

MINUTES

Commission Meeting

**February 22, 2005
Newport News, VA**

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
Russell Garrison)	
J. T. Holland)	
Cynthia Jones)	
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick)	
Carl Josephson	Sr., Assistant Attorney General
Col. Steve Bowman	Deputy Commissioner
Katherine Leonard	Recording Secretary
Andy McNeil	Programmer Analyst, Sr.
Wilford Kale	Senior Staff Advisor
Jane McCroskey	Chief, Admin./Finance Div.
Jack Travelstead	Chief, Fisheries Mgt. Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
James Wesson	Head, Conservation/Replenishment
Roy Insley	Head, Plans and Statistics
MPO Clifton Marsh	Marine Police Officer
MPO David Drummond	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.
Traycie West	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.

Randy Owen
Hank Badger
Benjamin McGinnis

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

Virginia Institute of Marine Science (VIMS)

Tom Barnard
Lyle Varnell
Roger Mann

Other present included:

Clifford Raymond	Lois Raymond	Edward Alleyne
William Judy	Ronald Talbert	Denise Talbert
Karla S. Havens	Charles F. Neikirk	Leo S. Robbins
Richard C. Robbins	Cornelius J. Hughes	Doug Bailey
Colleen Bailey	Sue Gilman Studds	E. L. Collingsworth
Pete Ransone	A. C. Schoner	C. M. Bradshaw
Fred Ajootian	Glenn Moore	Channing W. Mitchell
Mary Paphides	M. M. Robbins	Elaine R. Jordan
Todd Herbert	Christine Breddy	Jeff Zerby
Craig Palubinski	Donis H. Lassiter	Anne Smith
Narrison Bresee	Cynthia Taylor	Pat Boone
L. L. Curley, Jr.	E. A. Brummer	P. K. Pierpont
Shep Davis	Kenneth Parker	Debra Parker
Linda Goulder	Russell Towsome	Candree C. Coats
Claris Truitt	Richard Tabor	Jennifer Zerby
Angela Schreffler	Stephanie Giolembeski	
John Stout	Ginny Noerenberg	Robert Kirkpatrick
James Holthoff	Sharon Stallings	Jon Poulson
J. R. Bresee	David Fitch	Bob Simon
Carl Eason	Jason A. Mitchell	Shannon Mitchell
Ben Mears	Dave Barbee	Tommy Leggett
Z. R. Lewis	Susie Atkinson	Kenneth J. Lunding
Douglas F. Jenkins	Tric Goode, Jr.	Ed Poole
Roger Rowe	Roger Graham	Jerry Myers
J. G. Hall	David Raiford	Robert Allen
Frank Kurnay	W. C. Tice	Russell Gaskins
Jeff Deem	Dan Bacot	S. Peek
Dan Dise	Frances W. Porter	A. J. Erskine
Kelly Place		

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Associate Member Cowart called the meeting to order at approximately 9:33 a.m. Associate Member Holland arrived at approximately 11:00 a.m. Commissioner Pruitt arrived at approximately 11:37 a.m. and Associate Member Cowart was the acting chair in his absence.

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

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Associate Member Cowart swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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Approval of Agenda: Associate Member Cowart asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management, said that there was an additional page two item, which would be item H, Richmond Department of Public Utilities, #02-1288. Wilford Kale, Senior Staff Advisor, asked to be added to the end of the meeting as he had a legislative report for the Commission. **Associate Member McLeskey moved to approve the agenda with the changes. Associate Member Bowden seconded the motion. The motion carried, 6 - 0.**

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1. **MINUTES:** Associate Member Cowart asked for a motion for the January 25, 2005 meeting minutes. **Associate Member McLeskey moved to approve the minutes as presented. Associate Member Bowden seconded the motion. The motion carried, 5-0-3. Associate Members Garrison, Jones, and Schick all abstained, as they were not present at the January meeting. Associate Member Cowart, acting as the chairman, and Commissioner Pruitt voted yes to provide a quorum.**

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2. **PERMITS:** Bob Grabb, Chief, Habitat Management, gave the presentation on Page Two items, A through H, 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 Garrison moved to approve the page two items, 2A through 2H. Associate Member Schick seconded the motion. The motion carried, 6-0.

2A. HENRICO COUNTY DEPARTMENT OF PUBLIC WORKS, #04-2899 requests authorization to relocate 238 linear feet of 12-inch diameter submerged water line by directional bore, place 30 linear feet of riprap revetment and temporarily divert approximately 500 linear feet of the North Run to facilitate the replacement of the existing Hungary Road Bridge with a 105-foot long by 88-foot wide precast triple arch structure in Henrico County. Recommend inclusion of our standard instream work conditions.

Permit Fee.....\$100.00

2B. METROPOLITAN WASHINGTON AIRPORT AUTHORITY, #03-0810, requests authorization to widen one existing and construction of six new road crossings across approximately 195 total linear feet of Horsepen Run, and install approximately 2,052 square feet of riprap within Horsepen Run for channel scour protection. This project is associated with the construction of additional travel lanes and access ramps known as the North Area Roadways Project, for improved vehicular access to Washington Dulles International Airport in Loudoun County.

Permit Fee.....\$100.00

2C. CROWN POINT MARINA, INC., #04-2813, requests authorization to construct 1,115 linear feet of replacement mid-tide bulkhead within two feet channelward of a deteriorated bulkhead and to construct a 46-foot by 170-foot enclosed boathouse with 10 slips to replace a recently demolished boathouse adjacent to their marina situated along the Perrin River in Gloucester County.

Permit Fee.....\$100.00

2D. WALTER ADEY, #04-0786, requests authorization to install a private mooring buoy centered at 37° 22' 41.1" North Latitude and 76° 25' 51.7" West Longitude, approximately 600 feet channelward of his property situated along the Ware River between Ware Point and Jarvis Point in Gloucester County. The mooring is proposed to be located within Public Clamming Ground set aside by the Commission in 1930.

Permit Fee.....\$25.00

2E. S.H.C. DAVIS TRUST #1, #05-0029, requests authorization to install three (3) 210-foot long offshore breakwaters adjacent to their property along the Chesapeake Bay in the Butlers Bluff area of Northampton County.

Permit Fee.....\$100.00

2F. ENGLE HOMES, #04-2464, requests authorization to construct two separate sanitary sewer crossings under a total of approximately 115 linear feet of Broad Run, associated with the development of the Innisbrooke residential subdivision in Prince William County. Recommend approval with the inclusion of our standard in-stream permit conditions, an in-stream time-of-year restriction of April 15 - June 15 and August 15 - September 30 to protect the spawning season of the brook floater, and require coordination with the Department of Game and Inland Fisheries concerning pre-construction mussel surveys and relocations.

Permit Fee.....\$100.00

2G. KENNETH PAYNE, #04-1905, requests authorization to remove all dilapidated marina structures and construct a new marina containing a maximum of 28 wet slips along property adjacent to Branson Cove, a tributary of the Lower Machodoc Creek in Westmoreland County. Construction will include a 14-foot wide by 52-foot long by 6-inch thick reinforced concrete boat ramp that will extend approximately 30 feet channelward of mean low water; a 6-foot wide by 50-foot long tending pier adjacent to the boat ramp; two (2) open-sided boathouses, 52 feet by 166 feet and 62 feet by 84 feet, respectively, to cover a total of 13 wet slips; an 8-foot wide by 382-foot long, open-pile, timber walkway and a 6-foot wide by 170-foot long walkway with accompanying finger piers; and dredge approximately 1,100 cubic yards of State-owned subaqueous bottom with an upland excavator to create depths of minus three (-3) and minus four (-4) feet at mean low water. Dredged material will be dewatered in an upland containment site and then transported to a local gravel pit. Staff recommends a royalty of \$0.45 per cubic yard for new dredged material.

Royalty Fees (1,100 cu.yds. @\$0.45 cu. yd.).....\$495.00
Permit Fee.....\$100.00
Total Fees.....\$595.00

2H. RICHMOND DEPARTMENT OF PUBLIC UTILITIES, #02-1288, requests authorization to modify their existing permit, which authorizes the installation of a 36-inch water transmission main a distance of 857 linear feet within the James River. The applicant is seeking to modify the time-of-year instream work condition to allow a one-time extension for instream work through March 10.

No fees applicable, modification.

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3. CLOSED SESSION: There was no closed session.

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4. **WILLIAM WELLS, ET AL, # 04-1575**, requests after-the-fact authorization to retain three (3) previously installed and unauthorized freestanding osprey poles within the Pagan River adjacent to their properties in the Town of Smithfield in Isle of Wight County.

Bob Grabb, Chief, Habitat Management, explained that a letter requesting a continuance by one of the applicants was received by staff. He said that staff recommended the Commission hear the matter because it was after-the-fact and several continuances had previously been granted at the applicant's request. In light of the foregoing, staff was ready to proceed with the hearing. He also said apparently no one was present for the project, pro or con.

Associate Member Cowart explained that since notification was made and staff recommended the issue be heard now, he asked for a motion from the Commission.

Associate Member Garrison moved to go ahead and hear the matter as recommended by staff. Associate Member Schick seconded the motion. The motion carried, 6-0.

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

Mr. Stagg explained that on July 12, 2002, according to a Virginia Marine Police Investigative Report, an accident occurred in the Pagan River when a boater struck a pole within the river located approximately $\frac{3}{4}$ of a mile downstream of Smithfield Station. The report indicates that Mr. Bobby Brown of Browns Marine apparently installed the pole approximately 1½ years before the accident. Mr. William Wells had apparently authorized the placement of the pole. The report further indicates that Mr. Wells believed the pole was covered under a previous permit he had obtained from VMRC related to work at his private pier.

Mr. Stagg said that once the Habitat Management staff were made aware of this situation, a letter dated July 20, 2003, was sent to Mr. Wells requesting he provide any information documenting authorization. He was advised that without the proper authorization the poles constituted a violation of section 28.2-1203 of the Code of Virginia. Mr. William B. Ellen, agent for the applicants concerning this matter, subsequently contacted this office. A meeting was held on September 11, 2003, with Mr. Ellen and VMRC Law Enforcement and Habitat Management staff to discuss the matter. At this meeting it was discerned that there were a total of six unauthorized poles in this general location, two adjacent to Mr. Wells property, one adjacent to Mr. McPhails property and three across the channel adjacent to marshland on the opposite side of the river. Additionally,

Mr. Ellen indicated that two no wake buoys were located in this area and had been installed at the direction of Mr. Wells and possibly others. Mr. Ellen indicated his client was willing to remove the three poles adjacent to the marshland across the channel and also would remove the "no wake" buoys. However, he also indicated that Mr. Wells and Mr. McPhail would like to retain the three poles near their properties. Staff requested the submission of a Joint Permit Application requesting after-the-fact authorization to retain the three poles.

Mr. Stagg said that a Joint Permit Application was ultimately submitted on July 1, 2004, seeking after-the-fact authorization for three of the poles. Mr. Ellen, acting as the agent for the project, filed the application.

Mr. Stagg explained that staff recently visited the site and confirmed that the three poles on the opposite side of the river from the applicants' properties have been removed, as well as, the two "no wake" buoys. The three remaining poles that were still in place are located from 75 to 153 feet channelward of mean low water. There appeared to have been active use of two of the three poles by ospreys this past season. The middle pole, however, does not currently have any type of structure for a nest. This same pole currently has a no wake sign attached, for which VMRC can find no documentation or authorization.

Mr. Stagg said that the United States Coast Guard had reviewed this request and indicated they had no objections. However, they did note that their decision did not absolve the owners of any liability and that the owners had the option of marking the osprey poles. If the owners exercise that option they must prepare and provide, for Coast Guard approval, a Private Aids to Navigation application. No other agencies have commented on the project.

Mr. Stagg explained that while all three poles are a considerable distance from the marked channel at this location, the middle pole does not appear to be serving as an active osprey nesting site, therefore, staff recommends it be removed and only the upstream and downstream poles be approved. Staff also recommended that should the applicants wish to mark the remaining poles, they must first submit a Private Aids to Navigation application to the Coast Guard. Additionally, staff recommends triple permit fees and the assessment of an appropriate civil charge.

Associate Member Robins asked if public safety was an issue. Mr. Stagg explained that there was an accident in the vicinity of the 3 poles on the other side that had since been removed. Associate Member Robins asked if the center pole was a hazard. Mr. Stagg explained that it was on a sharp turn, but it could be traversed. Associate Member Robins asked if there was fast traffic in the area. Mr. Stagg responded, yes, but the "no wake" sign was further downriver. He explained that Mr. Wells had a "no wake" sign on his pier, which required a request be made by the County to the Game and Inland Fisheries to be legitimate.

Associate Member Schick asked if the inshore pole location was better for the ospreys versus over the water. Tom Barnard, VIMS representative, explained that they will nest onshore and offshore, but the birds prefer nesting over the water. Associate Member Garrison stated that shoreline nests were rarely seen.

Associate Member Cowart asked if anyone was present to comment on the project. There was no one present to comment, pro or con.

Associate Member Garrison moved to approve the after-the-fact permit for two of the three pilings and that the applicant be directed to remove the center pole as recommended by staff due to navigational concerns and that 44” square reflectors be placed on the two he was permitted to retain; a triple permit fee be charged; and that there be no civil charge assessed. Associate Member Schick seconded the motion. Associate Member Robins asked that the motion be amended to delete the reflectors and state that the two poles be marked in accordance with the applicable Coast Guard requirements. Associate Members Garrison and Schick agreed to amendment. The motion carried, 6-0.

Permit fees (Triple fees).....\$75.00

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5. RICHARD TABOR, # 03-0439, requests authorization to construct a 38-foot long by 18-foot wide open-sided boathouse adjacent to his property situated along Indian River in Chesapeake. Adjacent property owners and a resident 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 Mr. Tabor’s property is located on Indian River, a tributary to the Eastern Branch of the Elizabeth River, in Chesapeake. Mr. Tabor and his neighbors are located on a broad cove area.

Ms. West said that on March 11, 1993, Mr. Tabor requested authorization to construct a 224 -foot long private, open-pile, non-commercial pier with an 36-foot L-head, a 200 square foot floating pier, an uncovered lift and a 38-foot long catwalk and a 38-foot by 18-foot open-sided boathouse with associated 4-foot wide finger piers within a cove area of Indian River. The purpose of the project was to provide access to the water and mooring for his vessel.

Ms. West said that in April 2003, staff received protest letters from the applicant’s neighbors, Mr. John Stout and Ms. Virginia Noerenberg, Mr. K.D. Parker and Mr. and Mrs. J. Miles. The residents along the cove requested that staff postpone action on the

proposal until a riparian survey could be completed. Because of the nature of the cove area and the shared desire by the neighbors to cooperate in the establishment of the riparian areas within the cove, staff did not act on the application until an agreement had been secured. On July 3, 2003, staff notified Mr. Tabor that his application would be placed in an inactive status pending the resolution of the riparian apportionment.

Ms. West stated that on March 19, 2004, staff received a faxed copy of a signed and notarized agreement between the Parkers, the Stouts, and the Tabors, acknowledging and agreeing to a riparian survey. Since the concerns of the protestants appeared to be resolved, staff determined that the pier and boathouse were authorized by statute pursuant to §28.2-1203 of the Code of Virginia and issued a standard “no permit necessary” letter. Since the application for the project had been submitted prior to July 1, 2003, and Mr. Tabor had made no changes to his project, staff processed Mr. Tabor’s application based on the statutory authorization for private piers that existed when the application was submitted. It should be noted, however, that on July 1, 2003, a Code amendment took effect that changed the statutory exemption for private piers, limiting L- and T- heads and other pier protrusions to a maximum of 250 square feet.

Ms. West said that upon initiation of construction of the pier in October 2004, the adjacent property owners came forward to restate their objections to the proposal. Mr. Stout initially contacted staff to renew his objections. He followed his stated concerns with a written objection, co-authored by Mr. Parker. This letter was addressed to Commission Pruitt and dated October 30, 2004. In consideration of his objection, staff requested that Mr. Tabor cease construction of the boathouse until the full Commission could consider the matter. Mr. Stout and Mr. Parker contend that the pier should be re-evaluated under §28.2-1203, as it currently exists, because the file was inactivated during processing. While staff did inactivate Mr. Tabor’s file on July 3, 2004, we view this action as an administrative function and not necessarily an interruption of the stream of processing. In addition, staff’s letter specifically stated that the application would be reactivated upon notification that the riparian survey was complete.

Ms. West said that upon examination of the file, it is unclear whether the adjacent property owners, by agreeing to the riparian survey, were also agreeing to the construction of the boathouse. While Mr. Stout and Ms. Noerenberg’s letter of April 6, 2003, and Mr. Miles letter of April 11, 2003, only mention the pier, Mr. Parker’s letter does state that he has concerns about the pier and the boathouse. Since Mr. Parker is an adjacent property owner, his original objection negates statutory authorization of the boathouse under §28.2-1203 of the Code of Virginia. Given this, Staff believed the boathouse must be brought before the Commission for review.

Ms. West went on to explain that it was staff’s opinion that the boathouse appeared to be reasonably sized. In fact, if the adjacent property owner had not objected to the project, it would have qualified for the authorization contained in Section 28.2-1203 (A)(5) of the Virginia Code. The open-sided design should also minimize the visual impacts

associated with the structure. As such, staff recommended approval of the boathouse as proposed.

Bob Simon, contractor for the project, was present but did not comment.

Carl Eason, Attorney for the applicant, was present and his comments are a part of the verbatim record. Mr. Eason said that staff did a good presentation. He said he had a letter from Mr. Simon that a survey had been done and the pier was in the right location. He explained that an apportionment had been done for the neighboring lots. He said this matter had been pending since March 2003 and the 250 square foot limitation was not in effect at that time. He said the structure had been done in a way as to not be an obstruction. He said the objections were for the aesthetic reasons.

Associate Member Cowart asked if anyone else wanted to speak in favor of the project. No one else was present to comment in favor. He asked if there were any protestants present. There were protestants present and he swore them all in at one time.

John Stout, protestant and adjoining property owner, was present and his comments are a part of the verbatim. Mr. Stout said he objected to the construction and the impact it would have on his property and the neighborhood. He said 26 property owners in viewing distance in the area objected to the covered boathouse. He said that he requested consideration be given to the 26 more than to the 1. He showed overhead pictures to support his claim of there being no other boathouses in the area. He also provided the Commission with a petition.

Kenneth Parker, protestant and adjacent property owner, was present and his comments are a part of the verbatim record. Mr. Parker said there had been some untruths told. He said they received a letter from Mr. Madden on 3-31-03. He said the size had changed. He explained that only 4 out of 5 property owners had agreed to participate in the riparian survey and he believed it would not be approved if all 5 did not participate. He stated that the boathouse was equal to a 3-car garage. He provided several pictures and a map for the Commission. He stated that the boathouse was a distraction to the appearance. He said that the Commission needed to consider the 26 citizens and that the Oakland area was a declared historical neighborhood.

Debra Parker, protestant and adjacent owner, was present and her comments are a part of the verbatim record. Ms. Parker said she did not have a problem with the pier only with the boathouse. She said it would be an obstruction of the view if everyone were allowed the same.

Virginia Norburg, resident in the area and protestant, was present and her comments are a part of the verbatim record. She gave a summary of everyone's feelings regarding the project.

Carl Eason in his rebuttal explained that he had a copy of the apportionment for the Commission and the complaints only related to the aesthetics of the area. He said he had not seen the petition before. He said there was an inaccurate statement as to there being to no other boathouses in the area. He said the open sided boathouse should be allowed.

Associate Member Robins stated that the actual dimensions were confusing. Ms. West explained that was a correction. Associate Member Robins asked if approval was for a 38 by 18 boathouse. Ms. West responded, yes. She showed a picture of the boathouse across the creek from Mr. Tabor belonging to Mr. James Archbell. She went on to explained that she could find no permit in the records for that boathouse. However, if there were no protests it would be exempt.

Associate Member Garrison moved to accept staff recommendation and approve the open sided boathouse as proposed. Associate Member Robins seconded the motion. The motion carried, 6-0.

Associate Member Schick said that the Commission cannot just look at one area and must consider each area; and, supports the motion. Associate Member Robins said the square footage was less than 700, to be exact 684 square feet, in accordance with 28.2-1203; and, the open sides minimized the view obstruction and he supported the motion.

Permit fee.....\$25.00

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- 6. **MEREDITH ROBBINS, #04-2017**, requests authorization to install 16 mooring piles adjacent to three (3) existing piers and to change the designation of an existing concrete boat ramp and all other over-water structures from private to commercial use on Harpers Cove of Antipoison Creek in Lancaster County. Numerous residents in the area 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 project is located on a cove of Antipoison Creek, approximately halfway between the Town of White Stone and Windmill Point on Rt. 695. Reportedly, the property has been used by commercial watermen to offload catch and moor vessels for over 30 years. In 1984, Mr. Robbins received a VMRC permit for a concrete boat ramp, 145 linear feet of bulkhead, and a 30-foot long pier at this 9.66-acre parcel. That application indicated the project was private in nature. In 1985, the Lancaster County Board of Supervisors granted Mr. Robbins a conditional use permit for a bait storage and sales operation at the property. In 1986, a variance and subsequent amendment was granted for the construction of a fish storage building and a second floor addition to that building, respectively. In 1995, Mr. Robbins received a local wetland

board permit for 75 linear feet of rip rap (installed landward of mean low water) adjacent to the ramp and under a marginal wharf and building from which seafood was off-loaded and bait sold.

Mr. Woodward said that the County indicates that while the parcel is zoned R-1 (residential), it has been known generally as commercial and is "Grandfathered" as far as continuing on-going water-related activities. The current request is to bring the existing structures over State-bottom into compliance with the commercial nature of the property and to improve the safety of the existing moorings, as well as add one additional mooring, bringing the total number of wet slips to eight. There is currently dry storage on the property for six other boats.

Mr. Woodward stated that staff originally received nine letters of protest to the project. One of the letters, from Mr. E. L. Cullingsworth, included a petition with 15 signatures. Mr. Cullingsworth owns a marina and commercial marine railway approximately 150 feet across Harper's Cove. One signatory of the petition, Mr. John Ware, also submitted his own protest letter. Another protestant, Mr. Robert William McCaslin indicated that the lane leading to the ramp passed through his property, when in fact county records (Tax Map 35, Lot 237) indicate it is Mr. Cullingsworth's lane that passes through Mr. McCaslin's parcel.

Mr. Woodward said that staff has subsequently received five signed Adjacent Property Owner's Acknowledgement Forms indicating no objection by individuals listed in the petition. These individuals were contacted by the applicant's agent. As such, it is unclear exactly how many nearby residents actually object to the project. Staff also received one letter in support for the project. The majority of the letters expressed concern that public use of the ramp would increase boat and vehicular traffic and congestion in the area, leading to increased pollution and decreased property values. Several letters stated they were not opposed to commercial watermen using the area, but was opposed to "public" use of the existing ramp. None of the letters specifically objected to the mooring piles applied for in the permit.

Mr. Woodward said that the Virginia Institute of Marine Science indicated that there were no environmental concerns with the proposal provided the Health Department had approved an updated plan for sanitary facilities. The Department of Health has approved the project, with a requirement for an additional vault privy, which will also act as a sewage dump station. In the meantime, the applicant must secure a pump-out agreement with Windmill Point Resort and Yacht Center, which is currently undergoing renovations. No other state agencies commented on the proposal.

Mr. Woodward said that a permit was not required from the Lancaster County Wetlands Board since no wetland impacts were proposed or anticipated.

Mr. Woodward went on to explain that while staff understands the residents' concerns with increased boat traffic in the cove, the ramp is not being expanded, nor are there any other upland amenities being proposed. Staff understands that the ramp has been used "commercially" for many years, with patrons compensating Mr. Robbins so that the property can be maintained for use by watermen and local residents who do not own waterfront property. The County has long been aware of the commercial use of the property and clearly believes it to be compatible with the area, despite the residential zoning designation. Furthermore, any future shoreline improvements, such as a larger ramp or more slips, would require additional public interest review, so this application, in and of itself, did not appear to represent a substantial expansion over the existing use of the property.

Accordingly, Mr. Woodward said that staff was recommending approval of the additional mooring piles and the change in designation of the ramp, piers and other over-water structures from private to commercial, provided there was no overnight occupancy of vessels (people staying aboard the vessels) at the property. Further, the piles should not be installed until the pump-out agreement was in effect and the additional privy was installed.

All speakers were sworn in before testifying.

Mary Paphides, agent for the applicant, was present and her comments are a part of the verbatim record. Ms. Paphides explained that originally the protestants were given the wrong information. She said she made contacts and wrote letters to explain the project to them. She said that 9 out of the original 14 responded to her letter. She explained further that one did not have any comments; 1 forgot to sign; and 5 changed their minds. She said the applicant and his son had a petition with signatures in support of the project.

Leo S. Robbins, son of the applicant, was present and his comments are a part of the verbatim record. Mr. Robbins said that staff did a good evaluation of the project. He explained that the additional pilings would allow them to tie boats up to protect better during storms. They were told that in order to install more pilings they would have to become commercial. He said friends use the boat ramp and they take donations to keep the roadway and landing in repair. He said that there are no beaches for the county residents to use anymore. He explained that there was a popular beach just downstream and there was lots of activity. He said they would also continue to allow watermen to tie up there. He presented the Commission with a petition containing 75 signatures and said that all who signed it were landowners on the creek.

Pete Ransone, Lancaster County Zoning office representative, was present and his comments are a part of the verbatim record. Mr. Ransone said Mr. Woodward covered the project and he just wanted to confirm some of it from the county's perspective. He said there was only one boat ramp and one park in the county. Although there were other

marinas, there was a critical need for public access to the water to serve the lower end of the County.

David Rose, resident on Antipoison Creek, was present and his comments are a part of the verbatim record. He said he had a boat he kept at the facility. He said this project was needed. He said the Robbins were good people and just wanted to make the boat ramp safe and better for others. He said the beach was used a lot. He said the county tried to find a location for a public boat ramp, but could not find one closer than Windmill Point. He said he was requesting that the Commission approve the project as there was a need for this in the county.

Fred Ajootian, long time resident in the area, was present and his comments are a part of the verbatim record. Mr. Ajootian explained that he was a former Wetlands Board member, and been in the area for 17 years and been everywhere in the area. He said that he had been chairman of the County Advisory Committee for the Planning Commission. He said they had done a study and recommended the county provide access for the public to the water. He said there was not an area for the County to provide this water access for the public. He said the Robbins had always allowed neighbors to use the facility. He said they needed the pilings because of the weather and they were only improving the facility. He said the commercial designation was purely academic. He said he was requesting that the Commission to approve the project.

Glen Moore, attorney for 10 property owners, was present and his comments are a part of the verbatim record. Mr. Moore said all 10 were opposed to the project. He said the Commission needed to consider the public detriments versus the private benefits and the effects of this project on nearby property owners. He said that there had been a number of letters received by the Commission. He said this project would only cause additional congestion in the area and there was already too much there now. He presented some pictures for the Commission's review. He said they were asking the Commission to deny the project. He said there was a need for such a facility in the area, but just not in that location. He said the property was not zoned for commercial purposes.

Richard O'Brien, long time resident, was present and his comments are a part of the verbatim record. Mr. O'Brien said he was located on the opposite shore from the project near the mouth of the creek. He said this would only increase boat traffic and there was already a lot of that. He asked the Commission to deny the project.

Ronald Talbott, protestant, was present and his comments are a part of the verbatim record. Mr. Talbott said that it was not the responsibility of a private citizen to provide a public boat ramp. He said it was the County's responsibility.

E. L. Collingsworth, resident on the opposite side of the creek, was present and his comments are a part of the verbatim record. He said this project was not grandfathered. He said the building that was built in 1985 was for a seafood business, but there was

nothing there before that time. He said the county and state wanted a boat ramp, but this area was never zoned and never used for such. He said prior to 1984 it was just a field.

Mary Paphides, agent for applicant, in her rebuttal said this was a simple project and the pilings were needed for protecting the boats from the weather. She said the commercial status was not the main concern for the applicant.

Meredith Robbins, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Robbins said this had gotten to be a headache. He explained that he was retired from the fishing business. He said 35 watermen depend on this facility to tie up their boats. He said the VMRC staff told him that he could not make this change unless he was zoned for commercial purposes.

Leo S. Robbins, son of the applicant, gave the Commission the petition with 75 signatures of people who support the project. He said the Corps of Engineers had also given their approval. He said the county issued them a conditional use permit. He said his father or himself owned most of the boats.

Associate Member Garrison said he had lived near there for 45 years and this area did not have a much needed launching facility. He said there was no other area available and that was not going to change soon.

Associate Member Robins said that Lancaster County had issued a letter stating the property was considered to be commercial and grandfathered. He said the privy sanitation plan had been approved, this did serve the public interest, and was an improvement.

Associate Member Schick said there was a lack of public funding and he welcomed the private citizen wanting to help in this situation. He said that there was a need for access to water in the area and the state could set controls for the public's protection.

Associate Member Robins moved to approve the project in accordance with staff recommendation to include a prohibition of any overnight occupancy of vessels moored at the property; and, the further stipulation that the piles could not be installed until the sanitation plan had been approved by the Health Department, any additional required sanitary facilities had been installed, and a pump out agreement with Windmill Point had been executed. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

Permit fee.....\$25.00

Associate Member Holland arrived at the meeting at approximately 11:00 a.m.

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7. **CURLEY PACKING COMPANY, INC., #04-1931**, requests authorization to construct a commercial marina, to include four 8-foot wide, open-pile timber piers, with four 8-foot by 88-foot T-head platforms, extending a maximum of 244 feet channelward of mean low water, with 95 boat slips and associated mooring piles, and 503 linear feet of replacement timber bulkhead, adjacent to their property situated along Monroe Bay in Westmoreland County. An adjacent property owner protested the project.

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

Mr. McGinnis explained that the project was located in Monroe Bay, along the northwestern shoreline at Winkedoodle Point, in the Town of Colonial Beach. This property was the former location of Curley Packing Company's oyster-packing facility, and was immediately adjacent to the Winkedoodle Point Marina, which is also owned and operated by the Curley family. The width of Monroe Bay varies from approximately 1,030 feet to 1,545 feet, in the vicinity of the proposed marina.

Mr. McGinnis said that the applicant was seeking authorization to construct a marina that would include 95 total slips distributed across four main pier sections, each of which would include an 8-foot wide by 88-foot long T-head platform. The pier sections labeled in the application drawings as 'A' Dock, 'B' Dock, and 'D' Dock would extend 244 feet channelward of mean low water, while 'C' Dock would extend 242 feet channelward of mean low water. Each pier section would include the necessary mooring piles and 3-foot wide finger piers in 16 and 20-foot lengths, associated with each slip. The applicant also requested authorization to replace an existing, deteriorated bulkhead by constructing a new, timber bulkhead approximately one to three feet channelward of the existing structure, with a two-foot average encroachment over State-owned submerged land.

Mr. McGinnis stated that the Curley Packing Company's agent, Bayshore Design, informed the adjacent property owners of the proposed marina around the same time the application for the project was submitted to VMRC. On September 3, 2004, Bayshore Design received a letter of objection from Mr. Robert A. Kirkpatrick, who is the adjacent property owner on the southeastern side of Winkedoodle Point. That letter was forwarded by Bayshore Design, and was received by VMRC staff on September 10, 2004.

Mr. McGinnis said that Mr. Kirkpatrick felt the proposed marina would obstruct navigation in the natural, deep-water channel of Monroe Bay and limiting the passage of large draft vessels. He questioned the need for the bulkhead replacement, and whether or not the proposed marina would be able to provide adequate parking on the adjacent upland parcel. He also questioned the capacity of the upland utility infrastructure along

Lafayette Street to support the marina's needs, however, this issue appeared to be outside the Commission's jurisdiction.

Mr. McGinnis explained that the proposed marina's footprint would extend no further than 244 feet channelward of mean low water. Measurements taken by VMRC staff, from the State's 2002 Virginia Base Mapping Program (VBMP) aerial photographs showed that Monroe Bay was approximately 1,030 linear feet across at its narrowest point from the proposed marina. The piers would therefore extend less than one-fourth of the way across the bay. Also, staff's inspection of the same 2002 aerial photographs indicated that the natural, deep-water in this portion of the bay, lies channelward of the proposed marina. Based upon this information, staff believed that the proposed marina would not impede navigation in Monroe Bay.

To address the protestant's concerns over upland parking issues, Mr. McGinnis said that VMRC staff contacted Mr. Chuck Bird, Director of Zoning and Building for the Town of Colonial Beach. Mr. Bird informed staff by telephone conversation on January 27, 2005, and through an e-mail received February 9, 2005, that the parking plan for the proposed marina was in compliance with the Town's Zoning Ordinance. This ordinance required marinas to provide one parking space for every three boat slips, on the upland property. According to the parking plan submitted to VMRC staff, dated received February 3, 2005, both the newly proposed marina and the immediately adjacent Winkedoodle Point Marina, had adequate parking per the Town's Zoning Ordinance, and appeared to comply with the general siting criteria for marinas, contained in VMRC's Subaqueous Guidelines.

Mr. McGinnis stated that the Virginia Department of Health had approved the marina's wastewater pump-out and dump-station system, and had stated that the project would not increase the size of the condemned shellfish growing areas in Monroe Bay. The Virginia Institute of Marine Science (VIMS) Shoreline Application Report, dated October 14, 2004, indicated that the project's cumulative adverse impacts to the marine environment should be short-term and minor in extent. No other State agencies had raised concerns or objections to the project.

Mr. McGinnis explained that the environmental impacts associated with the construction of the marina were anticipated to be minor in extent. While staff was sensitive to the concerns of the protestant, the proposed marina would extend less than one-fourth of the 1,030-foot distance across the bay, and the proposed parking plan provided sufficient parking, per the Town of Colonial Beach's Zoning Ordinance. Although the protestant questioned the need to replace the existing bulkhead, staff felt that the existing bulkhead was in a state of deterioration and should be replaced before it failed.

Accordingly, Mr. McGinnis said that since the proposed marina appeared consistent with the requirements of the Commission's Subaqueous Guidelines, and Criteria for the Siting of Marinas or Community Facilities for Boat Mooring (VR 450-01-0047), staff recommended approval of the project as proposed, with the stipulation that the

replacement timber bulkhead be aligned no more than two feet channelward of the existing bulkhead, to limit any unnecessary encroachments over State-owned submerged lands.

Commissioner Pruitt arrived at the meeting at approximately 11:37 a.m.

Craig Palubinski of Bayshore Design and agent for the applicant, was present and his comments are a part of the verbatim record. Mr. Palubinski explained that the property was correctly zoned General C-1 with Colonial Beach. He said the Curleys were lifetime residents in the area. He said the community needed this project. He said it was currently a 65-slip facility that was rented out to capacity. He said they were turning away requests and the demand was expected to increase. He also explained that Colonial Beach was a resort town. He said in response to the Kirkpatrick protest, the project encroaches only on ¼ of the area across the bay and the parking exceeded the requirements of Colonial Beach. He further agreed that the bulkhead repair would be done to comply with staff’s recommendation.

Robert Kirkpatrick, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Kirkpatrick explained that the proposal was in a natural channel and would block access to deep water. He said no one had presented water depths in the area. He said the three proposed piers were in the channel. He said there were other marinas in the area, but they were not protesting the project. He said big slips would attract more traffic and bigger boats with not enough parking. He said that traffic would prevent use of the existing boat ramp. He said there was no cul-de-sac and no turnaround for traffic proposed which would cause more congestion. He said the Curleys own another point that would be a better location for this project.

Craig Pulabinski in his rebuttal said that Mr. Kirkpatrick’s objections were already answered by staff and the Corps of Engineers had issued their permit for the project as presented.

After further discussion Associate Member Garrison said that this project was needed in the area as big boat sales had increased and he therefore moved to approve the project. Associate Member Schick seconded the motion. He said that there was a need for more slips in this area with Washington, DC being so close; the condemnation would not be expanded; and, he, as another marina owner himself in the Monroe Bay area, did not have any conflict with voting. Associate Member Robins said the bulkhead was a simple replacement because of deterioration and would be a minor impact. He said he supported the motion if approval was conditioned to include that the bulkhead be aligned no further than 2 feet channelward of the deteriorating structure. Associate Member Garrison agreed with the amendment. The motion carried, 8-0.

Permit fee.....\$100.00

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8. **GAPS MARINA, #02-0408**, requests authorization to repair and replace an existing, previously undocumented 26-slip commercial marina adjacent to property situated along Slough Creek in Northumberland County. Mr. and Mrs. Gordon Evans, adjacent property owners, protested the project.

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

Mr. Madden explained that the marina was located approximately 15 miles north of the Town of Kilmarnock, approximately 2 miles west of Smith Point. The marina was comprised of two, large, open-sided boathouses. Building number one (1), located at the north end of the property at the head of the cove, measures 7,140 square feet and accommodates 11 wetslips, associated access piers, and mooring piles. Building number two (2), immediately south of Building one (1), at the mouth of the cove measures 12,230 square feet and accommodates 15 wet slips, associated piers, and mooring piles. The marina provides no additional maintenance services other than slip space. No fuel is dispensed and sewage pump out services are available at the nearby Smith Point Marina located down stream from Gaps Marina.

According to the applicant, the original marina piers were constructed in 1961 by Eugene Jett, Sr.(deceased). The boathouses, according to the protestants, were constructed between 1969 and 1970. The marina operated under the name of Jett's Marina until 1985, when it was purchased by Leroy F. Chatham Sr. (deceased). Mr. Patrick Boone and Ms. Cynthia Taylor purchased the marina from Leroy F. Chatham, Jr. in 2002.

Mr. Madden explained that upon obtaining legal ownership of the property, the current owners notified Commission staff of their intent to repair and renovate the marina. The renovations were to be conducted in place, without any increase in the number of wetslips, the configuration of the buildings, or square footage of the existing structures. Several piers, boathouse cross beams, and support pilings were in dire need of replacement. Given the extent of the repair and replacement activities; and, since there were no records of permits for the boathouse, a permit from the Commission was required for the encroachment over state-owned submerged lands.

Mr. Madden said that the only VMRC permit issued for the property appeared to be a 1986 permit authorizing the construction of an 85-foot long, floating pier section.

Mr. Madden explained that Mr. and Mrs. Gordon Evans protested the project. The Evans own and operate a K.O.A. campground, marina and ferry service to Smith Island. The protestants' facility is across the cove from Gaps Marina. The Evans were concerned that the boathouses impacted their view, which they felt devalued their property. The

protestants also claim that the drawings, provided by a certified land surveyor hired by the applicant, were inaccurate. Although the Evans' campground, pier facilities, and boathouse were only approximately 51 feet across the cove from the Gaps Marina boathouse, the dimensions and information in the application drawings appear accurate based on staff inspection of the site and a review of scaled aerial photography. Unfortunately, the Evans, who were the protestants, were not able to be present. Mrs. Evans had a doctor appointment in Florida.

Mr. Madden stated that the Virginia Institute of Marine Science had indicated there were no environmental concerns with the proposal. The Virginia Department of Health had approved the marina sanitary plan and the Virginia Department of Environmental Quality indicated that the water quality impacts should be minimal and temporary in nature. No other agency had objected to the application.

Mr. Madden explained that this marina has been in operation in one form or another for approximately 44 years. The current owners were attempting to improve the safety of the facility for their customers, and bring the facility into compliance with State regulations without changing the footprint of the marina. Staff believes that the public and private benefits of this project clearly outweigh the public and private detriment represented by the protestants' claim that the marina devalues their property. Accordingly, staff recommended approval of the project as proposed.

Patrick Boone, co-owner of the marina, was present and his comments are a part of the verbatim record. Mr. Boone said they purchased the property 5 years ago. He said the piling needed replacing as they were very old. He said he wanted to sister new pilings to the old ones if possible. He said they just wanted to fix it up and keep it clean. Associate Member Cowart asked if it was possible to move the second larger building back to be less intrusive. Mr. Boone responded that the Evans had more land and he could not imagine how that could be done. He said he thought that originally the building was more on land but erosion had occurred and changed that.

Commissioner Pruitt asked if anyone else was present in opposition. There was no one present in opposition.

Associate Member Cowart felt that since the marina was not permitted and some construction was apparently done after Mr. and Mrs. Evans came into the area, the Commission should not take any action with the protestants being absent. He moved to continue the hearing until the March meeting so the protestants could be present and testify. Associate Member Robins seconded the motion. The motion carried, 8-0.

Fees not applicable at this time, a continuance was granted.

9. **CHANNING MITCHELL, #04-1152**, requests authorization to remove an existing pier and boathouse and construct a new pier extending 123 feet channelward of mean high water with a 16-foot by 30-foot L-head, a 12-foot by 8-foot floating pier and an enclosed 21-foot by 42-foot boathouse adjacent to his property situated along Back Creek in Gloucester County. Two nearby property owners protested the project.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. He explained that there was an error on the design map and it should be 123 feet from mhw for the pier. He explained that Ms. Marjorie Masek, one of the protestants, had called earlier to say she could not be present at the hearing. He said she told him in their phone conversation that she did not object to the pier and bulkhead, as proposed, but wanted the boathouse to be open sided.

Mr. Neikirk explained that Mr. and Mrs. Mitchell's property is situated along the southeast shoreline of Back Creek, a tributary of the North River in the Ware Neck area of Gloucester County. Back Creek is approximately 500 feet wide at the project site and the channel is approximately five (5) feet deep at mean low water. Development along this portion of the shoreline is primarily residential.

Mr. Neikirk said that the Mitchells proposed to remove their existing pier and enclosed boathouse and construct a new private pier extending a similar distance of 123 feet channelward of mean high water, but with a taller enclosed boathouse and a larger pierhead. The proposed boathouse was to be 20.5 feet wide and 41.5 feet long, and the maximum height of the boathouse as proposed would to be increased by 2.5 feet to a height of 16 feet above mean high water. The boathouse was purportedly designed to provide protective mooring for an 18-foot to 21-foot antique Chris-Craft boat the Mitchells stated they intended to purchase. The mean low water depth at the channelward end of the pier was to be minus four (-4) feet.

Mr. Neikirk stated that the current pierhead was approximately 8 feet wide and 24 feet long. The Mitchells propose to construct a 30-foot by 16-foot L-head to facilitate the turning of a golf cart used to assist Mr. Mitchell in accessing their boat. An 8-foot by 12-foot floating dock was also proposed to facilitate easier access to their boat. The Mitchells stated that their future son-in-law lives across the North River, in Mathews County, and they often travel back and forth by boat. The total area occupied by the proposed pierhead and floating dock was 576 square feet.

Mr. Neikirk explained that the project was protested by an adjoining property owner, Mr. Robert Christ and by a property owner across the creek, Ms. Marjorie Masek. Mr. Crist is primarily opposed to increasing the height of the enclosed boathouse and believes it will obstruct his view. Ms. Masek is opposed to increasing the size of the boathouse or pier, also primarily for aesthetic reasons.

Mr. Neikirk said that since the combined area of the pierhead exceeded 250 square feet, the pier did not meet the requirements for the statutory authorization for private piers provided in §28.2-1203(5) of the Code of Virginia.

Mr. Neikirk stated that the pier and boathouse would only encroach over oyster planting ground currently leased to the Mitchells. No state agencies had commented on the proposal and staff does not believe the pier and boathouse will adversely affect navigation.

Mr. Neikirk said that staff believes the taller enclosed boathouse could adversely affect the protestants by obstructing the view from their properties and were of the opinion that an open-sided boathouse would provide similar protection for the Mitchells' boat, while serving to reduce the visual impacts. If the boathouse were constructed without sides, it would also eliminate the need for the 4-foot wide walkway inside the boathouse. Staff was also concerned with the combined size of the pierhead and floating pier. In 2003, the General Assembly stipulated that pierheads exceeding 250 square feet exceeded the statutory authorization for private piers contained in §28.2-1203(5) of the Code. Accordingly, staff critically evaluates requests for pierheads that exceed 250 square feet. While staff acknowledges that a floating pier may assist individuals in entering and existing a vessel, and they also recognize that floats less than six (6) feet in width may be unstable. Staff questioned the need to access the channelward end of a relatively short pier by golf cart and believes a wheelchair or scooter would provide similar access for physically challenged individuals while requiring significantly less maneuvering area. Even if a golf cart were used, however, staff believes it should be able to be turned in a smaller area.

Accordingly, Mr. Neikirk said that staff recommended approval of the project with a condition that the boathouse be constructed without sides and the combined dimensions of the pierhead and floating pier not exceed 250 square feet. Furthermore, if the boathouse were constructed without sides it would eliminate the need for the 4-foot wide finger interior pier adjacent to the main pier, so staff recommended it be eliminated as well.

Christine Breddy, with Gloucester Environmental and agent for Ms. Mitchell, was present and her comments are a part of the verbatim record. Ms. Breddy stated the protests were not because of the size of the pier and size of the boathouse. She said the boathouse was there prior to Ms. Mitchell's ownership of the property. She further said that the bulkhead was existing when Mr. Christ purchased his property and the bulkhead replacement was only changed in that the pilings were raised two feet. She said the walls were the same. She said Ms. Masek was only protesting the sides to the boathouse and her boathouse had sides.

Channing W. Mitchell, applicant, was sworn in and her comments are a part of the verbatim record. Ms. Mitchell explained that the turnaround was for her husband who

was not actually handicapped. She said her agent advised her the area was too small for a turnaround. She explained that he had vision problems as well. She said the 2 1/2' feet was no larger than usual, only the pilings were higher.

Associate Member Garrison explained that the General Assembly had limited the area to 250 square feet. Commissioner Pruitt explained that while statutory authorization was limited to 250, anything over that amount must come before the entire Commission pursuant to 28.2-1204.

Commissioner Pruitt asked if any protestants were present or represented.

Elaine R. Jordan, Attorney for Bob Christ, the protestant, was present and her comments are a part of the verbatim record. She provided a picture for her presentation. Ms. Jordan explained that if it were only replacement, then there would be no objection to the project, but they are enlarging the boathouse and the bulkhead. She said in Ms. Masek's letter, she said the bulkhead was increased in size in the 80's with permits. She said Ms. Masek only wanted the boathouse to be open-sided.

Christine Breddy in her rebuttal stated that the boathouse was the exact dimension as that existing, only 2 1/2 feet taller because of the pilings.

Associate Member Robins said that the enclosed boathouse did not serve the public's interest and should be open sided. He moved to accept staff recommendations, i.e., that the boathouse be open-sided to minimize impacts, the interior 4-foot walkway adjacent to the main pier be eliminated, and the combined deck and floating pier not exceed 250 square feet. Associate Member Garrison seconded the motion. Associate Member Holland stated he could not support with the motion. The motion carried, 6-1. Associate Member Holland voted no.

After Ms. Mitchell stated that she might just opt to replace the structure in accordance with Executive Orders 58 and 66, there was some discussion regarding the Executive Orders from the Governor's office for repairs resulting from Hurricane Isabel. Bob Grabb explained that since the application was received timely, prior to December 31, 2004, it was more of a question of getting the work done prior to the deadline set of June 30, 2005.

Permit fee.....\$25.00

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The Commission broke for a 40-minute lunch at approximately 12:39 p.m. and returned at approximately 1:20 p.m.

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- 10. JASON MITCHELL, #04-1150**, requests authorization to remove an existing pier and construct a new pier extending 135 feet channelward of mean high water with a 23-foot by 23-foot L-head adjacent to his property situated along the North River in Mathews County.

Chip Neikirk, Environmental Engineer, Sr., was present and his comments are a part of the verbatim record.

Mr. Neikirk explained that Mr. Mitchell's property was situated along the eastern shoreline of the North River in Mathews County. The North River is approximately 1,100 feet wide at the project site and the channel is approximately seven (7) feet deep at mean low water. Development along this portion of the shoreline is primarily residential or agricultural.

Mr. Neikirk said that Mr. Mitchell proposed to remove his existing 165-foot private, noncommercial, open-pile pier and construct a new private pier extending a similar distance of 135 feet channelward of mean high water, but with a larger pierhead, a floating pier section and an uncovered boatlift. The mean low water depth at the channelward end of the pier is minus seven (-7) feet. Although Mr. Mitchell currently only has a shallow draft 15-foot boat, he has stated his intent to purchase a larger sailboat.

Mr. Neikirk stated that the current T-shaped pierhead was approximately 10 feet wide and 15 feet long. Mr. Mitchell proposes to construct a 19-foot by 16-foot L-head adjacent to the main stem of the 6-foot wide pier to facilitate the turning of a golf cart used to assist a relative in accessing their boat. A 294 square foot floating dock is also proposed to facilitate easier access to his and his guests' boats. Mr. Mitchell stated that his future father-in-law lives across the North River, on Back Creek, in Gloucester County, and they often travel back and forth by boat.

Mr. Neikirk explained that the total area occupied by the proposed pierhead and floating dock is 598 square feet. Since the combined area of the pierhead exceeds 250 square feet, the pier does not meet the requirements for the statutory authorization for private piers provided in §28.2-1203(5) of the Code of Virginia. The pier will not encroach on any public or privately leased oysterground and no state agencies have commented on the proposal. In addition, no comments were received in response to the public notice placed in the Gloucester Mathews Gazette Journal.

Mr. Neikirk further explained that staff was concerned with the combined size of the pierhead and floating pier. In 2003, the General Assembly stipulated that pierheads exceeding 250 square feet exceeded the statutory authorization for private piers contained in §28.2-1203(5) of the Code. Accordingly, staff critically evaluates requests for pierheads that exceed 250 square feet. While staff acknowledges that a floating pier may assist individuals in entering and existing a vessel, they also agree that floats less than six (6) feet in width may be unstable. Staff questioned the need to access the channelward

end of the relatively short pier by golf cart and believes a wheelchair or scooter would provide similar access for physically challenged individuals while requiring significantly less maneuvering area. Even if a golf cart were used, however, staff believed it should be able to be turned in a smaller area.

Accordingly, Mr. Neikirk said that staff recommended approval of the project with a condition that the combined dimensions of the pierhead and floating pier not exceed 250 square feet.

Commissioner Pruitt asked if the applicant or representative of the applicant was present to comment.

Christine Breddy, with Gloucester Environmental and agent for Mr. Mitchell, was sworn in and her testimony is a part of the verbatim record. Ms. Breddy commented that this was the same as the previous case.

Jason Mitchell, applicant, was sworn in and his comments are part of the verbatim record. Mr. Mitchell said he needed to correct the dimensions of the turnaround T-head which was 25 feet including the pier coming down. He said it was actually 16 x 19. He said that there was a 5-foot tide change in that location and the floating pier was needed. He said he experimented with what size was needed for the golf cart and it cannot be turned around in the smaller area. He said the larger sailboat would be docked at the end of the pier necessitating the need for a larger size.

No one in opposition was present to comment. Commissioner Pruitt asked for a motion.

Associate Member Schick moved to approve the project with staff's recommendations. Associate Member Garrison said that Mr. Mitchell stated he had made the turnaround in a 304 square feet area (19' X 16') and asked that the motion be amended to permit that encroachment. Associate Member Schick agreed to accept the change to a maximum of 304 square feet for the L-head. Associate Member Garrison seconded the motion. The motion carried, 8-0.

Permit fee.....\$25.00

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- 11. JAMES HOLTHOFF, 04-0618**, requests authorization to enlarge an existing 32-foot by 32-foot boathouse to 56-feet by 59-feet and to construct a 24 feet of 4-foot wide catwalk pier extension; remove, relocate and extend a 5-foot wide catwalk pier to a length of 56 feet; and remove and relocate an existing 6-foot by 32-foot finger pier to a location parallel with the 25-foot by 25-foot T-head of the existing pier within and adjacent to Jones Creek, a tributary to the Pagan River in Isle of Wight County. Two county residents protested the project.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides.

Mr. Stagg explained that Mr. Holthoff's existing pier and boathouse were located near the confluence of Jones Creek and Titus Creek, just upstream of the Jones Creek Public Boat Ramp and Fishing Pier. Mr. Holthoff received authorization in 1987 (VMRC #87-0345) to construct an 89-foot long private pier, a 25-foot by 25-foot observation deck with gazebo, and a 32-foot by 24-foot covered boathouse with lift at his property.

According to Mr. Holthoff, he had experienced difficulties mooring his boats at the constructed pier as authorized in 1987. On both the upstream and downstream sides of the L-head he was mooring boats perpendicular to the channel alignment. During the late 1980's, or possibly early 1990's, Mr. Holthoff constructed additional stationary and floating finger piers aligned parallel to the channel. It also appears that additional finger piers within the boathouse roof footprint were also constructed, which were not shown in the 1987 application. While a Joint Permit Application to construct these piers should have been submitted prior to construction, if they were installed before July 2003, they would likely have met the criteria for permit exemption as provided by the Code of Virginia. As the structures currently exist, Mr. Holthoff has two covered slips, two uncovered slips, and a jet ski lift.

Mr. Stagg said that Mr. Holthoff's current request includes extending one of the finger piers and relocating and extending two other existing finger piers along the downstream side of the existing pier. In addition, he was requesting an increase in the size of the boathouse to 56 feet by 59 feet for three slips instead of the existing two. Additionally, the covered slips would include lifts and there will be one other uncovered boatlift and one jet ski lift. Mr. Holthoff provided boat ownership registration information in the application of four powerboats of 18, 28, 30, and 51 feet in length.

Mr. Stagg explained that the application indicates that the channelward end of the existing pier is 25 feet from the channel and that the width of Jones Creek at this location is approximately 420 feet. The current proposal does not extend any further channelward than the existing structures. As proposed the total amount of pier decking would be 1,267 square feet. The boathouse as proposed was 2,392 square feet for a combined encroachment of 3,659 square feet.

Mr. Stagg stated that staff had received objections from Mr. and Mrs. Neikirk, whom reside nearby on Titus Creek. Their objections included the large size of the proposed structure on Jones Creek, which they indicated they did not consider it to be a major waterway. They note that most other private piers along Jones Creek only accommodated one or two vessels. Additionally, they questioned whether this structure might adversely impact navigation within the creek, and questioned if some slips might eventually become rental slips. Staff also received a letter of objection from Jerianne Gardner, submitted on the letterhead of Isle of Wight Water Watchers. It is unclear if that letter was intended to represent the group or just Ms. Gardner's concerns. Her comments include the amount of

impervious surface this addition would create and its impacts on water quality, as well as, increased boat traffic and any subsequent shoreline erosion related impacts.

Mr. Stagg stated that the Isle of Wight County Wetlands Board had indicated that the project would not require a wetlands permit. No other agencies had commented on the proposal.

Mr. Stagg said that since Mr. Holthoff did not propose to extend any structures channelward of the existing pier, there appeared to be no additional navigational issues beyond those attributable to the existing structure. While Mr. Holthoff does own four motor vessels, staff believes that a roof structure to cover three slips may be excessive considering the size of the waterway and other similar structures along Jones Creek. Staff recommended approval of the pier reconfigurations, except for the most channelward 6-foot by 32-foot finger pier, approval of an open-sided boathouse roof of 12 feet by 32 feet over one of the 12-foot wide slips and a roof of 20 feet by 56 feet over the 17-foot wide slip, and that no boats be moored on the channelward side of the existing L-head.

James Holthoff, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Holthoff stated that staff did not present his project correctly. He asked for staff's slide to demonstrate what he requested. He said that he wanted the boatlift to have a roof also. He said he wanted a boatlift also in the slip location that staff did not recommend approval for and the pier with an offset. He said he wanted and needed to get his boat out of the water to decrease the maintenance and rid the need for applying antifouling paint. He said the Corps of Engineers issued their permit in 2003 and that he had answered all the objections raised. He said he had met with the adjoining property owners and they were not objecting to his proposal. He said he did not know the two protestants. He explained that Mr. Neikirk was over a ½ mile away and Ms. Gardner was over 9 miles away from him. He provided the Commission with a copy of the Corps of Engineers letter which said there would be minimal impact. He said he was requesting approval of his project.

Commissioner Pruitt asked if any in opposition were present to comment.

Charles F. Neikirk, protestant, was sworn in and his comments are a part of the verbatim record. Mr. Neikirk explained that Mr. Holthoff's boat was so large the bridge had to be raised to get it into the creek. He said at low tide the water depth was 1 to 2 ½ feet. He said there is a problem with larger boats in the creek because there are only john boats in that creek. He went on to say this was a creek not a river or bay.

Sharon Stallings, a supporter of the project, was sworn in. Her comments are a part of the verbatim record. Ms. Stallings explained that she had known Mr. Holthoff for many years and he was very responsible. She said that the project was pleasing and would not impact the waterway.

James Holthoff in his rebuttal explained that the boats were already there and the Jones Creek bridge had been raised to allow for the bigger vessels.

Commissioner Pruitt asked Tom Barnard, representative for VIMS, to address the issue of applying antifouling paint or removal of a vessel and the comparative effects on the environment. Mr. Barnard explained that there was a lot of data on antifouling toxicity. He said there were also some studies on treated bulkhead and such that can pollute and affect the bottom organism, but nothing specific. He also stated that the size of the waterway would have a bearing in the matter.

Commissioner Pruitt said it was the job of the Commission to balance the issues of public trust and private property rights.

After a great deal of discussion, Associate Member Holland moved to approve the project as presented by the applicant. Associate Member Schick seconded the motion. Associate Member McLeskey asked if approval included the cover over the boatlift. Associate Member Holland responded, yes. The motion carried, 5-3. Associate Members Cowart, Garrison and Jones all voted no.

Permit fee.....\$100.00

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12. DONALD BRITTON, ET AL, #03-1873, requests authorization to construct 287 linear feet of replacement bulkhead aligned a maximum of two (2) feet channelward of a deteriorating bulkhead and seven (7) 10-foot long finger piers with mooring pilings, creating 16 wetslips along Chincoteague Channel adjacent to Captain Fish's Restaurant in the Town of Chincoteague. This is a portion of a proposed 63-wetslip marina, the majority of which will be located in an adjacent man-made basin. An adjacent property owner protested the project.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides.

Mr. Badger explained that Mr. Britton's property is located on South Main Street, north of the Coast Guard Station, on the site of the Captain Fish's Restaurant. The overall proposal involves the expansion of an existing man-made boat basin, through the realignment of the existing bulkheads and dredging to deepen and widen the area. The number of slips in the marina will increase from 28 to 63.

Mr. Badger said that only the channelward 16 slips and the 287 linear feet of replacement bulkhead fall within VMRC's jurisdiction. The restaurant's enclosed porch, which is on open-piles and extends approximately 15 feet channelward of the existing bulkhead, will be removed when the bulkhead is constructed.

Mr. Badger stated that the Accomack County Wetlands Board, at its public hearing on February 26, 2004, authorized the installation and backfilling of 1,051 linear feet of bulkhead; construction of a 168-foot long open-pile pier; finger piers; mooring pilings; the filling of 4,500 square feet of tidal vegetated wetlands and the dredging of the man-made boat basin to minus four (-4) feet at mean low water. The Board's approval included a mitigation plan that will create a 4,500 square foot salt marsh for the loss of the vegetated wetlands.

Mr. Badger said that the adjacent property owners, Mr. and Mrs. Clifford W. Raymond, Jr., have protested the project. They argue that the bulkhead on the northeast side of Mr. Britton's property, along with the raised elevation of his property, will transfer significant amounts of rainwater run-off onto their property. They also have concerns that the channelward 30-foot section of the bulkhead encroaches onto their property.

Mr. Badger stated that the Virginia Institute of Marine Science estimated that 500 square feet of subaqueous bottom habitat will be lost due to bulkhead replacement, but the dredging will also create 5,400 square feet of bottom out of what is presently upland. An estimated 4,875 square feet of nonvegetated intertidal wetlands will be converted to subtidal bottom. All other comments were directed towards the Accomack County Wetlands Board, which as stated earlier, approved their portion of the project. The Virginia Health Department advises that the applicant has submitted an approved plan for sanitary facilities. Their Division of Shellfish Sanitation advises that the project will affect condemned shellfish growing areas but will not cause an increase in the size of the closure. No other State agencies have raised objections to the project.

Mr. Badger said that the U.S. Army Corps of Engineers has issued a Nationwide Permit Number 18, with a special condition for mitigation.

Mr. Badger also said that the Chincoteague Town Council sent a letter in support of the project due to the shortage of existing marina facilities and docking for visitors to Chincoteague.

According to Mr. Badger, this facility appears to meet most of the requirements of the Commission's *Criteria for the Siting of Marinas or Community Facilities for Boat Mooring*. Item number 7 of the Specific Siting Guidelines recommends site specific stormwater management Best Management Practices (BMPs), be required (such as buffer strips, grassed swales, wet detention ponds and permeable parking surfaces).

In this case, Mr. Badger said that since there will be no boat hauling and boat maintenance at the site, staff believes the rainwater run-off from the marina's proposed parking area, most of which exists for the restaurant and existing slips, is an upland issue that can be addressed by the applicant's Erosion and Sediment (E&S) Control Plan, which is required by Accomack County and the Town of Chincoteague.

Furthermore, Mr. Badger stated that the applicant has stated that the proposed bulkhead on the northeast side will be in a straight line and will not encroach upon the property rights, including riparian rights of Mr. and Mrs. Raymond.

Therefore, staff recommends approval of the proposed project with a condition that, should there be a change in upland use (e.g., marina to condominiums, dockominiums, townhomes, etc.), a new permit application and public interest review process for the use of the existing moorings involving State-owned submerged lands would need to be submitted for Commission review and approval.

Jon Poulson, counsel for the applicant, was present. His oral arguments are a part of the verbatim record. Mr. Paulson reminded the Commission that they had remanded this matter back to the Wetlands Board for reconsideration, which the board did and approved it. He said he had agreed with the remand. He said the facility was in disrepair when it was purchased by Mr. Britton and reiterated that the Town of Chincoteague was backing the project. He explained that Chincoteague Channel is a major tributary used by commercial seafood businesses. He said that the protest had to do with upland issues and wetlands portions of the project. He said that VMRC's authority extended only to the bulkhead and finger piers. He said that the VMRC staff was recommending approval and he was asking the Commission to agree and approve the project.

Clifford Raymond, protestant, was sworn in. His comments are a part of the verbatim record. Mr. Raymond explained that he was the adjacent property owner and had been a part time resident of Chincoteague for 27 years. Mr. Raymond presented a number of exhibits to the Commission. He said that he was objecting to the bulkhead and the fact that it would block their path to their dock. He said he did not understand how the bulkhead could be constructed on the property line without impacting him.. He said he was also concerned with the mooring piles and slips he wants. He said that Mr. Britton cannot access this area without crossing his property. He said the bulkhead should be installed a minimum of 5 feet from the property line. He said there was also a drainage issue and he had not seen any plans for how the drainage would be handled or treated. He said he was also concerned with the asphalt paving and the runoffs impact on the natural resources.

Lois Raymond, protestant, was sworn in and her comments are a part of the verbatim record. Mrs. Raymond said that Mr. Garrison made the comment earlier about how progress continues. She said she is not against progress, just against being steamrolled and losing her rights. She said she had concerns are for the community also. She asked how the project would proceed and who would look out for them. She said the Commission must look at the big picture, not just the bulkhead. She asked if the Commission should not also be concerned with water quality.

Jon Poulson, in his rebuttal comments, said that the bulkhead was on the property line. He said he had not heard anything that was pertinent to this Commission. He said the

protestants' complaints should be with the Wetlands Board, which approved the project a year ago.

Associate Member Bowden said he wished to clarify some misconceptions. He said this facility had always been commercial, the area had always been condemned and there was a great need for more slips in the Chincoteague area. He further stated that the zoning questions were not the VMRC's concern, the Wetlands Board issues were not for VMRC, and no evidence to not support the Britton project was presented.

After much discussion, Associate Member Garrison stated that the project appears to meet VMRC marina siting criteria; runoff was an upland issue; and the bulkhead was in a straight line and should not encroach on the Raymond's property rights including riparian rights. Therefore, he moved to approve the project with the stipulation that should there be a proposed change in the upland use (e.g., marina, to condominiums, dockiminiums, etc.) that a new permit application and public interest review process would be required for the moorings on state-owned land. Associate Member Holland seconded the motion. The motion carried, 8-0.

Permit fee.....\$100.00

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Associate Member Jones left the meeting for the day at approximately 2:55 p.m.

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- 13. **JEFFREY E. ZERBY, SR. #04-1778**, requests authorization to construct a 270-foot long by 6-foot wide pier with a 54-foot by 10-foot T-head, and sixteen (16) 14-foot long by 2-foot wide finger piers with eighteen (18) piles along Pungoteague Creek adjacent to Sandpiper Cove Campground in Accomack County. The proposed pier will create sixteen (16) boat slips for a total of twenty-six (26).

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

Mr. Badger explained that the proposed project is located on the north side of Pungoteague Creek and across the creek from the Town of Harborton. Sandpiper Cove Campground was created in 1972 and is approved for 187 mobile homes and campsites. The campground has approximately 1,200 linear feet of water frontage along Pungoteague Creek.

Mr. Badger stated that the applicant is in the process of renovating the park. As part of that upgrade, the applicant had previously received permits from the VMRC and the local

wetlands board to reconstruct and extend a fishing pier and another pier for the mooring of ten (10) small boats. The permits also included renovation of the existing boat ramp and the two (2) tending piers.

Mr. Badger stated that the Health Department had informed us that the applicant had submitted an approved plan for sanitary facilities. Their Division of Shellfish Sanitation advises that the project involves approved shellfish growing waters, and that the proposed activities would require a seasonal closure. They also state that if the project is approved, the facilities should be restricted to property owners and bonafide guests, and no overnight occupancy aboard boats should be allowed. (At the present time there is not a seasonal closure, due to the fact that the number of slips does not exceed ten).

Mr. Badger said that while there are privately leased shellfish grounds and State shellfish plantings within Pungoteague Creek, the project will not encroach directly on any leases. The closest shellfish grounds are approximately 4,800 feet away.

Mr. Badger stated that the Virginia Institute of Marine Science (VIMS) indicates that the individual and cumulative adverse environmental impacts resulting from this activity will be minimal. The Accomack County Wetlands Board has approved their portion of this project. No other State agencies have raised objections to the project and the project is not protested.

Mr. Badger explained that the siting criteria checklist in the Commission's "Criteria for the Siting of Marinas or Community Facilities for Boat Mooring" (VR 450-01-0047) identifies two criteria associated with this facility as being undesirable. Specifically, the salinity is suitable for shellfish growth and the water quality is high as evidenced by the approved designation for shellfish harvesting. Also, the regulation states for community piers that, "the number of slips will not necessarily be predicated by the number of units on the property" and that, "projects that by their cumulative impact will result in dense concentrations of boats in one area will be critically evaluated as to their impacts on natural resources."

Mr. Badger said that high-density waterfront developments raise difficult resource allocation questions. These questions become increasingly complex when numerous upland various users share a limited length of shoreline. While staff agrees that these individuals have some rights associated with the use of the common shoreline, those rights probably only include some limited right to access the water. Staff does not believe that this interest automatically includes a right to construct a pier or moor a vessel for those that are not individual or riparian owners. This opinion is clearly expressed in the Commission's Marina Siting Criteria. As a result, staff is often left with trying to determine what constitutes "reasonable" access for the owners of such developments.

Mr. Badger stated that for high density developments, staff typically recommends that the number of slips be limited to the number which could have been constructed had the

property been developed as single family lots. Under current zoning practices in Accomack County, approximately nine single-family lots could have been located along the shoreline in this development. Therefore, one might expect that up to nine (9) piers could be built along the development’s 1200 feet of shoreline.

Accordingly, Mr. Badger said that since the applicant already has authorization to reconstruct and extend a fishing pier and another pier for the mooring of ten (10) small boats, Staff believes the upgraded boat ramp should be utilized by the mobile homes and campsites to access the creek.

Mr. Badger explained that since the additional wetslips would require a seasonal closure around the entire facility, staff was reluctant to recommend approval of the proposed pier and 16 wetslips. Accordingly, staff recommended that the application be denied.

Jeff Zerby, Jr., applicant, was sworn in and his comments are a part of the verbatim record. Mr. Zerby said there were two items he wanted to correct. One was that there was more than 112 feet of waterfront. He said that a majority of the closure was along their waterfront. He said that they intend to improve the area and to make the area safer. He said he planned to remove the traffic at the boat ramp and make the docks less crowded. He said this was a business. He said he would be cleaning up the area to attract more people. He explained that the majority of the boats belong to his neighbors and they want to use the boat ramp. He said this was their only access to water.

No one was present in opposition to comment on the project.

Associate Member Robins stated that riparian owners were entitled to access, but the public trust must be considered and he felt what was there now was sufficient. He moved to deny the permit application. Associate Member Cowart stated that he agreed with Mr. Robins that the facilities were adequate. Associate Member Schick seconded the motion. The motion carried, 7-0.

No fees applicable, permit denied.

- 14. DOUG BAILEY, #04-1520, requests authorization to construct a 36-foot long by 18-foot wide open-sided boathouse adjacent to a previously authorized private pier adjacent to his property situated along the Poquoson River in York County. An adjacent property owner and several nearby residents protested the project.**

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

Ms. West explained that Mr. Bailey's property was located on the Poquoson River in York County. In his application, Mr. Bailey requested authorization to construct a 161-foot long by 5-foot wide private, open-pile, non-commercial pier with an 18-foot by 11-foot L-head and a 36-foot by 18-foot open-sided boathouse with associated 4-foot wide finger piers adjacent to his property. There is one other boathouse along this section of shoreline and several directly across the waterway.

Ms. West said that the Commission staff had determined that the pier was authorized by statute pursuant to §28.2-1203 of the Code of Virginia. However, since the boathouse was the subject of a protest letter from the adjacent property owner, that portion of the project was not statutorily authorized and must be considered by the Commission.

Ms. West said that five protest letters had been received in response to the application. Ms. Doris Lassiter, an adjacent property owner, believed the boathouse was too large given the size of the upland parcels in the neighborhood. She further stated that the structure would block her view and reduce the value of her property. Ms. Barr and Ms. Sutton, while not immediately adjacent to Mr. Bailey, do own waterfront property in the immediate vicinity. Their concerns reflect those stated by Ms. Lassiter. Mr. Brummer and Mr. Pierpont do not live in the immediate vicinity, but own waterfront property on the Poquoson River in York County. Mr. Brummer is concerned about his view, his property value, and that this boathouse would establish a precedent for others to construct similar structures. Mr. Pierpont believes the properties along this portion of the river are too small to support a "boathouse row".

Ms. West said that there was no oyster ground leases affected by the proposal.

Ms. West said that there are many boathouses on the Poquoson River. Within this neighborhood, there is one other previously authorized boathouse. The subject boathouse appears to be reasonably sized. In fact, if the adjacent property owner had not objected to the project, it would have qualified for the authorization contained in Section 28.2-1203 (A)(5) of the Virginia Code. The open-sided design should also minimize the visual impacts associated with the structure. As such, staff recommended approval of the project as proposed.

Ms. West said there were four (4) letters of support from adjacent and local property owners. Two of them were in the notebooks. Two had only been received recently and she provided copies of those for the Commission.

Ms. West explained that if the protest had not been received the project would have been approved pursuant to Section 28.2-1203 (A) (5). Since it was protested by the adjacent property it was before the entire Commission. She said the staff was recommending approval of the project.

Douglas Bailey, applicant, was present and his comments are a part of the verbatim record. Mr. Bailey gave a brief statement and then after the others addressed the Commission he wanted to resound the comments made. He said he was requesting authorization for 36' long X 18' wide, open-sided boathouse. He said he specifically proposed it open-sided so as not to be a visual problem.

Ken P. Pierpont, protestant, was present and his comments are a part of the verbatim record. Mr. Pierpont said that if this was allowed, the Commission would be opening pandora's box and he recommended not opening that box. He said the multi-slip boatsheds were not necessary and that a boatlift would do the same job. He asked the Commission to deny the project.

E. A. Brummer, protestant, was present and his comments are a part of the verbatim record. Mr. Brummer said that he had concerns with the pilings sticking up for the boathouse. He said it was good that it was being made open sided, but the boatlift would raise the boat so that it blocked his view. He said allowing this would only start something. He said there was one other boathouse in the area, but there are no boathouses in the immediate area of concern. He said the view would be impeded and if this was approved it would set a precedent. He said he strongly objected to this project. He said Mrs. Lassister was the most affected.

Doris Hudgins Lassiter, protestant, was present and her comments are a part of the verbatim record. Mrs. Lassiter had some photographs to present. She explained that she objected to the boathouse as it was a view obstruction. She said it was a large boathouse, 36' X 18' and the lots were too small. She said there was a 110' lot at the most. She said she felt the boathouse would devalue her property. She said she was concerned for future generations and their ability to enjoy the view on the Poquoson River. She said she had a question as to why the pilings were put in at the small ends down and the large ends up. She said she hoped this would not be approved and thereby starting a trend of more boathouses.

Doug Jenkins, waterman, was present and his comments are a part of the verbatim record. Mr. Jenkins said it was done that way to prevent the ice from pulling them up.

Associate Member Schick also explained that was done to support the roof weight better.

Doug Bailey, applicant, in his rebuttal stated that there were numerous larger boathouses in the area. He said he had designed the roof in such a way to have minimal impact. He said he was using his property to the fullest potential. He said the objections were not supported by facts, only opinions.

Associate Member Schick explained that boathouses were primarily of local concern if it fit the criteria for a boathouse. He moved to approve the project. Associate Member Garrison seconded the motion. Associate Member Robins stated that the

**size of lots do not infringe on the riparian rights of the other property owners.
Motion carried, 7-0.**

Permit fee.....\$25.00

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Associate Member Holland suggested that, given the number of new members on the Commission staff may want to prepare a briefing on water dependency and the Habitat criteria developed to define water dependency. Commissioner Pruitt instructed staff to schedule a Habitat meeting and to make an agenda item for the new board members to brief them the various issues such as what is water dependency, the 250-square foot code provision, etc.

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Commissioner Pruitt suggested that item 17 be heard before the rest of the fisheries items since so many individuals were at the meeting from a long distance for this issue.

17. PUBLIC HEARING: Establishment of 2005 recreational summer flounder fishery management measures.

Rob O'Reilly, Deputy Chief, Fisheries Management Division, gave the presentation with slides. His comments are a part of the verbatim record and he reviewed his powerpoint presentation with tables and graphs giving the history of summer flounder management measures and related catch data. He explained that this is a public hearing to establish 2005 recreational summer flounder management measurements. He said staff had a meeting with recreational fishermen, charter boat captains, anglers and other interested groups, and it was a great benefit to staff. He said it resulted in 4 options suggested for the Commission to consider.

Option 1) -- 16 ½-inch minimum size limit; 8 fish possession limit; January 1-March 28 closed season.

Option 2) -- 16 ½-inch minimum size limit; 6-fish possession limit; no closed season.

Option 3) --16-inch minimum size limit, 4 fish possession limit; closed periods of January 1 through March 28 and July 11 through July 17.

Option 4) -- 16-inch minimum size limit, 3 fish possession limit, and closed periods of January 1 through March 28 and July 11.

He explained that if there is an overage, then the next year projections must consider the overage when proposing the next year's management measures.

He explained that in the regulation (page 7), was modeled after the most conservative option, 16 ½ inch with 8 fish. He explained that, on page 8, the January – March closed season is still in place.

He said staff was recommending a 16 ½ inch size limit with a 6 or 8 fish catch limit. He said the CCA was recommending the 6 fish limit only but no size limit was proposed. He further stated that option 2 provided consistency with the state of the stock.

Carl Josephson, Assistant Attorney General, Sr., counsel for VMRC, left at approximately 4:03 p.m.

The public hearing was opened.

Randy Lewis, bait and tackle operator, was present and his comments are a part of the verbatim record. Mr. Lewis said that a letter was sent in representing 632 paying flounder fishermen who wanted option 2. He said they needed option 2's size limit to get enough fish. He said the summer flounder is not a catch and release fish. He said that most do not try to go and catch flounder before February 1.

Dave Barbee, representing the Northampton County Anglers Club, was present and his comments are a part of the verbatim record. He said that when he asked the members of this angler club, he got the following results: 105 chose option 1; 26 chose option 2; 4 chose option 3; 0 chose option 4; 1 abstained; and one said none of the above.

The public hearing was closed. Commissioner Pruitt asked for a motion.

Associate Member Garrison asked how hard would it be to separate the river fishery and give the fishermen small size fish, upriver. Mr. O'Reilly explained that it was not possible, the most it can be split is between the Chesapeake Bay, Eastern Shore and Oceanside. He went on to explain that data was not collected that fine. He said that at the FMAC meeting, five wanted option 1, three wanted option 2, and one wanted option 4.

Associate Member Bowden said that the Eastern Shore preferred option 2. He said the Seaside Eastern Shore harvest constantly drops and the closed season affects the seaside the most. He said it needed to be a 6 fish allowance.

Associate Member Robins said he would support option 2.

Associate Member Bowden moved to adopt option 2. Associate Member Holland seconded the motion. The motion carried, 7-0.

15. REQUEST APPROVAL of the 2005 Oyster Replenishment Plan and the procurement procedures.

James Wesson, Head, Conservation and Replenishment Dept., gave the presentation. His comments are a part of the verbatim record. He explained that plan was to utilize the available house shells and to transfer seed. He said the evaluation was self-explanatory and he would answer questions of the Commission.

Commissioner Pruitt asked Jane McCroskey, Chief, Administration and Finance Division, if she had any comments to make regarding the proposed program. Mrs. McCroskey said that the board needed to approve the procurement procedures as well as the program. Her comments are a part of the verbatim record.

Commissioner Pruitt asked for public input and there were none.

Associate Member Robins moved to approve the proposed program as well as the procurement procedures. Associate Member Schick seconded the motion. The motion carried, 5-0-2. Associate Member Bowden was absent during the vote and Associate Member Cowart abstained.

The 2005 Oyster Replenishment Plan and the procurement procedures are as follows:

DESCRIPTION - FUNDING SOURCES	MATCH REQUIRED	AMOUNT
NON-FEDERAL		
General Funds (GF) State		\$ 0
Indirect Cost Recoveries (ICR) State		\$150,000
Special Oyster Rock Fund (SF) State		\$ 0
Governor's State Income CB Fund (from 1999)		\$108,000
Virginia Oyster Reef Heritage Foundation		\$20,000
Elizabeth River Project – Maresk Mitigation		\$250,000
TOTAL NON-FEDERAL		\$528,000

Commission Meeting

**13109
February 22, 2005**

FEDERAL

NOAA 2003 - Virginia Oyster Reef Heritage Foundation		\$30,000
CRM Seaside Oyster Heritage		\$50,000
National Fish and Wildlife Foundation (NFWF)	\$48,700	\$48,700
Westmoreland County - NFWF	\$10,000	\$10,000
NOAA-2004 -Oyster Restoration		\$400,000
*NOAA-2005- Oyster Restoration		\$740,000
TOTAL FEDERAL		\$1,278,700

*The availability of this funding source is unclear, but expected in late summer of 2005.

BAY AND TRIBUTARIES

SEED TRANSFER:

There was almost no spatset in the Bay in 2004. Salinities are low, disease impacts have been reduced somewhat, and spatsets may be limited in 2005. There are some seed oysters in the upper James River from previous spatsets. If we can find watermen to harvest the seed, we will move 10,000 bushels of seed oysters to Bowlers Wharf and Russ’s Rock in the Rapahannock River. This would cost approximately \$5.00 per bushel.

James River Seed to upper Rappahannock River
10,000 bushels @\$5.00/bushel \$50,000 ICR

SHELLPLANTING Reef Sanctuary and Harvest Areas:

About 700,000 bushels of house shells are available to plant on the western shore and 40,000 bushels on the Eastern Shore. If the NOAA-2004 and 2005 funds are available, we will have enough money to use all of these shells.

Westmoreland County Oyster Heritage Program:

Westmoreland County and this year the Cople Middle School “Problems Solvers” continue to work with our Department to pursue funding to restore oysters within their county. The Cople Middle School “Problem Solvers” received a National Fish &

Wildlife Foundation grant to build a sanctuary reef near Lynch Point in the Yeocomico River.

Yeocomico River
Lynch Point Reef - 30,000 bushels of shells
@\$.100/bushel \$30,000
(10,000 NFWF and \$20,000 ICR)

Virginia Oyster Heritage Program, Phase II, Year 4:

Virginia's Oyster Restoration Plan follows the model that was endorsed by the Oyster Heritage Program, the Chesapeake Bay Program, and the scientific community. We have surveyed sites throughout the Bay and its tributaries, and have identified about 12,000 acres of good, public oyster bottom that needs consistent replenishment with shell cultch. Approximately 10 percent of that area is to be set aside as sanctuaries, and the remainder replenished for harvest. To minimize costs this year, areas will be planted within reasonable proximity to the shell sources.

We will continue to maintain productive areas in the Rappahannock, Piankatank, and Great Wicomico Rivers. We will also continue to rebuild harvest areas in Tangier (Hurleys and California Rocks) and Pocomoke Sounds (Onancock Rock) where we have had relatively good spatset and survival in recent years.

Reedville – Zapata Stockpile to California and Hurleys Rocks, Tangier Sound and Onancock Rock in Pocomoke Sound.

300,000 bushels @ 5,000-10,000/acre
@\$1.50/bushel \$450,000 NOAA

Reedville – Zapata Stockpile to Elizabeth River, Hospital Point

100,000 bushels @ 10,000 bushels/acre
@ \$2.00/bushel \$200,000 ERP-Maresk Mitigation

Reedville-Zapata Stockpile to the Great Wicomico River, Seed Rocks

35,000 bushels @ 1,000 bushels/acre
@ \$1.41/bushel \$49,350 NOAA

Other Shucking Houses on the Western Shore to the Rappahannock and Piankatank Rivers

300,000 bushels @ 1,000-5,000/acre
@ \$0.95 - \$1.50/bushel \$375,000 NOAA

We will also be purchasing hatchery produced broodstock oysters to place on the shellplants in the Elizabeth River as a requirement of mitigation for the Maresk project. We will set the price for 50 mm or greater, hatchery produced, DEBY oysters to be delivered to the project site.

625,000 DEBY oysters @ \$0.08/oyster	\$50,000 ERP-Maresk Mitigation
Seaside, Eastern Shore:	

Two grants are available for Seaside.

NFWF Oyster, Scallop and SAV
Restoration with the Nature Conservancy

60,000 bushels of shells @ \$1.00/bushel for oyster restoration	\$20,000 NFWF \$40,000 ICR
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Other funds for bay scallop restoration and eelgrass restoration	\$13,700 NFWF
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5,000 bushels of seed oysters from private grounds in the Machipongo River to Hogg Island @ \$5.00/bushel	\$15,000 NFWF \$10,000 ICR
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Seaside Oyster Heritage Program
Oyster restoration on various rocks in Accomack and
Northampton Counties

30,000 bushels of conch shells @ \$2.00/bushel	\$50,000 CRM \$10,000 ICR
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**APPROVAL OF PROCUREMENT ACTIVITY FOR THE 2005 OYSTER
REPLENISHMENT PROGRAM:**

General:

Certain aspects of the procurement of seed, shell, and replenishment services differ from the Commonwealth's standard procurement procedures and therefore must be documented and approved by the Commission. The Commission will be exercising this option under Section 28.2-550 of the Code of Virginia.

This section of the Code states that:

The Commission, when it makes a determination in writing that competitive bidding or competitive negotiation is not feasible or fiscally advantageous to the Commonwealth, may authorize other methods of purchasing and contracting for seed oysters, house shells, reef shells, shell bed turning, and other goods and services for oyster ground replenishment which are in the best interest of the Commonwealth and which are fair and impartial to suppliers. It may establish pricing for its award and purchases; use selection methods by lot; and open, close, and revise its purchases according to changing conditions of the natural resources, markets, and sources of supply.

For the harvest and movement of wild seed oysters and excavated shells, the Commission will set the per bushel price to be paid. For the turning and cleaning and dredging of public oyster bottoms, the Commission will set at per hour or per day rate to be paid. For the purchase of hatchery-spawned, aquaculture-produced, broodstock oysters, the Commission will set the price for each oyster. Public notices will be posted, and all interested parties may apply. Selection of contractors will be done using the lottery method.

The Commission will also set the price for the purchase of house shells. The prices are currently estimated to be \$0.30 per bushel for conch shells, \$0.35 per bushel for clam shells, and \$0.50 per bushel of oyster shells at the shucking house. Loading, transporting and planting costs will be set by the Commission based on handling costs, the type of activity, and the distance for transporting to the activity sites. Letters were sent to all licensed shucking houses inquiring as to the availability of shell. All houses that responded positively will provide shells to the 2005 program until the total dollar limit for this activity is met. If funds are sufficient, all available house shells in the state will be purchased by the Oyster Replenishment Program. If funding sources do not allow the purchase of the entire shell market, house shell contracts and/or contract amounts will be based on geographical location, mobilization cost, and shell planting locations which provide the greatest benefit to the oyster industry and to the Commonwealth.

The agency anticipates that all other 2005 oyster replenishment activities will be done using the Invitation for Bid or Request for Proposal process in accordance with the Virginia Public Procurement Act.

If the conditions of the oyster resource changes, or if the Conservation and Replenishment Department Head encounters unanticipated/unscheduled situations with the Oyster Replenishment Program, planned procurement activities may be changed, and one or more of the alternative methods of procurement listed above may be utilized to facilitate the completion of the 2005 Replenishment Program.

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- 16. PUBLIC HEARING:** To make permanent the Emergency Regulation 4 VAC 20-720-10, pertaining to Restrictions on Oyster Harvest.

James Wesson, Head, Conservation and Replenishment Department, gave the presentation. His comments are a part of the verbatim record. He explained that this was a public hearing to make permanent the emergency actions passed by the Commission at last month meetings. He said the same 50 boats were working in the James River and only 6 or 8 boats were working part time in the Rappahannock River.

1. A southern boundary line established at the Mills E. Godwin Bridge (Rt. 17) on of the Nansemond River for the James River Hand Scrape Area.
2. Elimination of the 3" spacing of the teeth for the standard oyster dredge.
3. A public oyster harvest season extension for the Rappahannock River Hand Scrape Area; the Rappahannock River Drumming Ground Hand Scrape Area; the Rappahannock River Temples Bay Hand Scrape Area; and the James River Thomas Rock Hand Scrape Area: February 1, 2005 through March 31, 2005.

The public hearing was opened.

Tommy Leggett, representative for the Chesapeake Bay Foundation, was present and his comments are a part of the verbatim record. He said they were concerned about the extension. He said this was good for the short term not the long term. He said that they do not support the extension. He said there was a report from VIMS that these oysters in the James River will not necessarily die due to the disease. He said we needed some guidelines when deciding to open and close the fishery. He suggested setting aside some of the areas open now for intensive monitoring by VIMS or whoever. He said the state's monitoring is a random system. He said some of the boats now will be dropping out and makes it not such an issue presently, but we need to think more in the long term.

Commissioner Pruitt explained that this had all been looked at when the decision was made last month. He said it was not an arbitrary decision.

Roger Mann, Fisheries Scientist representing the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. Dr. Mann said it is unusual to have oysters available to harvest and talk about. He asked the Commission to set aside a small area, maybe 2 acres, to do a study. He said it is important to leave some of the bigger animals to gather information on the 2, 3, 4, 5 years old. He said they want this area to study for the next few years. He discussed some graphs of data he had prepared for the Commission. He said he was not against the actions proposed today, only that an area be set aside.

Doug Jenkins, President of the Twin Rivers Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins thanked the board, Dr. Wesson, and staff and said they appreciated working this year. He said the freshness had helped the last couple of years for survival. He said the Commission needed to keep the current policy. He said if there is a drought the disease will increase. He said do not keep too many on the plate hoping for a future. He reminded the Commission of the threat of the cow nose rays. He explained that a dead product can not be harvested and it can not spawn either.

Mr. Leggett gave Commissioner Pruitt the CBF letter to be made a part of the record.

The public hearing was closed. Commissioner Pruitt asked the Commission for a motion.

Associate Member Robins asked if this could be done administratively or needs an emergency regulation to set this area aside requested by VIMS. Mr. Wesson said either way would do it, but explained that it is late in the season to take such action. He said the Elizabeth River has a number of areas with large oysters that could be set aside for study. He said everywhere has already been worked pretty hard. He said the area that just opened in the James River Hand Scrape Area has not been good and the oysters have died there. He said that the watermen were not working there, but were still working in the Thomas Rock Hand Scrape Area. He suggested a small area on the Newport News Shore where it is polluted and can not be worked and there are some oysters in that area. Dr. Mann said he would work with Jim on this matter.

Associate Member Robins moved to adopt Regulation 4VAC 20-720-10 and make the emergency actions permanent. Associate Member Cowart seconded the motion. The motion carried, 7-0.

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Association Member Cowart said that the watermen in the Pocomoke-Tangier Sound area wanted to bring a request to the Commission. He said because of business involvements he would be abstaining from participation in this matter.

Commissioner Pruitt asked Dan Dise to come forward to address the Commission.

Dan Dise, waterman, was present and his comments are a part of the verbatim record. He explained that they had lost some days in January, approximately 10 to bad weather and wanted to request a season extension through March 14. He said they are still catching the limit and are spread out as some are working in the Pocomoke and some in the Tangier. He said the watermen in the Rappahannock and James Rivers were granted extensions. He said if they can not get the extension, they will be moving to work in other areas such as the James River.

Commissioner Pruitt asked James Wesson to address this request. Mr. Wesson explained that it had been a good season but he had told them he needed to represent the resource. He said what is different this year is Maryland has allowed power dredging in more areas. He explained the spatset for these areas come from Maryland and the Tangier spatset is greatest near the Maryland line and decreases as you move down. He said his opinion would be to stop now. He said the 2003 and 2004 spatsets were not good and what is there now is the 2002 spatset. He said some large oysters needed to be left there for broodstock. He said staff recommended the season end February 28, 2005 as it is set to do.

Associate Member Robins asked if these large oysters would die from disease as he had stated in the James River. Mr. Wesson explained that was hard to say, but these areas are not equal when assessing them, as the sources of spawn are different.

Commissioner Pruitt asked for one week and a compromise.

Associate Member Robins moved to extend by emergency regulation the season for one week in the Tangier and Pocomoke Sound areas. Associate Member Bowden seconded the motion. Colonel Bowman asked what date the season ended. After some further discussion, Associate Member Robins responded it was for 7 working days. The motion carried, 6-0-1. Associate Member Cowart abstained from voting.

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20. PUBLIC HEARING: Amendments to clarify provisions of safe harbor and establish requirements related to transfer of quota from another state, for the offshore commercial summer flounder fishery.

Rob O'Reilly, Deputy Chief, Fisheries Management Division, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly said this was a joint request from both the Fisheries Management Division and Law Enforcement Division. He said a briefing was provided last month, as well as a draft regulation. He said staff recommended that these amendments be approved, which are as follows.

Section 40 H, page 5 of the draft regulation provides that only those vessels in safe harbor may exceed the summer flounder possession limit.

Section 40 K, page 6, states that a vessel granted safe harbor in Virginia shall only offload summer flounder, when the state the vessel is licensed in requests a transfer of quota, and the Commissioner approves the request.

The public hearing was opened. No one present had any comments to make regarding this matter.

Associate Member Holland moved to approve the amendments to Regulation 4VAC 20-620-10. Associate Member Garrison seconded the motion. The motion carried, 7-0.

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The following items were considered at the same time and one motion was made for all.

- 18. **REQUEST FOR PUBLIC HEARING:** For approval of 2005 recreational black sea bass and scup management measures.
- 19. **REQUEST FOR PUBLIC HEARING:** For approval of cow nose ray excluder fences in the Great Wicomico River.
- 21. **VIRGINIA SEAFOOD COUNCIL:** Request to continue current experiments with triploid *ariakensis* oysters. Request for public hearing.

Commissioner Pruitt asked for one motion for Items 18, 19, and 21 since they were requests for public hearings for recreational black sea bass and scup management measures; approval for the installation of cow nose ray excluder fences in the Great Wicomico River; and the Virginia Seafood Council request to continue experiments with the triploid *ariakensis* oysters. He said all of these are for public hearing and the chair is asking for one motion for all three items.

Associate Member Holland moved for public hearings on the three matters at the March Commission meeting. Associate Member Garrison seconded the motion. The motion carried, 7-0.

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22. PUBLIC COMMENTS

Doug Jenkins, President of Twin Rivers Watermen Association, was present, and his comments are a part of the verbatim record. Mr. Jenkins explained that he was here again to asked for a bushel of bycatch for shad for this year.

Jack Travelstead, Chief, Fisheries Management, responded and his comments are a part of the verbatim. Mr. Travelstead said that this would be a matter for the ASMFC Technical committee and then for the ASMFC Management committee. He said he needed something from the Commission to move forward. He said that staff, VIMS and participants in the shad program are all opposed to a bycatch. He explained that ASMFC had turned down such a request before made by VMRC and VIMS staffs, but that was for a 10% bycatch allowance, originally. He said that the Finfish Management Advisory Committee (FMAC) wanted a broad exception for bycatch. He said the matter can be

presented to the Commission now and then decide to move forward towards the end of the year when the ASMFC Technical committee meets.

Associate Member Bowden said staff needed to move forward on this matter. He said he thought the Commission was behind it and it was too late for this spring. He said staff needed to come forward in a timely manner for next spring and move faster on it. His comments are a part of the verbatim record.

Commissioner Pruitt asked for a motion. **Associate Member Bowden moved to proceed forward on the issue. Associate Member Cowart seconded the motion. The motion carried, 7-0.**

Wilford Kale, Senior Staff Advisor, gave a briefing on the status of legislation in the 2005 General Assembly. His comments are a part of the verbatim record.

Associate Member Robins gave the Commission heads up on the Audubon – ESA with Fish & Wildlife Service (FWS) efforts for zero mortality on endangered species that would affect the gill net fishery and large net fishery. He suggested the Commission write a letter to the FWS asking they consider the risks of such actions. His comments are a part of the verbatim record.

Associate Member Robins moved to send the letter. Associate Member Bowden seconded the motion. The motion carried, 7-0.

Associate Member Garrison gave a Finfish Management Advisory Committee (FMAC) report on a study being done now for better delineation for gill nets. His comments are a part of the verbatim record. No action was taken.

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There was no further business, the meeting adjourned at approximately 5:05 p.m. The next meeting will be Tuesday, March 22, 2005.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary