken too long to get a response to the letter sent by the Commissioner and it needed to be addressed before moving forward, as the Commission needed a position.

After further discussion, Commissioner Pruitt suggested calling Dr. Hogarth. Associate Member Holland suggested sending another letter with a copy forwarded to the Governor.

No further action was taken.

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19. REQUEST FOR PUBLIC HEARING: Amendment to Regulation 4VAC 20-566, "Pertaining to the Hampton Roads Shellfish Relay Area" to permanently extend the relay season to September 30th of each year.

Joe Cimino, Fisheries Management Specialist gave the presentation. His comments are a part of the verbatim record. Mr. Cimino explained that since 2001 the Commission has extended the season for the Hampton Roads Shellfish Relay area every year. He said when this issue came up last year Roy Insley made a request on behalf of the industry to extend the season through September 30th. He explained that at the August Commission meeting Mr. Insley requested that this date be made permanent and the Commission was agreeable doing as he requested. He said but this could not be done because the emergency regulation stated September 30, 2005 and the notice for a public hearing said the same thing. He further said that at that time the Commission decided that it would decide on whether to make it a permanent date in 2006.

Mr. Cimino said that staff recommended advertising the proposed amended Regulation 4VAC 20-566-10, et. seq., to extend the HRSRA season through September 30th on a permanent basis and requested approval to hold a public hearing at the July Commission meeting.

Associate Member Robins moved to advertise for a public hearing at the July Commission meeting. Associate Member Bowden seconded the motion. The motion carried, 8-0.

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Commissioner Pruitt asked Associate Member Garrison to end the meeting with a prayer.

There was no further business, so the meeting was adjourned at approximately 5:16 p.m. The next meeting will be Tuesday, July 25, 2006.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary