

MINUTES

Commission Meeting

July 27, 2010

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)	
William E. Laine, Jr.)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
John E. Tankard, III)	
Jack G. Travelstead	Chief, Fisheries Management
David Grandis	Assistant Attorney General
John M. R. Bull	Director-Public Relations
Louise Atkins	Administrative Office Specialist
Linda Hancock	Manager, Human Resources
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Fishing Tournament
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Laura Lee	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Allyson Watts	Fisheries Mgmt. Specialist
Warner Rhodes	Deputy Chief, Law Enforcement
Steve Head	Marine Police Officer
Herbert Bell	Marine Police Officer

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Tony Watkinson	Chief, Habitat Mgmt. Div.
Chip Neikirk	Deputy Chief, Habitat Mgmt.
Ben McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician
Royce Bridger	Draftsman, Engineering/Surveying

Virginia Institute of Marine Science (VIMS):

Lyle Varnell	Kirk Havens
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Others present included:

Pat O'Keefe	Ken Kidwell	Jeff Seay	Katie Madaly
Dennis Norman	Mike Redford	Robert W. Wilson	Crystal Thomas
Charles Theines	Kent Early	Ann Evans	Bronwyn Evans
Keith Trammull	Wayne Battle	Spencer Williams	Tom Scanniello
Forrest Rollins	Carol Rollins	Phil Roehrs	Darcy O'Neil
Dorsey White	Kevin Pankoke	Milton Hess	Chris Frye
Chris DeWitt	Karen Holloway	Peggy Simmons	Harold Simmons
John Picarski	Gary O'Neil	Jack Dozier	David O'Brien
Bob Winstead	Trent Funkhaser	Holly McGowan	Ellis W. James
Kenneth Heath	Frank Kearney	Ty Farrington	William A. Pruitt
Bob Grabb			

and others.

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

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

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APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda.

There were no changes, Commissioner Bowman asked for a motion to approve the agenda. **Associate Member Laine moved to approve the agenda. Associate Member Fox seconded the motion. The motion carried, 7-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman requested a motion for approval of the June 22, 2010 Commission meeting minutes, if there were no corrections or changes. There were none.

Associate Member Robins moved to approve the minutes, as circulated. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

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

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SPECIAL PRESENTATION

Commissioner Bowman presented Bob Grabb who retired as of July 1, 2010 after thirty plus years with the Virginia Marine Resources Commission. He presented him with his Certificate of Service and a plaque.

Former Commissioner, William A. Pruitt was present for the special presentation for Mr. Grabb's retirement and he made his comments of appreciation and congratulations, which are a part of the verbatim record.

Mr. Grabb made his comments and thanked all of the people who he had worked with over his many years of service.

SPECIAL ANNOUNCEMENT

As a result of the retirement of Mr. Grabb, Commissioner Bowman announced the promotions of both Tony Watkinson the new Chief of Habitat Management and Chip Neikirk the new Deputy Chief of Habitat Management. He commented and congratulated them both on their promotions.

SPECIAL INTRODUCTION

Rob O'Reilly, Deputy Chief of Fisheries Management announced a new employee in the Fisheries Management Administration office on the 3rd floor, Allyson Watts as the Fisheries Planner who would be working with him.

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

Tony Watkinson, Deputy Chief, Habitat Management Division, summarized these items for the Board. He stated that there were ten items. His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff. There were none.

Commissioner Bowman opened the public hearing. Being there were no public comments, the public hearing was closed. He stated the matter was before the Commission.

Associate Member Robins moved to approve the page two items (A – J), as read. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

- 2A. **BILL BROWN, #10-0896**, requests authorization to replace his failing bulkhead with 160 linear feet of new bulkhead which would encroach on State-owned bottom as much as two (2) feet channelward adjacent to his property at 8 Cedar Point Drive situated along Sunset Creek in Hampton. Staff recommends a royalty in the amount of \$320.00 for the filling of 320 square feet of State-owned submerged land at a rate of \$1.00 per square foot.

Royalty Fees (fill 320 sq. ft. @ \$1.00/sq. ft.)	\$320.00
Permit Fee	\$100.00
Total Fees	\$420.00

- 2B. **FREDERICK FISHER, III, #10-0137**, requests authorization to construct a 1,044-foot long gapped rock sill structure a maximum of 39-feet channelward of mean low water, backfilled with 3,100 cubic yards of sand/cobble material and planted with tidal wetlands and riparian vegetation, to reduce shoreline erosion and protect an existing historic brick and mortar retaining wall at his property situated along the James River at Westover in Charles City County. Recommend approval conditioned on the assessment of a royalty in the amount of \$414.25 for

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the placement of sandy/cobble fill over 8,285 square feet of State-owned subaqueous land at a rate of \$0.05 per square foot.

Royalty Fees (beach nourishment 8,285 sq. ft. @ \$0.05/sq. ft.)	\$414.25
Permit Fee	\$100.00
Total Fees	\$514.25

- 2C. CHARLES THOMAS, #10-0509**, requests authorization to reconstruct an existing 5' wide by 300' long 39-slip commercial pier, with a 5' wide by 80' long T-head and 17 finger piers and to install approximately 509 linear feet of replacement bulkhead encroaching a maximum of 2 feet channelward of the deteriorating structure at their existing marina situated along Chisman Creek in York County.

Permit Fee	\$100.00
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- 2D. KIMAGES WHARF ASSOCIATES, LLC, #10-0700**, requests authorization to construct a 6-foot wide by 500-foot long 12-slip community pier with an 8-foot wide by 76-foot long T-head, 12 finger piers and 12 uncovered boat lifts at property situated along the James River in Charles City County. Recommend approval conditioned on the applicant recording restrictive covenants prohibiting the construction of private piers for Lots 1-6 and an encroachment royalty of \$16,050.00 for the encroachment of the pier and slips over 10,700 square feet of State-owned subaqueous land at a rate of \$1.50 per square foot.

Royalty Fees (encroachment 10,700 sq. ft. @ \$1.50/sq. ft.)	\$16,050.00
Permit Fee	\$ 100.00
Total Fees	\$16,150.00

- 2E. CITY OF VIRGINIA BEACH, ET AL, #09-1686**, requests authorization to place approximately 2 million cubic yards of beach-quality sand along the 5 mile stretch of Sandbridge Beach, situated along the Atlantic Ocean in Virginia Beach. Beach nourishment will include hydraulically pumping sand from the Sandbridge Shoals borrow area, located approximately 3 nautical miles offshore, to the beach area between the Navy's Dam Neck Fleet Training Center to the north and the Back Bay National Wildlife Refuge to the south. Nourishment is proposed to occur approximately once every 3 years during the life of a Commission permit. Recommend the initial permit be approved for a period of five (5) years.

Permit Fee	\$100.00
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- 2F. METRO MACHINE CORPORATION, #04-2036**, requests a modification to an existing permit to now construct a 15-foot wide by 16-foot long open-pile extension onto an existing electrical transformer platform; to construct a 29 to 33-foot wide by approximately 155-foot long, open-pile concrete pier/trestle, which will provide access by means of an approximately 13-foot wide by 60-foot long portable steel ramp to two (2) approximately 40-foot wide car floats of 361 and 290 feet in length respectively, placed end to end to serve as a floating pier; and to construct one (1) 32-foot by 36-foot horseshoe shaped mooring dolphin with an outboard timber and rubber fender system at the channelward terminus of the proposed floating pier, all of which is intended to support shipyard activities related to the maintenance, repair, and overhaul of the U.S. Navy's LPD-17 class vessels immediately northeast of their existing floating dry-dock at their facility situated at the confluence of the Eastern and Southern Branches of the Elizabeth River in the City of Norfolk. The proposed open-pile pier/trestle will also require the relocation of an existing steel walkway, which provides access to the existing Tower Crane #2, approximately 8 feet to the southwest along an existing bulkhead.

No applicable fees—Permit Modification

- 2G. CITY OF NORFOLK, #10-0271**, requests authorization to install a 3-foot by 5-foot box culvert adjacent to an existing culvert beneath Blair Avenue near DuPont Circle, to improve drainage and tidal flow to an unnamed tributary to the Lafayette River in the City of Norfolk.

Permit Fee	\$100.00
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- 2H. CITY OF NORFOLK, #10-0644**, requests authorization to maintenance dredge, on an as-needed basis, as much as 26,000 cubic yards, per cycle, of State-owned subaqueous material from within an existing 6,400-foot long channel within Broad Creek, with widths varying between 25 and 40 feet. The channel will be dredged to a maximum depth of minus five and a half (-5.5) feet at mean low water and will include a 30-foot turning basin at its northern terminus. Staff recommends inclusion of the standard dredging conditions. The dredged material will be placed at the Craney Island disposal site.

Permit Fee	\$100.00
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- 2I. COLUMBIA GAS OF VIRGINIA, #10-0964**, requests authorization to replace an existing natural gas pipeline currently suspended from the Route 61 bridge over the New River in the Town of Narrows, Giles County, by installing a 6-inch diameter natural gas pipeline beneath approximately 483 linear feet of the New River, by directional bore method, immediately upstream of the Route 61 bridge. Staff recommends the assessment of a royalty in the amount of \$1,449.00 for the

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gas line's encroachment over 483 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 483 lin. ft. @ \$3.00 lin. ft.)	\$1,449.00
Permit Fee	\$ 100.00
Total Fees	\$1,549.00

- 2J. **OZIER MARINE, INC, ET AL, #10-0674**, requests authorization to remove a deteriorated timber jetty and construct a new 140-foot long vinyl jetty and to construct 220 linear feet of vinyl wave attenuator, remove two (2) floating pier sections and install a 12-foot by 220-foot and a 10-foot by 70 floating concrete pier sections and a 12-foot by 40-foot angled platform area to re-orient their mooring piers and improve wave attenuation at the Regatta Point Yacht Club facility situated along Broad Creek in Middlesex County.

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

- 4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** There was no closed meeting.

- 5. **TOWN OF WEST POINT, #08-0566**, requests authorization to construct a concrete canoe/kayak launch ramp and an open-pile timber footbridge across West Point Creek to facilitate construction of the Town of West Point Riverwalk Trail Project (Phase II). The project is protested by nearby property owners.

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

Mr. Owen provided copies of three letters that had been received on the morning of the hearing in support of the project.

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Mr. Owen explained that the project was located on West Point Creek, approximately 0.25 miles upstream of its confluence with the Mattaponi River, along 13th Street in the Town of West Point. Both residential and commercial properties existed nearby.

Mr. Owen stated that the project called for the construction of a 15' long by 20' wide concrete canoe/kayak launch and a 15' wide open-pile bicycle/pedestrian footbridge across 39 linear feet of West Point Creek to facilitate construction of the Town of West Point Riverwalk Project (Phase II). The project was to be funded by a VDOT Transportation Grant and was intended to improve public access to the waterway along the Route 33 Corridor. Phase I was completed by VDOT, approximately three years ago, during the Lord Delaware Bridge Replacement (area north of the creek).

Mr. Owen said that the mouth of the creek it was very shallow and largely inaccessible during most low tides by both power boats and canoes/kayaks. Even at high tide, navigation by powerboat within the creek was restricted to areas upstream by the Route 33 Bridge. The tidal creek ranges from freshwater to brackish conditions seasonally and supports an extensive tidal fringe marsh. Both native tidal vegetation and Phragmites australis, an invasive species of vegetation, were present at the project site.

Mr. Owen explained that the original project design in 1996, which called for the proposed ramp at the end of 12th Street, was heavily protested by adjacent and nearby property owners. The concerns were outlined in three letters, two of which included the signatures and names of 47 petitioners in opposition. Most felt that the ramp's use would restrict on-street parking and disrupt resident privacy. After considering the objections, the Town revised its plans and moved the ramp approximately 800' upstream, along 13th Street and just downstream of the proposed footbridge.

Mr. Owen explained further that revised drawings received May 10, 2010, were sent by staff to the three original protestants and noting that the project was moved from 12th Street to 13th Street. The letters asked all interested parties to respond in writing if they remained opposed to the project, as modified. To date, staff had received two letters from residents maintaining their objection.

Mr. Owen noted that one of the protestants, Mr. Robert Wilson, was the downstream adjacent property owner. He believed that the project would have a significant adverse impact on the neighborhood residents. Mr. Wilson suggested that the proposed trail and launch area be restricted to the area north of Route 33 on Glass Island, near the DGIF public boat landing. The second protestant, Mr. Dennis Norman, lived one-half a block away on Lee Street. He was a long-time resident from this area and was opposed to any change that would upset his lifestyle. He was also concerned that the town would have to spend additional monies to clean up after the users of the trail.

Mr. Owen stated that the Department of Conservation and Recreation stated that the work proposed would not adversely impact natural heritage resources in the project area. The

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Department of Environmental Quality advised that a Virginia Water Protection permit would not be required because the water quality impacts associated with the project were anticipated to be minimal. The Virginia Institute of Marine Science advised that the project's anticipated impacts to subaqueous lands were expected to be minimal, however they recommended that consideration be given to reducing the size of the proposed kayak/canoe launch. They further advised that an alternative design, such as, open cell pavers or an open-pile ramp would have less impact than a proposed concrete structure. Lastly, they noted their concern over the siting of the proposed parking area and storm water BMP in an existing wetlands area.

Mr. Owen said that pursuant to the governmental activity exemption contained in Section 28.2-1302 (3) (10) of the Virginia Code, the project did not require approval from the West Point Wetlands Board.

Mr. Owen stated that staff was sympathetic to the concerns of the protestants related to the project's potential to impact on neighborhood privacy. This was, however, an area outside of the Commission's primary jurisdiction and more appropriately addressed at the local level. Staff had been advised that one or more local public hearings were conducted prior to reaching the final design.

Mr. Owen noted that VIMS had advised that the project's impacts to subaqueous land were anticipated to be minimal, although they recommended that the launch be reduced in size and/or constructed with alternative materials. The 15' x 20' launch, in staff's opinion, was reasonably sized to safely accommodate public access. As proposed, it would impact 178 square feet of State-owned subaqueous bottom. Staff agreed that an open cell paver or open-pile design would further minimize impacts; however, they might not be as durable a structure as the current concrete design.

Mr. Owen said that the open-pile design of the footbridge should minimize its impacts on the marine environment. Additionally, the structure had been designed to allow small boat passage, even though the Route 33 bridge restriction was located just 475' upstream.

Mr. Owen explained 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.

Commissioner Bowman asked for questions of staff. Associate Member Fox asked, for clarification, if the parking lot was not under the jurisdiction of the Commission and the Board was only concerned with what was proposed in the water. Commissioner Bowman asked for the VMRC Counsel's opinion. David Grandis, Assistant Attorney General, responded yes, that the Commission only considered what was proposed below the mean low water and the issues relating to parking lots were considered by the appropriate locality.

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Commissioner Bowman asked if representative for the Town were present. Five individuals came forward and were sworn in.

Trent Funkhaser, Town Manager, was sworn in and his comments are a part of the verbatim record. Mr. Funkhaser stated that staff did an excellent presentation. He said he was well aware of the concerns of the individuals as this was a small town. He said he had spoken with the protestants a number of times as he had been with the Town for six years. He said they have made a number of design changes to work with the adjacent property owners. He said they were all at the hearing to answer any questions from the Board.

Commissioner Bowman asked for any questions from the Board.

Associate Member Tankard asked that being this was a public facility would there be any maintenance done here and regarding the concerns of the protestants something done to make sure the area is free of trash and such. Mr. Funkhaser said yes, they were fully staffed and capable of maintaining the area as has been done for a number of other areas, such as their agreement with VDOT to maintain an area at 14th Street, their schools, etc. for the last ten years and as long as he had been involved for the last six years.

Associate Member Fox asked what he thought of the VIMS recommendation for the use of the pavers versus the concrete ramp. Mr. Funkhaser said with his past experiences before coming to work for the town, that they preferred the concrete because of the durability. He said he felt that they had already made a number of environmental concessions.

Associate Member Fox asked about his concern with the width of the ramp and people trying to use it for motorized access. Mr. Funkhaser explained that for a public facility and with the amount of expected use they were satisfied that the width of the structure would safely accommodate any activity. He said as far as it being used for motorized vehicles, he said he was not worried because like the staff had said it was a very shallow area and inaccessible at low tide. He said if there was an incident of someone trying to use it for those purposes, they would take action to do something about it.

Commissioner Bowman asked if there had been a number of public hearings. Mr. Funkhaser confirmed there had been and explained that there had been numerous public meetings held since before and after he came to be Town Manager. He said there had been extensive redesign to accommodate the adjacent property owners.

Commissioner Bowman asked if anyone was present in opposition.

Dennis Norman, was sworn in and his comments are a part of the verbatim record. Mr. Norman stated that he had lived here all of his life on the same street. He stated that there were 13 people working for the Town and he asked why they want to put this in so that

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they have more to worry about. He stated he was dead against it and he was representing 40 people who were also.

Robert Wilson, property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Wilson explained that his property joined at West Pt. Creek. He said he was against the proposed ramp for the kayaks. He said the way it was now, it should not even be there and should be over at the boat ramp at Glass Island. He said there should not be a parking lot near a residential area. He said he was against the entire project.

Commissioner Bowman asked if anyone else wished to speak. There were none. Mr. Funkhaser was given two minutes to make rebuttal comments. Mr. Funkhaser indicated he would answer any questions. There were none.

Commissioner Bowman asked for discussion or action from the Board.

Associate Member Robins said he could appreciate the concerns of the protestants as to the potential impacts to the neighborhood. He said that the town has been through the extensive process, considered the public interests. He said he hesitated to substitute his opinion with that of the Town who was closer to the situation. He said he supported the staff recommendation and he felt it was in the public interest to have public access, which was all a part of the Town's master plan.

Associate Member Laine said he agreed with Mr. Robins for the most part, but regretted that there were some who may be inconvenienced. He said he felt that the project was in the best interest of the Town as the Town and their staff both support it. He said the public benefits outweigh the detriments. He said he had a project constructed in his area for access being provided for kayaks and it had worked out as a benefit for his area.

Associate Member Fox requested comments from VIMS on what they would recommend for the width of the structure.

Kirk Haven, Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Mr. Haven said he would not know what the width should be as other information would need to be considered and he felt this would require an engineering design to determine.

As he was inclined to recommend reducing the width, Associate Member Fox stated he was not sure what VIMS was recommending other than just reducing it.

Commissioner Bowman said that a single kayak trailer might require 8-foot width and a double kayak trailer might require the width needed for a johnboat trailer.

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Associate Member Robins said in follow up to this idea he felt the narrowing of the ramp would be a matter of potential safety. He said if there were concerns with usage by power boat trailers the Town has said they would enforce it and also that the Commission could make a condition of the permit to be that it be restricted to kayak use and to also add a signage requirement.

Commissioner Bowman asked for the Town Manager to comment to this issue.

Mr. Funkhaser said that they could restrict the use, but they want to encourage the public to use it and it to be utilized by those in the Town, such as school age kids to be able to enjoy the environment. He said this was a matter of public safety and they had made changes to cause less impact on the environment. He said they were requesting approval, as proposed. He said they could restrict its use because they have an ordinance in place that allows them to do so.

Chris Frye, VHB, was present and his comments are a part of the verbatim record. Mr. Wright explained that this was an unconventional structure and there was a 7-foot wide walkway down to the ramp. He pointed out on the slide what he was referring to. He said that all different ages will be there for the kayaking and utilizing this walkway and ramp.

Commissioner Bowman stated that the matter was before the Commission.

Associate Member Robins moved to approve the staff recommendation. Associate Member Laine seconded the motion. Commissioner Bowman stated for clarification that the motion was for the staff recommendation with the Town agreeing to restrict it to non-motorized use. Associate Members Robins and Laine both agreed. The motion carried, 7-0. The Chair voted yes.

Permit Fee	\$100.00
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- 6. **PIANKATANK SHORES CIVIC ASSOCIATION, #10-0670**, requests authorization to construct an 8-foot wide by 10-foot long open-pile pier-head at the channelward end of a 64-foot long community pier situated along the Piankatank River at the Association's property designated as Recreation Area #2 in Middlesex County. The project is protested by an adjoining property owner.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

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Mr. Neikirk explained that the project site was located along the Piankatank River at a commonly-owned community parcel in the Piankatank Shores Subdivision in Middlesex County. There was a small concrete boat ramp and a 64-foot long tending pier adjacent to the ramp. The pier was damaged by the remnants of Tropical Storm Ida and a coastal storm during November, 2009.

Mr. Neikirk said that earlier this year, the Association requested authorization to replace the pier under an executive order applicable to the November storms. In that application, however, the Association also requested authorization to widen the pier from 5 feet to 6 feet and to construct an 8-foot by 10-foot pier-head addition. Staff informed them that the replacement of the pier was authorized, but that they would have to submit an application for the wider pier and for the pier-head addition. That application was received on April 27, 2010.

Mr. Neikirk noted that the project was protested by Mr. and Mrs. Harold Simmons. Their property was adjacent to the downstream side of the community parcel. They stated that they had lived adjacent to the community parcel for over 30 years and they were concerned with continuing dumping of trash and trespassing at the parcel. They believed the proposed improvements to the pier would attract more activity and would lead to more trash and pollution.

Mr. Neikirk stated that in VIMS' comments dated July 8, 2010, they stated that utilizing community piers for access was generally preferable to the construction of multiple private piers designed to serve single users. They recommended the pier be elevated to at least 5 feet above the substrate where crossing the vegetated wetland fringe and they recommended the use of sufficient garbage receptacles for trash collection.

Mr. Neikirk said that the Health Department advised VMRC in their letter dated June 25, 2010, that the project was in compliance with their Sanitary Regulations for Marinas and Boat Moorings.

Mr. Neikirk explained that in the Department of Conservation Recreation report dated June 29, 2010, they stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Storm Water Management Regulations.

Mr. Neikirk said that no other state agencies had commented on the project.

Mr. Neikirk stated that staff believed the proposed pier replacement was appropriately sized for its intended use and would only minimally increase the existing footprint of the structure. The concerns expressed by Mr. Simmons would appear to be more appropriately addressed through increased enforcement by the community and possibly

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local law enforcement. The VIMS recommendation concerning the increase in the height of the pier was designed to minimize shading impacts on the existing vegetated wetlands and seems appropriate. Staff would also encourage the use of adequate trash receptacles but since their placement would likely be located on the adjacent upland, enforcement of such a condition by VMRC might be difficult.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that pier must be elevated to a height of at least 5 feet above the substrate in areas where the pier crossed vegetated wetlands. Staff also recommended a royalty in the amount of \$67.00 for the new encroachment of the pier on an additional 134 square feet of State-owned submerged land at a rate of \$0.50 per square foot.

Commissioner Bowman asked for questions by the Board. There were none.

Commissioner Bowman asked if someone representing the applicant wished to comment.

Dale W. Battle, Vice President of the Home Owners Association, was sworn in and his comments are a part of the verbatim record. Mr. Battle said that there were 450 lots and roughly 250 homes in the subdivision. He said that they presently keep 2 or 3 trash cans at the site. He said he did not see any pollution there and he would not and did not tolerate littering. He offered to give Mr. Simmons his phone numbers so that he could call him if he does not want to call the police. He provided the Board with a document with approximately 100 signatures supporting the project.

Commissioner Bowman asked if the Board had any questions.

Associate Member Tankard asked if the recommendation by VIMS to make the pier height five feet was something that they could do. Mr. Battle responded yes.

Commissioner Bowman asked if anyone wished to speak in support or opposition.

Harold Simmons, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Simmons stated that he first wanted to thank the Commission for holding this hearing allowing him to express his concerns and he also thanked the staff.

Mr. Simmons said he and his wife were not motivated by personal concerns in their objections. He said their concerns were for the environmental impact. He read his letter into the record. He provided the Commission with photographs to support the concerns he had for the environmental impacts. He referenced the various televised programs that had given rise to their concerns for the environmental, especially the Gulf oil spill. He said that various environmental groups had programs over the years where they have cleaned the area of the Piankatank River. He said that overdevelopment contributes to the

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pollution. He said it was said that the community pier was preferable over individual private piers. He said it was not mentioned, but a number of the waterfront properties already have private piers in this community. He said they did not oppose the reconstruction of the pier, but they did oppose the expansion of the structure which will bring in more activity. He said they have seen it all in their time in the area the no trespassing signs are not enforced. He said the sign saying individuals have to clean up after their pets is completely ignored. He requested a staff slide to show that access to the water was already present to adequately meet the needs.

Associate Member Tankard asked about the private piers already there for the waterfront lot owners and if this dock was for access to the water by the inside lot owners.

After some further discussion, Commissioner Bowman asked if anyone else in opposition or the applicant wished to comment.

Mr. Battle said that Mr. Simmons had lived there for 30 years he should see that they were a growing community. He said he would give them his phone numbers to call him at anytime.

Commissioner Bowman asked for questions.

Associate Member Robins asked if there was signage on the pier limiting the use to residents. Mr. Battle responded yes, there were no trespassing signs at every recreational area.

Associate Member Fox noted a sign needed to be fixed. Mr. Battle said that was to be done.

Associate Member Laine asked if others not in the community use it. Mr. Battle said there were a lot of people living there and he could not police them all, though he did try. He said he has called the police on individuals there after midnight.

Associate Member Tankard asked if there had been problems at the pier. Mr. Battle said it was rare to have problems there and that one time there was at the Recreational Area 3.

Commissioner Bowman asked if there were any more questions or comments. There being none, he stated the matter was before the Commission

Associate Member Robins explained that the concerns of the protestants, like the trash and trespassing were not under the jurisdiction of the Commission, but more like some simple best management practices by the HOA for limiting use. He said that he supported the staff recommendation but would want to include the VIMS recommendation for signage, as it seems that the HOA does need to do a better job and the VMRC can require the signage for the trash. He moved to accept the staff

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recommendation and to include the VIMS recommendation for signage regarding the trash. Associate Member Tankard seconded the motion. Associate Member McConaugha said the size to the additional structure seems him to be minimal. The motion carried, 7-0-0.

Royalty Fees (encroachment 134 sq. ft. @ \$0.50 sq. ft.)	\$67.00
Permit Fee	\$25.00
Total Fees	\$92.00

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7. **BRONWYN R. EVANS, #10-0632, and RICHARD A. BYLES and ANN S. EVANS, #10-0633**, request authorization to install a 45-foot and 55-foot long breakwater, respectively, along with a shared 85-foot long breakwater, extending a maximum of 30 feet channelward of an existing vegetated tidal marsh, and to backfill the three breakwaters with sand nourishment to be planted with appropriate wetlands vegetation, adjacent to their adjoining properties situated along the Poquoson River in the City of Poquoson. The project is protested by an adjacent property owner.

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

Mr. McGinnis explained that the proposed project was located on two adjoining properties situated along the Poquoson River in the Hunts Neck area of the City of Poquoson. The applicants each had an existing private pier on their individual properties and were now seeking a joint breakwater/living shoreline project to stem erosion along their shoreline. The proposed project would include the installation of three (3) stone breakwaters extending as much as 30 feet channelward of their eroding vegetated tidal fringe marsh, which would then be backfilled with sand and planted with native wetlands plants.

Mr. McGinnis said that staff received a letter of protest from Ms. Bronwyn Evan's neighbor, Mr. Roman E. Rollins, Jr., dated May 12, 2010. Mr. Rollins' stated that he objected to the project because he did not know of the project's potential impacts to his property and to the environment, and was not sure he had received the entire project proposal to review.

Mr. McGinnis stated that the Poquoson Wetland Board had approved the applications at their June 16, 2010, public hearing. Since Mr. Rollins did not attend, staff sent him a letter dated June 30, 2010, in an attempt to answer his concerns and provide him with a complete copy of the project's proposal. After receiving VMRC's letter, staff spoke with Mr. Rollins' son, Mr. Roman E. Rollins, III, by telephone on July 6, 2010. Mr. Rollins, III explained that their family remained concerned about the proposed project and agreed

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to provide staff with a letter outlining those concerns in detail. Staff received an updated letter from Mr. Rollins, dated July 8, 2010, in which he stated a strong objection to the project based upon aesthetic concerns, a loss of property value, the lack of a thorough impact assessment, the diversion of water and wave action onto his property, and the environmental disturbances mentioned in the VIMS report for the proposed project. Mr. Rollins, in his most recent letter, proposed an alternative solution that appeared to call for the placement of riprap at the toe of eroding marsh. Mr. Rollins also mentioned that he is concerned about the current location of Ms. Evan's recently constructed pier.

Commissioner Bowman asked if this was necessary to the discussion since it was not the matter before the Commission at this hearing. On advice of VMRC Counsel, he stated that it was not necessary to bring the matter of the pier up at this hearing. Mr. McGinnis said he agreed that it was not a part of the matter at this hearing, but he just wanted to comment on it since it was mentioned in Mr. Rollins letter. He said he suggested that Mr. Rollins seek a riparian apportionment to be determined by the York-Poquoson Circuit Court.

Mr. McGinnis said the VIMS Shoreline Permit Application Report, dated June 11, 2010, stated that the proposed breakwaters would alter the shallow water habitat and thus the type of animals that use the shoreline. The report went on to state that construction of the breakwaters and erosion of the backfill material may result in temporary impacts to water quality and sand transport. Ultimately, VIMS recommended that their preferred approach for stabilizing this shoreline was for the project, as proposed.

Mr. McGinnis noted that no other State agencies had raised concerns or objections to the proposed project.

Mr. McGinnis said that staff was sensitive to the concerns of the protestant. In light of the recommendation provided by VIMS, however, staff believed the proposed project was likely the best solution to address the erosion of the applicants' fringe marsh and restore a natural buffer along their shorelines. The proposed project was similar in design to other successful projects previously authorized by the Commission and local wetland boards.

Mr. McGinnis explained that after evaluating the merits of the project against the concerns expressed by those in opposition, since impacts resulting from the use of State-owned submerged lands should be minimal, and after considering all of the factors contained in §28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as proposed.

Commissioner Bowman asked if the Board had any questions. He instructed staff to provide the Board the information they needed at the end of the item in order for them to make separate motions.

Commissioner Bowman asked if the applicant or applicants were present.

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Bronwyn Evans, co-Applicant, was sworn in and her comments are a part of the verbatim record. Ms. Evans stated that shortly after she became the owner she started to consider how best they could protect their shoreline. She said after she attended a Living Shoreline seminar at William and Mary College, they decided a breakwater with shoreline nourishment would be best.

Commissioner Bowman asked for questions and there were none.

Ann Evans, co-Applicant, was sworn in and her comments are a part of the verbatim record. Ms. Evans stated she also represented her husband. She said they all feel fortunate to be able to live in this area. She said they realize this is more expensive, but they feel this is the type of project they want here.

Bob Winstead, agent and contractor, was sworn in and his comments are a part of the verbatim record. Mr. Winstead stated that they were very fortunate to have two applicants who want to do the living shoreline method. He said that he has experience with this type of project and he had talked with Dr. Hardaway at VIMS and explained to him what they planned and he was in favor of it and felt it was a good fix. He said they had already obtained the Corps' permit.

Commissioner Bowman asked if there were questions from the Board. There were none. He asked if anyone in opposition wished to comment.

Forrest Rollins, protestant's son, was sworn in and his comments are a part of the verbatim record. Mr. Rollins stated he was the youngest son. He said their biggest concern was what would happen to their property as an adjacent property owner. He stated they were also worried about the financial impact. He stated they were not against them protecting their property or the environment.

Commissioner Bowman stated that the questions were good ones. Mr. Rollins stated that they had not gotten any answers. Commissioner Bowman stated that they might have missed the answers to their questions at the Wetlands Board meeting. He asked VIMS to come forward and comment on wave action and deflection and their impacts.

Kirk Havens, VIMS was present and his comments are a part of the verbatim record. Mr. Havens explained that they do analyze the potential for impacting the adjoining areas and that it would actually be more of a benefit to their property.

Commissioner Bowman said to clarify that by placing this rip rap in front of the applicants' property it would benefit the applicant and the adjoining property owner depending on the wave action.

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Mr. Havens responded yes. Mr. Rollins stated that he was concerned that it was going to put them in a bind and cause them to have to do the same. Mr. Havens stated that his marsh was eroding now.

Commissioner Bowman stated that it had been established that this would not be detrimental. Mr. Rollins stated that it means their shoreline will not erode any faster.

As there was no one else to comment, Commissioner Bowman stated the matter was before the Commission.

Associate Member McConaugha moved to accept the staff recommendation. Commissioner Bowman said the motion was to accept the staff recommendation for item number 10-0632. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Commissioner Bowman asked for a motion for item number 10-0633.

Associate Member McConaugha moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0.

Permit Fee (#10-0632)	\$100.00
Permit Fee (#10-0633)	\$100.00

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- 8. **GRETCHEN HINTON, #08-2260**, requests authorization to deploy a total of 100 3-foot by 5.5-foot commercial oyster floats adjacent to her property situated along Judith Sound in Northumberland County. The project is protested by the adjacent property owners.

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 along Judith Sound, approximately seven miles north of the Town of Heathsville. Ms. Hinton's summer cottage was located in a subdivision comprised of predominantly small single family bungalows. The project was being undertaken by Ms. Hinton's grandson, Mr. Pat O'Keefe. Mr. O'Keefe proposed to deploy a total of 100 oyster floats. The wire mesh cage floats were to be 3 feet wide by 5½ feet long and are 18 inches high. Each cage had compartments for six individual oyster seed bags. The proposed floats would be secured with flotation and arranged along a long line, in groups of up to 10. Each line would be secured to the bottom with screw anchors and buoys would be placed at the ends of each long line to mark the location of the floats. The floats would not extend more than 63 feet

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channelward of the existing bulkhead and therefore they would not extend beyond the adjacent pier.

Mr. Madden explained further that the array of floats would be at least 18 feet away from Ms. Hinton's southern property line shared with the Whitakers and the floats would be 15 feet from the property line she shared with the Gaskills to the north.

Ms. Madden stated that the project was protested by both of the adjacent property owners. They were concerned that the floats would negatively impact their view of Judith Sound and that the commercial venture might reduce their property value.

Ms. Madden noted that the property was zoned by Northumberland County, as 'R2', which allowed for 'seafood processing.' According to the Zoning Administrator, Mr. W. H. Shirley, the proposed activity was compatible with the zoning designation; however, the applicant was prohibited from advertising his commercial operation at the property. While he would be allowed to sell his product from the cottage, he intended to transport them to a packer in Burgess. No commercial activity was currently proposed on the pier.

Mr. Madden said that a review of the Health Department Division of Shellfish Sanitation website revealed that Judith Sound was open for the direct marketing of shellfish.

Mr. Madden stated that the Virginia Institute of Marine Science indicated that, shellfish were an important component of the Chesapeake Bay ecosystem. They helped to increase water clarity by filtering their surrounding water, contributed to the aquatic food chain, and beds and reefs served as habitat for other aquatic species. While generally considered beneficial, impacts expected to result from aquaculture projects included temporary re-suspension of sediments resulting from aquaculture practices and the loss of aquatic bottom for other resources. In this case, the aquaculture would be on floats, so after installation, the direct impacts would be primarily the loss of the aquatic area for recreational purposes. There may be incidental impacts to aquatic birds, fish, terrapins, and other wildlife that normally migrate through or feed in the area. VIMS also noted that use of aquaculture BMPs, appropriate to the particular aquaculture operation, can minimize adverse environmental impacts. Voluntary measures identified by VIMS included practices such as clearly marking grow-out sites, adhering to legal marking requirements, consideration of the sites impact on scenic vistas, and maintenance of the floats.

Mr. Madden said that VIMS Submerged Aquatic Vegetation (SAV) reports for the most recent 5-year time span indicated no SAV habitat in the vicinity of the project. In 2003, *Ruppia maritima* was found growing in Judith Sound; however the bed had been absent since that time.

Mr. Madden stated that in an attempt to address the concerns expressed by the adjacent property owners, the applicant had agreed not to use the pier to store floats, or use the pier

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to conduct any cleaning or maintenance of the floats. Accordingly, the pier would only be used for typical non-commercial purposes.

Mr. Madden said that staff was sensitive to the aesthetic issues raised by the adjacent property owners, however, this type of activity was not out of character for many regions throughout Tidewater Virginia and appeared consistent with local zoning. Commission staff had no way to assess the impact, if any, this operation would have on current or future property values. It did not appear that the activity would impede ingress and egress to the adjoining piers and the floats did not appear to negatively impact the adjacent property owners from enjoying their property. The floats and associated marker buoys only rise a few inches above the surface. The applicant had agreed to limit his use of the pier to boat mooring and would not conduct any commercial activity on the pier.

Mr. Madden explained that after evaluating 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 with the following conditions:

- The pier will not be used to store oyster floats nor will it be used to clean, maintain or deploy the oyster floats.
- Permittee agrees to remit a one time royalty payment in the amount of \$2,268.00 (staff correction to \$226.80) for the encroachment over 4,536 square feet of State-owned subaqueous bottom at a rate of \$0.50 (staff correction to \$0.05) per square foot of encroachment.
- The permit and authorization to retain the structures shall be valid for a period of five years. After five years, the Permittee may request the Commission re-evaluate the project and seek authorization to continue the activity for an additional period of time.
- The public shall not be excluded from any areas not physically occupied by the authorized structures.
- Permittee shall properly maintain all structures and shall remove all structures within five (5) days upon their falling into a state of disrepair or upon cessation of their use as aquaculture structures.
- The structures must be marked and located in accordance with all applicable U.S. Coast Guard requirements.
- Should unforeseen conflicts arise, the Commission may elect to hold an additional public hearing at which time they may elect to revoke the permit and direct removal of any or all of the authorized floats.

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Commissioner Bowman asked staff if they could explain the last condition of the staff recommendation. Mr. Madden said with this type of operation issues could occur such as conflicts with other users or with the public and this would give the opportunity to reconsider the project.

Commissioner Bowman asked Tony Watkinson, Chief, Habitat Management to comment. Mr. Watkinson explained that this is the usual list of conditions placed on these types of permits. He said these are usually handled administratively, as they are not usually protested; therefore, not required to be heard by the Board.

Associate Member Fox stated that it seemed that when a business person makes an investment they need to know it would need time to make a profit and to recover that investment. He said if you leave the last condition he cannot be certain how long he can practice his trade. Mr. Watkinson stated it would not be done at the staff level and they would have a chance to argue their case. He said it was the nature of the project that these types of issues occur and it would give the permittee the opportunity to address any problems. If he cannot prove his case, then the board would hear it. Associate Member Fox said but he would have another shot at it in five years, anyway. Mr. Watkinson responded that is right.

Associate Member Fox asked about what the fetch was there at the project site. Mr. Watkinson said it was possibly 10 miles in length. Associate Member Fox asked if there were concerns with the floats hitting the piers as it could be rough there. Mr. Madden said that when maintaining that type of operation that could happen. He added that perhaps Mr. O'Keefe could address that question.

Associate Member Robins asked if staff had approved any other aquaculture operation in the middle of a residential area, which he had never heard of, only in a rural area. He said there was the question of zoning it R2 for seafood processing, is this interpreted as overboard aquaculture? Mr. Watkinson said that in regards to the second question, they were relying on the County's interpretation. He said for the first question, he did not know that the Commission had seen a project of this size in a residential area. He said in Gloucester he recalled one in a residential, but it was more rural and on the Eastern Shore usually on the Seaside, it was more remote.

Commissioner Bowman asked if the applicant was present or represented.

Pat O'Keefe, applicant's grandson, was sworn in and his comments are a part of the verbatim record. Mr. O'Keefe asked if he could pay annually rather than just a one-time payment. Mr. Watkinson said that he would be required to pay 10% annually. Commissioner Bowman stated it would need to be worked out.

Associate Member Fox stated that the fetch was very long and in the event of a storm how would he control the movement of the floats. Mr. O'Keefe explained that the

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neighbors had sea walls. He said he had been doing oyster gardening here and he felt he was using the best system with the heavy duty gauge floats covered in plastic to prevent rusting and doubling up the lines at the corners to secure the floats. Associate Member Fox stated that a storm like Ernesto would be a problem. Mr. O'Keefe said they would come back to their property in that case.

Commissioner Bowman asked if there was another area he had considered that would be acceptable and not in a residential area. Mr. O'Keefe said he had thought about doing bottom lease aquaculture in the Sound. He added that the Gaskills and the Whitakers did not come that often to these properties.

Commissioner Bowman said that when you read the law they were guided by, he had a hard time saying yes, go ahead.

Associate Member Tankard said he agreed that he had never seen anything like this and he was certainly familiar with aquaculture.

Associate Member Tankard asked with the applicant being another party was there a formal agreement in case of a disagreement to still allow access to the floats. Mr. O'Keefe said yes.

Associate Member Tankard said he had one final question and that was how would he store and maintain the floats. Mr. O'Keefe said from the shore as there was a seawall where he could take them behind to power wash and store where they could not be seen.

Commissioner Bowman asked if there was anyone in support or opposition present to comment. There were none. He said the matter was before the Commission.

Associate Member Robins said he was concerned with a precedent being set, as this was a significant commercial operation in a residential neighborhood. He said this was not the scale of an oyster gardener but more significant. He said the others were in more remote areas and there was concern with neighboring property owners. He said Virginia does support aquaculture, but in this case it was not appropriately sited.

Associate Member Fox expressed his concern again about the fetch and the floats being able to break lose during a storm.

Associate Member McConaugha stated he was concerned about this being a residential area and asked if it was just this one property or the whole area. Mr. Madden answer that the whole area was zoned R2. Associate Member McConaugha asked if it had been this way a long time or was it just done. Mr. O'Keefe stated that he believed it had been that way.

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Commissioner Bowman explained that in rural counties this was often done in an effort to enable the properties to be sold more easily. He stated the matter was before the Commission.

Associate Member Tankard stated that he certainly had concerns, but at the same time the area was zoned by the County for allowing it. He moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. Associate Member Robins said he would be voting against it as he had some concerns with approving the project for this site and that a precedent was being set. He said he had policy concerns as regards the Public Trust Doctrine. Commissioner Bowman said he echoed what Mr. Robins had said. He said he supported aquaculture in Virginia, but would vote against this project. He said in the Code Section 28.2-1205, it said they must consider the public and private benefits here and this was not tilted to the side of a public benefit. He asked for a vote on the motion and the motion carried, 4-3. Associate Members Fox and Robins both voted no. Commissioner Bowman voted no.

Royalty Fees (encroachment 4,536 sq. ft. @ \$0.05 sq. ft.)	\$226.80
Permit Fee	\$ 25.00
Total Fees	\$251.80

- 9. **HUNTON CREEK IMPROVEMENT ASSOCIATION, #10-0497**, requests authorization to remove a damaged timber channel jetty and to construct 246 linear feet of riprap jetty along the western side of the Hunton Creek entrance channel in Middlesex County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along the entrance channel to Hunton Creek, a tributary of the Rappahannock River in the Deltaville area of Middlesex County. The Hunton Creek Improvement Association had a valid permit to mechanically maintenance dredge the channel to a depth of minus four (-4) feet at mean low water and to place the sandy dredged material along the beach areas on both sides of the channel. The expiration date of that permit was currently April 30, 2012.

Mr. Neikirk said that the Association was seeking authorization to remove a recently damaged timber channel jetty located along the western side of the Hunton Creek entrance channel and to construct a total of 246 linear feet of riprap jetty to replace the

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damaged timber structure. The Association hoped the new jetty would reduce the frequency of required maintenance dredging along the channel.

Mr. Neikirk stated that the riprap jetty would impact approximately 1,500 square feet of jurisdictional beach and approximately 3,360 square feet of State-owned submerged land. Middlesex County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk said that the existing timber jetty had been significantly damaged during recent storms and a geo-textile bag installed along the beach last year was torn by pieces of the deteriorating jetty. The damage to the jetty had left the channel susceptible to significant shoaling. The Association planned to conduct the project in two phases. Phase 1 consisted of the landward 156 feet. As funds became available, they planned to construct the most channelward 90 feet.

Mr. Neikirk said that no comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification. In the VIMS report dated May 4, 2010, they stated that improving the failed jetty was appropriate to improve navigation and reduce the frequency of maintenance dredging. They recommended that all of the failed structures should be removed and properly disposed of.

Mr. Neikirk noted that in the Department of Conservation and Recreation report dated July 9, 2010, they stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Stormwater Management Regulations.

Mr. Neikirk said the Department of Game and Inland Fisheries, in their comments noted the Northeastern Beach Tiger Beetle may be present in the project vicinity and they recommended coordination with the U.S. Fish and Wildlife Service in their report dated June 25, 2010. They also noted the presence of the Peregrine Falcon and sea turtles in the project vicinity; however, they stated they did not anticipate the proposed project would adversely impact those species. They also recommended strict erosion and sediment controls and a time-of-year restriction from February 15 through June 30 of any year to minimize adverse impacts on anadromous species.

Mr. Neikirk noted that no other state agencies had commented on the proposed modification.

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Mr. Neikirk said that staff believed the replacement of the damaged jetty was appropriate and the utilization of riprap should provide for a longer lasting and more durable structure.

Mr. Neikirk stated that after evaluating the merits of the project, and considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project with a condition that the damaged geo-bag and timber jetty being replaced must be removed and properly disposed of. Staff also recommended a royalty in the amount of \$1680.00 for the encroachment of the jetty on 3,360 square feet of State-owned submerged land at a rate of \$0.50 per square foot. Given the project location, and considering the width of the Rappahannock River at the site, as well as the nature of the project staff did not feel a time-of-year restriction was necessary.

Commissioner Bowman asked for questions of staff.

Associate Member Laine asked about the length of the proposed breakwater compared to the existing jetty. Mr. Neikirk explained it was even with the other one. He said some rock had been placed there and the channel had been a maintenance problem. He said they had more homes there now and they hoped that would mean more money for it. Associate Member Laine asked what the water depth was seaward of the end of the jetty. Mr. Neikirk stated 4 feet at MLW. He noted the existing rip rap jetty was constructed three years prior in 2007.

Associate Member Fox asked if they planned to replace the geo-bag. Mr. Neikirk responded, no.

Associate Member Tankard asked about the DGIF comments. Mr. Neikirk said these were standard comments.

Commissioner Bowman asked if that was a condition more for a species trigger. Mr. Neikirk responded yes.

Commissioner Bowman asked if anyone wished to be heard on this matter. There were none. He said the matter was before the Commission.

Associate Member Robins moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

Royalty Fees (encroachment 3,360 sq. ft. @ \$0.50 sq. ft.)	\$1,680.00
Permit Fee	\$ 100.00
Total Fees	\$1,780.00

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10. **KENT EARLY, #10-0689**, requests authorization to extend two (2) vinyl groins a maximum of 30 feet landward and to construct a new third vinyl groin extending 56 feet channelward of mean high water adjacent to his property situated along the York River at 8778 Blue Gate Lane in Gloucester County. The project requires both a subaqueous permit and a Coastal Primary Sand Dunes and Beaches permit.

Chip Neikirk, Deputy Chief, Habitat Management, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along the York River in the Bena area of Gloucester County. The shoreline consisted of a sandy beach with a wide shallow sandy subtidal flat channelward of the beach. There was submerged aquatic vegetation extending well channelward of the beach. There were numerous groins along the shoreline both upstream and downstream of Mr. Early's property.

Mr. Neikirk stated that Mr. Early was seeking authorization to extend two existing vinyl groins further landward and to construct a third low-profile vinyl groin extending 56 feet channelward of mean high water near his downstream property line shared with Mr. West. Mr. Early had originally proposed to construct a vinyl bulkhead along the landward portion of his beach but he withdrew that portion of the project after staff explained that they would likely not be able to recommend approval of the bulkhead on the beach. The third groin was added as an alternative to the bulkhead.

Mr. Neikirk said that the landward groin extensions and the new groin would impact approximately 100 square feet of jurisdictional beach and approximately 22 square feet of State-owned submerged land. Gloucester County had not yet adopted the beaches and dunes ordinance which was made available to them by virtue of recent Code changes that became effective on July 1, 2008. As a result, the Commission was charged with acting as the local dunes and beaches board pursuant to Chapter 14, Subtitle III, of Title 28.2 of the Code.

Mr. Neikirk explained that Mr. Early's sandy beach had migrated landward and now extends beyond the landward ends of the existing vinyl groins. The two landward groin extensions were designed to stabilize the sand on the landward portion of the beach. The new groin near the downstream property line was intended to address erosion of the beach that may be resulting from the recent failure of the groin located on his neighbor's property.

Mr. Neikirk noted that no comments were received in response to the public notice and neither adjoining property owner indicated they had any objection to the modification.

Mr. Neikirk stated that VIMS in their comments, dated July 7, 2010, that a breakwater system would typically be the preferred alternative for shoreline stabilization, however since there was SAV located channelward of the shoreline, they stated that the

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construction of the groin within the established groin field was expected to have only temporary and localized impacts. They suggested beach nourishment be added to the created groin cell to minimize adverse impacts related to the interruption of sand transport.

Mr. Neikirk explained that in their report dated July 12, 2010, the Department of Conservation and Recreation stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that were regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Stormwater Management Regulations.

Mr. Neikirk said that the Department of Game and Inland Fisheries noted the presence of Bald Eagle, Peregrine Falcon, and Kemps Ridley turtles in the project vicinity in their report dated June 25, 2010, however, they stated they did not anticipate the proposed project would adversely impact those species. They also recommended strict erosion and sediment controls and a time-of-year restriction from February 15 through June 30 of any year to minimize adverse impacts on anadromous species.

Mr. Neikirk stated that staff believed the construction of a low-profile timber groin within an established groin field was a reasonable approach to help maintain a sandy beach and to stabilize the shoreline. Staff typically recommended against the placement of a groin near a shared property line, but in this case it would be serving to replace a nearby deteriorated groin on the adjacent property. The addition of sand as beach nourishment within the created groin cell would both provide additional shoreline protection while minimizing the interruption of sand transport to down-drift properties.

Mr. Neikirk explained that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1403(10)(B) and §28.2-1205(A) of the Code of Virginia, staff recommends approval of the project with a condition that a minimum of 40 cubic yards of sand must be placed within the created groin cell within 14 days of the completion of the new groin. Staff also recommended a royalty in the amount of \$11.00 for the encroachment of the groin on 22 square feet of State-owned submerged land at a rate of \$0.50 per square foot. Given the project location and considering the width of the York River at the site, as well as, the nature of the project, staff did not feel a time-of-year restriction was necessary.

Commissioner Bowman asked for questions from the Board.

Being that he was out of the room during some of the presentation, Commissioner Bowman asked the staff if there was anything in his presentation to the Commission that was not in the written evaluation. Mr. Neikirk responded no.

Commissioner Bowman asked if the applicant was present and wished to speak.

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Kent Early, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Early stated that he thought staff did a good job presenting what he was proposing to do at his property. He said that north easterlies had been hard on the shorelines of his three properties and the jetties there were starting to fail. He said he just wanted to protect his property which would also help to protect his neighbor's.

Commissioner Bowman asked if there were questions from the Board. There were none. He asked if anyone was present in opposition. There were none. He said the matter was before the Commission.

Associate Member Laine moved to accept the staff recommendation. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

Royalty Fees (encroachment 22 sq. ft. @ \$0.50 sq. ft.)	\$ 11.00
Permit Fee	\$100.00
Total Fees	\$111.00

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- 11. **STURGEON CREEK CONDOMINIUMS, #10-0309**, requests after-the-fact authorization to retain six (6) wetslips constructed channelward of their authorized location, two (2) previously unauthorized wetslips, six (6) finger piers, six (6) pile supported boatlifts, five (5) small personal watercraft lifts and a 29-foot by 6-foot open-pile pier extension, as well as authorization to construct 168 linear feet of additional open-pile pierhead with finger piers and mooring poles to create 10 additional wetslips with uncovered boatlifts and to construct 11 cantilevered canoe and kayak racks along the landward side of the pier-head at their community use pier situated along Sturgeon Creek in Middlesex County.

Chip Neikirk, Deputy Chief, Habitat Management gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that the project site was located along Sturgeon Creek, a tributary of the Rappahannock River in the Deltaville area of Middlesex County. The community pier served the Sturgeon Creek Condominium development which consisted of six buildings and a total of 18 units situated atop a relatively high steep bluff overlooking the creek. The condominium property included approximately 1,500 linear feet of shoreline along Sturgeon Creek and a tributary cove.

Mr. Neikirk explained that on February 26, 2010, the Sturgeon Creek Homeowners Association (the Association) submitted an application seeking authorization to expand their community pier and add slips to create a total of 18 wetslips at the pier. The

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expansion would provide a slip for each of the 18 condominium owners. During the review of the application, staff determined that there were several unauthorized improvements that had been made to the pier at various times since its original construction around 1990.

Mr. Neikirk stated that staff discussed the permit discrepancies with the applicant and a Notice to Comply was sent to the Association on April 20, 2010. That notice identified the following unauthorized pier additions:

1. Eight (8) wetslips are located on the channelward side of the pierhead. Only six (6) wetslips are authorized and those are authorized on the landward side of the pierhead.
2. Six (6) finger piers have been constructed.
3. Seven (7) uncovered, pile-supported boatlifts have been installed.
4. Five (5) small personal watercraft lifts have been installed on existing pier pilings.
5. A 29-foot by 6-foot open-pile addition has been constructed on the northeast end of the pierhead.

Mr. Neikirk stated also that the notice directed the removal of the unauthorized structures within 45 days or alternatively, the submittal of an after-the-fact request to retain the illegal structures. Staff also stated that any after-the-fact application would need to be accompanied by a statement from the Association or their contractor explaining why the work was conducted without the required permit. It was requested that any after-the-fact request must be made within 30 days.

Mr. Neikirk said that in a letter dated May 3, 2010, the Association requested after-the-fact authorization for the unauthorized construction and they asked that their pending application be utilized, as their after-the-fact application. The letter also provided a detailed explanation concerning the history of the construction at the pier and the Association's limited involvement. Finally, they apologized for the unauthorized work for which the Association was responsible and they asked the Commission to take into account the Association's limited involvement when considering the assessment of civil charges and penalties.

Mr. Neikirk noted that the Association explained in their letter that the original developer, Mr. Mason Andrews, retained ownership of the pier and was responsible for its use until the Association took control of the pier in 2005. They stated that all of the unauthorized construction took place prior to 2005, with the exception of the installation of two uncovered boatlifts. Staff aerial photographs appeared to support their statement. They also stated that they relied upon the contractor to obtain any necessary permits for the installation of the lifts. The contractor Larry Shores was recently deceased and his son was unable to locate any paperwork associated with the boatlift installation.

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Mr. Neikirk noted also that no comments were received in response to the public notice and neither adjoining property owner objected to the application.

Mr. Neikirk said that in VIMS comments, dated July 8, 2010, they stated that piers had shading impacts on wetlands and the waters under the pier structure. They also noted that wetslips and the associated concentrated boat handling introduce petroleum products, toxicants, bacteria, and garbage into the waterway. To minimize impacts they recommended reducing the size of the structure where possible, the development of plans to address oil spills, garbage and sewage handling, and the proper use of sewage pumpout facilities. They also recommended the use of adequate trash receptacles and signage for best management practices.

Mr. Neikirk stated that the Health Department determined on July 6, 2010, that the Association was in compliance with the Health Department's Sanitary Regulations for Marinas and Boat Moorings. The Health Department also confirmed by e-mail correspondence that the upstream portion of Sturgeon Creek, in the project vicinity, was presently condemned for the direct marketing of shellfish and the additional slips would not necessitate any additional closure.

Mr. Neikirk said that The Department of Environmental Quality, in their letter dated March 3, 2010, advised staff that a Water Protection Permit would not be required. In the Department of Conservation and Recreation's comments, dated April 14, 2010, they stated that they did not anticipate that the project would adversely affect any of their programs but they noted the applicability of the Chesapeake Bay Act requirements that are regulated by the local government. They also noted that the project must comply with the Virginia Erosion and Sediment Control Handbook and Virginia Stormwater Management Regulations.

Mr. Neikirk explained that under local land use policies, it appeared that approximately 10 single family homes could have been developed on this property. Accordingly, the number of slips appeared to conform to a policy the Commission had used in the past, basically providing two slips for each of the private piers that could have been constructed had the property been developed, as single family lots. It did not appear that the project would adversely affect navigation within the creek.

Mr. Neikirk explained further that the project would not encroach on any public or privately leased oyster planting ground. The project would also not necessitate any changes to the existing shellfish condemnation.

Mr. Neikirk said that staff believed the proposed construction was reasonable and that the environmental impacts associated with the expansion would be minimal. In fact, staff was preparing to administratively approve the request until it was discovered that there was unauthorized construction. Staff often discouraged the storing of personal watercraft,

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canoes and kayaks on community piers, but in this case it seemed reasonable, since the high bank limited access and made upland storage impractical.

Mr. Neikirk said that staff was always troubled by violations and after-the-fact applications. In this case, it appeared the majority of the unauthorized work was conducted prior to the Association taking control of the pier. The Association stated that they were unaware of the unauthorized construction, until it was identified by staff during the review of their application. They also stated that submittal of the current application was evidence of their desire to comply with the laws and regulations.

Mr. Neikirk stated that after evaluating 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 with a condition that the Association be required to develop and implement appropriate best management practices designed to address the prevention of pollution associated with solid waste, sewage, and petroleum products. Given the after-the-fact nature of the request, staff also recommended triple permit fees and royalties, as provided for in §28.2-1206(D) of the Virginia Code, for the 1,102 square feet of encroachment associated with that portion of the pier that was constructed without VMRC authorization. The triple permit fee would amount to \$300.00 and the triple royalty would be based on \$4.50 per square foot (triple the normal rate of \$1.50 per square foot). Staff also recommended a royalty of \$7,704 for the encroachment of the proposed pier addition on 5,136 square feet of State-owned submerged land at the normal rate of \$1.50 per square foot. Finally, should the Commission desire to accept the payment of a civil charge in lieu of further enforcement actions, staff would recommend the charge be based on a minimal environmental impact and moderate degree of deviation or non-compliance.

Commissioner Bowman asked for questions for the staff.

Associate Member Tankard asked if it was a fact that the ownership was just on paper and if the developer was still there. Mr. Neikirk explained that she was not there. He said the Association did seem to have been caught off guard.

Commissioner Bowman asked about what part of this project was constructed by the Association or were they just left holding the bag. Mr. Neikirk stated that they had told him that they had just installed the 2 lifts and the additional pilings.

Commissioner Bowman asked if the Association's representative was present to comment.

Tom Scanniello, President of the Homeowners Association, was sworn in and his comments are a part of the verbatim record. Mr. Scanniello thanked the Commission staff for their assistance with the project. He said that they regret the violations and apologize. He said that they agreed with the triple permit fee of \$300.00 and asked that only the minimum of \$1,200.00, for their part in all this, be assessed. He said that they

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did take ownership and control of the dock in 2005. He said before that if they did anything at the dock they had to get the developer's consent and pay her rent. He said they had no authority over any actions before that time. He said the deck expansion he thought was done in 2002-2003 by a homeowner who sold his condominium and left shortly after that. He said he felt that they were being unfairly punished for anything done prior to 2005. He explained that there were 18 members of the Association and the proposed fees would take approximately 25% of their annual income. He asked that consideration be given that they were a small association with limited funds.

Commissioner Bowman asked for any questions. There were none.

Commissioner Bowman asked how the fees were determined. Mr. Neikirk stated it was a typical recommendation at the staff level, but it was up to the Board what it would actually be charged.

Associate Member Fox said in the packet received by them he read in one part that the royalty fees would be triple at \$4.50 and then again he read that it would be \$1.50. Mr. Neikirk said the triple fee was for the portion that was in violation and the normal fee was for the new construction requested.

Commissioner Bowman stated that he would not have a problem with the staff's recommendation if they were guilty, then they should be charged everything. He said he did have problems with the part where these folks were left holding the bag by the contractor, who was deceased, and the corporation that had been dissolved. He said the matter was before the Commission.

Associate Member Robins said that he concurred with the Commissioner's remarks that the developer and the contractor created some of the mess by not seeking the proper permits. He said that he thought that much of this was inherited. He said he was inclined to stick with the triple permit fee and make the rest the normal rate. He moved to approve the project with a triple permit fee and the normal royalties for the entire project, as well as a \$600.00 civil charge considering this a minimal degree of environmental impact and a minimal degree of deviation or non-compliance. Associate Member Fox seconded the motion. The motion carried, 7-0. The Chair voted yes.

Royalty Fees (encroachment 6,238 sq. ft. @ \$1.50/ sq. ft.)	\$ 9,357.00
Permit Fee (triple fees)	\$ 300.00
Civil Charge	\$ 600.00
Total Fees	\$10,257.00

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12. PUBLIC COMMENTS:

Ellis W. James of Norfolk urged the Commission to continue to protect and conserve sharks. His comments are a part of the verbatim record.

Ty Farrington, Crabber asked the Commission to consider changing the work hours for commercial crabbers to adjust for the unseasonably warm summer. His comments are a part of the verbatim record.

After some discussion, Associate Member Fox asked if a motion was needed. Commissioner Bowman requested action by the Board.

Associate Member Fox made a motion to advertise a regulation change for consideration at August meeting to set work hours for September from 5 a.m. to 1 p.m., instead of 6 a.m. to 2 p.m. Associate Member Tankard seconded the motion. The motion carried, 7-0. The Chair voted yes.

Associate Member Robins passed along an industry request for staff to evaluate the impacts to the commercial striped bass gill net fishery from federal marine mammal protection measures. His comments are a part of the verbatim record.

* * * * *

13. PUBLIC HEARING: Consideration of amendments to Regulation 4VAC20-252-10 et seq., 'Pertaining to Striped Bass' to adjust the recreational harvest measures for the fall 2010 season.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly provided additional public comment received by staff as handouts which he explained were in support of delaying any action being taken now. He reviewed all the numerous charts and tables explaining the 2009 recreational striped bass fishery, as compared to earlier years, which were a part of a PowerPoint presentation.

Mr. O'Reilly said that each year the Commission has amended the striped bass regulation to address harvest overages of the recreational quota or in anticipation of overages. He said that the recreational harvest in the Chesapeake Bay had been substantially lower than the quota in 2008 and 2009. He said last year, the Commission re-instated the 2-fish striped bass possession limit for entire month of December, because of the 2008 harvest being 48% lower than 2009. He explained that for the 2010 Fall Fishery the quota is 30% higher than the 2009 harvest. He referred to Table 2, which showed the harvest and quotas since 1997 and what regulatory action was taken by the Commission. He said that Table 1 shows that there has not been a quota overage since 2006 and annual harvest in 2008 and 2009 were well below quota even with the relaxing of the regulations. He

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stated that there may be other reasons for this lower harvest recently than the regulatory measures shown in Table 2, such as the impacts on the striped bass population from *Mycobacterium spp.* and economic reasons as well.

Mr. O'Reilly indicated the Chesapeake Bay area samples of striped bass catch by NMFS were generally proportional to the total number of intercepts, although the number of striped bass intercepts were low in 2005. He said WAVE 6 (November-December) accounts for the majority of the Chesapeake area harvest in each year since the fishery was reopened in 1990. He said whether it strictly owing to the economic factors or a combination of those factors with the availability of fish the past three years, 2007-2009 represented the lowest harvest since 2002.

Mr. O'Reilly said that originally the staff was recommending the relaxing of the regulations for the fall recreational fishing season, as staff was recommending that the removal of the no-take slot (fish between 28 inches and 34 inches) and the implementing of an 18-inch minimum and 28-inch maximum size limit and a 2-fish possession limit, whereby one of the two fish could greater than 28 inches. He said there was concern of a total relaxation (two fish at 28 inches minimum) resulting in an increase in harvest and a quota overage. He said the reason staff was recommending delaying action was that the ASMFC had held a hearing here at VMRC in June and then will hold another in the fall in November, to consider the increase of the commercial striped bass fishery quota. He said the ASMFC wanted to make the quotas more equitable for both the Commercial and Recreational fisheries. He said because of that staff was changing their recommendation to delaying until after this was determined and that CCA Virginia was strongly opposed to the increase in the commercial coastal quotas, as well as the increase in the Chesapeake Bay recreational striped bass quota. The CCA Virginia based their position on the decline in harvest, since 2006, the prevalence of mycobacteriosis and the decrease in the abundance of age 8 and older striped bass.

Mr. O'Reilly explained that there had been an Ad hoc Committee for the past six years providing advice on management measures and they agree with the approach by staff to modify the slot limit and postpone a decision.

Mr. O'Reilly said that staff recommended the Commission delay consideration of adoption of the proposed amendments until after the ASMFC meeting in November and for others reasons given previously discussed.

Commissioner Bowman asked for questions of staff from the Board.

Associate Member Fox asked that if the Commission takes the staff recommendation to delay for 2010 and any changes would be for the 2011 season. Mr. O'Reilly stated that was correct. He said that staff would know more about the 2010 harvest by mid-February 2011.

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Commissioner Bowman opened the public hearing and asked for comments from anyone present who wished to comment on this matter. There were none. The public hearing was closed. He stated the matter was before the Commission.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

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14. KENNETH T. HEATH: Request to license and locate two pound nets in new locations in Chesapeake Bay, near the western shore of Fisherman Island, Northampton County. The proposed locations are protested.

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

Mr. Travelstead explained that Mr. Heath had applied to the Commission for a license to locate two pound nets in the Fisherman Island area just north of the Chesapeake Bay Bridge-Tunnel (CBBT).

Mr. Travelstead explained that as a result of the public comment review period, staff received 11 letters or e-mails protesting the placement of the nets. He said the letters cite various reasons for opposing the placement of the nets at these locations, which include:

Hazard to navigation because of the proximity to the Chesapeake Bay Bridge Tunnel and the extreme tidal swings and currents and especially since no lighting, marking or radar reflectors are required.

The adverse impacts to the dolphins and turtles.

The boaters leaving the park and transiting in the area would not see the nets and pilings that support it.

Mr. Travelstead explained that information supplied by Law Enforcement and Engineer-Surveying of VMRC suggested that most of the recreational fishing in the area occurred much further offshore than the reach of the nets. He said further that the closeness of the nets to the shoreline of Fisherman Island and the fact that the nets are tucked under a sand shoal on the northwestern side of the island suggested that their interference with navigation would be diminished. He said that boaters that transit in the area through the CBBT highrise or the causeway connecting Fisheries Island to the mainland must steer a wide course to avoid the sand shoal and in doing so avoid the nets.

Mr. Travelstead said that these proposed sites were within the Pound Net Regulated Area 1, as defined in Regulation 4VAC 20-20-10. He said also that unless the nets were set

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within 10 horizontal feet of the mean low water line, they must be set with modified leaders from May 6 through July 31. He explained the modified leaders would minimize interactions with the turtles and dolphins.

Mr. Travelstead noted earlier that there were other nets in the area and that these were new locations for the pound nets, as they were not new nets. He stated that the current regulation provides for limiting entry into the pound net fishery.

Mr. Travelstead said that staff recommended approval of the pound nets.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked for clarification if it was true that this was a one in, one out and not additional nets because this is a limited fishery. Mr. Travelstead said this would not add new nets to the Bay.

As there were no further questions, Commissioner Bowman asked the applicant if he wished to comment.

Kenneth Heath explained the nets were his and he just wanted to move them to a new location. He said the study on the modified leaders would be completed that Friday and there had not been any incidences of turtles or dolphins getting into the nets.

Commissioner Bowman asked if anyone else was present to comment. There were none. He said the matter was before the Commission.

Associate Member Robins announced that he would be abstaining on the pound net issues.

Associate Member Tankard moved to approve the staff recommendation. Associate member Bowden seconded the motion. The motion carried, 5-0-1. The Chair voted yes. Associate Member Robins abstained. Associate Member Laine was absent from this presentation.

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15. **ARTHUR P. BENDER:** Request to license and locate a pound net in a new location in Chesapeake Bay, northwest of the concrete ships at Kiptopeke, Northampton County. The proposed location is protested.

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

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Mr. Travelstead stated that Mr. Bender was requesting a license and to locate a pound net in the Chesapeake Bay northwest of Kiptopeke State Park.

Mr. Travelstead explained that during the public comment period, which ended June 28, staff received 3 letter and e-mails protesting the placement of the net in this location. He said that basically the same reasons were offered in these comments received as those for Kenneth Heath's request.

Mr. Travelstead said that again the nets were being placed in the Pound Net Regulated Area 1 and the nets must be set with modified leaders from May 6 through July 31, which addressed the concerns expressed in regards to the turtles and dolphins.

Mr. Travelstead said that the Kiptopeke boat ramp is a busy place, heavily utilized by recreational boaters and fishermen throughout the year. He said that during the fall and early winter recreational bass fishermen utilize the ramp and often depart and return during night-time hours. He said the placement of another net does present another navigation obstacle that boaters must recognize and become aware of. He noted that a precedent had been set when another net owned by Mr. Like was approved in 2005 for this area.

Commissioner Bowman asked if there were any known boating incidents. Mr. Travelstead said no. Commissioner Bowman asked Law Enforcement staff to respond and Lt. Col. Warner Rhodes, Deputy Chief of Law Enforcement indicated no. Mr. Travelstead noted for the Board that the people at the State Park had been notified of the proposed pound nets and they did not submit comments on it.

Associate Member Tankard expressed his concern of another hazard to navigation in the area. Mr. Travelstead said that it would be a fence there which the fishermen must learn is there. Associate Member Tankard asked if there was only one present now. Mr. Travelstead said there was the one licensed by Mr. Like and after referencing an Engineering-Surveying map on page four of the evaluation, noted that there was another further up about a mile away next to Mr. Bender.

Associate Member Laine asked about the water depth at the net. He said he presumed that this net would be in deeper water than the gill nets inshore. Mr. Travelstead said he did not know the water depths.

Commissioner Bowman asked Mr. Bender to come forward if he wished to make comments.

Arthur Bender, applicant, was present and his comments are a part of the verbatim record. Mr. Bender explained that the water depth on the deep end of the stand was about 30 to 35 feet and on the inshore end about 18 feet. He stated that there was considerable distance from where the traps are running to the beach.

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Associate Member Laine asked if this would be the northern most ends of the traps. Mr. Bender stated that at this time he would say yes. He added that there was nothing stopping someone else from applying north of him.

As there were no further questions, Commissioner Bowman asked if anyone was present in support or opposition who wished to speak. There were none. He said the matter was before the Commission for discussion or action.

Associate Member Bowden moved to approve the request. Associate Member Fox seconded the motion. Commissioner Bowman said he would not support anything closer, but staff had pointed out that a precedent had been set with Mr. Like's net. Associate Member Tankard explained that in light of the accidents in Bay it should be a concern which he felt it should not be overlooked. He explained further that smaller boats were launched here closer to shore and the net licensed by Mr. Like did make them have to go further offshore. He said he felt the Commission must consider public safety. Commissioner Bowman asked for a vote on the motion and the motion carried, 6-0-1. The Chair voted yes. Associate Member Robins abstained.

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16. RECOMMENDATIONS of the Recreational Fishing Advisory Board (RFAB) and Commercial Fishing Advisory Board (CFAB).

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

Ms. Davis explained that the current estimate of funds available for projects is \$1,562,668 and there was a current annual obligation of approximately \$1.5 million on the Virginia Saltwater Recreational Fishing Development Fund.

Ms. Davis said that there were actually 12 projects in the RFAB review cycle, but the Board was only recommending, at this time, the funding of three, totaling \$15,294. She said that staff would be back in September with funding recommendations for the other nine projects.

Ms. Davis stated that comment letters, which included all twelve of the proposals, were provided by the CCA of Virginia and the PSWSFA.

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

A) 2010 Sunshine Children's Fishing Program. Denny Dobbins, Portsmouth Anglers Club. \$7,194 Vote 6-0

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B) 2010 Saxis and Morley's Wharf Fishing Piers Youth Fishing Tournaments (Year 9). Allen Evans, Eastern Shore of Virginia Anglers Club. \$2,000 Vote 6-0

C) 2010 Youth Developmental "Hooked on Fishing" Adventure (Year 3). John Wager, Virginia Charter Boat Association. \$6,100 Vote 6-0

Commissioner Bowman asked for questions of staff and there were none.

Commissioner Bowman asked for public comments regarding the recommendations and there were none. He asked for a motion for RFAB recommendations.

Associate Member Fox moved to approve the recommendations of the RFAB. Associate Member Laine seconded the motion. The motion carried, 7-0. The Chair voted yes.

Ms. Davis explained that the estimated funds available by December 31, 2010 from the Marine Fishing Improvement Fund (MFIF) were \$143,829.

Ms. Davis said that at this time staff was recommending the use of funds for the one project, which totaled \$40,000 as an add-on so the work currently underway by the same contractor for the federal government. This work would be done in July and October 2010. She said that in September, funding recommendations for the other four proposals would be provided.

The following project was recommended by the CFAB for funding with MFIF.

Estimating Catch-per-Unit-Effort (CPUE) for the 2010 Blue Crab Fishery in Virginia Chesapeake Bay, add-on for July and October. Contractor, Versar, Inc. \$40,000.

Commissioner Bowman asked for questions of staff and there were none.

Commissioner Bowman asked if there were any public comments and there were none. He asked for a motion for the CFAB recommendation.

Associate Member Tankard moved to approve the CFAB recommendations. Associate Member Bowden seconded the motion. The motion carried, 7-0. The Chair voted yes.

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There was no further business and the meeting was adjourned at approximately 2:20 p. m. The next regular meeting will be held Tuesday, August 24, 2010.

Steven G. Bowman, Commissioner

Recorded by:

Louise Atkins, Acting Recording Secretary

Minutes Prepared by:

Katherine Leonard, Recording Secretary