

MINUTES

Commission Meeting

May 27, 2008

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
John R. McConaugha)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
J. Edmund Tankard, III)	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin/Finance
Sunita Hines	Bs. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
David Fraley	Fisheries Mgmt. Technician
Bethany Eden	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Kevin Croft	Marine Police Officer
Wayne Litz	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.

Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
Rom Lipicus

Other present included:

Phill Roehrs	Mike Mundy	Rebecca Francese	Carmen Infantino
Gwen Infantino	Glenn Bottomiey	Kevin Martingayle	Elizabeth Martingayle
Mark Scerbo	John W. Wilson, Jr.	David Saunders	C. L. Vann
Steve Webb	Craig Seltzer	Elizabeth Sears	Gregg Webbe
Herman Wine	Matt Miller	Christian Brumm	Nat Compton
Cynthia Ewing	Mike Ewing	Cason Barco	Pat Milmoie
Skip Feller	John Crowling	Bob Landry	Nancy Landry
Bradley Nott	Tim Hogan	John Keite	Patricia Groze
Ellis W. James	Roger Parks	Douglas F. Jenkins, Sr.	
Chris Moore	Ken Smith	Lee Anne Washington	
Pete Nixon	Frances Porter		

and others.

Commissioner Bowman called the meeting to order at approximately 9:30 a.m. and announced that Associate Member Schick would not be at the meeting. He said that there was a quorum present and the Commission could proceed with the meeting.

At the request of Commissioner Bowman, Associate Member Tankard gave the invocation and Associate Member McConaugha led the pledge of allegiance.

APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. There were none.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to approve the agenda, as presented. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.**

* * * * *

MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the April 22, 2008 meeting minutes. **Associate Member Robins moved to approve the minutes, as circulated. Associate Member McLeskey seconded the motion. The motion carried, 8-0. The Chair voted yes.**

* * * * *

Commissioner Bowman asked Joe Grist to come forward and introduce the two new employees in his department.

Joe Grist, Head, Plans and Statistics, introduced two new employees hired to work in the Fisheries Management Division, Plans and Statistics Department: David Fraley, a graduate of Idaho University and Bethany Eden who had her Masters in biology and previously worked at VIMS.

* * * * *

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

* * * * *

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

Bob Grabb, Chief, Habitat Management Division, reviewed the eleven page two items, 2A through 2K, for the Commission. He said that staff was recommending approval of these items. His comments are a part of the verbatim record.

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

Commissioner Bowman asked for a motion for Items 2A through 2K. **Associate Member McLeskey moved to approve these items. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.**

2A. FAIRFAX COUNTY PARK AUTHORITY, #08-0176, requests authorization to replace two existing fair weather trail crossings and to construct two new fair weather trail crossings impacting 7,442 square feet of Pohick Creek as a result of improvements to the Pohick Creek Stream Valley Trail in Fairfax County.

Permit Fee..... \$100.00

2B. DEPARTMENT OF THE ARMY, #08-0255, requests authorization to remove Pier 645 and replace it with a 172-foot long by 12-foot wide pier and remove Pier 686 and replace it with a 250-foot long by 14-foot wide pier adjacent to property situated along Gunston Cove at Fort Belvoir in Fairfax County.

Permit Fee..... \$100.00

2C. LOUDOUN MITIGATION, LLC, #08-0270, requests authorization to impact 8,060 linear feet of the North Fork of Catoctin Creek for the installation of rock cross-vanes, riffles, root wads, J-hooks, and rock toe protection and relocate sections of the channel as part of a stream restoration project at the Daley Farm site in Loudoun County.

Permit Fee..... \$100.00

2D. U. S. COAST GUARD, #06-0269, requests a permit modification to shift the installation of a 50-foot by 39-foot drive-on floating dock from its easternmost pier to their westernmost pier at their existing training facility situated on Wormley Creek in York County.

No applicable fees – Permit modification

2E. COUNTY OF YORK, #08-0337, requests authorization to construct an 87-foot long nearshore breakwater, 65 linear feet of extensions to an existing breakwater and place 10,000 cubic yards of beach nourishment material along the York River to provide additional shoreline protection along the Yorktown waterfront in York County.

Permit Fee..... \$100.00

2F. JAMES CASTLEBERRY, et al, #08-0269, requests authorization to install a 100 linear foot, near-shore rip rap breakwater with a 20-foot base, a 100-foot long rip rap marsh sill with a 9-foot base width and a 50-foot long (mlw), continuous height, riprap jetty and the filling of 5,000 square feet of submerged lands with beach quality sand to create an intertidal tombola, adjacent to the applicants' property situated at the confluence of Whays Creek and the Great Wicomico River in Northumberland County. Staff recommends a royalty in the amount of

\$2500.00 for the filling of 5,000 square feet of subaqueous bottom at a rate of \$0.50 per square foot.

Royalty Fees (filling 5,000 sq. ft. @ \$0.50/sq. ft.).....	\$2,500.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,600.00

2G. GEORGE CLARKE, ET AL, #07-1632, requests authorization to install approximately 706 linear feet of riprap, the toe of which may extend a maximum of 7 feet channelward of mean low water, for shoreline protection of properties situated along Little Neck Creek in Virginia Beach.

Permit Fee.....	\$100.00
-----------------	----------

2H. COLUMBIA GAS TRANSMISSION CORP., #07-2521, requests authorization to replace or repair existing gas pipeline segments along a 22-mile section of Line VM-108 from Valve 19 in Isle of Wight County to Norfolk, possibly requiring the excavation, exposure, and replacement of the 16-inch diameter pipeline under Western Branch Reservoir, the Nansemond River, and a tributary to Burnetts Mill Creek in Suffolk, and the Southern Branch of the Elizabeth River in Chesapeake. Staff recommends approval including a permit condition requiring the Permittee to notify the Commission of any line replacements needed, at which time a royalty at the rate of \$3.00 per linear foot for the encroachment under State-owned subaqueous bottom will be assessed.

Royalties Fees (To be determined) Permit Fee.....	\$100.00
--	----------

2I. CITY OF NORFOLK, #08-0550, requests authorization to install five (5) approximately 40-foot wide by 125-foot long armor stone breakwaters approximately 250 feet channelward of mean low water, situated along the Chesapeake Bay between 17th Bay and 22nd Bay Streets in the City of Norfolk.

Permit Fee.....	\$100.00
-----------------	----------

2J. RIVANNA WATER AND SEWER AUTHORITY, #08-0041, requests authorization to replace the existing Meadow Creek Interceptor, sanitary sewer line with new ductile iron pipe and/or other suitable pipe material ranging between 36 and 42 inches in diameter, crossing above or below a total of 221 linear feet of Meadow Creek at five locations in the City of Charlottesville and Albemarle County.

Permit Fee.....	\$100.00
-----------------	----------

2K. DEPARTMENT OF CONSERVATION AND RECREATION, #08-0074, requests authorization to mechanically dredge approximately 19,700 cubic yards of bottom material from Hungry Mother Lake to restore access to existing dock/boating areas at Hungry Mother State Park in Smyth County. Recommend approval contingent on a March 1 through June 30 in-stream time-of-year work restriction to protect finfish spawning periods.

Permit Fee..... \$100.00

* * * * *

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

Bob Grabb, Chief, Habitat Management, reviewed items 3A through 3D for the Commission and his comments are a part of the verbatim record. He stated that the staff was seeking approval of the terms of consent agreements negotiated by them and the parties involved.

Commissioner Bowman asked if there were any questions for staff. There were none. He asked if anyone, pro or con, wished to address any of the items. There were none. He asked for action by the Commission.

Associate Member Holland moved to approve items 3A through 3D. Associate Member McLeskey seconded the motion. The motion carried, 8-0. The Chair voted yes.

3A. STAFFORD COUNTY, #99-2064, requests after-the-fact authorization for the removal of a cofferdam during the time-of-year restriction imposed for in-stream work (March 15 through 30 June). The cofferdam was removed on or about April 11, 2008. The applicant has agreed to the payment of a \$600.00 civil charge and triple permit fees of \$300.00 in lieu of further enforcement action.

In 2005, the Marine Resources Commission approved a permit to install a water intake structure including rip rap bank stabilization. One of the permit special conditions was a prohibition against any instream construction activities outside of a cofferdam between March 15 and June 30. In this case, Stafford County finished the intake manifold construction prior to the time-of-year restrictions but did not have enough time to remove the cofferdam prior to the time-of-year restrictions taking effect.

Stafford County corresponded with the ACOE about removing the cofferdam during the time-of-year restriction, but never received approval to remove the cofferdam. The ACOE

advised Stafford County to coordinate with the other state agencies to receive permission to modify the permit. Stafford County did not contact VMRC about modifying the permit or seek permission to remove the cofferdam during the time-of-year restrictions.

Staff conducted a full review of the issue regarding the removal of the cofferdam during the time-of-year restriction that review included the ACOE, DGIF and VIMS. Had Stafford County asked permission to remove the cofferdam within the time-of-year restriction, staff could not have supported the modification due to the anticipated anadromous fish activity in the Rappahannock River. Nevertheless, the apparent environmental impacts and degree of non-compliance were considered minimal since the contractor did utilize turbidity curtains and since the anadromous fish migration had not moved that far upstream in the Rappahannock this year. As a result, staff recommended approval of the after-the-fact request with an assessment of triple permit fees of \$300.00, as well as, a civil charge of \$600.00 based on a finding of minimal impact and a minimal degree of non-compliance.

Permit Fee (Triple).....	\$300.00
Civil Charge.....	\$600.00
Total Fees.....	\$900.00

3B. U.S. ARMY CORPS OF ENGINEERS, #08-0665, requests after-the-fact authorization to retain a temporary offshore work platform (trestle) constructed over the 42nd Street stormwater outfall pipe structures that extend out into the Atlantic Ocean in Virginia Beach. The trestle was constructed in October of 2007 to allow for maintenance and repair activities of the outfall structures and will remain in the ocean until January of 2009. During maintenance activities the 30-foot wide by 200-foot long trestle will be reconstructed and moved to different access points along the approximate 2000-foot long outfall. Upon completion of all activities the entire trestle will be removed. Staff recommends approval with triple permit fees of \$300.00 and no civil charges.

During the ongoing maintenance activities, the 30-foot wide by 200-foot long trestle will be reconstructed and moved to different access points along the approximate 2000-foot long outfall. If approved, the trestle would remain in the Ocean until January of 2009 and upon the completion of all activities, the entire trestle would be removed.

According to the Corps, they did not anticipate needing a Commission permit for the activities given the temporary nature of the required maintenance efforts. Furthermore, the decision was made along with their contractor, Precon Marine, Inc., to construct and work from a temporary trestle for safety precautions, given the wave energy in the surf zone. Other than triple permit fees (\$300.00), to which the applicant had agreed to pay, staff recommended approval of the after-the-fact request with no civil charges and the requirement that the Corps abide by any conditions set by the U.S. Coast Guard.

Permit Fee (Triple)..... \$300.00

3C. RICK LOY, #06-0939, requests after-the-fact authorization to reclassify the use of an existing, open-pile pier from a private, non-commercial structure to a multi-user, community pier, and to retain a recent, unauthorized, 29-foot by 48.9-foot pier expansion, which included a single boat slip with boat lift, decking platforms, and two (2) 6.5-foot wide finger piers, adjacent to his property situated along Aquia Creek in Stafford County. Prior to the unauthorized expansion, the existing 6-foot wide pier extended approximately 112 feet channelward of the shore, and included approximately 780 square feet of L- and T-head platforms, two (2) boat lifts, three (3) individual mooring piles, and one (1) triple pile mooring dolphin. The community pier is intended to serve the applicant and several upland property owners, which have deeded access to use the pier. The applicant has agreed to triple permit fees of \$300.00 and a civil charge in the amount of \$1,200.00 commensurate with minimal environmental impact and a moderate degree of non-compliance. In addition, staff recommends the assessment of a royalty in the amount of \$6,379.50 for the community pier's encroachment over 4,253 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

On March 28, 2006, the Commission held a restoration hearing with regard to Mr. Loy's non-compliance with a Notice to Comply (N.C. #05-15) issued by staff on October 17, 2005. At the time, staff had determined that Mr. Loy was in violation for the stockpiling of concrete retaining wall blocks on State-owned submerged land and for the pier expansion that was part of his current after-the-fact request. During the hearing, Mr. Loy stated that his pier was also utilized by his neighbors through deeded access and use agreements. After deliberation, the Commission ordered the concrete block removed within 30 days, and agreed to accept and process an after-the-fact application for the expansion and change in use of the pier.

Processing of Mr. Loy's after-the-fact request began immediately following the March 28, 2006, restoration hearing. Unfortunately, requests for additional information as well as Mr. Loy's attempts to obtain the necessary approvals from the Stafford County Wetlands Board and the Virginia Department of Health had delayed Commission consideration of this after-the-fact request. Health Department approval was finally granted on April 11, 2008, in the form of a conditional exemption from their Sanitary Regulations for Marinas and Boat Moorings (12 VAC 5-570 et seq.).

Staff had conducted a full public interest review regarding the current request, including contacting the adjacent property owners and publication of a Public Notice with no responses received. As a result of all this, staff recommended approval of Mr. Loy's after-the-fact request. The applicant had agreed to triple permit fees of \$300.00 and a civil charge in the amount of \$1,200.00 commensurate with minimal environmental

impact and a moderate degree of non-compliance. In addition, staff recommended the assessment of a royalty in the amount of \$6,379.50 for the community pier’s encroachment over 4,253 square feet of State-owned submerged land at a rate of \$1.50 per square foot.

Royalty Fee (encroachment 4,253 sq. ft. @ \$1.50/sq. ft.).....	\$6,379.50
Permit Fee (Triple).....	\$ 300.00
Civil Charge.....	\$1,200.00
Total Fees.....	\$7,879.50

3D. EUGENE TURLINGTON, #08-0253, requests after-the-fact authorization to retain a 27-foot long by 4-foot wide addition to his community pier along Onancock Creek in the Bailey Neck area of Accomack County. The pier is now 173-foot long by 4-foot wide with ten mooring piles and is used for the mooring of five family member's boats. The applicant has agreed to a triple permit fee of \$75.00 and a civil charge in the amount of \$600.00 based on minimal environmental impact and minimal degree of deviation.

Mr. Turlington received permit authorization (#04-0962) from VMRC in August 2004 to change the use of his private pier to a joint-use pier and extend the pier an additional 50-feet, making the pier 146-foot long by 3-foot wide, which included a 6-foot by 10-foot T-head and ten mooring piles.

A compliance check conducted on December 7, 2007, found that the pier addition was 83-feet long by 4-feet wide, encroaching 27 feet more than permitted. A Notice-to-Comply letter directing removal of the additional 27-feet of pier and the submission of revised drawings showing the pier to be 4-feet wide was sent to Mr. Turlington in January 2008. In lieu of removal, Mr. Turlington requested Commission approval of his after-the-fact application to retain for the additional 27 feet of pier.

According to the applicant, the construction of the addition was done by family members who used the pier and the permit drawings were not on site at the time of construction. They did not realize that the pier was out of compliance until notified by staff. The applicant also noted that the existing pier was still shorter than nearby private piers and was far outside the navigation channel leading into the Town of Onancock. Had the original community pier application included the 27-foot long section for review, staff felt certain the project would have been approved. Staff had received no objections to the project in response to the VMRC public interest review, including a newspaper notice for comments. The increased encroachment had resulted in minimal additional environmental impacts.

In light of the above, staff recommended that the Commission endorse Mr. Turlington’s offer to pay a triple permit fee of \$75.00 and a civil charge in the amount of \$600.00

(based on minimal environmental impacts and minimal degree of deviation) in-lieu of any further enforcement action and that an after-the-fact permit be issued for the pier, as constructed.

Permit Fee (Triple).....	\$ 75.00
Civil Charge.....	\$600.00
Total Fees.....	\$675.00

* * * * *

4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL.

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

VMRC versus Michael W. Jewett
Harrison versus VMRC

Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Associate Member Robins moved for the following:

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

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

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

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

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

AYES: Bowden, Bowman, Fox, Holland, McConaugha, McLeskey, Robins, and Tankard.

NAYS: NONE

ABSENT DURING VOTE: Schick

ABSENT DURING ALL OR PART OF CLOSED MEETING: Schick

Motion carried, 8-0. The Chair voted yes.

Katherine Leonard, Recording Secretary

Michael W. Jewett

Bob Grabb, Chief, Habitat Management explained some of the background on this violation. He said a letter had been received from the City of Poquoson, as well as a report from Mr. Jewett's Structural Engineer that stated that due to the repairs the structure now met the live load requirement of 125 pounds per square feet, as needed for seafood offloading, except for a small area. He said that staff recommended that the Commission make a finding that Mr. Jewett was now in substantial compliance with the original Commission Order of Compliance with the explicit condition that any future uses by others than the Jewetts would need authorization from all agencies. He said that Health Department approval for any moorings would be needed. He said the City was ready to assume their part of the responsibilities required by the agreement and to issue an occupancy permit. His comments are a part of the verbatim record.

Commissioner Bowman asked the City's representative, Mr. Burgess, if staff had explained everything to his satisfaction. Mr. Charles Burgess, Jr., City Manager responded yes. He said they appreciated the Commission's efforts to resolve this matter and the City was ready to take responsibility for its part in the agreement. His comments are a part of the verbatim record.

Associate Member Robins stated that on advice of Counsel and because of the agreement by the City, he moved that the Commission find that in regards to the dock, Mr. Jewett had satisfied the VMRC conditions. He added to the motion that in order for the dock to be utilized by more than just the Jewetts' vessels, separate approvals would be required and conditioned upon the approval of the Health Department. Associate Member Holland seconded the motion. The motion carried 8-0. The Chair voted yes.

* * * * *

5. **CITY OF VIRGINIA BEACH, #07-2035**, requests authorization to install a 48-inch diameter concrete stormwater outfall line that will discharge approximately 940 feet channelward of mean low water into the Atlantic Ocean from a new stormwater pump station to be constructed at the intersection of Atlantic Avenue and 61st Street in Virginia Beach. The project is protested by several nearby property owners.

Justin Worrell, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Worrell explained that he had received to date, 25 letters of protest. He said some of the comments included: 1) cost too much, 2) impact to beach, 3) impacts to water quality, 4) impacts to the marine resources, 5) there was no problem, and 5) impacts from the construction.

Mr. Worrell explained that the City of Virginia Beach had existing ocean outfalls at 16th and 42nd Streets, and one currently under construction at 79th Street. All three of those outfalls were permitted by the Commission.

Mr. Worrell further explained that currently an approximate 0.22 square mile (approximately 143 acres) drainage area in the general vicinity of 61st Street and Atlantic Avenue utilized a series of low-capacity pump stations to help drain stormwater away from the residences and Atlantic Avenue. This stormwater was directed into the existing Beachfront Storm Drain Interceptor, located underground on the landward end of City-owned beach, and directed to the south outfall at 42nd Street. According to the City, these pump stations were undersized and inefficient at removing stormwater from Atlantic Avenue, oftentimes making the road impassible during and after a significant storm event.

Mr. Worrell said that the new collector system would include a new force main installed between 55th and 64th Streets with the new pump station installed on the west side of 61st Street and Atlantic Avenue. According to the City, the location at 61st Street provided a natural low point for the new pump station, given the existing contours of the drainage area. Furthermore, the 80-foot right-of-way associated with the eastern half of 61st was larger than other right-of-ways for nearby roads. This would provide the City with more room to work with fewer impacts to the users of the roadway. Installation of the outfall in the ocean would include mechanical dredging, which might require the construction of a temporary trestle for access. The outfall line would terminate vertically at an elevation approximately 10 feet below mean low water.

Mr. Worrell stated that in February of this year, staff began receiving calls and letters of protest from citizens living along, and in the general vicinity of 61st Street. They complained that the City should not be investing millions of dollars on a “minor” stormwater flooding project. Although the North Virginia Beach Civic League supported

the funding and construction of the outfall, the protestants noted that in years prior to this application being submitted, when this idea was being considered by the City Council, as many as 300 neighborhood residents protested and signed a petition that questioned the need and funding for the project. Additional issues raised by the protestants included disturbances to the adjacent residences, streets, and the existing coastal sand dune and beach (dune and beach impacts were exempt from the Virginia Beach Wetlands Board because they were located on City-owned property). More importantly, the protestants questioned the impacts that untreated stormwater would have on the marine environment. They further suggested that the release of untreated stormwater would lead to higher bacteria levels, more beach closures, and marine species die-offs.

Mr. Worrell explained that on March 4, 2008, staff organized a site meeting at one of the protestant's residence. The City, its agent, and eight citizens attended the meeting. Staff explained the application review and permitting process and specifically explained that the Commission only had jurisdiction over impacts to State-owned submerged bottom channelward of mean low water. During that meeting most of the concerns expressed were upland issues not within the Commission's purview. The City representative, Mike Mundy, explained the purpose of the outfall, how it would be installed, and why it was proposed in this location versus other locations. Since that meeting, staff received more protests from neighbors relating to both City and Commission matters of jurisdiction. The City also provided staff with more specific information related to the functioning capacity of the existing stormwater facilities.

Mr. Worrell said that the U.S. Army Corps of Engineers issued a Nationwide Permit 12 for the outfall, and the Department of Environmental Quality waived its permit requirement provided the request qualified for the Corps' Nationwide permit. The United States Coast Guard stated they had no objections to the proposal. In the Virginia Institute of Marine Science (VIMS) report, it was noted that while the direct impact to marine resources would be temporary, best management practices (BMPs) should be implemented to the extent practicable to reduce stormwater pollutants. The Virginia Beach Health Department, a division of the Virginia Department of Health, "strongly recommended" approval of the application. The Virginia Beach Health Department is the local regulatory agency responsible for ocean water bacteria testing and beach closures. The Department of Conservation and Recreation, the State agency that administers the Municipal Separate Storm Sewer System (MS4) permitting program, had no objections provided the City of Virginia Beach continued to implement and update its MS4 Program Plan.

Mr. Worrell stated that as proposed, this proposed ocean outfall appeared to be a more efficient mechanism of removing problematic stormwater from the Atlantic Avenue corridor along this section of Virginia Beach. The new pump station and outfall would eliminate the necessity for the existing, under-capacity pump stations that currently attempt to drain the area. Ultimately the stormwater would be removed more quickly and should relieve potential flooding faster.

Mr. Worrell said that staff understood the concerns of the nearby property owners regarding the release of untreated stormwater in the ocean near their properties, but it should be noted that most of the stormwater from this area already entered the ocean through other existing City outfalls. Furthermore, the Commission had no evidence that these outfalls, properly designed and installed, lead to bacteria problems and/or beach closures along the oceanfront. Other concerns cited by the protestants regarding project funding, beach and dune impacts, and roadway impacts were outside of the Commission's jurisdiction. Therefore, staff recommended approval of the portion of the stormwater outfall that extended channelward of mean low water, as requested, with a recommendation that the City continued to pursue future best management practices (BMP's), when practicable, that aid in filtering all ocean outfalls.

Commissioner Bowman asked for comments from VIMS' representative because of the concerns regarding the BMP's expressed by the Board. Lyle Varnell, VIMS, was present and his comments are a part of the verbatim record. Mr. Varnell stated that staff was correct and the comments provided by VIMS were standard comments for water quality problems. He stated that these were engineering issues and VIMS could not respond to that as the City had personnel for that issue. He said the increased concentration here was changed by the water flow. Dr. McConaugha asked about the 10-foot outfall clearance. Mr. Varnell said the chance of the discharge coming back to the beach was not a problem as there was a low probability of that occurring.

Commissioner Bowman asked for a representative of the City to come forward.

Rebecca Francese, agent for the City, was sworn in and her comments are a part of the verbatim record. Ms. Francese stated that Commission staff had provided a good overview. She said all the letters of protest had been read and considered when planning this project. She said this project was needed in order to reduce roadway flooding and damage to properties. She stated that stormwater already entered the waterway. She said as a result of natural weather conditions, it took 4 to 5 hours to clear up. She reviewed the calls that had been logged by the City because of the flooding. She said that between January 2003 and May 2008 they had received 48 calls for street flooding, eight times per year. She said it generally required re-routing of traffic. She noted that the Corps had recommended that the storm drainage needed improvements. She said that the Corps had approved it, that DEQ said no permit was necessary that the 401 permit covered it, the U. S. Coast Guard said that there was no hazard to navigation, and the Dept. of Health recommended approval. She said in regards to the VIMS comments, the City continued to seek new technologies to improve water quality throughout the City.

Commissioner Bowman asked for others who wished to speak in support of the project.

John Wilson, member of the civic league and a resident of North End, was sworn in and his comments are a part of the verbatim record. Mr. Wilson stated that he had letters of support in favor of the project. He said at the September 2006 Board meeting they were

made aware of the project. He said at the October 2006 meeting, a representative of the public utilities spoke and explained why it was needed. He said they were told that the infrastructure originally supported smaller homes and less homes, but growth had occurred and now there were 2200 homes, which caused increased runoff. He said that it was needed. He said from an engineering standpoint the 61st street outfall was ideal.

Elizabeth Martingayle, resident and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Martingayle stated that she had been a resident in the area since 1996 and had only once seen any serious flooding. She provided photos and displayed them on the overhead projector. She said other areas received significant flooding and what was already there did not help. She said the reports provided by the City only suggest how, not why it was needed. She said if there was to be significant rain, nothing would help. She said when it all started it was a 10-year pump, now it was a five-year and the pipe was 1,000 feet and now it was down to 900 feet. She said that was not far enough and the discharge would come back to the beach. She asked what would happen in an emergency from the pipe failing because the pump station was on the other side of the dune. She said the current pump station had been riddled with problems. She said she had always been opposed, but there was a wealthy neighborhood that did not want to wait and the majority of the neighborhood did not want it. She said when what had been done already was not working you did not need to add to the problem.

Robert Landed, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Landed said he resided at 61st and Oceanfront and stated his concern was with the environmental impact of the pipe on the Ocean.

Gwen Infantino, resident and protestant, was sworn in and her comments are a part of the verbatim record. Ms. Infantino said she had been a resident for 22 years and in that time the drainage had worked properly within hours. She said she was also concerned with the size of the structure.

Commissioner Bowman reminded the speakers that the comments needed to be focused on the outfall, not the areas that were outside the jurisdiction of VMRC.

Ms. Infantino stated there were environmental impacts to the beach which could cause it to be closed for bacteria reasons.

Bradley Nott, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Nott said that he resided on Oceanfront Avenue and this was a second home for him. He stated that he had visited here all his life and last year was the first time that the beach had been closed. He said the City referenced old studies at least 10 years old. He said there were environmental issues that required a new study be done to determine what effects the existing system was having on the area. He said the current system was ineffective.

Kevin Martingayle, resident and attorney, was sworn in and his comments are a part of the verbatim record. Mr. Martingayle explained that he was representing his children. He said that water quality was a concern of VMRC. He said on the North end, the 42nd Street pump was putting out waste into the Ocean and as a result beach closures had occurred. He stated the project here would be permanent and waste would be pumped out into the Ocean without being treated. He said there were other alternatives and in 2008 this was not the answer. He said that he felt upwelling would be an alternative, but VIMS said that it was not modeled and they did not know if it would work. He said there was a need to find out more information before the project was done. He provided a handout dated February 2, 2001 from the City Manager to the City Council regarding the 42nd Street problems. He said on April 8, 2005, the Corps had said that the City needed to do something regarding the 2002 mitigation. He further said that on March 30, 2001, the Cavalier Hotel complained about the 42nd Street pump and it had still not been fixed. He said there had also been bacteria problems, such as E. coli. He stated that corrections were needed as there were unsolved problems with other outfalls for a number of years. He said a current study was needed. He said the City was not going to do anything that was not required. He suggested that any permit issued should be conditioned that this one be similar to the other outfalls. He said that VMRC needed to say to the City that it slow down and investigate what was already here and how it can be corrected and also told to be innovative.

Cason Barco, resident and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Barco stated that the area where the outfall was proposed was used as a thoroughfare and big boats would be coming close to the pipe. Therefore, he suggested that the Commission require that the outfall pipe be marked with a buoy.

Skip Feller, Head Boat Operator business owner, was sworn in and his comments are a part of the verbatim record. Mr. Feller stated that he was not opposed to the project, just wanted the outfall pipe to be marked with a lighted buoy.

Pat Milmoie, marina operator, was sworn in and his comments are a part of the verbatim record. Mr. Milmoie stated that he was not opposed to the project, but he felt that the outfall pipe needed to be marked to avoid getting hit.

Commissioner Bowman asked if there were any further comments from the City's representative.

Phil Roehrs, City of Virginia Beach, was sworn in and his comments are a part of the verbatim record. Mr. Roehrs said that in regards to the bacteria issue the others said it needed to be treated, but what needed to be treated were the pathogens, which were everywhere. He said that about the BMP's, they only make the problems worse. He said as far as the beach closure that was the responsibility of the Health Department who tests for fecal coliforms and not for anything else. He stated that all storm water on the land

eventually ended up in the ocean. He said the system now would discharge that away from everyone and remove the trash. He said it had always been done this way.

Commissioner Bowman asked for questions from the Board.

Associate Member McLeskey asked about putting in a sea buoy to mark the pipe. Mr. Roehrs responded that they objected to this suggestion because of the liability and sea buoys were difficult to maintain so they preferred not to put them out. Associate Member McLeskey stated that there could be loss of life and there was a moral responsibility here. Mr. Roehrs stated that the Coast Guard would be putting a notation on their charts. Associate Member McLeskey stated that most boat operators use a GPS, and that the charts do not get updated but every 4 or 5 years.

Associate Member Fox stated that he did not agree that it always flows out into the ocean. He said that in the colonial days it did not happen. He said there needed to be an acknowledgement of the problem of getting rid of wastewater and not nearly enough was being done by the City to solve it. He explained that dilution would be a solution by moving the pipe further offshore. He said it would cost more, but having to shut down the beaches would cost a lot more.

Associate Member McConaugha stated that the pipe could be lengthened to 2,000 feet and oriented more to the South to give more depth for the outfall. Mr. Roehrs said that the process had been done and they believed they were working with the right project.

Associate Member Fox asked if the lack of funding was the reason for the difference in this project from the others. Mr. Roehrs said that was not the reason. He said in the mid 90's the rest were all done as a part of a larger project and now different people were making the decisions.

Commissioner Bowman asked about the fact that the others were a part of a larger project. Mr. Roehrs responded yes and explained that the driving force behind them was a coastal engineering firm. He stated that the City was comfortable with the placement of the proposed outfall.

Associate Member Robins asked the VIMS representative if increasing the distance offshore would lead to decreased contamination. Mr. Varnell responded, yes, that was a natural conclusion.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins said he felt there was a need for this project even though some residents disagreed with the City. He said that the City's documentation backed up their opinion that there was a need for it. He said the other concerns such as risk to navigation

and environmental impacts were also legitimate. He said it would be appropriate to mark the outfall pipe, as well as, the possibility of VMRC changing the length.

Associate Member Fox stated that he agreed that there was a need, but there were concerns with the location of the outfall due to the impacts to water quality and the navigation problems. He said it could be moved further offshore. He stated he felt the City needed an alternate solution.

Associate Member McConaugha said he agreed that there was a need to get rid of the storm water and to get it further offshore. He said there would be increased cost, but the City had not looked at the bacteria problem and they needed to address it because of the closures that had occurred at North End. He said if this one needed to be closed then they all do. He said it needed to be moved more offshore and a study was needed.

Commissioner Bowman stated that he agreed with all that the City was requesting, but increasing the distance of the pipe seemed to be the way to go. He said he was not sure about the navigation issue, but that moving it to 2,000 feet would solve some of the problems. He said that there was a need to protect the environment.

Associate Member Fox stated that the project, as proposed, was not adequate to protect the environment and there was the navigation issue. He said if it was put where it was proposed, then it would need a buoy. He stated he was opposed to the proposed project. He moved to deny the project. Associate Member McConaugha seconded the motion. Associate Member Robins stated that he hesitated to deny this project and offered a substitute motion in which he moved to approve the project, but require that the pipe be moved further offshore to 2,000 feet, or like the others, and not require that it be marked. Associate Member Tankard seconded the substitute motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (to be determined)
Permit Fee..... \$100.00

Commissioner Bowman said that the Commission would hear one more item before breaking for lunch.

- 6. **COMPTON AND ASSOCIATES, #06-1000.** Commission review, on appeal by the applicant, of the March 20, 2008, decision by the Suffolk Wetlands Board to deny the applicants' request for after-the-fact authorization to retain multiple previously installed floating piers and previously constructed pier and deck structures, as well as requesting after-the-fact authorization to retain an enclosed expansion of an existing restaurant at the applicants' marina/restaurant facility

situated at the terminus of Ferry Road, along Bennetts Creek, a tributary to the Nansemond River. The applicant also requested and was denied authorization to install additional floating pier sections.

7. **COMPTON AND ASSOCIATES, #06-1000**, requests after-the-fact Commission authorization to retain multiple previously installed floating piers and previously constructed pier and deck structures, as well as after-the-fact authorization to retain an enclosed expansion of an existing restaurant at the applicants marina/restaurant facility situated at the terminus of Ferry Road, along Bennetts Creek, a tributary to the Nansemond River in the City of Suffolk. The applicant also requests authorization to install additional floating pier sections. The project is protested by a nearby landowner and oyster ground leaseholder.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Stagg stated that he had a handout of additional minutes prepared by the Wetlands Board that had just been finalized.

Mr. Stagg explained that the restaurant/marina facility was located at the terminus of Ferry Road along Bennett Creek in the northern section of the City near Route 17. The site had received numerous permits in the past, under a different owner. Mr. Nat Compton apparently purchased the site approximately 5 to 6 years ago. The site was flooded and damaged by Hurricane Isabel in 2003.

Mr. Stagg further explained that in late 2005, staff received numerous phone calls suggesting that additional structures had been installed at the site. In response, staff visited the site and reviewed the previous permit authorizations. Apparently, sometime after the hurricane considerable changes were made to the footprint of the marina, to include the addition of floating piers, and the expansion of a fixed deck area adjacent to the restaurant. Additionally, during follow-up site visits, it was discovered that other additions and improvements had apparently been constructed prior to Mr. Compton's ownership. These improvements included the enclosure of a previously permitted, covered, screened in waiting area, over the subaqueous bottomland of Bennett Creek and its conversion into full service restaurant seating, as well as, the addition of a fixed pier along the shoreline immediately adjacent to the parking lot. Staff had been unable to find any application or permit documents related to these two structures, as they now exist.

Mr. Stagg stated that staff contacted Mr. Compton by letter dated December 29, 2005, and requested Mr. Compton contact staff within 15 days to discuss the structures at the site that had not been previously authorized. Staff later met with Mr. Compton in early 2006, at which time Mr. Compton was informed that there were differences between the existing structures and those that had been previously permitted. Staff took field measurements to compare with previous permit documents. Mr. Compton was then

notified, by letter dated April 18, 2006, of the unauthorized structures and was offered the option to remove all unauthorized structures within 30 days or to submit an after-the-fact application to retain the structures, since Mr. Compton had previously indicated that he had only attempted to repair the marina, with minor changes, and believed he was within the authorization provided in the Governor's Executive Order 58 that allowed the reconstruction of previously permitted structures over State-owned submerged lands. That Executive Order, however, required that an application be submitted and approved by VMRC. No application was ever submitted by Mr. Compton pursuant to the requirements of the Executive Order.

Mr. Stagg said that a Joint Permit Application was received on May 1, 2006, seeking after-the-fact authorization for all structures, as they currently existed at that time, and a request to add additional floating piers, apparently not yet installed. Unfortunately, the drawings provided did not clearly depict the actual conditions onsite. Staff requested, in a letter dated June 1, 2006, a set of as-built drawings within thirty days. Additional information was received on July 6, 2006, which staff determined was still not adequate to deem the application complete. The applicant then indicated he was obtaining additional help to produce CAD drawings, to scale, of the site with all structures shown. Eventually, on November 2, 2006, the applicant did provide additional as-built drawings, purported to be to scale, but still hand drawn, with a color coded index indicating previously existing structures (before Hurricane Isabel) and what had been installed after the storm, as well as proposed new structures for which authorization was also being sought. After discussions with the City of Suffolk concerning the drawings and since it appeared that this was the best information that would be provided, it was determined that the application was deemed to be complete.

As a result Mr. Stagg stated that the City of Suffolk scheduled a Wetlands Board hearing on the project. That hearing was delayed several times at the request of the applicant due to illness. The project was eventually heard at its March 20, 2008 meeting during which the Wetlands Board denied the after-the-fact application submitted by Compton and Associates. VMRC received a faxed request, from Mr. Compton, dated March 29, 2008, appealing the Suffolk Wetlands Board decision. The appeal was deemed received within the 10-day appeal period specified in Code and was therefore considered timely. The appeal also contained a request for deferral for 60 days due to scheduling conflicts with a "serious court matter". Staff responded to the applicant in a letter dated March 31, 2008, indicating that the matter would be scheduled for the April 22, 2008, Commission meeting. Additionally, the letter informed Mr. Compton that unless he was scheduled to be in court on the same date as the Commission meeting, the matter would likely not be deferred and that he should prepare to proceed during the April 22, meeting. He was further informed that the subaqueous violations would also be heard at the same meeting, unless the wetlands appeal review was continued or remanded back to the City of Suffolk Wetlands Board for additional action.

Mr. Stagg explained that during the March 20, 2008, Wetlands Board hearing, the City of Suffolk staff made a brief presentation to the board, with aerial photographs from 2002 and 2006, which clearly depicted the structures that were present before Hurricane Isabel, and what was installed after the storm. The board then questioned Mr. Compton concerning the Governor's Executive Order, and how he could explain the apparent changes in the footprint of the marina piers and the fixed deck structure. Mr. Compton indicated he believed he was in compliance with the Executive Order, and that he had obtained Army Corps of Engineers (ACOE) authorization for the current footprint (Regional Permit 19). In further testimony Mr. Compton noted that he was told by numerous officials, soon after the hurricane, including then Senator George Allen, the ACOE, and others that he could reconstruct and repair damaged structures. Additionally, he noted he received a Small Business loan from the federal government for the work and that he had not increased the number of slips previously authorized by the Health Department.

Mr. Stagg noted that four nearby property owners spoke in opposition to the project with concerns over potential adverse wetlands impacts, increased boat wakes, noise, and other upland issues. Additionally, one speaker presented a petition with fifty signatures in opposition to the after-the-fact request. The Wetlands Board then discussed the obvious differences in the site since the hurricane. Additionally, the Board requested clarification on their jurisdiction. City staff indicated that the Board routinely reviewed marina applications to include modifications, even when the proposed activities did not directly impact tidal wetlands. VMRC staff further noted that the Wetlands Ordinance allowed the Board to consider not only direct tidal wetlands impacts, but also indirect impacts, and the impact of the project on public health, safety, and welfare, the testimony of any person in support or opposition to the project, as well as whether the anticipated public and private benefit of the proposal exceeded its anticipated public and private detriment.

Mr. Stagg stated that there was no VIMS report for this project. City staff indicated to the Board that no report was given because VIMS deemed the wetlands impacts to be minor and a report was not necessary. However, VMRC staff believed no report was issued because VIMS did not believe the information provided by the applicant was adequate to provide a report.

Mr. Stagg went to say that after careful consideration the Board moved to deny the after-the-fact application to retain any structures installed after Hurricane Isabel, to deny any new structures, and to direct the applicant to remove said structures and restore the marina footprint to what had been previously authorized. The motion passed unanimously by a 6-0 vote. Mr. Compton noted that he intended to appeal the decision. The Board did not address the fixed pier along the shoreline or the restaurant expansion.

Mr. Stagg said that staff had reviewed the entire record, which clearly showed the board thoroughly reviewed the proposal and determined that the applicant had installed structures in excess of those previously authorized. Additionally, they determined that the

applicant had not obtained either a proper wetlands permit or subaqueous permit from VMRC for the structures. The Board considered the applicant's testimony that it was his belief that he was in compliance with the Governor's Executive Order #58 and his testimony that the current configuration was actually an improvement over the older authorized footprint. After considerable discussion the Board voted to deny the application and require removal of the unauthorized structures. The Wetlands Board did not address the restaurant enclosure or the additional fixed dock along the shoreline. Based on the record considered as a whole it was apparent the board considered the potential impacts the marina expansion could have on nearby wetlands resources. As such, VMRC staff could not find that the Board erred in its deliberations or actions and therefore recommended the Commission uphold the Suffolk Wetlands Board decision.

Mr. Stagg noted for the Board that some of the structures had been removed as ordered by the Wetlands Board, but not all of them.

Cynthia Ewing, Attorney representing Compton and Associates, was present and her comments are a part of the verbatim record. Ms. Ewing stated that Mr. Compton had removed some of the structures as ordered including the fixed pier and what was on the other side of the restaurant as shown on the staff's slide. She said he had closed up that portion of the restaurant and the associated deck, as he was told to do. She explained that he had purchased the restaurant in 2000 after it was totally closed. She explained further that the previous owner, Bennetts Creek, Inc., had been authorized to construct the screened closure, but in August 1993, the new dining room was constructed, as stated in the letter from the previous owner. She said that Mr. Compton was not aware that this was done without a permit when he purchased it. She stated that this did not encroach on any additional subaqueous bottom.

Ms. Ewing explained that the requirement that he close a portion of the restaurant impacted Mr. Compton's operation of the restaurant. She said the Health Department had authorized the seating of 100 people. She stated that if he could not utilize the entire structure he would not be able to continue his business. She said he was asking the Commission to grant an after-the-fact permit, where he was not at fault. She said as far as the pier and dockage, he would need enough to continue the marina but he wanted to comply with the VMRC. She said he did not dispute the deck decision of the Wetlands Board. She said he was requesting 90 days to reapply with less slips than before the hurricane. She said he had received some bad advice after the hurricane. She explained that he was having problems in contacting some of the boat owners and 90 days would allow him to get rid of some of the boats. She said he wished to modify the application for the VMRC's consideration.

Commissioner Bowman asked for clarification by VMRC Counsel. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel asked if this was about the Wetlands Board jurisdiction and what was to be heard next? Mr. Stagg explained that the Commission must consider the appeal and then act on the subaqueous portion of the

project. He explained that most of the project was over subaqueous bottom, but the Wetlands Board had looked at it as secondary impacts to wetlands. He said this goes back to an older Attorney General's opinion. He said the Commission needed to take action on the appeal and decide if the Wetlands Board acted properly.

Commissioner Bowman stated that the VMRC must determine if there was a fair hearing by the Wetlands Board and their decision cannot be changed unless they erred in making a decision. Mr. Josephson stated that the subaqueous lands belonged to the State, therefore, it was not under the Wetlands Board jurisdiction. Bob Grabb, Chief, Habitat Management, explained that the Wetlands Board could consider secondary impacts to wetlands and the Board had exerted jurisdiction over it. He said if the structures do not impact wetlands, then it defaults and becomes entirely under the VMRC jurisdiction. He explained that, based on the record, there was some discussion and the Board did view that it had impacts on the wetlands. Mr. Josephson stated that their jurisdiction was not over the structures. Mr. Grabb stated that because of secondary impacts, and based on another Attorney General opinion, if by use of the structure there were secondary impacts to the wetlands, then the Wetlands Board could assume jurisdiction. He said if it was decided that was wrong, then the VMRC could change it. He said if the Commission should modify the Wetlands Board decision, then it could act on the subaqueous portion. Mr. Josephson said that he was not aware of the older Attorney General opinion and suggested that the matter be tabled until he could look into the matter. Commissioner Bowman ruled that the issue of the Wetlands Board jurisdiction be deferred until the Mr. Josephson could look into the matter and ruled also to go ahead and take action on the subaqueous portion.

Mr. Grabb stated that an appeal had never been deferred by the Commission and then the subaqueous portion was acted upon. He said this would set a dangerous precedent and staff recommended that both be deferred with separate motions. He asked, since the restaurant was not a part of the Wetlands Board decision and as it had been constructed by others individuals, did the Commission want to continue to restrict its use.

Commissioner Bowman noted that the floating docks had been removed, as seen on staff slides, and the Commission had the right to decide on a continuance, but not to put someone out of business. He suggested that the applicant be allowed to use the areas pending resolution of the appeal.

Associate Member Robins moved to continue both matters for 60 days, allowing the use of the restaurant and the slips that had been originally permitted. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Wetlands Appeal – Subaqueous Permit Application – Both deferred for 60 days.

* * * * *

Commissioner Bowman adjourned the meeting at approximately 12:40 p.m. The meeting was reconvened at approximately 1:25 p.m.

* * * * *

8. **JOHN AELLEN, #07-1919**, requests authorization to install two (2) 125-foot long nearshore stone sills immediately channelward of two existing low-profile wooden groins and to repair one groin by installing stone along the landward end at his property situated along Onancock Creek in the Bailey Neck area of Accomack County. The sills will be nourished with beach quality sand. Both Commission subaqueous and coastal primary sand dune permits are required.

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

Mr. Badger explained that the project was located in the Bailey Beach Subdivision, a community lying on the south side of Onancock Creek, three miles northwest of the Town of Onancock and one-half mile east of East Point. The subdivision was created around 1990. Most of the property is low in elevation with a small 2-foot high coastal primary sand dune and beach along its west side that shows some signs of erosion.

Mr. Badger also explained that the project was located along a shoreline reach that transitions from a dune/beach area to vegetated wetlands. There were stone riprap revetments on adjacent lots to the south and stone marsh toe protection adjacent to and north of the proposed project. In 1991, a previous owner applied for and received a permit to install the two existing low-profile wooden groins.

Mr. Badger stated that Mr. Aellen originally proposed to install a 258-foot long stone revetment against the coastal primary sand dune impacting 2,064 square feet of dune/beach. After the VIMS' recommendations were received, the applicant consulted with his agent and they redesigned the project. The redesign removed the proposed dune revetment and replaced it with a nearshore breakwater system and 118 cubic yards of sand fill. The new design only involved the beach area, which was not under the jurisdiction of the Accomack County Wetlands Board, thus, eliminating the need for a Wetlands permit.

Mr. Badger explained that the County of Accomack had not yet adopted the model Coastal Primary Sand Dune and Beach ordinance. As a result, the Commission was responsible for administering the provisions of the ordinance within that locality. VMRC staff held a public hearing in the Accomack County Administration Building, Board of Supervisors Chambers on Thursday, April 3, 2008, to hear any public comments on the project. Mr. Fred M. Morgan, a nearby property owner was the only person to attend the hearing. No public opposition had been received to date.

Mr. Badger said that the Virginia Institute of Marine Science (VIMS) indicated that the proposed breakwaters/sills and beach nourishment were consistent with the recommended approach to enhance the natural ability of the sand beach to provide erosion protection. However, they found it difficult to predict how the combination of the proposed breakwaters/sills and the existing groins would interact and affect sand transport and deposition. VIMS further stated that if the upland bank erosion continued because there was not enough sand being trapped by the structures, more beach quality sand could be added and removal of the failing groins could be considered in the future. No other State agency had expressed any opposition to the project.

Mr. Badger explained that Section 28.2-1401 (B) of the Code of Virginia “Powers and duties of the Commission” states that “The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features.” In addition, the Coastal Primary Sand Dunes/Beaches Guidelines, Section IV, states that “No permanent alteration or construction upon any coastal primary sand dune shall take place which would, impair the natural functions of the dune, physically alter the contour of the dune or destroy vegetation growing on the dune. Activities contrary to these standards will be permitted only if the Commission finds that there will be no significant adverse ecological impact from the proposal, or that granting a permit for the proposal is clearly necessary and consistent with the public interest.”

Mr. Badger said that although the applicant had revised his proposal to include a more acceptable breakwater design, which was somewhat like a sill, the combination of the existing groins and the breakwater presented concerns regarding their combined affect on the beach system as referenced by VIMS. Furthermore, the length of the breakwaters relative to their offshore location and the width of the opening between the proposed structures, was somewhat atypical for these types of projects. Because of these concerns, staff was unable to support approval of the project as designed and recommended denial.

Mr. Badger stated that staff recommended the applicant seek the advice of a shoreline consultant with specific knowledge of breakwater design in order to develop a plan for breakwaters or sills with the proper dimensions and spacing for the site. Staff also recommended the applicant consider removal of the groins, as a part of any revised plan, before submitting a new application for review.

Mr. Badger said that since this was the first project of this type along this section of shoreline staff was concerned that any approved structure not limit or adversely affect the ability of other property owners to consider properly designed breakwaters or sills to retain the beach along their shoreline.

The applicant was not present at the hearing. Staff recommended that action be taken since the applicant had attended all other meetings.

Commissioner Bowman asked for action by the Commission.

Associate Member Holland moved to adopt the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalties (filling 200 sq. ft. @ \$0.05/sq. ft.)	\$10.00
Permit Fee.....	\$25.00
Total Fees.....	\$35.00

* * * * *

- 9. **MARK SCERBO, #08-0258**, requests authorization to construct and backfill 280 linear feet of vinyl replacement bulkheading aligned a maximum of 2 feet channelward of an existing, failing bulkhead adjacent to the applicant's marina situated at the confluence of the Coan River and the Potomac River in Northumberland County. The project is protested by an adjacent property owner.

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

Mr. Madden explained that the project was located at Travis Point at the confluence of the Coan River and the Potomac River in Northumberland County approximately six miles north of Heathsville. The marina provided 17 covered wetslips, nine uncovered wetslips, upland boat storage, onsite repair facilities, fuel, stores and bait. The owner/operator wanted to construct and backfill 280 linear feet of vinyl bulkhead to replace the existing, failing bulkhead located at the back edge of the 17 slip boathouse.

Mr. Madden stated that according to the applicant, the original bulkhead, which supported the boathouse roof, dated back to the late 1950's and early 1960's. Since the supports for the buildings roof rest on the bulkhead cap boards, the new vinyl sheet piles would be driven in by a vibratory hammer rig working between the roof supports. This construction technique would enable the applicant to construct the new bulkhead without removing the existing roof.

Mr. Madden said that the project was protested by Mr. William G. Allen, who owned two lots located opposite the marina's covered slips. Mr. Allen objected to any additional construction adjacent to his property. He was concerned about any potential devaluation of his property attributable to the proposed construction. He also questioned the validity of the well and associated concrete pad, which was used as a principle benchmark in the project drawings.

Mr. Madden said that staff had verified that the freshwater well was recently installed and had reported those findings to Mr. Allen. Mr. Allen, however, continued to maintain his protest of the project.

Mr. Madden noted that the Virginia Institute of Marine Science had commented that while they preferred the bulkhead be reconstructed in the existing alignment, they had no objection to the new structure being aligned two feet channelward of the existing bulkhead

Mr. Madden said that the Virginia Department of Health stated that the marina facility was in compliance with the Sanitary Regulations for Marinas and Boat Moorings.

Mr. Madden stated that no other agency or individual had protested the project

Mr. Madden explained that while staff was sensitive to the issues raised by Mr. Allen, the construction of the new bulkhead was an obvious safety concern for those using the boat shed and marina. The new bulkhead should also reduce the potential for accidental discharge of sediment laden material into the Coan River due to the failure of the existing bulkhead.

Mr. Madden said that after considering the merits of the project and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project as proposed with a royalty in the amount of \$1,680 for the filling of 560 square feet of State-owned submerged lands at a rate of \$3.00 per square foot.

Mr. Madden explained that Mr. Allen, the protestant, was not present at the hearing because of health problems.

Commissioner Bowman asked if the applicant wished to comment.

Mark Scerbo, applicant, was present and his comments are a part of the verbatim record. Mr. Scerbo stated that staff had done a great job in summarizing his request.

Commissioner Bowman asked for a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalty Fees (encroachment 560 sq. ft. @ \$3.00/sq. ft.).....	\$1,680.00
Permit Fee.....	\$ 100.00
Totals Fees.....	\$1,780.00

- 10. COUNTY OF MIDDLESEX, #06-1937**, requests authorization to remove two pilings and install a total of four (4) new pilings adjacent to the existing public pier adjacent to the public landing along Locklies Creek off State Route 621 in Middlesex County. The project is protested by both adjacent property owners

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

Mr. Neikirk explained that the public landing was owned by Middlesex County and was located along Locklies Creek near the end of State Route 621. The creek was approximately 675 feet wide at the project site. Development along the creek included a mixture of residential and commercial properties. Locklies Marina was the adjoining property owner just past the public landing. The project involved the replacement of two pilings and the installation of two new pilings adjacent to the existing public-use pier. All four new pilings would be located 22 feet from the existing pier and were designed to improve the ability to moor vessels at the pier. The County explained in a letter dated August 30, 2006, that there were no formal slips at the pier but that the county allowed boats to moor overnight at the pier. They stated that approximately four (4) boats used the pier on a regular basis and that they anticipated such activity would continue. The facility was primarily utilized by commercial watermen.

Mr. Neikirk said that the project was protested by both adjoining property owners. Mr. Jack Mazmanian Jr., owner of the Locklies Marina stated he was concerned that the existing sanitary facilities were inadequate and users of the pier were using his facilities and dumpsters. He said the landing did not have a pump-out facility, was not properly zoned and was in violation of Health Department requirements. He added that the facility was used after the posted hours and that the pier encroached on the neighboring property's riparian rights. Mr. Roger Hopper submitted a letter of opposition on behalf of the other adjoining property owner, Mrs. Delores Miller. She believed the pilings were too close to her property, too tall, and that the boats tied to the pier would float over her leased oyster planting ground.

Mr. Neikirk stated that VIMS, in their report dated April 19, 2007, stated that the direct impact of the pilings would be minor. They added, however, that if overnight mooring was allowed, then adequate sanitary and solid waste collection facilities should be provided and maintained if they were not already.

Mr. Neikirk said that the Health Department in their letter, dated April 15, 2008, informed staff that the project had been granted a variance from their "Sanitary Rules for Marinas and Boat Moorings." The special conditions of the variance were detailed in a letter from Dr. Karen Remley to Mr. Charles M. Culley, Jr., dated April 3, 2008. The variance was granted with special conditions requiring two portable privies of the type that included hand washing facilities and a contract for their pump-out by an approved pump and haul contractor. The county would be required to monitor the units to determine the frequency

of use and required pump-out. The county must also maintain a pump-out agreement with the nearby Regent Point Marina and must provide a dump station and holding tank for portable toilets from boats using the pier. No overnight occupancy was allowed on any boats moored at the pier. Finally, the County was required to contact the Health Department if any of the conditions were violated.

Mr. Neikirk explained that the southernmost proposed piling was located close to Mrs. Miller's leased oyster planting ground, but it did not appear to staff that it would encroach directly on the ground.

Mr. Neikirk stated that the pier was located within a small embayment and the area was crowded, however, staff did not believe the project would adversely affect navigation within Locklies Creek. If more than two boats were to be moored along the northeast side of the pier, access to and from the Locklies Marina ramp could be obstructed. The location of the ramp immediately adjacent to the shared property line, however, added to this congestion problem. The pilings were proposed to improve the existing mooring conditions at the pier. No new slips were proposed. The project was held in a pending status for an extended period while Middlesex County worked with the Health Department to develop an acceptable plan for sanitary facilities at the landing. The required facilities should be a significant improvement over the existing pit privies previously used at the landing.

Mr. Neikirk said that both neighbors had expressed concerns regarding the pier facility's possibly encroachment on their property rights and in Mrs. Miller's case, her leased oyster planting ground. Staff did not believe the southernmost piling would encroach on Mrs. Miller's oyster planting ground; however, a survey might be required to confirm the location of the piling relative to the lease. It was important to note that a permit issued by the Commission would not grant the permittee any right to encroach on the property rights, including riparian rights of others. Additionally, the permit would not grant the permittee any right to encroach on leased oyster planting ground without the consent of the leaseholder.

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

Associate Member Fox asked if more than 4 boats could be moored because of the added pilings. Mr. Neikirk said that the pilings were just to improve the current mooring arrangement. Associate Member Holland asked if there was a charge for mooring. Mr. Neikirk responded no that it was first come, first serve. Associate Member Fox asked about overnight occupancy. Mr. Neikirk responded, no.

Commissioner Bowman asked if anyone else wished to address this item. There was no one else, pro or con, to speak on this matter.

Commissioner Bowman asked for action by the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member McLeskey seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee..... \$25.00

* * * * *

- 11. **R.R.PAYNE, INC., et al, #08-0024**, requests authorization to remove an existing community use pier and boat ramp and to construct a new 12 ½-foot wide by 24-foot long boat ramp and a 5-foot wide by 48-foot long community use pier at a parcel designated for use by the Queens Estates subdivision situated along Postle Cove off Belle Isle Lane in Mathews County. The project is protested by an adjoining property owner.

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

Mr. Neikirk explained that the property was situated along Postle Cove, a small tributary on the south shore of Queens Creek in Mathews County. Postle Cove was approximately 180 feet wide at the project site. Development along the creek was primarily residential. The proposed community-use timber boat ramp was intended to replace an existing deteriorated timber ramp and the existing 3-foot wide by 48-foot long tending pier would be replaced by a 5-foot wide by 48-foot long tending pier. The existing ramp and the proposed replacements were designed to serve the residents of the Queens Estate Subdivision.

Mr. Neikirk stated that the project was protested by Ms. Betsy Carr, an adjoining property owner. In her letter dated January 31, 2008 she stated she objected to the inclusion of a boat ramp and she requested that the permit contain restrictions to prevent commercial activity, general public use and overnight mooring. She also requested that the operating hours be limited. Finally, she said any permit should include measures to protect the adjacent wetlands and other sensitive environmental features in the vicinity.

Mr. Neikirk said that VIMS, in their January 22, 2008 report, stated that they anticipated the adverse marine environmental impacts associated with the project would be minimal.

Mr. Neikirk said that the Health Department in their letter dated March 15, 2008 informed staff that the project was in compliance with their “Sanitary Rules for Marinas and Boat Moorings” with the following conditions:

1. No overnight occupancy of boats.
2. Discharge of sanitary waste is prohibited.
3. Pier is only to service the residents of lots #9 through #18 and their guests.

Mr. Neikirk stated that the Department of Conservation and Recreation did not anticipate that the project would adversely affect any of their programs although their Chesapeake Bay Local Assistance Division noted that the applicability of the Chesapeake Bay Act requirements were regulated by the local government.

Mr. Neikirk said that no other state agencies had commented on the project. He also said that the project would not encroach on any public or privately leased oyster planting ground and that staff did not believe the project would adversely affect navigation.

Mr. Neikirk explained that the project was essentially the replacement of existing structures and that the conditions imposed by the Health Department addressed some of the concerns expressed by Ms. Carr. Additionally, it did not appear that the proposed project would have a significant adverse impact on either the environment or navigation.

In summary, Mr. Neikirk stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed. He added that staff was recommending that a royalty fee in the amount of \$0.30 per square foot be assessed for this project, if approved.

Commissioner Bowman asked if the applicant wished to make any comments.

John Keite, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Keite explained that in two weeks the papers will be finalized and he would own the property. He explained the pier was aging and not safe. He said it would not be used commercially, but used only by the 9 residents. He said only small craft would be used, the largest being 17 feet. He said they also want to use it to fish.

Commissioner Bowman asked if anyone else, pro or con, wished to speak. There were none.

Associate Member Holland moved to accept the staff recommendation with royalties. Associate Member McConaugha seconded the motion. The motion carried, 8-0. The Chair voted yes.

Royalties (encroachment 300 sq. ft.

@ \$0.30/sq. ft.).....	\$ 90.00
Permit Fee.....	\$ 25.00
Totals Fees.....	\$115.00

* * * * *

12) PUBLIC COMMENTS: 1) Ellis W. James, 2) Doug Jenkins, 3) Pete Freeman, and 4) Ken Smith

Ellis W. James, Norfolk resident, was present and warned the Commission of the increasing size of “ocean deserts” where there was scant fishery resources evident and suggested the Commission plan accordingly.

Douglas Jenkins, President, Twin River Watermen’s Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said that documents show that the blue catfish posed a threat to the Chesapeake Bay region, as it was in all major rivers and tributaries. He said this was an issue not included in the Crab Management Plan. He provided photographs which were taken by Rom Lipcius showing samples of blue catfish with their insides exposed and showing how they were consuming the blue crabs. He explained that there were three predators: Striped bass, Croaker, and Blue Catfish and it was taking a toll on the resource. He said that in one month’s catch the number of small crabs was the same as the whole previous year. He stated that if there were anymore predators the crab resource would be lost. He said the Commission should be looking at a multi-species management plan. He said that staff at VIMS did not see the problem and the Dept. of Game and Inland Fisheries was in denial that there was a problem. He stated he was taking this problem to Richmond. He also suggested that staff go out with him to see for themselves and he would pay all of the expenses. He said the time to do something was now. He said he was also going to write to the Secretary of Natural Resources about finding some funding for the development of a processing plant.

Pete Freeman, a Hampton crabber and former Associate Member, was present and his comments are a part of the verbatim record. Mr. Freeman explained that he had put the cull rings into his crab pots and ended up losing 25% more of his catch. He said he did not want the other fisheries to be allowed to catch them, such as the peeler pots. He said the watermen had more and more regulations put on them to where they cannot make a living He stated that with the increased fuel costs and only about 200 crab pots, it just might put him out of business. He said they were not overfishing the resource. He said there were 700 full-time working crabbers. He said Maryland was laughing at Virginia as they had less female crabs there in Maryland. He said he would be writing to the Governor and to his Congressman as something had to be done for the waterman. He said he wanted to work as long as he could, which might not be long as he was 80 years old now.

Ken Smith, Virginia Watermen’s Association, was present and his comments are a part of the verbatim record. Mr. Smith said he wanted to add some more information to what Mr. Jenkins had said earlier. He showed by a photograph how the catfish that were sampled with the crabs in them all had roe in them, which was a bad thing, and he said this was not just at certain time, but year round so that they produced non-stop.

* * * * *

13. PUBLIC HEARING: Final consideration of Emergency Regulations, adopted April 22, 2008, to prevent over-harvesting of the blue crab resource.

Rob O’Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. O’Reilly explained that there were four regulations: 1) Chapter 4 VAC 20-270-10 Et Seq., “Pertaining to Crabbing,” Chapter 4 VAC 20-880-10 Et Seq., “Pertaining to Hard Crab and Peeler Pot License Sales,” Chapter 4 VAC 20-1090-10 Et Seq., “Pertaining to Licensing Requirements and License Fees,” and 4 VAC 20-700-10 Et Seq., “Pertaining to Crab Pots.

Mr. O’Reilly said that last month’s public notice legally advertised a 10 to 30% reduction in peeler pots and crab pots. This meant that that 2008 reduction of 15%, for hard crab pots, and the 30% reduction in peeler pots and the 2009 reduction, which was 30%, for both peelers pots and crab pots, did not necessitate an emergency amendment. In Subsection 4 VAC 270-50 on page 3, the 2008 crab pot license categories were established, as a 15% reduction in pots, compared to prior to your April 22, 2008 meeting. Staff incorporated the adopted 30% reduction in 2008 crab pot license categories, as part of the Regulation in Subsection C, on page 3, and advertised the 15% reduction in pot license categories, as an emergency amendment. Effectively, the Commission already adopted the 2008 and 2009 reduction because both reductions were advertised, for the April 22, 2008 meeting.

Mr. O’Reilly stated that, similarly, the emergency amendments, of Chapter 880 in Section 30 on page 2 did not need to be advertised as an emergency amendment, since this 15% reduction, in hard crab pots, falls within the 10-30% reduction advertised, for your April 22, 2008 meeting. The same situation involved Chapter 1090, as both the 2008 and 2009 variable crab pot license amounts on page 3 could have been incorporated by the final regulation you adopted last month, and the emergency regulation was unnecessary.

Mr. O’Reilly explained that staff advertised emergency amendments to Chapter 700, for this meeting, as the Commission modified the areas where crab pots would need to be equipped with 2 3/8” cull rings, at its April 22, 2008 meeting. Earlier, these cull rings were advertised, for use in crab pots set in the tributaries, but at last month’s meeting the Commission determined these cull rings would be mandatory in all crab pots, in all tidal

waters, except Virginia's Seaside Eastern Shore. This could be found on page 2 of the Regulation.

Mr. O'Reilly stated that several fishermen had told staff that they would not comply with the proposed cull ring requirement. One fisherman had indicated to a few staff members that it was too difficult to add this cull ring to pots that were already deployed. Staff knew it would be difficult to make this change in mid-season, and it would have been better to do this before the season started. Staff understood that it would be more difficult to place the new cull rings in pots, as they were pulled from the water, compared to on shore. The reduction in female harvest associated with this new cull ring requirement was needed to maintain the 34% reduction in 2008. Last month's action by the Commission to require the 2 3/8" cull rings in all areas, except Seaside, was viewed by staff as insurance that the 34% reduction in females crab harvest would be met. Now, as a consequence of the high amount of effort that had occurred in the 1942 (original) sanctuary, the savings, in female crab harvest associated with the 2 3/8" cull rings was an important component of the overall (34%) reduction in female crab harvest.

Mr. O'Reilly said that staff recommended adoption of these four regulations and to make them effective June 1, 2008.

Commissioner Bowman asked for questions of staff.

Associate Member Robins stated that he thought that there had been only emergency action taken last month for the geographic range of cull rings as the reduction was advertised. He stated that the buoy marking was not advertised originally. Mr. O'Reilly stated that would be the next agenda item to be discussed. He explained that the Commission had added to the cull rings and the pot reduction has been intended by staff to be for 2009. He said now the Commission would have a second opportunity to pass this measure. Associate Member Robins stated that the Board was being asked to reaffirm the decision of last month.

Both Associate Members Holland and Fox asked about the need to decide twice.

Mr. O'Reilly explained again that the staff had originally advertised for 2009 and the Commission added 2008. He said that staff decided to advertise as an emergency measure for 2008. He said that Mr. Josephson might have a view on this matter.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel stated that this was a good cautionary effort by staff, as the measure was originally advertised for 2009 and the Commission took action for 2008. He explained that this would ensure that the Regulation would not be vulnerable to dispute.

Commissioner Bowman opened the public hearing.

Douglas Jenkins, Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that he was still confused with the discussion about 2009 and 2008. He said when fishing a pot you do not need four rings and you only wind up having no crabs. He stated that Mr. Freeman had told the Commission earlier that he has tried the four rings in his pots and he estimated that he lost an additional 25% of his harvest with the larger ring. He said that some Board members had heard all this before, as they serve on the Potomac River Fisheries Commission. He said that there was a market for the 5¼-inch male crab, as people were willing to pay a higher price for a bushel of them. He said that the watermen should not be punished anymore. He said staff had said earlier that the female crabs were the ones that would escape and asked that staff confirm that statement. Mr. O'Reilly said he did not say that, but said that the illegal sized female crabs would be allowed to escape. Mr. Jenkins said what he was worried about were the male crabs that escaped. He explained that in the upper Bay the crabs differ in their shape because when they shed they were slower to grow back to being a hard crab in the fresher water. He said that changing in mid-season, by having to add cull rings, while on the boat, was difficult, and the watermen had to return to the shore to do it, losing time from harvesting. He said adding the cull rings on top of the 34% reduction was just adding insult to injury. He said the Commission should add hours to the work day to recover the time lost. He suggested also that an alternative would be to take two wees off at the end of the season. He finally suggested that the 2009 measures be tabled and to hold a meeting with the CMAC to come up with a better plan.

Ken Smith, Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith said that the male crab size in Virginia was 5" and a 2 5/16-inch cull ring would allow them to escape. He said that he had attended all the CMAC meetings to keep up with what was happening, and they were told that if they did not come up with a plan, then the staff would. He said he had heard about the 34% reduction, but now there was pot reduction and additional cull rings added as well. He said the 2 3/8-inch cull ring would make a difference in the male crabs in his part of the Bay. He said for the 5 inch male crab a waterman gets \$2.25/pound and for a shedder \$1.00/pound and the way it was proposed they would lose money on each crab. He stated that the reduction in pots and adding the additional cull rings were excessive actions last month. He asked the Commission to reconsider the cull rings action taken last month.

Commissioner Bowman closed the public hearing. He said the matter was before the Board.

Associate Member Robins stated that, from the comments made, the watermen were concerned about the difference in sizes of the crabs around the State and the effect of the cull rings. He noted that Mr. Freeman had tried the rings, and his harvest was 25% less. He said that staff had indicated a 6% conservation amount. He suggested that staff and VIMS develop a study to determine better catch differentials and gather more detailed information. He said they need to study how long the currents measure must remain in effect and gather better data for making future long term decision.

Mr. O'Reilly stated that it could be done. He said the original cull ring studies were done in 1987 and had a geographical component as well as looking at different systems, and this could be done the same way. He said he did not have information from the North Carolina study, but they had looked at escapement. He said he did not know how quickly this could be done. He explained that Rom Lipcius would be talking later and could answer that question, but staff could work with them.

Associate Member Bowden said that he had a real problem with all this stuff. He said at ASMFC Striped Bass Board meeting, the only one to mention that the bass eat the crabs was from Maryland, and he had a crab picking business. He stated that no one from Virginia mentioned it. He said, as Mr. Tankard had said in his prayer, at the beginning of the meeting, the Commission needed to show some compassion. He said he felt the actions taken were approved because of fear of retaliation. He said even though the existing regulations had failed, it should not keep the Commission from continuing to try. He said that most watermen were older than him, and he was 54 years old. He explained that older watermen on the Seaside were limited to 100 to 150 pots and 75 pots would be a hardship for them to make a living. He said almost all Maryland crabbers had a 500-pot limit and it would be 350 next year. He stated that Virginia would be limited to 70 to 105 pots. He said that it could not be justified that in addition to the 34% reduction, there would be a pot reduction, as well as the additional cull rings required. He said the State could not continue to do more and then continue to add even more. He said there might be a need to make a clean sweep of the members of the Board, as well as the staff. He said that efforts needed to be made that were production oriented. He said the staff mentioned sacrifice, well the government at all levels was in trouble right now because of budget deficit and they could not reduce the number of State employees and survive. He said if the 34% was met, then why was it necessary to do more. He stated it was just being cruel. He said even if all crabbing were to be stopped, he doubted that a 15% increase in the population would be seen. He said that all crabbers know there is a problem and were willing to help. He said they understood the 34%, but not everything else. He said why should people be put out of work, if we do not have to, when results needed do not happen. He said the crab survey had not shown a banner year, but they had had one and there was no need to extend the emergency regulations.

Associate Member Robins said that there had been a lot of comments about the 30% pot reduction. He said that staff would be giving a timeline on the pot tagging system and included in it there was a potential provision for a transfer by individuals to keep at full strength. He said that the 30% pot reduction was a placeholder for the reduction on gear that was passed last month. He said the transfer would allow the waterman not to be bound by the 30% pot reduction. He said that it had been indicated that this was all overkill, but he felt it was not. He said he felt it was appropriate to establish a buffer for the uncertainties and also to reaffirm the actions taken at last month's meeting.

Associate Member Robins made a motion to reaffirm the emergency regulations adopted last month. Associate Member McConaugha seconded the motion. The motion carried, 7-1. Associate Member Bowden voted no. The Chair voted yes.

* * * * *

- 14. PUBLIC HEARING:** Consideration of proposed regulations pertaining to crab pot identification, to improve enforcement of crab pot limits.

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

Mr. Travelstead explained that last month, the Commission directed staff to advertise a proposed regulation making it unlawful to mark a crab pot buoy with more than one number. The Commission also agreed to consider exemptions to the marking regulation for those fishermen who were legally licensed to crab in the Potomac River and in North Carolina. In those instances the pot identification number provided by those jurisdictions may also be placed on each crab pot or peeler pot. The purpose of the proposed regulation was to help the enforcement of the crab pot limits, currently established by regulation.

Mr. Travelstead stated that staff recommended the adoption of the draft regulation, but it was up to the Commission as to when this would be made effective.

Commissioner Bowman asked about how long it could be delayed. Mr. Travelstead stated that there were watermen who would have numerous numbers on the buoys to remove, and when staff did a survey of sources for the buoys, they found there was not a good supply of the crab pot buoys available. Staff suggested that time be allowed for the watermen to make the necessary changes. Commissioner Bowman asked if there was a scientific reason for this action. Mr. Travelstead stated that it was to improve enforcement. He said with the 30% reduction needed for next year, it was very important that this be done.

After further discussion about what the effective date should be, Mr. Travelstead suggested that it could be delayed until March 17th, next year.

Commissioner Bowman opened the public hearing.

Pete Freeman, Hampton crabber, was present and his comments are a part of a verbatim record. Mr. Freeman said that he had two numbers on his buoys. One was his, and one had been his son's who had passed away last year. He said it was difficult to make this change in mid-season, and they should be allowed time to make these changes. He also mentioned that more time should have been allowed, for the adding of the additional cull rings, at least until 2009.

Commissioner Bowman closed the public hearing.

Associate Member Robins said he thought the marking would enhance enforcement to enforce pot limits but agreed with other comments about burdens of in-season changes.

Associate Member Robins moved to accept the staff recommendation and to make it effective March 17, 2009. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

BLUE CATFISH

Dr. Rom Lipcius, VIMS, provided an update on the blue catfish study. His comments are a part of the verbatim record.

Dr. Lipcius summarized the Blue Catfish Summit, held on May 14, 2008, which included representatives from the offices of the Secretary of Natural Resources, VMRC, VIMS, VCU, DGIF, The Nature Conservancy, and other local experts on this species. This meeting was the results of comments made by Douglas Jenkins and instructions by the Commission.

Dr. Lipcius explained that after the various presentations, there was discussion on the state of knowledge on the blue catfish and its impacts. At this meeting some consensus was reached, but it was not on the very important issues, such a predation of crabs. It was decided at the end that another meeting would be necessary.

Dr. Lipcius said that the blue catfish was introduced as a trophy fish, in the mid-70's, by the DGIF, but did not increase in numbers, until the mid-90's. He said being that the increase in numbers was not until the mid-90's, suggested that the catfish did not cause the decline in the population of blue crabs. He said these fish can survive in the upper reaches and in salinity of at least 12 ppt.

Dr. Lipcius said that, whether it were to be determined that there was an impact, on the blue crab, or not, would not necessarily mean that the regulations would be changed, but the exploitation of blue crabs would still have to be dealt with.

He stated that it might be better if this species were just to remain a trophy fish. He said at the present time those that are caught, by the watermen, could not be dealt with. He said a fishery would need funding of a processing plant, which had been suggested. He said if harvesting of these species were to be encouraged then he would recommend that an advisory be issue warning of the possible high levels of contaminants that could be in the fish. He said in the James River these fish have a heavier level of contamination then the fish in the York and Rappahannock Rivers.

No action was taken.

* * * * *

15. **BLUE CRAB TIMELINE:** Proposed schedule of events for the 2009 implementation of a crab pot tagging program and other blue crab management measures.

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

Mr. Grist explained that at the last meeting, the Commission requested that a timeline, detailing the specific steps and logistics needed for implementing a crab pot tagging system, be presented at the May meeting.

Mr. Grist said that the timeline details those items that have been identified as necessary for a pot tagging and effort reduction system, when key decisions must be made if a crab pot tagging system is to be implemented by March 17, 2009, and what other crab conservation measures should be addressed. He reviewed the timeline, which was as follows:

When	Action
June, 2008	<p>Staff presents plans, for pot buoy tagging, effort reduction and first-year tag and effort transfers to BCMAC.</p> <ul style="list-style-type: none"> • Elements of the tag plan: <ol style="list-style-type: none"> 1) Tags: type and costs 2) Tag Costs: VMRC or harvester 3) Tag Allocation (example: additional tags for lost pots). 4) Tag replacement rules 5) Tag use rules 6) FTE requirements 7) Program Management Costs 8) Management Database Design and Development • Elements of the effort reduction plan: <ol style="list-style-type: none"> 1) Time period (2000-2007) 2) Base harvest activity on a pot, time or harvest metric • Elements of first year tag transfer plan: <ol style="list-style-type: none"> 1) Limit temporary or permanent transfers to one per MRC_ID 2) One month, by appointment, time period (April) for transfers.

When	Action
July, 2008	<ul style="list-style-type: none"> • Staff discusses revisions to pot tagging plan, effort reduction plan and first-year tag and effort transfer criteria with BCMAC. • Send to General Services tag design and requirements for bid development. • Submit budget amendment to Richmond for initial costs for tags, mailings, materials, and facilities. • Seek funding for July '09 FY from General Assembly, for 2 FTE's to be hired and trained in late 2009, early 2010. • Staff begins pot tagging management database development work.
August, 2008	<ul style="list-style-type: none"> • Staff presents final version of pot tagging plan, effort reduction plan and first-year tag and effort transfer plan to BCMAC for final recommendation. • BCMAC also continues discussion of the following: <ol style="list-style-type: none"> 1) tributary sanctuaries 2) white line peeler crab protections 3) peeler pot cull rings 4) placement of cull ring 5) phase-two use of agents
September, 2008	<ul style="list-style-type: none"> • Request public hearing and advertisement of regulation amendments pertaining to pot tagging, latent effort and first-year tag and effort transfer plan at Commission meeting. • Staff trial tests management database design and applications. • Staff starts procurement process for additional storage facility.
October, 2008	<ul style="list-style-type: none"> • Commission holds public hearing on regulation amendments pertaining to pot tagging, latent effort and first-year tag and effort transfer plan. (if measures are adopted, timeline continues, if not, process halts).
November, 2008	<ul style="list-style-type: none"> • Pot tags design ordered for 2009 crab pot season.
December, 2008 through January, 2009	<ul style="list-style-type: none"> • Staff finalizes logistical plans for receiving, organizing, transporting, and distributing pot tags and licenses before March 17, 2009 season opening.
February, 2009	<ul style="list-style-type: none"> • Staff receives tags, organizes tags, print licenses and puts with tags, and distributes tags. • Staff notifies crab harvesters of regional pot tag distribution day and requirements for tag pick-up.
March, 2009	<ul style="list-style-type: none"> • Staff goal of having all tags with corresponding purchased licenses distributed 2 to 3 weeks prior to March 17, 2009

When	Action
April, 2009	<ul style="list-style-type: none"> • Results of Winter Dredge Survey and stock status are available • Consult with BCMAC on status of resource and effects of 2008 regulations. • Additional regulations may be proposed at this time. • One-month crab pot tag transfer period opened (with limitations to be defined).
July, 2009	<ul style="list-style-type: none"> • Staff reports back to Commission on status of program and future timeline involving staffing and expansion of the pot tag and effort transfer plan. • General Assembly provides budget for 2 FTEs and administration of transferable effort program.
August, 2009	<ul style="list-style-type: none"> • BCMAC meeting to discuss initial details of expanding transferable pot tag program. • Advertise for new staff members to manage overall pot tagging and transferable effort program.
September, 2009	<ul style="list-style-type: none"> • BCMAC meeting to discuss refinements to additional transfers to pot tagging program.
October, 2009	<ul style="list-style-type: none"> • BCMAC final meeting on expanding transfers in the pot tagging program (if needed) • New staff hired • Pot tags design ordered for 2010 crab pot season.
November, 2009	<ul style="list-style-type: none"> • Request for public hearing to advertise final transferable effort program
January, 2010	<ul style="list-style-type: none"> • Commission public hearing and adoption of transferable effort program
February, 2010	<ul style="list-style-type: none"> • Transferable effort program effective (February 1, 2010). • Staff receives tags, organizes tags, print licenses and puts with tags, and distributes tags. • Staff notifies crab harvesters of regional pot tag distribution day and requirements for tag pick-up.
March, 2010	<ul style="list-style-type: none"> • Staff goal of having all tags with corresponding purchased licenses distributed 2 to 3 weeks prior to March 17, 2010

Associate Member Robins thanked the staff for providing this timeline, as requested by the Commission, including the transfer system.

No action was taken.

* * * * *

16. **PUBLIC HEARING:** Consideration of proposed amendments to Regulation 4VAC20-450, "Pertaining to the Taking of Bluefish", to establish the 2008 commercial quota.

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

Mr. Grist explained that this proposal had been advertised for a public hearing today. The current VMRC Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," established the commercial 2007 quota as 1,018,660 pounds, and staff was requesting that this regulation be amended to establish the new 2008 commercial quota.

Mr. Grist said that the Atlantic States Marine Fisheries Commission (ASMFC) announced differing coast-wide quotas, for bluefish, as approved by the ASMFC Bluefish Management Board in August 2007 and the National Marine Fisheries Service in February 2008. The total coast-wide quota equals 28.256 million pounds.

Mr. Grist stated the Virginia commercial quota, as allocated by the ASMFC, will be 1,048,366 pounds, representing 11.8795% of the coast-wide commercial allocation.

Mr. Grist explained that in recent years, Virginia had transferred substantial amounts of its bluefish quota to other states (North Carolina and New York), as these transfers were allowed under the plan and allow better utilization of the Virginia quota.

Mr. Grist stated that staff recommended adoption of the amended Regulation 4 VAC 20-450-10, et seq., which set Virginia's 2008 bluefish commercial quota at 1,048,366 pounds.

Commissioner Bowman opened the public hearing. There were no public comments, therefore, he closed the public hearing and requested action by the Commission.

Associate Member Robins moved to approve the amendment to the regulation. Associate Member Tankard seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

17. **RECOMMENDATIONS OF THE RECREATIONAL FISHING ADVISORY BOARD AND COMMERCIAL FISHING ADVISORY BOARD.**

Sonya Davis, Fisheries Management Specialist, Sr., gave the presentation. Her comments are a part of the verbatim record.

Ms. Davis explained that the estimate of funds available, for projects, as of September 30, 2008, from the Virginia Saltwater Recreational Fishing Development Fund, was \$2,185,032. The estimate of funds available, for projects, as of December 31, 2008, from the Commercial Marine Fishing Improvement Fund, was \$181,167.

Ms. Davis said that seven of the nine board members attended this meeting. One board member, who was not able to attend, provided his vote by e-mail. Of the 13 proposals submitted, the RFAB recommended full or partial funding of 10, totaling \$1,672,310. Item J was withdrawn by the applicant during the review process.

The following 10 projects were recommended for approval by the RFAB:

A) 2008 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club. \$7,194. **Vote 8-0.**

B) 2008 Saxis & Morley's Wharf Fishing Pier Youth Fishing Tournaments (Year 7). Allen Evans, Eastern Shore of Virginia Anglers Club. \$2,500. **Vote: 8-0.**

C) 2008 Hope House & Oak Grove Nursing Home Fishing Excursions and Clinics. D. Hurst, C. Macin, Great Bridge Fisherman's Association. \$4,000. **Vote: 8-0.**

D) Virginia Marine Sportfish Collection (Year 2). J. Grist, J. Cimino, VMRC. \$12,000. **Vote: 8-0.**

E) Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 8). Mary Fabrizio, VIMS. \$45,348. **VOTE: 8-0 for the amount of \$22,674.**

RFAB COMMENT: Provided that the Commercial Marine Fishing Improvement Fund furnishes a match of \$22,674.

F) Estimating Relative Juvenile Abundance of Recreationally Important Finfish in the Virginia Portion of Chesapeake Bay. Mary Fabrizio, VIMS. \$74,242. **Vote: 7-1.**

STAFF COMMENT: VMRC received an 8% increase in Federal Aid (Wallop-Breaux) funding for 2008. With the increase, we were able to provide more federal dollars for this project. However, with the increase in federal funding, an increase in the state match was also needed. These funds will be added to the pool of funds allocated for the state match.

G) Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study) - Year 2. James Kirkley, VIMS. \$236,479. **VOTE: 5-3 for the amount of \$205,479.**

RFAB COMMENT: Provided that the Commercial Marine Fishing Improvement Fund furnishes a match of \$31,000.

K) 2008 Deployment of Artificial Reef Structure. Mike Meier, VMRC. \$500,000. **Vote: 8-0.**

L) Buckroe Beach Saltwater Fishing Pier. Fred Whitley, City of Hampton. \$750,000. **Vote: 7-1.**

M) Data collection and analysis in support of single and multispecies stock assessments in Chesapeake Bay: the Chesapeake Bay Multispecies Monitoring and Assessment Program (ChesMMAAP). R. Latour, C. Bonzek, VIMS. \$94,221. **Vote: 8-0.**

STAFF COMMENT: VMRC received an 8% increase in Federal Aid (Wallop-Breaux) funding for 2008. With the increase, we were able to provide more federal dollars for this project. However, with the increase in federal funding, an increase in the state match was also needed. These funds will be added to the pool of funds allocated for the state match.

The following 2 projects were not recommended for approval by the RFAB:

H) Enhancement and Sentinel Reefs for the Virginia Artificial Reef Network. Rom Lipcius, VIMS. \$153,946. **Vote: 8-0.**

RFAB COMMENT: This project is a duplication of effort with VMRC's Artificial Reef Program. Also, the original focus in the design of the reefs was more for oysters than for fish.

I) Habitat Suitability for Artificial Recreational Fish and Oyster Reefs. Rochelle Seitz, VIMS. \$61,076. **Vote: 7-1.**

RFAB COMMENT: This project is a duplication of effort with VMRC's Artificial Reef Program. Also, the original focus in the monitoring of the reefs was more for oysters than for fish.

Ms. Davis added that Dr. Rom Lipcius wished to address the proposals that were denied by RFAB.

Dr. Rom Lipcius, VIMS, was present and his comments are a part of the verbatim record. Dr. Lipcius reviewed what had been done to date and the remaining activities for the board. He said that in response to the RFAB's concerns about duplicating the VMRC's Artificial Reef Program activities, he had eliminated the new element of the project and correspondingly cut the proposed budget by \$74,922. He said the second concern was that there was too much effort on oysters and there seemed to be some misunderstanding. He

explained that this effort was directed at recreational fish. He said the Lynnhaven River segment of the project had been eliminated and the other species proposed for being sampled were a part of the prey base for the fish. He said that if the project were not completed then no benefit would be derived from the \$200,000 spent already, as it would be lost. He said that all the time and effort expended by VIMS and VMRC staff would also be lost.

Ms. Davis explained that a CFAB meeting was not held to discuss these proposals, but she had called each member individually to get their input.

The Commercial Fishing Advisory Board (CFAB) has completed its review of pending applications. The board members were mailed a copy of the following 8 proposals.

Of the 8 proposals submitted, 5 are recommended for full or partial funding, totaling \$166,104.

Funds for any projects approved by you, for expenditures from the Commercial Marine Fishing Improvement Fund, are available immediately.

The following 5 projects were recommended for approval by the CFAB:

A) Product Development for Cow Nose Ray. Shirley Estes, VMPB. \$55,900.

B) Project Manager for the Re-examination of Feasibility Study on One-year Grow-out of Triploid *Crassostrea ariakensis*. Frances Porter, VSC. \$26,530. (Part 1 of 2)

STAFF COMMENT: The U.S. Army Corps of Engineers is currently reviewing the permit to continue with this study. We expect the permit to be approved. In the event that the permit is not approved, the project will not continue. The unused funds will be returned to the commercial fund.

H) Repeatability of the Enrichment Procedure for Triploid *C. ariakensis* larvae. Standish Allen, VIMS. \$30,000. (Part 2 of 2)

STAFF COMMENT: The U.S. Army Corps of Engineers is currently reviewing the permit to continue with this study. We expect the permit to be approved. In the event that the permit is not approved, the project will not continue. The unused funds will be returned to the commercial fund.

C) Estimate and Assess Social and Economic Importance and Value of Menhaden to Chesapeake Bay Stakeholders and Region (3 Year Study) – Year 2. James Kirkley, VIMS. \$31,000.

STAFF COMMENT: Provided that the recreational fund furnishes a match of \$205,479.

D) Estimating Relative Abundance of Young-of-Year American Eel, *Anguilla rostrata*, in the Virginia Tributaries of Chesapeake Bay (Year 8). Mary Fabrizio, VIMS. \$22,674.

STAFF COMMENT: Provided that the recreational fund furnishes a match of \$22,674.

The following 3 projects were not recommended for approval by the CFAB:

E) Federal Assistance Match (Wallop-Breaux) Funds FY 2009. Jack Travelstead, VMRC. \$321,820.

STAFF COMMENT: Funds are currently not available.

F) Rappahannock River Stock Assessment in Support of Rotational Oyster Management. Roger Mann, VIMS. \$65,177.

STAFF COMMENT: Funds are currently not available.

G) Identifying the Importance of Gene Expression for Size Change in the Blue Crab, *Callinectes sapidus*. Lisa Horth, ODU. \$45,643.

STAFF COMMENT: Funds are currently not available.

Ms. Davis stated that staff recommended approval of the RFAB and CFAB recommendations.

Associate Member Holland moved to accept the recommendations of CFAB and RFAB, as presented. Associate Member McLeskey seconded the motion.

Associate Member Robins asked how the proposals were presented to the RFAB.

Ms. Davis said the proposals were presented to the Board by the applicant, the RFAB held a public hearing, then a work session, which was followed by a final meeting to decide on the final recommendations for the Commission. Commissioner Bowman asked about the lateness of some of the meetings. Ms. Davis responded that they considered thirteen proposals and some meetings ended at approximately 9:30 p.m. or 10:00 p.m. She noted for the Commission that the RFAB had not had an opportunity to review the revised proposal by Dr. Lipcius, as it was just received today. Dr. McConaugha asked about the large menhaden funded proposal and if Dr. Kirkley had done a report. Ms. Davis stated that the Year-1 grant had been extended six months and all the required reports and presentations had been made to the RFAB and the Commission. Dr. Lipcius stated that he was just notified at the May 12th meeting of the RFAB denial.

Commissioner Bowman asked about the next RFAB meeting. Ms. Davis responded July 14th would be the next meeting date. **Commissioner Bowman suggested the presentation be given at the RFAB meeting on July 14th.** Dr. McConaugha asked if others would be allowed to do this also. Ms. Davis said there were only two denied by RFAB. Dr. Lipcius stated that his presentation was for both proposals.

Commissioner Bowman asked Associate Members Holland and McLeskey if they would agree to an amendment to the motion to include his suggestion. Both responded yes. The motion carried, 8-0. The Chair voted yes.

* * * * *

Associate Member McLeskey made a motion that the Commission come up with a solution to the economic disaster that had occurred to the Crab Fishery and to write a note to the Governor thanking him for asking the President to declare this a disaster situation. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

* * * * *

There was no further business and the meeting was adjourned at approximately 3:45 p.m. The next meeting will be Tuesday, June 24, 2008.

* * * * *

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary