

## MINUTES

**January 25, 2005**  
**Newport News, VA**

**Commission Meeting**

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

William A. Pruitt )	Commissioner
Ernest N. Bowden, Jr. )	
S. Lake Cowart )	Associate Members
J. T. Holland )	
F. Wayne McLeskey )	
Richard B. Robins, Jr. )	
Frederick S. Fisher	Sr., Assistant Attorney General
Col. Steve Bowman	Deputy Commissioner
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst, Sr.
Jane McCroskey	Chief, Admin./Finance Div.
Jack Travelstead	Chief, Fisheries Management Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
James Wesson	Head, Conservation/Replenishment
Roy Insley	Head, Plans and Statistics
Joe Cimino	Fisheries Management Specialist
Ellen Cosby	Fisheries Mgmt. Planner
MPO Minor Stone	Marine Police Officer
MPO Sandi Walker	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Tracy West	Environmental Engineer, Sr.

**Commission Meeting**

**13030  
January 25, 2005**

Justin Worrell  
Randy Owen  
Hank Badger  
Benjamin McGinnis

Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.  
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)  
Tom Barnard

Other present included:

Earle Hall  
Betty Cornwell  
Larry Rakes  
Jenny McGuire  
Martin  
Bill Dennis  
Ken Semesk  
Jeff Borwn  
Mike Kay  
William Geary  
Mike Jewett  
Joe McCauley  
Roger Parks  
David Parks  
Jamien L. Green  
David C. Walker

Ian Bates  
Irma Carneal  
Gary Crouch  
Shellie B. Woddell  
Cindee Linthear  
Jeff Bliemel  
Ed George  
Anne Brown  
Phill Roehrs  
Clinton Ritter  
Danny McColloch  
Bryan Peele  
Russell Gaskin  
Tom Powers  
Dusty Crump  
Kelly Place

Susan L. Fogg  
Walter Cornwell  
Dean Westman  
Graig Palubinski  
Donna S. Dennis  
Karen Brauer  
Bo Bragg  
Harrison Bresee  
Kim Sandhoff  
Tom Eubank  
M. Scott Bloxom  
Kent Carr  
Mike Croxton, Jr.  
Donnie Thrift  
Robert Weagley

\* \* \* \* \*

Commissioner Pruitt called the meeting to order at approximately 9:45 a.m. Associate Members Garrison, Jones, and Schick were absent.

\* \* \* \* \*

Associate Member Cowart gave the invocation and Commissioner Pruitt led the pledge of allegiance to the flag.

\* \* \* \* \*

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

\* \* \* \* \*

**Approval of Agenda:** Commissioner Pruitt asked for any changes to the agenda. Jack Travelstead, Chief, Fisheries Management, said that there was an additional fishery item by Jim Wesson for the James River Hand Scrape Area. Bob Grabb, Chief, Habitat Management, said that Michael Jewett had called and said because of car problems he would be late for the meeting. He also said that there would be a briefing for the Virginia Beach Rudee Inlet project after the Page Two Items; and, staff was pulling Item 12, Dominion Virginia Power, et al, #04-2241, because the protests had been resolved and the application for permit could be handled administratively. **Associate Member McLeskey moved to approve the agenda with the changes. Associate Member Robins seconded the motion. The motion carried, 5 - 0.**

\* \* \* \* \*

1. **MINUTES:** Commissioner Pruitt asked for separate motions for the August and December meeting minutes.

**Associate Member McLeskey moved to approve the August 11 and 12, 2004 minutes, as circulated. Associate Member Holland seconded the motion. The motion carried, 4-0-1. Associate Member Robins abstained, as he did not attend the August meeting.**

**Associate Member Robins moved to approve the December 21, 2004 meeting minutes, as circulated. Associate Member McLeskey seconded the motion. The motion carried, 4-0-2. Commissioner Pruitt voted because of the two abstentions. Associate Members Cowart and Holland abstained, as they did not attend the December meeting.**

\*\*\*\*\*

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

There were no questions of staff and no one was present from the public to comment either pro or con.

**Associate Member McLeskey moved to approve the page two items, 2A through 2G. Associate Member Robins seconded the motion. The motion carried, 5-0.**

- 2A. **AMERICAN ELECTRIC POWER, ET AL, #04-2609**, requests authorization to replace an existing, private bridge over Walker Creek in Bland County with a pre-cast, 43-foot long by 20-foot wide, clear-span, bridge to provide equipment access for the installation and maintenance of the previously authorized Wyoming-Jackson Ferry Power Transmission line. Recommend approval with the inclusion of our standard instream permit conditions.

Permit Fee.....\$100.00

- 2B. **NEW KENT COUNTY DEPARTMENT OF PUBLIC UTILITIES, ET AL, #04-2745**, requests authorization to install, by directional bore, a submerged 16-inch sewer line beneath 42 linear feet of Rumley Marsh to provide public sewer to residents of New Kent County.

Permit Fee.....\$100.00

- 2C. **FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, #02-2187**, requests modification to a time-of-year restriction included in a previously authorized permit for the installation of a sanitary sewer trunk line across four separate crossings of Pohick Creek in Fairfax County, and for the installation at the final two (2) crossings of precast concrete caps over existing sewer trunk lines and six-inch thick gabion mattresses along the streambed to cover all trunk lines. Recommend the previous time-of-year restriction of February 15 - June 30 is revised one time to a new in-stream restriction from March 1 - June 30 to allow completion of the final stream crossing.

No fees applicable, modification.

**2D. LYON SHIPYARD, INC., #04-2341**, requests authorization to maintenance dredge, by clamshell, 35,000 cubic yards of State-owned submerged lands, and on an as-needed basis, to provide maximum depths of -20 feet below mean low water at the existing bulkhead sloping to depths of -31 feet below mean low water at their existing drydock facility adjacent to their property situated along the Eastern Branch of the Elizabeth River in Norfolk. All dredged material will be transported to and disposed within the Craney Island Disposal Facility. Staff recommends a pre-dredge conference and requirement to submit a post-dredge bathymetric survey.

Permit Fee.....\$100.00

**2E. CHESAPEAKE COVE MARINA, #04-2401**, requests authorization to remove an existing commercial boathouse, construct a new 115-foot by 50-foot boathouse with six (6) wetslips, 260 linear feet of replacement vinyl bulkhead, a 5-foot by 48-foot open-pile pier with finger piers and mooring piles to provide two wetslips adjacent to their marina situated along Broad Creek in Middlesex County. There will be a net decrease in the size of the boathouse and the reduction of two slips.

Permit Fee.....\$100.00

**2F. WESTERN BRANCH PRESERVE, LLC, #04-2132**, requests authorization to construct eight (8) 150-foot long dual-slip community piers, two (2) 175-foot long community piers with six (6) slips and one (1) 170-foot long community pier with eight (8) slips (a total of 11 piers and 36 slips), and construct a 16-foot wide, concrete community boat ramp and associated tending pier which will extend 45 feet channelward of mean low water. The proposed structures are designed to serve a 225-acre waterfront subdivision consisting of 41 lots situated on the Western Branch of the Corrotoman River in Lancaster County. All of the proposed slips will also include uncovered, low profile boatlift structures. Recommend approval based on the developer's agreement to include deed restrictions that will prohibit any further construction of individual private piers by the subsequent riparian waterfront property owners.

Permit Fee.....\$100.00

**2G. CITY OF VIRGINIA BEACH, #04-1181**, requests authorization to hydraulically dredge approximately 100,000 cubic yards of State-owned subaqueous bottom material to create a deposition basin in Rudee Inlet's outer channel to improve navigation and reduce shoaling. The project also requests authorization to maintenance dredge, on an annual basis, approximately 100,000

cubic yards of material to maintain project depths of minus twenty feet at mean lower low water with a two-foot overdredge allowance. The sandy dredge material will be placed to the north as beach nourishment between 14<sup>th</sup> Street and Rudee Inlet and to the south between the Inlet and Camp Pendelton on Croatan Beach.

Permit Fee.....\$100.00

\* \* \* \* \*

**3. CLOSED SESSION:** There was no closed session.

\* \* \* \* \*

**(This item was heard following Item 5 at the request of the defendant.)**

**4. MICHAEL JEWETT, #03-0849.** Continuation of a formal restoration hearing and consideration of a Commission subcommittee report concerning unauthorized construction activities at a former seafood offloading facility located at the terminus of Lawson Road on Bennett's Creek in Poquoson.

Ms. Kim Sandhoff, Court Reporter for Mike McGuire, protestant, was sworn in.

Tracy West, Environmental Engineer, Sr., gave the presentation with slides. Her comments are a part of the verbatim record. She explained that this is the 3<sup>rd</sup> time this matter has been heard by the Commission.

Commissioner Pruitt left the meeting.

Ms. West explained that during a restoration hearing held at the October 26, 2004, regular meeting, the Commission reviewed drawings and photos of ongoing unauthorized construction activities taking place at a pier facility situated at the end of North Lawson Road in Poquoson. The item was considered under the name of Mr. James W. Firth. Following staff's presentation, the Commission granted a request by Mr. Michael Jewett, the new owner, to postpone any decision regarding his unauthorized construction activities until he could consult with legal counsel. The Commission ordered that no further construction activities be undertaken at the facility in the interim and continued this matter until their November meeting.

Ms. West also explained that in response to the Commission's inquiry regarding ownership of the existing facility, and the name under which the application had been filed, Mr. Jewett subsequently submitted a copy of a deed proving his ownership of the facility and a request to transfer the application into his name. The transfer request letter

included the signatures of the Firth's and a statement that indicated their concurrence with the transfer. The deed for the existing facility does not confer ownership of the underlying submerged lands or any portion of the adjacent upland. Fee simple ownership of the submerged lands involved remains the property of the Commonwealth.

Ms. West said that at the continued restoration hearing held on November 23, 2004, the Commission reviewed the additional information presented by staff and considered Mr. Jewett's sworn testimony. Mr. Jewett elected not to obtain legal counsel for the hearing. Subsequent to a closed meeting discussion, the Commission appointed a subcommittee, consisting of Commission staff, City of Poquoson staff and Associate Commissioners Holland and Schick, to further discuss and possibly formulate an appropriate recommendation for Commission consideration. The Commission also extended their stop work order and reminded Mr. Jewett that no further construction activities could be undertaken at the facility until this matter was resolved.

Ms. West said that staff's October 26, 2004, and November 23, 2004 staff evaluations are included in the books for the Commission's reference.

Ms. West said that the Commission staff met with City of Poquoson staff on December 9, 2004, to discuss the City's concerns regarding the facility. Prior to that meeting, Commission staff visited the site and noted that two finger piers had been constructed perpendicular to the main pier. These structures were not in place when staff issued their sworn compliant, notice to comply, and stop work order in June 2004. However, staff cannot conclusively state exactly when these finger piers were added to the facility. They may or may not represent a violation of the Commission ordered stop work order of October 26, 2004.

Ms. West stated that the Commission Subcommittee met on January 5, 2005 in a public meeting. Due to a conflict, Associate Member Holland was unable to attend the meeting and Associate Member Robins agreed to serve in his stead. No members of the public attended the meeting. The minutes of that meeting are in the Commission notebooks as part of the briefing package.

Ms. West said that during the meeting, Mr. Carl Josephson indicated that, in his opinion, the York County Board of Supervisors had the authority to authorize the installation of the facility in the 1940's under §33.1-67 and §33.1-229 of the Code of Virginia. As such, he recommended that the subcommittee and the Commission accept the assertion that construction of the wharf was properly authorized.

Ms. West explained that the discussion during the subcommittee meeting focused on several key issues. Mr. Jewett's level of compliance with City of Poquoson ordinances and stop work orders, the impacts of the continued upland property dispute on any state or local regulatory actions, and the unknown nature of the structure's integrity were all discussed. The subcommittee also expressed concerns regarding unsubstantiated rumors

that Mr. and Mrs. Jewett were using the facility as their primary residence and whether this was an authorized use under City ordinances and Health Department regulations.

Ms. West said that Ken Somerset of the City of Poquoson Building Department presented a memo dated January 5, 2005, outlining the items that Mr. Jewett must address in order for him to come into compliance with City ordinances. That outline was followed by correspondence dated received January 12, 2005, from D. Wayne Moore, attorney for the City of Poquoson, presenting additional concerns of the City of Poquoson.

Ms. West said that the subcommittee carefully considered §28.2-1210 of the Code of Virginia, which authorizes the agency to compel removal of deteriorated structures located on State-owned submerged lands upon a finding that a structure represents a hazard to public health, safety and welfare. Mr. Somerset presented to the subcommittee a letter to Mr. Mike Jewett from George Cornwell, P.E., dated February 6, 2004. This letter refers to the "degree of deterioration" at the facility. Mr. Somerset also offered that, prior to Mr. Jewett's purchase of the wharf, the City of Poquoson evaluated the possibility of acquiring the property. City staff determined at that time that, due to its deteriorated state, the City was unwilling to purchase the wharf.

Ms. West said that the subcommittee discussed all of the information that had been presented or was in the record. Based on that information, the subcommittee developed a recommendation for action to be presented to the full Commission for its consideration at the January 25, 2005 meeting. Associate Member Robins will present those recommendations at the conclusion of any public testimony and at the onset of Commission discussion.

Ms. West said that staff has been working with the Health Department and they have supplied staff with their documentation. She said any exemption originally given is no longer valid and the VDH request that the project be denied until the applicant comes into compliance with the Health Department regulations.

Ms. West said that staff suggests that the Commission consider, in addition the recommendations of the subcommittee, initiating a formal complaint regarding Mr. Jewett to the Department of Professional Occupations Board since Mr. Jewett is a licensed contractor and all work on the pier at the facility has been done illegally.

Associate Member Robins said he would make his presentation after the public comment period had been completed.

Michael Jewett was present and his comments are a part of the verbatim record. Mr. Jewett said that he submitted a letter requesting an opportunity to speak to the subcommittee. Mr. Grabb told him that it was not possible. He said that he had received no correspondence from the Health Department telling him what he needs to do. Mr. Jewett said that he was prepared to defend his actions, but can not address the



**Commission Meeting**

subcommittee's comments or recommendations since he did not know what they did. He offered a petition for the Commission's consideration, which he read into the record and is a part of the verbatim record. He said he had over 600 signatures. He explained that the City denied him his rights and his actions were done to protect his investment. He said the City said the structure was dangerous, but his actions have corrected it. He also said that he protected the resources and provided watermen with safe dockage. He said he was requesting that he be allowed to keep the improvements and be given the permits he needs to maintain it.

Associate Member Cowart asked for any questions. He asked Mr. Jewett when the finger piers on the left were installed. Mr. Jewett responded he thought it was July or August and he removed some debris at the same time.

Commissioner Pruitt returned to the meeting.

Associate Member Robins asked Mr. Jewett about his earlier testimony and in the petition he stated that the City has blocked his efforts to make application. Mr. Jewett said yes. He said he had sent 20 letters to make application and the City will not give him an application until he obtains the VMRC approval. Associate Member Robins asked if any progress has been made to resolve these issues? Mr. Jewett responded he has attempted to, but no and he never received a letter from the Health Department telling him what is required. He read a letter he had sent to the City on November 30, 2003, which he said the City never responded to either.

Commissioner Pruitt asked if anyone else wanted to comment.

Jenny McGuire, protestant, was present and her comments are a part of the verbatim record. Mrs. McGuire said she was representing her husband and would make a short presentation. She explained that VMRC and the City of Poquoson had told Mr. Jewett of certain requirements, which he was warned to meet prior to construction. She said these were not met nor waived. She said he continued to work even after being issued 3 stop work orders. She said the 4<sup>th</sup> was issued for construction prior to the September meeting.

Associate Member Robins gave a report for the subcommittee established by the Commission for this matter. Mr. Robins explained that he agreed there is a need for the permit approval, but the applicant must comply and not ignore the stop work orders. He said it is clear that the Commission must take strong administrative action to get the applicant into compliance. He said he felt that the City was not prejudiced against Mr. Jewett. He the subcommittee reviewed a number of stop work orders and then went on to say that the applicant had violated several stop work orders by the City and one by the Commission. He said correspondence from the City to Mr. Jewett regarding the necessity to obtain a building permit was prior to Hurricane Isabel. He explained that the committee met on January 5, 2005 and it was determined that Mr. Jewett had not made any effort to apply with the City for permits. He said that they had reviewed the

documentation on the structures stability. He said that that the City had ruled that the structure was unsafe. He said a VHB Engineering Report done for the City was received today and was in the Commissioners' notebooks. He said the subcommittee recommended that a timetable be developed. He said that based on the subcommittee's findings the structure is structurally unsound and Mr. Jewett should be instructed to remove it within six (6) months pursuant to Section 28.2-1210 of the Code of Virginia. He said that if Mr. Jewett would provide an engineering report or engineering plan to make the structure sound, the matter of the removal could be reheard at the next meeting. He said that in the six month interim it should be stipulated that no dockage of any vessel other than a vessel owned by the Jewetts be allowed. In addition, he said Mr. Jewett should be ordered to remove all unauthorized new structures within thirty (30) days and if Mr. Jewett fails to comply, then an order should be issued for the immediate removal entirely.

Mr. Jewett asked what a VHB report was. Mr. Robins responded it is an engineering company report done for the City. Mr. Jewett continued to say that in April 2002 the City should have caused no sale of the property, but it was not done. He said he bought the property after that date. He was told the City did not like to condemn property but to allow the owner to make repairs. He said the City personnel have not attempted to work with him and never said his engineering report was not sufficient. He said the City Engineer said himself he was not qualified.

Associate Member Cowart said that if the engineering report said the structure was safe, he could keep it. Mr. Robins said yes, or submit a plan to make it safe but Mr. Jewett needed to resolve all upland issues.

Mr. Jewett said the engineering report said the structure must support a certain amount of live load. He said the Cromwell report questions the live load capability of the floor. He said the report suggested a test.

Associate Member Cowart said the Commission needed the report by the engineer and Mr. Robins agreed.

Mr. Jewett said that the report exists and was given to the City. Mr. Robins said the subcommittee considered that report and the City Engineer rebutted the report because the load test was insufficient and did not consider the structures soundness to natural effects. Mr. Jewett said that the City had not told him the report was not good.

Kenneth M. Somerset, representing the City of Poquoson, was present and his comments are part of the verbatim record. Mr. Somerset said they had attempted numerous times to answer Mr. Jewett. He said Mr. Jewett signed for the letter about drawings required, etc. He said no building permit could be issued until other permits were received, but told him to apply to start the process. Mr. Robins asked if anything had been resolved since the committee meeting. Mr. Somerset responded, no.

Jeff Bliemel, City of Poquoson representative, was present and his comments are a part of the verbatim record. Mr. Bliemel said that when Mr. Jewett first approached them they were happy with Mr. Jewett. He said that getting all repairs done in a safe manner was the primary concern. He said the building was not structurally sound and there were concerns for the foundation, for example they had no idea what was used below the mud line. He said they had problems with understanding Mr. Jewett's use plan. Originally, he said Mr. Jewett said it was for boat repair and construction and since then several uses have been indicated. He said they needed to know the intended use to determine what requirements are necessary. He said they could not go against the public's interest. He said they needed proof of legal right of way. He said when they spoke with the surveyor and the attorney and there was no legal access, it had always just been assumed. He said the sewer issue was that there was an outhouse at the dock but the city now provides access to public sewage. He said the City had responded to Mr. Jewett's letter.

Mr. Jewett said that regarding the letter Mr. Somerset said he had signed for the attached letter is dated November 1 and the certification is dated October 14. He said the November 1 letter was never sent.

After further discussion Commissioner Pruitt asked for a motion.

**Associate Member Robins' motion was as the following:**

**WHEREAS, it is the policy of this Commission to promote public safety, and  
WHEREAS, the record indicates that the structure is not structurally sound and continues to provide a hazard to public safety and a hazard or obstruction to the use of Bennetts Creek, and**

**WHEREAS, Virginia Code 28.2-1210 authorizes this Commission to require removal of property from the waters of the Commonwealth when any wharf, pier or structure is found to constitute a hazard or obstruction to the use of the waterways of the Commonwealth, NOW THEREFORE,**

**I move that the Commission find that the structure is structurally unsafe, thereby constituting a hazard to public safety and the use of Bennetts Creek, and that Mr. Jewett be directed to completely remove the structure within six (6) months in accordance with the provisions of 28.2-1210 of the Code of Virginia. Should Mr. Jewett provide a report by a licensed structural engineer that the facility is structurally sound or submit an engineering plan signed by a licensed engineer to make the building structurally sound, the Commission would be willing to reconsider its removal order at its next regularly scheduled meeting. In the intervening six (6) months, the Commission orders that there be no residential or overnight occupancy of the facility and that only vessels owned by and registered to the Jewetts may be moored thereto. The Jewetts are hereby directed to remove all unauthorized new construction specially the finger piers and walkway expansion, which have been undertaken at the facility in the absence of proper authorization, within thirty (30) days. The Jewetts shall be prohibited from undertaking any other**

**construction activities at the facility, other than the removals outlined above, until the facility itself has been properly authorized and was in accordance with all required permits from both the state and local governments. Should the Jewetts violate or not conform with any of the restorative measures or deadlines imposed herein, a directive for removal of the structure in its entirety becomes effective immediately. However, if the Jewetts maintain that the structure is sound, the Commission should encourage them to pursue resolution of upland property ownership issues in an effort to obtain all local and state approvals as soon as possible. Associate Member Cowart seconded the motion. The motion carried, 5-0.**

No fees applicable, enforcement action.

\* \* \* \* \*

5. **BEACH COVE VILLAS CONDO OWNERS ASSOC., #04-2277**, requests after-the-fact authorization to retain three (3) 90-foot long, T-head, concrete block groins installed at the site of three (3) remnant stone groins in front of their condominium units on the Rappahannock River near Windmill Point in Lancaster County. A commercial waterman who has a pound net adjacent to one of the groins protested the project.

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

Mr. Woodward explained that the Beach Cove Villas (BCV) consist of three multi-family condominium buildings located at Windmill Point, adjacent to the Windmill Point Resort and Yacht Harbor facility on the lower Rappahannock River in Lancaster County. During Hurricane Isabel in September 2003, the three existing quarry stone groins located along the beach in front of the condos were damaged to the point that Mr. Dave Waddell, on behalf of the BCV Condo Owners Association (COA), contacted staff to inquire about repairing the structures. Staff informed Mr. Waddell that, pursuant to the Governor's Executive Order 58, a permit was not required from VMRC to replace previously permitted structures provided they were rebuilt in the same location and in identical or smaller dimensions. Staff was familiar with the groins as a result of an application in 1997 to refurbish the three existing groins and build two new groins along the BCV shoreline. The permitted work was never done and that permit expired on August 31, 2000.

Mr. Woodward said that on August 31, 2004, staff inspected the BCV site as a result of an inquiry from the local wetlands board staff. The inspection revealed that (1) the groins had been rebuilt using 2-foot by 2-foot by 6-foot concrete blocks rather than the quarry stone which had been scattered during the storm, (2) the groins appeared to have been extended, and (3) T-heads had been added to the channelward end of the groins. On September 10, 2004, staff sent a Notice to Comply to Mr. Thomas Eubank, president of

the BCVCOA, directing removal of the block groins or submittal of an after-the-fact application for review. Staff received an application on September 30, 2004 and initiated the required public interest review of their request to retain the groins in their current condition. In a letter submitted with the application, Mr. Waddell explained that he was unclear from his discussions with staff that the materials used in the "repair" had to be identical, and decided to use concrete blocks after doing some research on the Internet. He contends that they stayed within the footprint of the old groins in the water, but may have come up onto the beach 20 feet further than the pre-existing groins.

Mr. Woodward explained that the new groins are protested by Mr. E. L. George, who fishes a licensed pound net immediately downstream of the easternmost groin. Mr. George indicates he ran into the groin with his skiff while checking his net last summer and contends that the groins are a hazard and should be removed.

Mr. Woodward stated that the Virginia Institute of Marine Science indicates that while replacing the damaged groins is justified and the impacts of the structures are minor, the placement of additional stone over the blocks may become necessary if they start to move out of place. They further state that it is difficult to predict how effective the new structures will be and suggest the placement of clean sand for nourishment should there be any adverse impacts in the immediate vicinity of each groin. The Virginia Department of Conservation and Recreation documents the presence of the federally threatened Northeastern beach tiger beetle and recommends coordination with the United States Fish and Wildlife Service and the Virginia Department of Agriculture and Consumer Services regarding potential impacts to this insect species. Staff has forwarded the application to those agencies for their review and action, as appropriate. The Department of Environmental Quality, the Department of Health, and the Department of Game and Inland Fisheries all find the project acceptable.

Mr. Woodward said that the Lancaster County Wetlands Board granted an after-the-fact permit at their December 9, 2004, public hearing, finding the impacts to the beach were minimal. While a civil charge was discussed, the board felt that there was some confusion on the part of the applicant as to what constituted "repair." Based on that they waived any charge.

Mr. Woodward said that the U. S. Army Corps of Engineers, on November 29, 2004, approved the project under their Nationwide Permit Number 3 for maintenance of existing structures.

Mr. Woodward explained that the existing stone groins in front of Beach Cove Villas have been deteriorating since the mid-1990's, as evidenced by the permit that was granted to repair them in 1997. Hurricane Isabel exacerbated the damage by knocking some of the rock down into the near-shore area adjacent to the groins. When staff was contacted regarding repairs to the groins, Mr. Waddell was made aware of the Governor's

Executive Order and told that provided the loose stone was simply restacked in the existing footprint, the work would not need formal authorization. Had Mr. Waddell described the structures they built, staff would have informed him that a permit was required given the different materials, the extension of the structures and addition of T-heads. The web site that Mr. Waddell used as a guide mentions pre-cast concrete blocks. Staff is generally cautious with such designs, however, given the buoyancy of concrete as compared to quarry stone. We further believe that the T-head and additional 18 feet of length on each groin is unnecessary and represents a navigation hazard over and above the pre-existing stone footprint of the structures.

In light of the foregoing, Mr. Woodward said that staff recommends removal of the T-heads, the channelward 18 feet (3 blocks) of each groin, and the installation of a single pile at the terminus of each groin as a navigational marker. Should the blocks become unstable and show signs of movement due to wave action, staff would recommend a top-dressing of Class 2 stone (at a minimum) in a low-profile design be required, as per the recommendations of VIMS. Staff further recommends triple permit fees and an appropriate civil charge, based on a minimal impact but a moderate degree of noncompliance, against both the applicant and the contractor, as well as a formal complaint being forwarded to the Virginia Board of Contractors regarding the contractor given his role in this matter.

Tom Eubank, President of the Homeowners Association, was present and his comments are a part of the verbatim record. Mr. Eubank said that Mr. Wadell was not present. He said that it was not Mr. Wadell's intent to violate the law. He explained that Mr. Wadell was originally told that no permit was necessary and because the material to be used was changed to stone it made a permit necessary. He said that he thought that Mr. George's objection had been resolved. He said the t-head was 120 to 125' from Mr. George's net and did not represent a hazard. He said he had been there for fifteen summers and the groin already existed. He explained that the cost of the stone was \$48,000 and eventually the plan was to cover it with amour stone, but the funds were not currently available. He said the existing permit had expired.

There were no questions for Mr. Eubank. Those in opposition were given an opportunity to comment.

Ernest L. George, protestant, was present and his comments are a part of the verbatim record. Mr. George said he had a problem with the t-heads which represented a hazard. He explained further that they could not be seen at all times, especially when they were underwater. He provided a photo of the lowest tide showing they could barely be seen.

There were no questions for Mr. George and no one else present to comment, Commissioner Pruitt asked for discussion or motion.

Associate Member Cowart asked staff if an application had been received for the t-heads, would they have been permitted? Mr. Woodward responded to the question by saying that probably not, the t-heads were not beneficial and would have saved money. He explained that groins with a spur are used most of the time and the spur prevented scouring behind the groins. Associate Member Cowart asked about the length with the t-head. Mr. Woodward said that the length is longer, but it is because 20' more are on the beach than before. Mr. Cowart asked about the original 1997 application. Mr. Woodward explained that the groin was to be refurbished and two 70-foot groins were to be added. He said one had a spur near the shoreline. Associate Member Cowart asked if the additional length was the problem. Mr. Woodward explained that the length was not a problem, only the material used and the t-heads.

Associate Member McLeskey asked about using rip-rap. Mr. Woodward said the preference was for low profile design to allow sand to move around. He said another 2-3' high and it would no longer be low profile.

Commissioner Pruitt stated that Isabel caused problems for everyone and he felt there was no intent by Mr. Wadell to circumvent the law. He said Mr. George's objection is a good one. He asked Tom Barnard from VIMS to comment.

Tom Barnard, Virginia Institute of Marine Science representative, was present and his comments are a part of the verbatim record. He said the t-head can be effective, but must be site specific when considering its use.

Commissioner Pruitt asked for a motion.

Associate Member Bowden stated that there was no problem with the length. Mr. Bowden said the t-heads were not misunderstood, but the concrete versus stone was likely a mistake. He suggested that because there was a major concern over the t-heads being a hazard, and warning poles should be placed at the end.

Associate Member Robins stated that he agreed with Mr. Bowden and agreed there should be triple permit fees and no civil charge.

**Associate Member Robins moved to approve the after-the-fact permit with the stipulation that the t-heads be removed and markers installed with a charge of triple fees. Associate Member Bowden seconded the motion. The motion carried, 5-0.**

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

\* \* \* \* \*

6. **COLD CHEER FARM ESTATES HOMEOWNERS ASSOCIATION, #04-1854**, requests authorization to construct a community pier addition to provide five (5) wet slips at their community property situated along Piscataway Creek in Essex County. Several nearby property owners protested the project.

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

Mr. Owen explained that the project is located on a 1.45-acre community parcel in a 58-lot subdivision situated along the lower Piscataway Creek, approximately 0.72 miles from its confluence with the Rappahannock River. Of the 58 lots, five (5) are waterfront parcels with riparian rights on Piscataway Creek. The applicant previously applied for and constructed a concrete boat ramp, tending pier and a fishing pier on the community parcel under VMRC Permit #99-0043.

Mr. Owen said that the stated purpose of the application is to provide temporary boat mooring for the residents and guests of Cold Cheer Farm Estates Homeowners Association (HOA). Specifically, the applicant seeks authorization to construct a 6-foot wide by 94-foot long community pier addition with two (2) 2-foot wide by 10-foot long catwalks to provide five (5) wet slips. The application also includes a request for a 20-foot long timber groin with 12 cubic yards of beach nourishment material. The local wetlands board approved this portion of the project on September 23, 2004.

Mr. Owen explained that eight residents of the HOA protested the project. They argue that the project is a violation of their covenants and that the decision to file the application was reached by illegal vote. Additionally, they are concerned that the project will increase their liability, insurance, taxes and dues and deplete the current treasury funds set aside for maintenance and repair of the existing facility. Finally, they feel that the proposed moorings will interfere with their community fishing pier and boat ramp, and question how five wet slips can adequately serve 57 lot owners.

Mr. Owen stated that the Virginia Institute of Marine Science Shoreline Application Report, dated September 15, 2004, indicates that the project area is not an ideal location for additional boating activities because the creek is narrow and shallow. The likely direct and indirect impacts include marsh erosion from boat wakes, fuel spills, bilge, sanitary and gray water discharges as well as solid wastes. Should the project be permitted, VIMS recommends that the slips be shifted channelward to minimize marsh erosion and future dredging needs. The Virginia Department of Health advises that the applicant's plan for sanitary facilities was approved. Their Division of Shellfish Sanitation advises that the project will affect condemned shellfish growing areas and, if approved, will not cause an increase in the size of the closure. No other State agencies have raised objections to the project. In response to the VIMS comments, the applicants on October 28, 2004, submitted revised project drawings that shifted the pier and slips 10-



feet channelward. On December 3, 2004, staff received a copy of an amendment to the HOA covenants, executed on December 1, 2004, which now allow for the mooring of vessels at the community facility.

Mr. Owen said that the riparian rights for the five waterfront lots, however, have not been severed. As such, the owners of those lots have an individual right to navigable access and have constructed private piers pursuant to the statutory authority provided for in Section 28.2-1203.A.5 of the Code of Virginia.

Consistent with past Commission actions and policy, Mr. Owen explained that the staff could not support the proposed wet slip mooring of vessels for non-riparian lot owners. Accordingly, staff recommends denial of the project as proposed. Staff could support a 8-foot wide by 50-foot long L-head addition to the existing tending pier to accommodate the launch and retrieval of small watercraft and boats. This recommendation mirrors your November 23, 2004 decision for the Deep Landing Subdivision (Charles Davis) who requested similar non-riparian moorings at their community property located approximately 5.5 miles upstream of the current project. Should the Commission elect to approve the project as either originally proposed or in a modified form, staff would recommend that the permit be conditioned to preclude the overnight mooring of vessels moored thereto.

Craig Palubinski, the applicant's agent, was present and his comments are a part of the verbatim record. Mr. Palubinski explained that the project as proposed would alleviate conflicts and congestion at the boat ramp. He explained that the purpose of the pier was to provide temporary mooring with no overnight dockage, to serve as a staging system for the boat ramp, and provide for more stable unloading.

Associate Member Robins asked if the staff recommendation for an 8' by 50' L head was acceptable. Mr. Palubinski said it was acceptable if the Commission did not allow what was proposed.

Donna Dennis, representing the Homeowners Association, was present and her comments are a part of the verbatim record. Ms. Dennis explained that she was representing a majority of the members, as the others were unable to attend the meeting. She further explained that the proposal was to create a safe environment for families. She said that except for 5 all other residents were full time. She said the Commission had a copy of the deed covenants that were recorded at the court.

Walter Cornwell, property owner, was present and his comments are a part of the verbatim record. He said he did not object to the 8' X 50' L-Head suggested by staff but did object to the proposed project. He said that Mr. Owen had expressed his concerns adequately and others that are in opposition agree with him.

Craig Palubinski explained that the way it is proposed, no boats would be in front of the fishing pier and the slips are between the fishing pier and existing pier.

Commissioner Pruitt asked what the pleasure of the Commission was in this matter.

**Associate Member Cowart moved to grant the 8' X 50' L head and to deny the mooring slips. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Permit Fee.....\$100.00

\*\*\*\*\*

- 7. **RONALD W. BOONE, #04-2187**, requests authorization to construct a 116-foot long by 42-foot wide building to house a bait shop, rest rooms, a snack bar, and recreational room, with a 12-foot by 12-foot gazebo structure on the roof, and two 24-foot by 16-foot open-sided roofed shelter structures, all to serve activities associated with the reconstruction of Harrison's Fishing Pier situated along the Chesapeake Bay in Norfolk.

Tracy West gave the presentation with slides and her comments are a part of the verbatim record. Ms. West explained that Mr. Boone was unable to attend because of a family emergency.

Bob Grabb, Chief, Habitat Management, explained that the applicant had agreed with the staff recommendation when staff spoke with him yesterday via telephone.

Commissioner Pruitt stated that if there was no opposition and even with the applicant absent, the Commission would go ahead with the matter.

Ms. West explained that the former Harrison's Fishing Pier was located along the Chesapeake Bay in the Ocean View section of Norfolk. Hurricane Isabel destroyed the pier. The upland property was subsequently sold to Mr. Ronald Boone, Jr., who requested authorization to reconstruct the facility under Governor Warner's Executive Orders 58 and 66. These Executive Orders authorized the replacement of pre-existing structures provided they were previously authorized and in a serviceable condition prior to the hurricane.

Furthermore, Ms. West explained that the Executive Order requires that any replacement structures be reconstructed in the same location and in identical or smaller dimensions as the previously permitted structure. Further, any property owner seeking to replace a previously permitted structure was required to submit a letter and suitable drawings of the

proposed replacement structure for comparison purposes. The order specifically stated that no person may proceed with replacement of a structure under the provisions of the Executive Orders without written approval from the Commissioner of the Virginia Marine Resources Commission.

Ms. West said that Mr. Boone was able to provide documentation that several permits had been issued over the years by various regulatory agencies authorizing the construction and expansion of the facility. A majority of the proposed replacement pier, to be called the Ocean View Fishing Pier, appeared to have been previously authorized. However, Mr. Boone was unable to provide documentation that the various buildings and shelters located on the former fishing pier were ever authorized by any of the regulatory agencies. In light of this, staff determined that they could not authorize the replacement of any of the previously existing roofed structures under the Governor's Executive Orders because they did not appear to have been previously authorized. As a result, Mr. Boone submitted a Joint Permit Application requesting authorization to construct the roofed structures on the replacement fishing pier.

Ms. West stated that Mr. Boone's proposal entails the construction of a 116-foot long by 42-foot wide building to house a bait shop, rest rooms, a snack bar with a seating area, and a recreational room. The building also has an open upper deck with a 12-foot by 12-foot gazebo structure. In addition, two (2) 24-foot by 16-foot open-sided roofed shelter structures, located at two different locations along the pier, are also proposed. These shelters are designed to offer seating and shade to patrons of the pier.

Ms. West explained that when evaluating the water dependency of a project, staff utilizes the criteria that was developed by the Habitat Management Advisory Committee and approved by the Commission at its July 2003 Commission meeting. Those criteria require staff to consider the definition of water dependency approved by the Commission, as well as two specific questions regarding the project being considered. The approved definition states "Water dependent means those structures and activities that must be located in, on or over State-owned submerged lands". In addition, to be water-dependent, both of the following questions must be answered in the affirmative - 1) Is it necessary that the structure be located over water? and 2) Is it necessary that the activity associated with the structure be over the water?

Ms. West stated that the Virginia Department of Health finds the project acceptable, however, they note that no charter recreational fishing vessels (head boats) may utilize the facility until the VDH has further evaluated all plans associated with the offering of this type of service at the pier.

Ms. West said that while staff believes that the proposed structures are not necessarily water dependent in nature, the proposed amenities are consistent with conveniences typically offered at a community fishing pier facility. Further, these same amenities,

although most likely not properly authorized, are very similar to the services previously offered at the former Harrison's Fishing Pier.

In addition, Ms. West said staff believes that the structures proposed are in keeping with this agency's public trust responsibilities. While the facility is private, it offers a plethora of public benefits to the citizens of the Commonwealth through providing recreational access to the Chesapeake Bay.

Ms. West explained that as such, staff recommends approval of the project as proposed with the provision that charter recreational fishing vessels may not utilize the facility until the Department of Health has authorized this use of the pier.

Commissioner Pruitt asked for a motion.

**Associate Member McLeskey moved to approve the request as presented by staff with the suggested restriction. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Permit Fee.....\$100.00

\* \* \* \* \*

- 8. **BLUEWATER YACHT SALES LLC, #04-1594**, requests after-the-fact authorization for the installation of a 245-foot long by 8-foot wide floating commercial pier and mooring piles adjacent to their property situated along Sunset Creek in Hampton. Residents in the vicinity protested the project.

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

Ms. West explained that the Bluewater Yacht Sales LLC is located along Sunset Creek near the downtown area of Hampton. Hurricane Isabel damaged the facility. Mr. Earle Hall, owner, subsequently initiated repairs to the bulkhead and piers, believing they were authorized to do so under Governor Warner's Executive Orders 58 and 66. However, in rebuilding the piers, he decided to forgo the replacement of the finger piers on the eastern pier. The capacity of the finger piers was replaced by constructing a new pier between the two previously existing piers. According to the application, this resulted in no increase in the number of slips. The total number of slips at the facility remains at 20.

Ms. West also explained that the Executive Orders issued by Governor Warner following Hurricane Isabel allowed the replacement of pre-existing structures provided they were previously authorized and in serviceable condition prior to the hurricane. In order to qualify for this authorization, replacement structures were required to be reconstructed in the same location and in identical or smaller dimensions as the previously permitted

structures. Furthermore, any property owner seeking to replace a previously permitted structure pursuant to the Executive Orders was required to submit to this agency a letter or application and suitable drawings of the proposed replacement structure for comparison purposes. The Executive Orders specifically state that no person may proceed with replacement of a structure under the provisions of the Executive Orders without written approval from the Commissioner of the Virginia Marine Resources Commission.

In response to a complaint by a local resident in late June 2004, Ms. West said that staff telephoned Mr. Ian Bates of Bluewater Yacht to inquire about reported construction activities occurring at the facility. Mr. Bates explained that the property was undergoing repairs due to hurricane damage. Staff explained that the construction of the new pier, placement of additional mooring piles at the previously existing piers, and installation of the replacement bulkhead were not in compliance with the provisions of the Governor's Executive Orders and requested that the owners immediately submit a written request to replace the structures in conformance with the Executive Orders. A request for authorization to replace the structures was submitted on June 25, 2004. Staff issued an authorization letter for the replacement of the bulkhead as an activity in conformance with the Executive Orders under VMRC #04-1528. However, since the new pier and additional pilings were not previously existing or previously authorized, they were not eligible for authorization through the Executive Orders.

Ms. West said that staff conducted a site inspection on July 1, 2004, to further evaluate the installation of the new pier and additional mooring piles. At that meeting, staff requested that Bluewater Yacht staff either submit a completed Joint Permit Application (JPA) requesting after-the-fact authorization to retain the new pier and additional mooring piles or remove all unauthorized structures within 30 days. A JPA was submitted the next day. As such, staff did not issue a Sworn Complaint and Notice to Comply.

Ms. West said that staff requested an explanation as to why the installation of the new pier had been undertaken without any written authorization from the agency. Mr. Chris Hall stated that he relied on information in a newspaper article and that the article did not mention that written authorization from VMRC was necessary. In addition, he stated that since the facility was not increasing the number of slips, he believed the new design was replacing what the facility had before the hurricane.

Ms. West explained that several residents in the vicinity protest the project. Ms. Susan Joseph is concerned that these activities were all undertaken without permits and without the opportunity for the public to comment on the construction before installation. Mr. James McNider and Mr. Shellie Woodell both stated that they are concerned about the quality of the drawings submitted for review. Ms. Molly Ward believes the new pier adversely impacts navigation within Sunset Creek.

Ms. West stated that the Virginia Institute of Marine Science stated that the individual and cumulative adverse impacts associated with the installation of the pier are minimal. The Virginia Department of Health has stated that the project is acceptable.

Ms. West said, clearly, the installation of the new pier and additional mooring piles does not meet the provisions set out in the Governor's Executive Orders for Hurricane Isabel relief. Mr. Hall should have submitted a Joint Permit Application for the installation of the new middle pier. Also, since this is a commercial facility, installation of any additional new mooring piles also requires authorization from this agency. Staff concurs with the protestants concerns that the public had not been granted the opportunity to evaluate the proposal before construction began.

Ms. West explained that in evaluating the new pier, however, staff does not concur with the protestants' contention that the new pier impacts navigation within Sunset Creek. The new pier represents less encroachment into the waterway than the two previously existing piers on either side of it. The new mooring piles were also installed adjacent to the existing piers. It is difficult to determine whether any, some or all of the pilings are replacements for damaged piles or represent new unauthorized encroachment onto State-owned submerged lands.

Ms. West said that the staff recommends that the Commission grant after-the-fact approval for the floating pier as installed with an assessment of triple permit fees.

Ms. West said that Mr. Earle Hall, Mr. Chris Hall, and Mr. Ian Bates have all worked in the commercial waterfront and marina business for many years. These gentlemen have obtained permits for various facilities in the past and each has an established professional relationship with the staff of this agency. They are very well aware that permits for encroachment over State-owned submerged lands require authorization from this agency. Therefore, staff also recommends that the Commission consider an appropriate civil charge with a finding of minimal degree of environmental impact and a maximum degree of non-compliance.

John Daniel, attorney for Bluewater Yacht, was present and his comments are a part of the verbatim record. Mr. Daniel stated that staff's presentation was good. He explained that they do not debate the issue. He said that there was significant damage by Isabel. He said that the applicant felt that he was in concert with the Executive Order. He said that the applicant had worked with staff to improve the area by installing less and removing others. He said they had reduced the effect on the environment by 150 square feet. He said the protest was for the finger dock inside 5 – 6' of the existing dock. He said this was done to avoid the channel and to improve the facility and the effects on the environment. He said they did not intend to go out of compliance, but nature had caused the need for this project.

Commissioner Pruitt asked if anyone was opposed to the project.

Shellie Woodell, adjacent property owner, was present and his comments are a part of the verbatim record. Mr. Woodell explained that no permit for the construction was obtained to begin with. He said that according to VMRC and the Corps the new work on the bulkhead extended out from land and was not repair, but new work. He said that if it was done properly he would have been notified to comment and it was not good to give after-the-fact approval. He said the matter would go further if VMRC does not fix it. He said that he has been required to comply and they were not.

John Daniel in his rebuttal explained that the protestant couldn't be unaware seeing that the construction was right next door. He said the improvements have less impact on the marine resources.

**Associate Member McLeskey explained that he knew the applicant and the operation. He said he did not believe it was intentional violation. He moved to approve with staff recommendation for after-the-fact triple fees and to waive the civil charge. Associate Member Robins seconded the motion.**

Commissioner Pruitt allowed the protestant to make additional comments at this point. Mr. Woodell said that the photo showed the new pilings adjacent to the pier and all new work not just repair work. He also said the new work was in his riparian rights.

**Motion carried, 5-0.**

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

\* \* \* \* \*

**6. COLD CHEER FARM ESTATES HOMEOWNERS ASSOCIATION, #04-1854.**

Craig Palubinski, agent for item 6, asked to address the Commission again. Commissioner Pruitt agreed. Mr. Palubinski explained that he had spoken with the protestants and they had agreed with his proposed changes. He said that instead of the 8' X 50' L head, he proposed to construct a 6' X 45' walkway and to keep the mooring and catwalk.

Associate Member Cowart stated he was not willing to change and give credence to interior lot owners having riparian right pilings. He said no change.

Associate Member Robins explained that there was the issue of appropriate use and the VIMS report for increased activity will not be reconsidered.

Bob Grabb, Chief, Habitat Management explained to Mr. Palubinski that the applicant can reapply within 1 year.

\* \* \* \* \*

The Commission broke for a 45-minute lunch at 12:39 p.m. and reconvened at 1:45 p.m.

\* \* \* \* \*

- 9. **JACK W. COLLINS, #03-2064**, requests authorization to cross Wolf Creek near the Town of Hicksville in Bland County with a 10-foot wide by 60-foot long, steel and timber, single span bridge with two (2) concrete footers on the edge of the creek to connect an easement over land belonging to Mr. Harry Thompson and provide for vehicular access from State Route 642 to his cabin. Mr. Thompson objects to the project.

Jay Woodward, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Woodward explained that the applicant and protestant were not present at the meeting.

Mr. Woodward explained that Mr. Collins owns approximately 195 acres of land near Wolf Creek in the Town of Hicksville in Bland County, on which he has built a 1,300 square foot cabin. His only access to the parcel is via a deeded easement over land owned by Mr. Thompson. The easement runs from State Route 643 across the Thompson property to Wolf Creek, then from the other side of the creek across the same Thompson parcel to Mr. Collins' property. Wolf Creek is approximately 60 feet wide and 3 to 4 feet deep at ordinary high water in the vicinity of the easement. While the easement grants ingress and egress along a right-of-way or road, it does not specify that a bridge may be constructed to cross the creek. A previous attempt to construct a bridge adjacent to the easement was abandoned once Mr. Collins was made aware of the permitting requirements. The abutments for this structure will be removed. Mr. Collins currently fords the creek when the water is low enough to allow it. He is often unable to do so when the water is high. Mr. Donald Coburn who has land adjacent to Mr. Collins across Wolf Creek will also use the bridge.

Mr. Woodward said that Mr. Thompson objects to the construction of a bridge. He feels the bridge will result in additional flooding of his farmland and prevent him from using the ford to take farm equipment in and out of his property. Staff met with both Mr. Collins and Mr. Thompson in an effort to gain a better understanding of the issues and endeavor to resolve the situation. Mr. Thompson currently uses a farm road over his property which is located downstream of the proposed bridge crossing. He crosses the creek with his equipment using the Hwy 52 Bridge. The proposed bridge is to be constructed with the abutments entirely over the State-owned bottom of Wolf Creek with movable ramps so that high water events would flow over the structure, similar to many low-water crossings in the western part of the State. Staff has contacted the VDOT Residency in the area and they have no objection to the proposal. The Department of



Environmental Quality is not requiring a Water Protection Permit for this project, stating that the water quality impacts should be minimal and temporary in nature. No other agencies have commented on the proposal.

Mr. Woodward stated that staff would normally recommend that a bridge of this type be constructed with the abutments on the adjacent upland creek banks, thereby avoiding direct impacts to State bottom. However, since the applicant does not own the adjacent upland, staff believes that the applicant has little alternative in an effort to gain access to his property. The free-span design of the bridge minimizes impacts compared to a culvert-type crossing. It also appears that the bridge will have little effect on the floodplain since the structure will be overtopped during high water events. Mr. Thompson does not currently use this area as a crossing for his equipment so there should be no effect on his activities.

Accordingly, Mr. Woodward said that staff recommends approval of the bridge as proposed, with the inclusion of our standard in stream conditions below:

1. In-stream construction activities shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half of the waterway shall be obstructed at any point in time.
2. All cofferdams and any excess material shall be removed to approved upland areas upon completion of the construction, and the stream bed and banks shall be restored to pre-existing contours and conditions.
3. Construction shall be performed during low-flow conditions and during the period between June 1 and September 30 to the greatest extent practicable.
4. The Virginia Erosion and Sediment Control Handbook (3rd Ed., 1992) shall be followed throughout construction.

In addition, Mr. Woodward said that staff recommends complete removal of the existing abutments that were illegally constructed adjacent to the easement prior to completion of the project.

There was no one in favor or opposition present at the meeting.

**Associate Member Holland moved to accept staff recommendations. Associate Member Cowart seconded the motion. The motion carried, 5-0.**

Permit Fee.....\$25.00

\* \* \* \* \*

10. **WILLIAM GEARY, #04-2015**, requests after-the-fact authorization to retain an existing culvert crossing constructed over Back Creek in Frederick County and permission to install metal rails along the upstream side of the crossing to help prevent culvert clogging. Construction of the 16-foot wide crossing included laying culverts and concrete over an approximate 40-foot section of State-owned subaqueous bottom and involved filling approximately 100 square feet of subaqueous bottom adjacent to the crossing in an attempt to stabilize the upland. The crossing currently serves as an access route to Mr. Geary's private property.

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

Mr. Worrell explained that Mr. William Geary began constructing a culvert crossing of Back Creek in October of 2002. At the time he had not submitted an application for permit to the Commission. In June of 2004, the Department of Environmental Quality (DEQ) notified staff of the crossing's existence, mentioning they had received questions about the structure from the public. Staff then contacted Mr. Geary and questioned his authorization to build the crossing over State-owned submerged lands.

In response, Mr. Worrell said that Mr. Geary indicated that he received a permit from the U.S. Army Corps of Engineers (USACOE) dated January 7, 2003, and received verbal confirmation from the DEQ that if a USACOE permit was obtained he could continue construction. He also indicated that Frederick County Public Works officials advised that a County permit for this type of crossing would not be required. Upon learning of our concerns, Mr. Geary immediately agreed upon a joint site visit with all associated agencies.

Mr. Worrell said that on July 16, 2004, staff visited the project along with Mr. Geary and representatives from the DEQ, USACOE, and Frederick County. Staff advised Mr. Geary not to place any more fill material into the Creek. Staff also explained the Commission's jurisdiction over non-tidal waterways like Back Creek and indicated that a Notice to Comply would be issued. Staff further advised Mr. Geary that he had two options: either remove the structure within a timely manner, or submit an after-the-fact application requesting that the Commission permit the structure to remain.

Mr. Worrell stated that on July 22, 2004, staff filed the sworn complaint, and a Notice to Comply was sent by certified mail to Mr. Geary on July 26, 2004. Soon after receipt of the Notice to Comply, Mr. Geary contacted staff and submitted an application seeking after-the-fact authorization for the crossing. The application and subsequent revisions included site and structure drawings, a request to add 20-foot long metal rails to the upstream side, other agency's correspondence, and a chronology of events. Upon

receiving a complete application, staff initiated the public interest review of the project and forwarded the application packet to the appropriate State and Local agencies for comment.

Mr. Worrell explained that in response to staff's request for comments, the Department of Game and Inland Fisheries (DGIF) originally recommended the structure be removed. After a site visit on November 3, 2004, however, DGIF forwarded comments to staff stating that although they probably would not have recommended approval had such a structure been proposed, they had no objection to it remaining if Mr. Geary agreed to the following conditions: (1) removal of the subaqueous fill placed upstream because it is causing increased turbulence, (2) establish and post a convenient canoe portage, and (3) future clean-out of debris at the crossing should be accomplished from the bridge and not from equipment working within the stream. Mr. Geary agreed to the conditions and subsequently submitted a revised drawing showing the removal of the upstream subaqueous fill as requested by DGIF. Mr. Geary's willingness to remove the upstream fill will reduce the overall fill impact to approximately 100 square feet.

Mr. Worrell said that during the public interest review, staff received no protests from adjacent property owners or members of the general public. One adjacent property owner called to voice his support for the crossing, stating that the crossing was much safer than the existing ford. The USACOE issued a modified permit on October 29, 2004 to incorporate changes from the initial plans. DEQ issued a "No Permit Required" letter on September 9, 2004, and Frederick County reiterated that they did not require Mr. Geary to submit any plans for review.

Mr. Worrell said that given the DGIF's conclusion that the structure does not restrict fish passage, staff recommends approval of the after-the-fact crossing with the following special conditions:

- The permittee must establish and post canoe portage signs upstream and downstream of the crossing advising the public that his private property can be traversed without trespassing.
- Metal rails shall **not** be installed along the upstream side of the crossing as they may hinder efforts in removing debris from the culverts.
- The permittee must remove the approximate 120 square feet of subaqueous fill placed upstream of the crossing on the eastern side.
- Permittee agrees that all future clean-out of debris at the crossing will be accomplished from the bridge and not from equipment working within the stream.

Mr. Worrell said that in addition, staff recommends that the Commission consider an appropriate civil charge, given the after-the-fact nature of the request based on minimal environmental impacts and a moderate degree of non-compliance. We also recommend tripling the permit fee as provided by Code.

Clinton Ritter, attorney for the applicant, Mr. Geary, was present and his comments are a part of the verbatim record. Mr. Ritter gave a history of the roadways. He said the Commission had to decide if Mr. Geary has to remove the structures or not. He said Mr. Geary had agreed to allow others access through deeded right-of-ways. He said his client was a small developer in the County and always tried to abide by the laws. He said he has known him a long time and they were hunting buddies. He said the applicant thought he had obtained all permits. He said the DEQ had told him to go to the Corps and they approved it. He said that one year later the Marine Resources said he was in violation. He said living up in the mountains, they were not familiar with VMRC. He said those counties need to be more aware of VMRC because of these creeks.

Commissioner Pruitt asked if anyone was present, pro or con, to comment. There were none. Commissioner Pruitt said he felt the applicant had tried to do right. He asked for a motion.

Associate Member Bowden said he believed the applicant had tried to comply. He said he was not comfortable with a large fine as there was no intent to circumvent the law.

**Associate Member Robins said that he agreed with Mr. Bowden. He said he was surprised the Corps did not initiate the joint application process. He said he moved to approve the after-the-fact application to retain the culvert crossing with the specifications of staff and no civil penalties. Associate Member Bowden seconded the motion. The motion carried, 5-0.**

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

\* \* \* \* \*

- 11. COLUMBIA GAS OF VIRGINIA, #04-2549**, requests after-the-fact authorization to retain the installation of a 6-inch replacement gas pipeline for a distance of 20 linear feet, by directional drill method, beneath Lieutenant Run, a tributary to the Appomattox River within the City of Petersburg.

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

Mr. Stagg explained that the project involves the replacement of a six-inch gas pipeline that had been exposed as a result of numerous summer storms during 2004 and which was discovered during routine gas line inspections last fall. The gas pipeline supplies a portion of the needs of the City of Petersburg, including the Southside Regional Medical Center. The applicant noted in the application that due to the precarious nature of the existing pipeline, and the potential adverse implications arising from an interruption of service to the Medical Center, they were proceeding with installation the same week the

application was submitted. Additionally, Columbia Gas contacted this office and reiterated that intended to submit an after-the-fact application for the proposed work.

Mr. Stagg further explained that Lieutenant’s Run, a non-tidal waterway, is approximately 20 feet wide at this location with an average water depth of approximately 12 inches. The applicant completed the work by directional drill method. Since the new pipeline is approximately 5 feet below the streambed, there were no direct impacts to the stream. The agent for the project indicates that the work was completed on October 26, 2004. Staff recently visited the site and confirmed that the work has been completed and the old exposed pipeline has been removed.

Mr. Stagg said that staff received no objections related to this proposal from other agencies or the public-at-large.

Mr. Stagg said that the placement of utilities over, under, or through State-owned subaqueous lands requires a permit from VMRC. The applicant was aware of this requirement, since they contacted staff before proceeding with any work. Due to the emergency nature of the work, and with staff’s knowledge, however, they proceeded with the work while submitting the application for authorization. Had the applicant had the opportunity to submit an application for a new pipeline at this location, it is likely they would have been granted administrative authorization for the work without the need for full Commission consideration.

Mr. Stagg said that based on the emergency nature of the request to replace an exposed gas pipeline, and the fact that the line was directionally drilled, staff recommends after-the-fact approval of the proposal be granted with the standard permit fee and without any civil charge consideration.

Commissioner Pruitt left the meeting. Associate Member Cowart in his absence acted as the chairman.

Associate Member Cowart asked for any questions for staff and there were none. He asked for comments for or against from the public and there were none. He then asked for a motion.

**Associate Member Holland moved to accept staff recommendations. Associate Member Bowden seconded the motion. The motion carried, 4-0.**

Permit Fee.....\$100.00

\* \* \* \* \*

12. **DOMINION VIRGINIA POWER, ET AL, #04-2241**, requests authorization to install overhead power transmission lines, to provide individual electrical service to Mr. Lewis Starkey, over Wards Creek in Prince George County. An adjoining property owner protested the project.

**Bob Grabb, Chief, Habitat Management said that this project was pulled from the agenda because the protests for this project had been resolved and the matter could be handled administratively.**

\* \* \* \* \*

13. **ARMY CORPS OF ENGINEERS:** Request for a Security Zone in the Area of Plum Tree National Wildlife Refuge.

Commissioner Pruitt returned to the meeting.

Colonel Steve Bowman, Deputy Commissioner, gave the presentation with slides. Colonel Bowman explained that this proposed regulation would establish a restricted area in the proximity to the Plum Tree Island National Wildlife Refuge. He explained that on March 16, 2003, Governor Mark Warner signed into law Senate Bill 1186, which authorizes the Commission (or Commissioner) to establish restricted areas in the interest of public safety. He said that Plum Tree Island National Wildlife Refuge, formerly Plum Tree Range, was used for aerial bombing and gunnery practice from 1917 to the late 1950s. The United States Fish and Wildlife Service acquired it in 1972. He said as a result of significant erosion that has uncovered empty shells and unexploded ordnance rockets that makes incursion into the area by the public hazardous, the United States Army Corps of Engineers requests the adoption of a regulation that prevents incursion into the waters that surround this facility. He said the Corps called Commissioner Pruitt in October 2004 to make this request. He said that a federal temporary Danger Zone was adopted in July 2004 that prohibits access to the refuge and shallow waters surrounding it until July 31, 2005. He explained that this regulation mirrors the established Danger Zone. He said that the adoption of this regulation affords the Virginia Marine Police the authority to enforce Virginia law that prohibits entrance into the restricted area. He stated that staff recommends adoption of this regulation.

Colonel Bowman said that no one was present to represent the USACOE, but someone was present from the Fish and Wildlife Service.

Associate Member Cowart asked Colonel Bowman how was it made known that it was a restricted area. Colonel Bowman answered him by saying that signs are posted at the perimeter. He also stated that they would rather educate than to make arrests unless it becomes necessary.

The hearing was opened to public comment:

Tom Powers, a Poquoson resident was present and his comments are a part of the verbatim record. Mr. Powers explained that the fishery in the area was impacted. He said that there was a federal law in place that has a Sunset Clause and the Sunset Clause should be added to the state regulation to mirror the federal regulation. He said also, that assistance should be sought from the federal people to get the hazardous materials removed. Colonel Bowman said that Mr. Powers' suggestion was a good one regarding the addition of the sunset clause. He said that DEQ says this is a stopgap measure and they have stressed all along the need for clean up. Commissioner Pruitt suggested adding some wording that basically says it remains in effect as long as the federal law remains in effect.

**Associate Member Robins moved to adopt the State Regulation 4VAC 20-1045-10 as recommended by staff and make it effective so that it runs concurrent with the federal law. Associate Member Bowden seconded the motion. The motion carried, 5-0.**

\* \* \* \* \*

**UPDATE FOR THE RUDEE INLET PROJECT BY THE CITY OF VIRGINIA BEACH.**

Randy Owen, Environmental Engineer, Sr., gave the January update for the project to the Commission. His comments are a part of the verbatim record.

\* \* \* \* \*

**14. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-450-10 et seq., "Pertaining to the Taking of Bluefish".

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that this amendment was being made to establish the 2005 commercial quota. He explained that this quota had not been caught for several years, and ASMFC could possibly look at a reallocation.

Associate Member Robins asked if the stock assessment may be adopted and the stock determined at a different level and a quota adjustment made. Mr. O'Reilly responded, yes, but likely downward. Associate Member Robins asked if the watermen would be notified. Mr. O'Reilly responded, yes.

The hearing opened to the public. There were no public comments.

**Associate Member Cowart moved to adopt the Regulation 4VAC 20-450-10 establishing the 2005 quota at 1,235,310 pounds. Associate Member Holland seconded the motion. The motion carried, 5-0.**

\*\*\*\*\*

- 15. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-910-10 et seq., "Pertaining to Scup (Porgy)" to increase the possession limit in the commercial fishery for the Winter I period, as well as modify the Summer period quota.

Joe Cimino, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. Mr. Cimino explained that the previous month the Commission took emergency action to amend the regulation to allow for a possession limit increase for the Winter I period and also changed the summer period quota from 7,911 pounds to 5,040 pounds. He said that staff was recommending approval of the amendments to Regulation 4VAC 20-910-10.

The hearing was opened to the public. There were no public comments.

**Associate Member Robins moved to approve the amended Regulation 4VAC 20-910-10 for scup. Associate Member McLeskey seconded the motion. The motion carried, 5-0.**

\*\*\*\*\*

- 16. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-252-10 et seq., "Pertaining to the Taking of Striped Bass".

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that until 2003 there was only a single commercial quota (1990 through 2002) and in 2003 two quotas were established for the two separate fisheries (coastal area and Chesapeake area). He said that in order to effectively monitor these quotas there is data that needs to be obtained that currently is not done. He said the quota was smaller in 2004 for the Bay than in past years. He said there is only 9.3 million pounds Bay-wide this year, and it must be closely monitored. He said that if there are overages this year in the commercial quota there is payback immediately the next year. Overages in the commercial and recreational Chesapeake Bay fishery are paid back by the offending jurisdiction. He further said that the Chesapeake quota is more flexible but not a whole lot. He said a letter from Doug Jenkins had been received expressing concern over the allocation for Coastal versus the Chesapeake area. He said the adoption of the amendments include the 5 items in the evaluation, which follow:



1. It shall be unlawful for any person fishing recreationally to land and retain any striped bass in excess of the possession limit applicable for the area and season being fished, within the 24-hour period of 12 a.m. through 11:59 pm. Striped bass taken in excess of the possession limit shall be returned to the water immediately.
2. All permitted commercial harvesters of striped bass shall report to the Commission, in accordance with 4VAC 20-610-10, et seq. In addition to the reporting requirements of 4VAC 20-610-10, et seq., all permitted commercial harvesters of striped bass shall record and report daily striped bass tag use and specify the number of tags used on striped bass harvested in either the Chesapeake area or Coastal area. Daily striped bass tag use on striped bass harvested from either the Chesapeake area or Coastal area, within any month, shall be recorded on forms provided by the Commission and shall accompany the monthly catch report submitted no later than the 5<sup>th</sup> day of the following month.
3. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the Commission. Any unused tags that cannot be turned in to the Commission shall be accounted for by the harvester submitting an affidavit to the Commission that explains the disposition of the unused tags that are not able to be turned in to the Commission.
4. Any buyer permitted to purchase striped bass harvested from Virginia tidal waters shall provide written reports to the Commission of daily purchases and harvest information on forms provided by the Marine Resources Commission (VMRC). Such information shall include the date of purchase, buyer's and harvester's striped bass permit numbers and harvester's Commercial Fisherman Registration License number. In addition, for each different purchase of striped bass harvested from Virginia waters, the buyer shall record the gear type, water area fished, city or county of landing, weight of whole fish, and number and type of tags (Chesapeake area or coastal area) that applies to that harvest. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the 5<sup>th</sup> day of the following month. In addition, during the month of December, each permitted buyer shall call the VMRC Interactive Voice Recording System, on a daily basis, to report his name and permit number, date, pounds of Chesapeake area striped bass purchased and pounds of coastal area striped bass purchased.
5. The 2005 striped bass quota for the Chesapeake area is 3,009,854 pounds, or 1,504,927, for the recreational and commercial fisheries in the Chesapeake area, a 10.3% increase over the 2004 quota.

Associate Member Robins stated that staff is talking about a real time monitoring system. He said that during January the commercial fishery is closed to accomplish accounting situation. He asked if this time frame for opening the fishery could be shortened. Mr.

O'Reilly explained that staff is currently working on the tag distribution. He explained further that the time required for program administration might improve, but they need assistance in the administrative process. Mr. Robins stated that it was a hardship for the fishery, and Mr. O'Reilly stated that it is an administrative hurdle.

The hearing was opened to the public.

Tom Powers was present and his comments are a part of the verbatim record. Mr. Powers suggested that if the fishery is opened in January it should be the Bay fishery, leaving the Coastal fishery closed.

Dusty Crump was present and his comments are a part of the verbatim record. Mr. Crump explained that the upriver fishery was cut to 28" size limit for fish on March 26 and on April 1 there is a sanctuary area that is closed. He explained that this closure is not based on any scientific reason nor is it a mandated closure. He said this area needs to remain open for that 5-day period, until the 1<sup>st</sup> of April and there should be a larger quota on the smaller fish size. He said this way they could provide for the local market and not have to travel a distance to market these smaller fish.

The hearing was closed to the public.

Commissioner Pruitt asked Mr. O'Reilly if the spawning closure was a federal requirement. Mr. O'Reilly explained that this matter had been brought to the ASMFC attention, but it remains this way because none of the other States are pushing the issue. Commissioner Pruitt asked about increasing the size of the fish to address Mr. Crump's suggestion. Mr. O'Reilly explained that from March 26 to June 15 there is a slot size limit (18 to 28) for the commercial industry. He said after Doug Jenkins brought this matter to the Commission's attention the start date was March 15 until a few years ago when it was changed to March 26. Commissioner Pruitt said the upriver fishermen in New Kent and up that way have a different situation than Doug Jenkins's area and have been hit the hardest.

Associate Member Bowden said there is a need try to get an allowance for a larger than 28" fish for the upriver fishery for those 5 days. Commissioner Pruitt asked Mr. O'Reilly how this could be done. Mr. O'Reilly explained that this would first have to be brought up with the Technical Committee to request a change in the size limit.

Commissioner Pruitt asked for a motion regarding the 5 points discussed.

**Associate Member Robins moved to adopt the amended regulation 4VAC 20-252-10, et seq. for striped bass. Associate Member Cowart seconded the motion. The motion carried, 5-0.**

\*\*\*\*\*

**17. PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass".

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that Mr. Peele who is in the bycatch fishery brought this matter to the attention of the Commission at last month's meeting. He said Mr. Peele had brought it to the attention of the Commission that the 17,000 pounds medical exception had not been used so far, and it is set up to go back to the direct fishery. He said Mr. Peele had said that he had been too young to qualify during the qualifying period and had asked for an exception to allow him into the fishery and give him some, if not all, of the 17,000 pounds. He said there is justification for allowing the young and others into the fishery that can afford to purchase quota, That is allowed by regulation. He said staff had no problem with expanding the exception hardships allowed, but once this was done, it would be difficult to judge between Mr. Peele and others who have been in the fishery all along and need more quota.

The hearing was open to the public.

Brian Peele was present and his comments are a part of the verbatim record. Mr. Peele explained that he had worked for others in the direct fishery, but now he had bought his own boat to get into the fishery. Mr. Peele gave the Commission a letter from Jim Martin, his employer, who was supporting him getting into the fishery.

Kelly Place, Coastal Watermen Association, was present and his comments are a part of the verbatim record. Mr. Place said that the board members at last month's meeting were interested in encouraging the young to get into the fisheries. He said there was a need to reverse the system and let the younger generation into the fishery. He said there are individuals in the fishery who have a lot of quota and do not use it. He said something needs to be done to allow more in the fishery or the fishery will die of old age.

The hearing was closed. Commissioner Pruitt asked for discussion or a motion.

Associate Member Robins said that this deserves thoughtful consideration, but he saw problems with the proposal. He said the poundage set aside for a medical exception is an extra ordinary circumstance. He said the age exception would just prejudice others. He said that a medical exception is a temporary situation. He explained that the remaining quota should return to the current participants.

Associate Member Bowden said that he disagreed with Mr. Robins. He said he supports staff, but would suggest some tweaking. He said that a lot of states have an apprenticeship program.

Associate Member Bowden made a motion to adopt staff recommendations but to incorporate 3 items: 1. Anyone given a hardship exception should not receive any more quota than the lowest directed quota (currently 2,100 pounds); 2) Anyone receiving quota for an exception can not sell the quota for 5 years; and, 3) Consideration be given to an apprenticeship as a hardship exception. Associate Member McLeskey seconded the motion. Associate Member McLeskey stated that Mr. Peele had been fishing since 1991 and that carried a lot of weight for him getting into the fishery. Associate Member Robins stated that he could not support the motion and exceptions allowed should not be expanded beyond a medical one. Associate Member Cowart said he could not support the motion, and the quota should return to the indirect fishery as established in the regulation now. He explained that Mr. Peele could obtain quota by transfer, which is allowed by regulation. The motion carried, 3-2. Associate Members Holland, McLeskey and Bowden voted, yes. Associate Member Cowart and Robins voted, no.

\* \* \* \* \*

**18. SUMMER FLOUNDER:** Request for public hearing on proposed amendments to adjust the recreational fishing measures for 2005.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly explained that staff met with the ad hoc committee and there were 4 options to take to public hearing suggested by the recreational ad hoc committee. The options were as follows:

- 1) 16 ½" minimum size limit; 8 fish possession limit; January 1-March 28 closed season.
- 2) 16 ½" minimum size limit; 6-fish possession limit; no closed season.
- 3) 16" minimum size limit, 4 fish possession limit, and closed periods of January 1 through March 28 and July 11 through July 17.
- 4) 16" minimum size limit, 3 fish possession limit, and closed periods of January 1 through March 28 and July 11.

Mr. O'Reilly said that staff recommended these 4 options be taken to public hearing in February.

Associate Member Bowden moved to go to public hearing with the committee recommendations. Associate Member McLeskey seconded the motion. The motion carried, 5-0.

Mr. O'Reilly explained that Fisheries Management and Law Enforcement is jointly requesting the Summer Flounder Regulation (4VAC 20 620-10) be amended to allow for calling in for "safe harbor" for vessels bound for North Carolina. Because of weather problems this year at Oregon Inlet, they could not reach their home state. He explained further that when these vessels are in the Virginia port for a few days, or more than a few days, there is incentive to offload while there. He said this is an economic advantage for Virginia. He said this is a direct transfer of quota from North Carolina to Virginia that does not change Virginia's quota. He stated this suggested amendment to the regulation could be found on page 5 of 9, subsection H that says a buyer could not buy unless he satisfied the requirements on page 6, subsection K. Commissioner Pruitt asked if this needed to be advertised? Mr. O'Reilly responded, yes, and will be put in with recreational measure advertisement. Colonel Bowman agreed that this was good to plan ahead and be ready for such occurrences.

Associate Member Holland moved to take the matter to public hearing next month. Associate Member Cowart seconded the motion. The motion carried, 5-0.

\* \* \* \* \*

**19. AMERICAN SHAD RESTORATION:** Approval of procurement procedures and public notice.

Jack Travelstead, Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead said this is an annual request for the Commission approval of the Procurement Procedures for the Shad Restoration Project. He said this is for 9 watermen and 1 alternate to capture American Shad broodstock in the Pamunkey, Rappahannock and James Rivers for a cooperative program with the Game and Inland Fisheries Commission. He said the procurement procedures and this notice have to be approved by the Commission.

NOTICE OF REQUEST FOR PUBLIC PARTICIPATION IN THE  
2005 SHAD RESTORATION PROJECT

The Marine Resources Commission invites WRITTEN RESPONSE as to the availability of as many as 10 individuals for capturing American shad (shad) from the Pamunkey River (unless otherwise directed by the Virginia Department of Game and Inland Fisheries, VDGIF) for the 2005 shad restoration project. Project dates will be approximately March 8 through mid-May, 2005.

The procurement of services for the 2005 American Shad Restoration Project has been approved by the Commission, using its authority under Section 28.2-550 of the Code of Virginia.

PROJECT DESCRIPTION: A total of nine individuals will be selected as permitted project participants, and one individual will be selected as project alternate. All scheduling, on a weekly and seasonal basis, will be established by the Virginia Department of Game and Inland Fisheries project coordinator. The need for participation by alternates in the project will be determined by the Virginia Department of Game and Inland Fisheries project coordinator.

For fishing days during the March 8 through mid-May, 2005 period, permitted project participants shall be paid at the rate of \$200.00 per fishing day, with a fishing day generally occurring between the hours of 12:00 Noon and 12:00 midnight.

Listed below are specific evaluation criteria, ranked by order of importance. Each respondent must indicate his or her experience or ability to meet each of these criteria. The Commission will consider each written response to these evaluation criteria on a case-by-case basis to determine the most qualified individuals who will receive permits or alternate status for the American Shad Restoration Project. In the event there are more than 10 equally qualified respondents, selection for the project will be made through a lottery system. The lottery will be held on March 1st at 2:00 P.M. in the 4th floor small conference room (Library) of the Marine Resources Commission, 2600 Washington Avenue, Newport News. Those wishing to be present are invited to attend. Notification of individuals chosen for this project will be in writing by mail.

#### EVALUATION CRITERIA

1. You must have participated in one or more of the 1992 through 2004 American shad restoration projects of the Virginia Department of Game and Inland Fisheries and Virginia Marine Resources Commission. Priority will be given to those individuals who have previously participated in this project more than one year.
2. You must have the appropriate equipment: a boat and two 4 1/2 - 5 1/2-inch mesh drift gill nets.
3. You must be available to fish for shad during most of the days between mid-March and mid-May.
4. You must have experience in fishing for shad in upriver areas, using drift gill nets.

Any person interested in participating in this project should send a written response describing his or her ability to meet the above criteria. In the response, include the name of the boat to be used and a current daytime telephone number where you can be reached.

**Associate Member Holland moved to approve the procedures and notice for the project as recommended by staff. Associate Member Cowart seconded the motion. The motion carried, 5-0.**

\* \* \* \* \*

**A REQUEST BY INDUSTRY:** For the Commission to consider establishing a southern boundary line at the Nansemond River Bridge (Route 17) for the James River Hand Scrape Area.

James Wesson, Department Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record. He said there was a request by industry to establish a southern boundary for the James River Hand Scrape Area. He said this would be an emergency action to be confirmed by public hearing.

**Associate Member Holland moved to approve the emergency regulation and to advertise for public hearing. Associate Member McLeskey seconded the motion. The motion carried, 5-0.**

\* \* \* \* \*

**20. PUBLIC COMMENTS:**

Associate Member Rick Robins requested to be heard at this point. He suggested that a Committee be established for Limited Entry. He explained that concerns were expressed last month that limited entry discouraged the young people from becoming involved in fisheries and would cause the death of fisheries. He said that he did not agree and that contrary to this the limited entry would conserve the resources and ensured the survival of the fishermen in that fishery. He suggested that a Roundtable Committee for Limited Entry be established and this committee would bring recommendations for the Commission to consider, but not be binding. He said this committee would benefit this Commission.

Commissioner Pruitt said this was a great idea and this committee would not necessarily have to meet monthly as the other committees do. He then suggested that Associate Members McLeskey and Robins, watermen representatives, an economist, and VIMS experts be included on the committee. Associate Members McLeskey and Robins agreed to serve on this committee.

Dusty Crump, Upriver Waterman, was present and his comments are a part of the verbatim record. Mr. Crump explained that they should be allowed to use smaller than 6" or larger nets in the spring so that watermen would be allowed to catch the smaller fish. He also suggested that a one-bushel by-catch of shad be allowed in the spring.

Jack Travelstead said this was something to be decided by the ASMFC this year.

Commissioner Pruitt said he agreed with the suggested changes and asked staff to bring these matters to the attention of ASMFC.

**Roger Parks**, Lancaster Waterman, was present and his comments are a part of the verbatim record. Mr. Parks requested that the Commission consider extending the oyster harvest season in the Rappahannock River for the rest of the year.

Associate Member Cowart asked Mr. Wesson of staff to comment on this matter. James Wesson, Department Head, Conservation and Replenishment, said that they would not object to the extending the season of the Hand Scrape Area season in the Rappahannock River. He explained that there was interest by industry to extend the Thomas Rock Hand Scrape Area in the James River while the James River Hand Scrape Area is open in order to spread out the boats and relieve the pressure on one area. He suggested opening these two areas for February and March 2005.

Associate Member Bowden explained that he had been approached by Tangier-Pocomoke watermen with a problem of the 3" spacing of the teeth of the oyster dredge that is required by regulation. He explained that most of the dredges had smaller spacing and this was causing a problem for the watermen when they were inspected. He suggested that this requirement be suspended for the rest of this season and that the Oyster Committee discuss this in August before the next season.

Jim Wesson said that it was his understanding that the Law Enforcement Division have suspended this requirement. Associate Member Bowden said this was agreed to until the meeting today. Mr. Wesson said that he did not think it was worth making them change this season.

Colonel Steve Bowman, Deputy Commissioner, explained that it was not good to just say suspend the requirement, but to actually change the enforcement verbage in the regulation.

**Associate Member Cowart moved to grant the emergency action and approve the extended seasons in both the Rappahannock River Hand Scrape Areas and the Thomas Rock Hand Scrape Area in the James River from February 1 through March 31, 2005 and advertise for a public hearing in February. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Colonel Bowman said he did not believe the spacing size should be eliminated, but for Associate Member Bowden to suggest what would work as far as this size.

**Associate Member Bowden moved to approve an emergency regulation to suspend the 3" teeth spacing for the oyster dredge in the Pocomoke-Tangier Management Area the remainder of this dredge season; to direct the Oyster Committee to work on this matter; and, for staff to come back with language on the preferred size no**



**later than August. Associate Member Holland seconded the motion. The motion carried, 5-0.**

Associate Member Cowart asked if there had not been concerns with something similar to this for the James River. Colonel Bowman said that was a different issue, it dealt with the inside bar not the spacing of the teeth and has been resolved.

Associate Member Cowart suggested Colonel Bowman in the surveys by his personnel of the dredges determine the smallest size. Commissioner Pruitt suggested that Jim Wesson do whatever was necessary to fine-tune this issue to ensure that it would not have to come back again.

**Tom Powers** was present and his comments are a part of the verbatim record. He said going back to Mr. Robins comments regarding ITQ transferable permits, he suggested that consideration be given to ownership of the permit not ITQ. He said this would give the permits back to the program and allow the young people to obtain them and get into the fishery.

No action was taken by the Commission.

**Russell Gaskins** was present and his comments are a part of the verbatim record. He said that the Bay watermen were waiting for a fair share of tags as compared to the Ocean fishery receive more tags and catch larger fish. He said the Bay fishery is allowed 23 tags less than the Ocean fishery. He said the Ocean fishery average 20 pound fish and the Bay fishery average 12.5 pounds. He said the Bay fishery is treated unfairly.

Jack Travelstead explained this was an issue to be discussed by Associate Member Bowden's Committee on February 16<sup>th</sup>.

**Kent Carr** was present and his comments are a part of the verbatim record. He said he was the individual who had asked for the extension of the Thomas Rock Hand Scrape Area. He further explained that Law Enforcement was being inconsistent in enforcing the laws and regulations and has caused a problem with the watermen. He said that this needed to be corrected. Commissioner Pruitt said if you spoke with Colonel Bowman, you have done the right thing and he will investigate.

**Michael Shackelford**, waterman, was present and his comments are a part of the verbatim record. Mr. Shackelford said he had been listening to the discussions today about sea bass and striped bass and he felt the Commission needed to look out for the full-time watermen.

**Donnie Thrift** was present and his comments are a part of the verbatim record. Mr. Thrift had a question about putting the oysters in the basket rather than leaving them in the bottom of the boat. Associate Member Cowart said this had come up earlier and he

thought it was okay to put it in the orange basket. Mr. Thrift said that the orange plastic basket is the same as the tub. Commissioner Pruitt said that the Commission is working on it. Associate Member Cowart said the only problem was with watermen who make a habit of keeping small oysters and the orange baskets make it easier for them to hide them from Law Enforcement.

**Chris Walker**, Eastern Shore Watermen Association representative, was present and his comments are a part of the verbatim record. Mr. Walker read a letter regarding the adding of the turtle to the endangered species and the effects on the fishery in Virginia and along the coast.

**Associate Member Cowart** said that there was a request for NOAA to place the Chesapeake Bay oyster on the “endangered species” list, which would basically close the fishery in the Chesapeake Bay. He said the Commission needed to let NOAA know that they should not enact this before the public hearing.

**Wilford Kale**, Senior Staff Analyst, briefed the Commission on the current legislation before the 2005 General Assembly that affects the Marine Resources Commission.

\* \* \* \* \*

There was no further business, the meeting adjourned at approximately 4:30 p.m. The next meeting will be Tuesday, February 22, 2005.

---

William A. Pruitt, Commissioner

---

Katherine Leonard, Recording Secretary