

MINUTES

Commission Meeting**August 23, 2005**

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 L. Bowden, Jr.)	
Russell Garrison)	
J. T. Holland)	
Cynthia Jones)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick)	
Carl Josephson	Sr. Assistant Attorney General
Col. Steven Bowman	Deputy Commissioner
Katherine Leonard	Recording Secretary
Wilford Kale	Senior Staff Advisor
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Linda Hancock	Human Resources Mgr., Sr.
Jack Travelstead	Chief, Fisheries Mgt. Div.
Rob O'Reilly	Deputy Chief, Fisheries Mgt. Div.
Jim Wesson	Head, Conservation/Replenishment
Sonya Davis	Fisheries Management Specialist, Sr.
Lewis Gillingham	Fisheries Management Specialist
Kelly Lancaster	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Joe Cimino	Fisheries Management Specialist
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
MPO Keith Crandall	Marine Police Officer
MPO Adam Friend	Marine Police Officer
Sargeant Dan Eskridge	Assist. Area Supervisor
MPO Richard Haynes	Marine Police Officer

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**13332
August 23, 2005**

Bob Grabb
Tony Watkinson
Chip Neikirk
Jeff Madden
Jay Woodward
Tracy West
Ben Stagg
Justin Worrell
Randy Owen
Hank Badger
Benjamin McGinnis

Chief, Habitat Management
Deputy Chief, Habitat Mgt. Div.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
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Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)

David O'Brien
Lyle Varnell
Bob Orth

Other present included:

William F. Newton
Janice Williams
Linda Himmelwright
Gabel Himmelwright
Richard Muller
D. Stamper
David Tribble
Don Miles
Jim Snider
Potter Henderson
Deborah Painter
Lionel Jenkins
Chris Moore
Jeff Strahan
John Wyatt
Scott McDonald
Ralph Hallabell
Jeffrey Crockett
Roger L. Parks
Tom Powers
Amanda Lawless

Rodney F. Roherns
Martin Jansons
Susan Worrall
Randy Pack
Jennifer Guerrero
R. P. Ayres
H. M. Arnold
William Emerson
Chris Moffatt
Jeffrey Watkins
M. G. Folkes, Jr.
C. Roger
Mark Monsfield
W. C. Tice
Robert Jensen
Frances Porter
Russell Gaskins
Buddy Carson
John Forrest
Kelly V. Place
Justine Woodward

Roland Pierce
Deborah S. Saline
Mark Worrall
Ron Pack
Harold Diggs
Mohammel Sherbazheny
R. H. Meyers
Perry Mason
Bob Livengood
Ellis W. James
Fernand Baruch
Tommy Leggett
Dave Schulte
Robert Weagley
Chris Ludford
Roy Insley
Douglas F. Jenkins, Sr.
L. R. Carson, III
R. C. Hurwitz
Scott Bloxom
Clay Bernick

and others

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Commissioner Pruitt called the meeting to order at approximately 9:38 a.m. Associate Member Fox was absent. Associate Member Jones was expected to arrive by the afternoon portion of the meeting.

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

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

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Approval of Agenda: Commissioner Pruitt asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management told the Commission that Item **10. KEITH A. FARRISH, #04-2026** had been pulled from the agenda at the request of Mr. Farrish's agent. He said they would be submitting revised drawings. In response to Mr. Robins' questions regarding a public comment period, Commissioner Pruitt said that there would be time at the end of the meeting for public comments. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Garrison seconded the motion. The motion carried 6-0.**

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MINUTES: Commissioner Pruitt asked for a motion to approve the July 27, 2005 meeting minutes. **Associate Member Garrison moved to approve the minutes as circulated. Associate Member Bowden seconded the motion. The motion carried, 6-0.**

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- 2. **PERMITS** (Projects over \$50,000 with no objections and with staff recommendation for approval). Bob Grabb, Chief, Habitat Management made the presentation for the page two items, A through I, and his comments are a part of the verbatim record.

Commissioner Pruitt asked if anyone was present at the hearing to address these issues. No one was present, pro or con, to address the Commission for these agenda items.

Commissioner Pruitt asked for a motion. Associate Member Schick moved to approve the page two items, A through I, as presented by staff. Associate Member Robins seconded the motion. The motion carried, 6-0.

2A. NEWPORT NEWS DEPARTMENT OF ENGINEERING, #05-0770, requests authorization to replace existing concrete pipes under Church Street and Normandy Lane with larger capacity box culverts (10' by 4') to reduce street flooding from Deep Creek, Hogge Pond and Normandy Lake in the City of Newport News.

Permit fee.....\$100.00

2B. COLUMBIA GAS TRANSMISSION CORPORATION, #04-2010, requests authorization for replacement or repair of gas pipeline (VM-107) segments at multiple stream crossings, as needed, in Goochland, Henrico, Chesterfield, and Prince George Counties. Recommend our standard instream conditions.

Permit fee.....\$100.00

2C. COLUMBIA GAS TRANSMISSION CORPORATION, #05-0829, requests authorization for replacement or repair of gas pipeline (VM-108) segments at multiple stream crossings, as needed, in Goochland, Powhatan, Chesterfield, Dinwiddie and Prince George Counties and the Cities of Colonial Beach and Petersburg. Recommend our standard instream conditions.

Permit fee.....\$100.00

2D. HENRY COUNTY PUBLIC SERVICE AUTHORITY, #03-2332, requests authorization to revise an existing permit to allow the construction of eight (8) aerial, steel encased, PVC sewer lines above Blackberry Creek as part of the Northwest Henry County Sewer Improvement Project. The eight crossings, specified as numbers 16-23, will span a total of approximately 259 linear feet of State-owned submerged bottom and vary in height from 6-inches to 24-inches above ordinary high water. No instream work will be necessary for the construction of the aerial crossings.

Permit fee.....\$100.00

2E. MARINE CORPS BASE QUANTICO, #05-1149, requests authorization to replace an existing bridge with four 10-foot wide, by 11-foot high, by approximately 125-foot long box culverts, underlain by a 9-inch thick gravel pad, and overlain by fill material tapered to a finished grade approximately 31 feet above ordinary high water, with a 24-foot wide roadway with 9-foot wide shoulders, crossing approximately 21 linear feet of Beaverdam Run at the Bridge

9 site on Marine Corps Base Quantico in Stafford County. The proposed project also includes the installation of approximately 629 cubic yards of riprap bank stabilization and channel scour protection, channelward of ordinary high water, along approximately 86 total linear feet upstream and downstream of the culverts.

Permit fee.....\$100.00

2F. TOWN OF WYTHEVILLE, #05-1442, requests authorization to cross Reed Creek in two (2) locations near the I-81 highway bridge crossing with a concrete-encased water line, buried a minimum of 12-inches below the natural creek bed, as part of a water line extension project to serve the south side of the Progress Park commercial development in Wythe County. Recommend approval with the inclusion of the Division’s standard in-stream construction conditions.

Permit fee.....\$100.00

2G. NORTHROP GRUMMAN NEWPORT NEWS, #05-1746, requests authorization to construct a 12,750 square foot, open-pile steam generation facility adjacent to Pier 3 to provide steam for the testing of aircraft carrier internal systems at their facility situated along the James River in Newport News. Recommend approval pending expiration of the public comment period ending August 25, 2005, and removal of the entire structure from State-owned subaqueous land by August 2008.

Permit fee.....\$100.00

2H. DEPARTMENT OF THE ARMY, #05-0937, requests authorization to install 15 334-foot long by 94-foot wide breakwaters and place 165,000 cubic yards of associated beach nourishment, filling 18,600 square feet of State-owned submerged lands to be placed along the shoreline from Battery Parrott to the end of the existing seawall at Dog Beach adjacent to property situated along the Chesapeake Bay in Hampton.

Permit fee.....\$100.00

2I. DEPARTMENT OF THE ARMY, #05-0938, requests authorization to install 3,320 linear feet of concrete seawall aligned no farther than two (2) feet channelward of an existing deteriorated seawall which will result in the filling of 9,960 square feet of State-owned submerged lands, and the installation of 3,320 linear feet of riprap with a base width of 25 feet, channelward of the new seawall to be installed from Battery Parrott to the Chamberlin Hotel adjacent to Ft. Monroe along Hampton Roads in Hampton.

Permit fee.....\$100.00

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

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

- 1) Palmer versus VMRC; 2) Jewett versus VMRC; 3) Evelyn versus VMRC; and, 4) Mitchell versus VMRC

The motion was seconded by Associate Member Garrison. The motion carried, 6-0.

Associate Member Robins moved for the following:

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

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

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

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

Associate Member Garrison seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Bowden, Garrison, Holland, McLeskey, Robins, Schick, and Pruitt

NAYS: None

ABSENT DURING VOTE: Associate Members Fox and Jones

**ABSENT DURING ALL OR PART OF CLOSED MEETING: Associate Members
Fox and Jones**

The motion carried, 7-0.

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

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Lt. Colonel Lewis Jones, Deputy Chief, Law Enforcement Division, introduced two new Marine Police Officers to the Commission-- MPO Herbert Bell, assigned to the Middle Area and MPO Gary Fox, assigned to the Eastern Shore. He said to become a Marine Police Officer you have to go through all the same training as the State Police. He congratulated both officers.

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- 4. **PACK FAMILY LIMITED PARTNERSHIP, #04-2454**, requests authorization to modify a previously issued permit (#04-0983) to increase the proposed dredging of State-owned subaqueous bottomland from 3,200 cubic yards to 7,500 cubic yards and to reconfigure previously authorized slips within the same footprint at the existing Smithfield Station Marina facility along the Pagan River in the Town of Smithfield in Isle of Wight County. An adjoining property owner protested the project.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Stagg said that there was an e-mailed letter of support that was received the previous day and another letter from the protestant.

Mr. Stagg explained that the project was located along the Pagan River near its confluence with Cypress Creek in the Town of Smithfield in Isle of Wight County. The commercial complex included a marina, restaurant, hotel lodging, and conference facilities.

Mr. Stagg further explained that in November of 2004, the applicant submitted a Joint Permit Application seeking authorization to expand the marina facility, dredge up to 3,200 cubic yards of State-owned subaqueous bottomland; replace a failing bulkhead and construct a new extended bulkhead; construct a breakwater/jetty structure; construct a marginal wharf along the shoreline; and install new mooring piles channelward of existing marina slips to facilitate the mooring of larger vessels. The proposal was

subjected to our normal public interest review and the Commission at its March 2005 meeting subsequently approved it as a Page 2 item.

Mr. Stagg said that on July 1, 2005, the applicant submitted a request to dredge an additional 4,300 cubic yards of State-owned subaqueous bottomland in an expanded area offshore of the original dredge area. During the subsequent public interest review, the project received an objection from an adjoining property owner. The applicant, once again, submitted another modification request, on July 29, 2005, requesting authorization to reconfigure the previously approved marina slips by reducing the number of finger piers, but adding mooring dolphins along the offshore slips, reducing the length of the main access floating dock for better navigability and widening that dock from 8 feet to 10 feet. The increased width was requested for stability concerns since this would be a floating dock. This modification was again subjected to a public interest review.

Mr. Stagg stated that the property owner immediately upstream of the project was protesting the project. His objections included, disturbance of the creek bottom immediately adjacent to his property, which was residential in nature, as well as the increased noise resulting from an expansion of the facility.

Mr. Stagg said that the Virginia Institute of Marine Sciences Shoreline Application Report indicated that while the proposed dredging would result in temporary impacts, the benthic community was expected to repopulate in a relatively short time. VIMS previously addressed the marina slips and indicated that while the increase in boat slips would result in additional potential for adverse environmental impacts, those impacts could be reduced and minimized through the development of a proper marina management plan.

Mr. Stagg explained that the Department of Health indicated that the project was acceptable. The U. S. Army Corps of Engineers issued an individual permit for the original project on February 22, 2005. The Isle of Wight County Wetlands Board approved the bulkhead and original dredging portion of the project at their December 20, 2004, meeting. Since the new dredging was all channelward of mean low water the Wetlands Board did not take jurisdiction over the modification request.

Mr. Stagg explained further that no other agencies had commented on the proposal.

Mr. Stagg said that the adjoining property owner did not object to the original proposal, and considering that the environmental impacts of the additional dredging should only be temporary in nature staff recommended approval of this request. Also, the proposed marina expansion reconfiguration, as with the original proposal, appeared to provide public and private benefits that clearly outweighed the potential detrimental impacts. Therefore, staff recommended approval of the reconfiguration of the marina slips. Additionally, staff recommended a royalty of \$1,935.00 be assessed for the dredging of an additional 4,300 cubic yards of State-owned subaqueous lands at a rate of \$0.45 per

cubic yard, along with a dredging time-of-year restriction from February 15 through June 30 of any year to protect anadromous fish species.

Randy Pack, Vice President of Smithfield Station, was present and his comments are a part of the verbatim record. Mr. Pack said there was not much to add to the staff comments. He said he would answer any questions from the Commission. Associate Member Robins referred to VIMS comments regarding a marina management plan. Mr. Pack said that they belonged to the Clean Marina Association. Associate Member Garrison asked if the spoil would be trucked to the site. Mr. Pack explained that the material would be dredged by clamshell method and then put on trucks to be hauled 3 or 4 miles down the road.

Commissioner Pruitt asked if there was anyone present in opposition to the project. No one in opposition was present.

Associate Member Holland moved to approve the project as recommended by staff. Associate Member Schick seconded the motion. The motion carried, 6-0.

Royalty fee (300 cu. yds. @ \$.45/cu. yd.).....	\$1,935.00
Permit fee.....	\$ 100.00
Total fees.....	\$2,035.00

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- RANDOLPH H. PACK, #05-1180**, requests authorization to dredge up to 1,500 cubic yards of State-owned subaqueous bottomland; after-the-fact approval to retain previously unauthorized marina slips and finger piers; reconfigure previously authorized marina slips; and after-the-fact authorization to retain a larger than previously permitted “lighthouse” building (#87-1941) along with approval of a change in use of the structure from the previously authorized use as a dockmaster office; restrooms/showers; and marina store/raw bar, to use as lodging and a conference/meeting room, at the existing Smithfield Station Marina/Hotel/Restaurant facility, along the Pagan River, in the Town of Smithfield in Isle of Wight County. An adjoining property owner protested the project.

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

Mr. Stagg said that the project was located along the Pagan River near its confluence with Cypress Creek in the Town of Smithfield in Isle of Wight County. The commercial complex included a marina, restaurant, hotel lodging, and conference facilities.

Mr. Stagg explained that on May 20, 2005, the applicant submitted a Joint Permit Application seeking authorization to maintenance dredge up to 1,500 cubic yards of State-owned subaqueous bottomland. This same area had previously been dredged under permit 87-1941, which also authorized additional pier and slips, a bulkhead, rip rap, a marginal wharf, a breakwater and construction of a "Lighthouse" multi-use structure. The current application was subjected to the normal public interest review and received an objection from an adjoining property owner. During routine processing of the application staff noted certain discrepancies between some of the existing facilities and what had been previously permitted. Additionally, it was discovered that the use of one of the structures at the facility was for purposes other than those authorized when it was initially approved. Staff notified the applicant of these apparent discrepancies, by letter, dated July 14, 2005.

Mr. Stagg said that staff subsequently met with both Randy Pack and Ron Pack, principals of Smithfield Station, to review the issue. The Pack's admitted that some reconfiguration of the piers had taken place and that the Lighthouse structure was not currently being used for any of the purposes originally proposed. The applicant subsequently provided staff with "as built" drawings of all the structures currently located at the facility, both over the water and upon the adjacent upland. These drawings verified that the inshore slips had been reconfigured to "side to" moorings and that additional slips had been added on the inshore side of a previously approved marina pier. These slips include previously unauthorized small finger piers. While the slips had been reconfigured and relocated, it did not appear that the applicant had exceeded the maximum amount of slips for which they had Health Department approval.

Mr. Stagg said that the property owner upstream of the project protested the project. His objections included, the disturbance of the creek bottom immediately adjacent to his property, which was residential in nature, as well as increased noise related to the expansion of the facility.

Mr. Stagg stated that the applicant previously received authorization to extend an existing marina pier and to add slips along the offshore side under permit #87-0414. The applicant also received authorization under permit #87-1941 for slips along the shoreline with finger piers. When constructed, the pier extension alignment appeared to have been slightly altered and additional slips with finger piers were placed along the inshore side of the pier. Additionally, the slips previously approved along the shoreline were "reconfigured" without finger piers to allow for "side to" mooring along the approved floating pier. The "Lighthouse" structure appeared to be larger (taller) than depicted in the original application drawings, which depicted a main floor and what appeared to be a smaller dock master office above. It also appeared to be in a slightly different location. The current structure had two complete floors and a smaller office area above the second floor. The applicant confirmed that the primary use of the building had been for lodging, meetings and parties since it was constructed in 1994. The uses initially proposed by the

applicant, that the Commission specifically authorized, were for a dockmaster's office, restrooms and showers for the marina, a marina store and a seafood raw bar.

The Virginia Institute of Marine Sciences Shoreline Application Report indicated that the maintenance dredging would result in temporary impacts to the benthic community that should recover relatively quickly and that any pier structure impacts would be minor. They further recommended that all non-water dependent activities be sited over subaqueous lands only after all upland alternatives had been eliminated.

Mr. Stagg said that the Department of Health noted that the project, in its current state, remained in compliance with the Sanitary Regulations for Marinas and Boat Moorings. The Department of Game and Inland Fisheries recommended a time-of-year restriction for dredging from February 15 through June 30 of any year to protect anadromous fish species. The Isle of Wight County Wetlands Board did not exert jurisdiction as no wetlands impacts were involved. No other agencies had commented on the proposal.

Mr. Stagg stated that since the area of the proposed dredging was previously authorized, and this request was for maintenance dredging of the same area, staff recommended approval of that aspect. Additionally, since the reconfiguration of the marina slips resulted in no increase in the number of slips over that which were previously approved, staff also recommended their approval with no civil charge.

Mr. Stagg said that the change of use of the "Lighthouse" structure was more problematic. While the structure was previously approved for non-water dependent uses, the current use appeared to be even less water-related than any of the previously proposed uses. Staff also questioned whether the Commission would have approved such uses had they been specified originally. Additionally, since the original authorization, the Commission had adopted a water dependency policy that more clearly defined its position on such structures.

Mr. Stagg explained that the applicant had clearly stated that at least three of the four previously proposed uses for the lighthouse had been accommodated either on the adjacent upland or were no longer needed at all. Staff believed, based on the Commission's adopted policy, that the current and proposed continued use of this structure as hotel lodging and conference/meeting room was entirely non-water dependent and could be accommodated on the upland (the applicant was currently seeking final local approvals for additional buildings on the upland). Therefore, staff recommended that the lighthouse structures uses be consistent with the original proposal. Of those, only a marina store seemed to be the only viable use not already accommodated elsewhere.

Mr. Stagg stated that should the Commission deem that the current and proposed future uses of the "Lighthouse" structure as lodging and conference/meeting room were reasonable non-water dependent uses of State-owned subaqueous lands and warranted approval, and in light of the fact that the applicant had used the structure for this purpose

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for over ten years, staff recommended an appropriate civil charge be considered along with a triple permit fee.

Ronald H. Pack, President for Smith Station, was present and his comments are a part of the verbatim record. Mr. Pack said that the staff had given a good history for the project. He said in regards to the dock orientation, it was changed because of a 35-year old deed a protestant found. That had kept them in court in suit since 1995. He said they only built 14 of the 35 permitted slips. He apologized for the fact that what slips were built had been moved. He said they did not use all of the permitted encroachment and no breakwater was ever built. He said there was no economic gain by these changes and he asked that it be approved as built. He said that originally the plan was to have a shoal bay light, but that type is no longer in existence. He said the only difference is that the light is taller and they had only used 1,669 square feet and their permit was for 3,500 square feet. He said they also asked for approval for the light. Mr. Pack said that the facility was used for corporate retreats by various principalities and they had needed to use this facility for something as it was sitting there unused. He said that they serve a lot of food there. He said the lawsuit had hurt them. Mr. Pack said the lighthouse was only good for what it was presently being used for and it was the same as it has been since it was built in 1993. It has become a vital part of the marina. He said that it is an icon now and is even shown on charts and used as a landmark. Mr. Pack said they did not realize that change in use violated the permit and asked that the Commission approve their request.

Commissioner Pruitt asked if anyone was present in opposition. No one was present in opposition to the project.

Associate Member Holland moved to grant approval for the slip, the dredging and the use of the lighthouse. Associate Member Schick seconded the motion. Associate Member Garrison said he felt that they had made their case. He further stated that only half of the permitted square footage had been used. Associate Member Robins explained that the request was not approved because it was water- dependent but water-related. He said this facility was historically used this way. He said while there was a Public Trust issue concern, there was a strong public support in the surrounding community. Associate Member Schick said that as to water dependency, the restaurant and lodgings enhanced the area with a beautiful facility, which provided access to the waterway. He said the change in use was not that much different and it was a smaller encroachment. Commissioner Pruitt stated that he concurred with the motion. **The motion carried, 6-0.**

Permit fee.....\$100.00

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6. **DERRICK RIDLEY, #05-0981**, requests authorization to install 330 linear feet of riprap on property situated along Hampton Roads in Hampton. A primary coastal sand dunes and beaches permit is required.

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

Ms. West said that Dr. Ridley's property is located on a peninsula of land between Hampton Roads and the Merrimac Shores boat basin. Most of the properties along this shoreline suffered heavy erosion during Hurricane Isabel. A failing revetment is located along the boat basin shoreline. Dr. Ridley proposes to install riprap along both shorelines of the property.

Ms. West explained that the City of Hampton had not yet adopted the Model Coastal Primary Sand Dune/Beaches Ordinance. As a result, the Commission was charged with acting as the Board and reviewing the impacts to the beach areas associated with this project.

Ms. West stated that the staff for the Hampton Wetlands Board, reviewed the proposed revetment along the Merrimac Shores boat basin shoreline and determined that placement of the new revetment, since it would be placed within the same footprint as the failing structure and no additional wetlands would be impacted as a result of the new structure, qualified as maintenance and repair of an existing structure. As a result, in accordance with §28.2-1302(9), they did not require Dr. Ridley to obtain a permit to repair the previously existing but failing revetment along this portion of his shoreline. However, VMRC, VIMS, and Hampton Wetlands Board staff agreed that the Hampton Roads shoreline was a jurisdictional beach and a permit was required for installation of this portion of the riprap structure.

Ms. West said that the VMRC staff conducted a public hearing on this proposal on August 1, 2005, at 1:00 P.M. in downtown Hampton. Mrs. Grace Ridley and the agent for the project, Mr. Richard Calvert, were in attendance. No other individuals attended the hearing.

Ms. West said also that the Virginia Institute of Marine Science had stated that the proposed project was acceptable.

Ms. West stated that staff believed the revetments were necessary to protect Dr. Ridley's eroding upland area. The project design was consistent with the Shoreline Development Best Management Practices Guidelines, represented the minimum encroachment necessary to provide protection from further erosion, and should not result in any significant adverse ecological impacts. As a result, staff recommended approval of the project.

Commissioner Pruitt asked if the applicant or his representative were present. Neither the applicant nor a representative was present. He further asked if there was anyone present in opposition to the project. There was no one present in opposition.

Commissioner Pruitt then expressed his concern in taking action when no one was present, pro or con, but he said he was leaving it to the board if they wanted to go ahead and take action at this hearing.

Associate Member Robins moved for approval of the project. Associate Member Holland seconded the motion. The motion carried, 6-0.

No fees applicable

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(Item 12 was actually heard prior to the lunch break and before Item 7)

Commissioner Pruitt explained to the Commission that Associate Member Bowden had requested that this item be moved forward. He asked for a motion.

Associate Member Holland moved to accept the request by Associate Member Bowden. Associate Member Garrison seconded the motion. The motion carried, 6-0.

- 12. COUNTY OF NORTHAMPTON, ET AL, #05-0492**, requests authorization for the one-time placement of up to 75,000 cubic yards of hydraulically dredged beach quality sandy material arising from creation of the proposed Nassawadox Creek Federal Navigation Channel in an unconfined overboard 68-acre site in the Chesapeake Bay, northwest of the mouth of Nassawadox Creek. The project is protested by nearby property owners.

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

Mr. Badger explained that the Nassawadox Creek Federal Navigation Channel was a new Federal project channel that was designated by the Corps in 1999. Its creation would generate, during the initial dredging, approximately 75,000 cubic yards of medium to fine grain sand. The channel would be seven (7) feet deep at mean low water and was designed to connect the community of Bayford to deep water in the Chesapeake Bay. Although it had never been dredged before, the Corps guesses that once constructed, the channel will require maintenance dredging every five (5) to eight (8) years.

Mr. Badger further explained that the Corps' proposed spoil site was approximately 2,000 feet offshore, northwest of the mouth of Nassawadox Creek. The material would be

deposited at the – 11-foot contour. The new bottom elevation was expected to be no higher than four (4) feet, or no higher than minus seven (-7) feet at mean low water.

Mr. Badger said that this item had been placed on the August agenda at the request of Associate Commissioner Holland.

Mr. Badger explained that while the actual dredging of the federal project channel was authorized by statute, the placement of the dredged material overboard on State-owned bottom was not exempt. That aspect required a permit from the Marine Resources Commission for the use of State-owned bottomlands pursuant to Chapter 12 of Title 28.2 of the Code of Virginia. The requirement for a Commission permit would be eliminated, if the Corps were to place the material in a contained upland disposal site. The project as proposed was protested by three landowners who live near the mouth of Nassawadox Creek. They had expressed concerns over the alignment of the channel at the mouth of the creek, and the potential erosion of their properties from boat wakes. They also requested that a “No Wake Zone” be created from the mouth of the creek to the community of Bayford. The protestants also believed the proposed overboard disposal site should be relocated further offshore and south of Nassawadox Creek so as to not affect either Nassawadox Creek or Westerhouse Creek.

Mr. Badger said that staff had also received a letter from a resident of Silver Beach requesting that a feasibility study be performed to determine if the sandy material could be used as beach nourishment along their eroding beachfront. Silver Beach was a severely eroding section of Bayfront that lies approximately 2000 feet to the north, within pumping distance of Nassawadox Point.

Mr. Badger stated that the Virginia Institute of Marine Science (VIMS) originally indicated that the individual and cumulative adverse environmental impacts resulting from the channel dredging itself should be short term in nature, with recovery of the benthic community expected within 12 to 18 months. They further stated, however, that the dredged material placement option needed to be carefully evaluated relative to its potential to have adverse effects on living resources (i.e., submerged aquatic vegetation and on tiger beetles, a federally listed threatened species). VIMS also stated that while the information provided indicated that offshore placement might have the least direct impact on those two resources, this needed to be verified. They recommended that the exact placement site should be adjusted to minimize any potential impacts to SAV.

Mr. Badger said that in a supplement, VIMS indicated that their initial recommendation was for the placement of the sandy dredged material on the beach south of the creek. In their opinion, beach nourishment was the most beneficial use of the material from a shoreline management perspective. The 75,000 cubic yards of beach quality sand was not so much a waste by-product of the dredging as it was a valuable State resource in its own right.

Mr. Badger said that the Army Corps of Engineers indicated that they had examined this alternative, but in their opinion, the existence of submerged aquatic vegetation (SAV) and tiger beetles made this option unfeasible. No documentation had been provided to substantiate this conclusion.

Mr. Badger said that staff had requested additional information from the applicant to address these issues. The applicant provided a drawing showing a 68-acre placement site. The placement site was moved offshore an additional 1,500 feet to avoid all of the potential SAV impacts. In the absence of any further federal monies, the Corps had indicated that they were unwilling to provide additional information, justification or further evaluation.

Mr. Badger explained that, obviously, the Corps preferred to dispose of the material offshore. Not too surprising, that also represented the cheapest disposal option. Although the Corps had advised the agency that this project was not presently funded, Associate Commissioner Holland believes funds might yet become available. In fact, he stated that \$444,000 had already been committed to this project (\$300,000 Federal, \$107,000 from VPA, and \$37,000 from the County.) He was also of the opinion that any further delay or requests for studies or additional information might kill the project's chances outright. With all of these constraints, VIMS then looked for the best offshore site where adverse effects to SAV resources could be minimized. This led to the proposed site.

Mr. Badger said that the Department of Environmental Quality (DEQ) had also requested additional information from the Corps as recently as July 8, 2005. The Corps informed DEQ that since the project had not been funded, they had no money to do any additional drawings or any further investigations regarding beach nourishment. As a result, DEQ had suspended further processing of the application due to the non-submittal of the requested information.

Mr. Badger said that the Department of Game and Inland Fisheries (DGIF) and DEQ both supported the beneficial use of dredged material. DEQ and DGIF had both recommended that the applicant avoid or minimize SAV impacts both in the channel and in the overboard placement site. No other State agency had expressed opposition to the project.

Mr. Badger explained that although the protestants may have legitimate concerns, §28.1-1203(A)(3) of the Code of Virginia clearly provides statutory authorization for the dredging of a Federal Navigation Channel authorized by Congress. The channel itself does not require a permit from our agency.

Mr. Badger stated that the protestants also requested that a "No Wake Zone" be established. Under §29.1-744 of the Code of Virginia that request should be made to the local governing body (i.e., Northampton County). If approved by the Board of Supervisors, the County would then forward the application and request to the Director of

the Department of Game and Inland Fisheries for their approval. Again a permit was not required from VMRC.

Mr. Badger explained that, as stated previously, Associate Commissioner Holland believes that failure to approve the project as proposed will kill it. Conversely, staff believes that approval without further evaluation, especially given the provisions of §10.1-704 of the Code of Virginia, might create a significant legal issue. §10.1-704 of the Code of Virginia specifically states, "The beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment." Given the fact that the channel had never been dredged, the Corps had clearly stated that the dredged material was expected to be 98% medium to fine grained sand and that the material was suitable for beach nourishment.

Mr. Badger stated that while the Corps' own Tiger Beetle shoreline study indicated an ideal habitat and a large breeding population of the Federally threatened Northeastern Beach Tiger Beetle along the shoreline south of Nassawadox Creek, they did not find any in the target area north of Nassawadox Creek, which included the Silver Beach area. Curiously, the ideal habitat for adult tiger beetles and their larvae are wide, undisturbed, dynamic, fine sand beaches. As a result, it also appeared that any beach nourishment component could act as a tiger beetle enhancement, not a detriment.

Mr. Badger stated that a comparison of the applicant's information along with that provided by VIMS suggests that SAV presence might be limited or sporadic at best, west of the shoreline at Silver Beach. Staff believes this area offered an excellent opportunity for beach nourishment. Unfortunately, this possibility has apparently received scant examination thus far.

Mr. Badger said that beach nourishment, coupled with upland disposal, was a component of the Corps' dredge material management plans for the Cape Charles entrance channel, Saxis Harbor, Tangier Harbor and the Guilford Creek (Guard Shores) Federal navigation projects on the bayside. Overboard placement was authorized for the Nandua Creek project in Accomack County. Given the amount of sand that would be dredged initially and during each maintenance cycle, staff believes it should be used for beneficial purposes by placement along an existing eroding shoreline rather than merely being dumped in an overboard site offshore.

In summary, Mr. Badger said staff endorsed and supported the dredging required to create and establish the Nassawadox Creek Federal Project channel. However, staff's was concerned over the disposition and potential loss of a valuable state resource that could be put to significant beneficial use.

Mr. Badger stated that based on §10.1-704 of the Code of Virginia, which directs that beach quality nourishment be given priority consideration, and the fact that the area north

of Nassawadox Creek may be suitable for nourishment, staff, recommended that a Commission decision on this application be deferred until such time as the applicant had fully evaluated the feasibility and suitability of a beach nourishment component north of Nassawadox Creek, particularly in the area of Silver Beach.

Doug Stamper, U. S. Army Corps of Engineers' representative, was sworn in and his comments are a part of the verbatim record. Mr. Stamper explained that the original contact with the County was in 1999, but budget constraints delayed the project. He said he did not agree with all of staff's comments. He said the County was interested in the project due to the Commercial Fishery in the area. He said that according to a study by the Corps, beach replenishment would not be appropriate. He said further that offshore placement sites were considered. He said this would serve to feed the sandbar by breaking down the wave energy. He also said that this project was modeled after the Nandua Creek project.

Janice Williams, Acting County Administrator, was sworn in and her comments in support of the project are a part of the verbatim record. Ms. Williams explained that the County fully supported the project. She said this area supports the local commercial watermen, helped county revenues as well as provided an area for recreational activity. Associate Member Garrison asked if "no wake" signs were acceptable to the board. Ms. Williams said yes, she believed so, even though this had not been discussed by them.

H. M. Arnold, Eastern Shore Waterman's Association, was sworn in and his comments in support of the project are a part of the verbatim record. He said he represented 73 members who all supported the project. He said the dredging was needed because if a boat was more than 30 feet and drew more than 2 feet of water, as it was now that boat operator could not get into the area. He said there were 9 clam aquaculturists and 2 oyster growers in the area and the increased flow of water would also be better for them. He said it had been approximately 30 years since a crab dredger could get into that location to work. As a waterman and marina operator he asked that the Commission approve this project.

Donald Miles, Commercial Waterman, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Miles said he was asking for approval of this project as well. He said he had a dock in the area and he has to unload his catch at another dock because his is not accessible.

Jeff Walker, Nassawadox resident and Board of Supervisor's member, was sworn in and his comments are a part of the verbatim record. Mr. Walker explained that he liked to participate in recreational activities in this area. He said that the sand was needed to be utilized for beach nourishment. He said that the sand moves North to South in Northwesterly winds. He said the sand, if deposited in the offshore site, would be moved into the bay. He said offshore disposal did not maximize the benefits of the project.

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

Robert Meyers, a resident north of the dredge site, was sworn in and his comments are a part of the verbatim record. Mr. Meyers said that he was also representing the Millers, his next-door neighbors. He further said that he did not object to the dredging, but he did want it done properly. He said that too many shortcuts were being taken.

Deborah Saline, seasonal resident of Silver Beach, was sworn in and her comments are a part of the verbatim record. Ms. Saline explained that she had checked out the claim of tiger beetles in the area and could not find any. She said she was not opposed to the dredging, but there was a need to consider putting the sand at Silver Beach. She said that the area was continually eroding. She said she had a document with 30 signatures of residents who want the sand put there. She said there was a total of 50 residents along Silver Beach. She explained that the beach belonged to the residents and was only used by the residents and their guests.

Associate Member McLeskey asked how much waterfront was represented by the 30 contiguous residents? Mr. Badger stated that along Old Silver Beach the beach was approximately ½ mile.

D. Stamper in his rebuttal comments said that there was a feasibility study done by the Corps. He said there must be 4,000 to 5,000 feet of beach to use this area as a disposal site. He said they were trying to avoid SAV and other environmental impacts. He said this area does fill in over time, which would require maintenance dredging. He said that they considered what would cost the least and have the least environmental impact.

Commissioner Pruitt asked what was the status of the beach if public sand was used on a private beach. Mr. Stamper explained that he thought this would open the area up to public access, but he would have to check with others to be sure. Associate Member Schick said that happened to him and he signed a release. Carl Josephson, Senior Assistant Attorney General and VMC counsel, stated that it has to be agreed to by the property owners to make it public. He said there had to be an agreement.

Associate Member Holland said he had worked for 6 years on it and it needed two final permits, one from VMRC and one from DEQ, and after that the funding could be obtained. Mr. Stamper said the issuance of the permits would break the funding loose.

Lyle Varnell, representative from VIMS, said that on page 1-3 of the evaluation VIMS advised that the sand be disposed of offshore to avoid SAV and other environmental impacts.

Associate Member Holland moved to support disposal at the offshore site. Associate Member Garrison seconded the motion. Associate Member Schick stated that it was always a problem for private beach nourishment. He said the community needed to get

together to protect their waterfront. He said he supported the motion. Associate Member Robins said this dredging would benefit the public and while it would be ideal to put this material on the beach, the Corps assessment was convincing and was done well. Associate Member Bowden stated that he supported the motion, as there were lots of watermen who could work in this area. He said the Corps said that there had to be 4,000 to 5,000 feet of beach to use the materials as beach nourishment. He also said that the Corps could not ignore the Endangered Species Act as it applied to the Tiger Beetle. Commissioner Pruitt said that he agreed with the motion because of the various issues discussed. **The motion carried, 6-0.**

Permit fee.....\$100.00

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The Commission broke for lunch at approximately 12:10 p.m. and returned at approximately 12:52 p.m. Associate Member Garrison reconvened the meeting in Commissioner Pruitt's absence and acted as chairman.

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- 7. **FERNAND BARUCH, JR., #05-1046**, requests authorization to construct four (4) riprap breakwaters and place up to 3,500 cubic yards of sandy material landward of the breakwaters as beach nourishment and to construct a second open-pile pier extending 120 feet channelward of mean high water adjacent to his property situated along Meachim Creek and the Rappahannock River in Middlesex County. Several property owners along Meachim Creek protested the project.

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

Mr. Neikirk explained that Mr. Baruch's property was located on a point of land at the mouth of Meachim Creek in Middlesex County. A long narrow spit of land and a series of islands on the north side of Meachim Creek had recently eroded subjecting the property to a much longer northerly and northeasterly fetch across the Rappahannock River. Consequently, the property had experienced significant erosion in recent years. Much of the shoreline consisted of a steep 25-foot sandy bluff. Recently fallen trees and soil, as well as portions of a destroyed pier and retaining wall, were located in the intertidal zone at the base of the bluff.

Mr. Neikirk stated that a review of aerial photographs indicated that the northern side of the Baruch property had receded approximately 100 feet since 1985. It appeared that approximately 25 feet of shoreline had been lost during the last three years. While a significant amount of the erosion could likely be attributed to Hurricane Isabel, now that

the islands had eroded at the mouth of Meachim Creek, the property was subjected to a fetch of nearly 2.5 miles across the Rappahannock River and rapid erosion was expected to continue.

Mr. Neikirk said that Mr. Baruch proposed to grade his bank, construct 500 linear feet of riprap revetment landward of mean low water and install four (4) riprap breakwaters with 3,500 cubic yards of sand placed landward of the breakwaters, as beach nourishment, in an attempt to stem the erosion. He also proposed to construct a private pier and boatlift extending 110 feet channelward of mean high water along the southern side of his property and a second pier extending 120 feet channelward of mean high water on the northern side of his property. Staff previously determined that the revetment and grading would not require a VMRC permit since the work was proposed landward of mean low water. Furthermore, staff determined that the pier and boatlift proposed on the southern side of the property met the statutory authorization for private piers contained in §28.2-1203(a)(5) of the Code of Virginia. Accordingly, only the breakwaters, beach nourishment and second pier remained under Commission review.

Mr. Neikirk said that several property owners along Meachim Creek protested the project. They were primarily concerned that the breakwaters and associated beach nourishment would cause additional shoaling in the already shallow Meachim Creek Channel. The unmarked channel runs relatively close to the southern shoreline near the mouth of the creek. The channel was subjected to shoaling from the erosion of the spit and islands along the north side of the creek, as well as, the erosion of the high bluffs within the creek.

Mr. Neikirk stated that the Virginia Institute of Marine Science (VIMS), in their report dated June 3, 2005, originally questioned the need for both breakwaters and the riprap revetment and suggested constructing only the revetment. In a subsequent report dated July 5, 2005, however, VIMS stated that the use of the breakwaters and revetment was a viable alternative and added that the breakwaters and beach nourishment would help to maintain some intertidal beach habitat and associated wetland vegetation, providing habitat stability and an intertidal area that would not be present with the revetment alone. They also recommended that the material used for beach nourishment be tested to insure that it was of a suitable size and composition for beach nourishment. Furthermore they recommended the use of sediment curtains to minimize siltation during the construction of the breakwaters and nourishment.

Mr. Neikirk said that the Department of Game and Inland Fisheries stated that there was an active bald eagle nest in the vicinity but that they did not anticipate that construction activities would have any adverse impact on eagle nesting activities. They recommended a time of year restriction between February 15 and June 30 to minimize adverse impacts on anadromous fish. As an alternative to the proposed structures, they recommended consideration be given to creating a "living shoreline" using shallow water sills and fiber

logs. No other State agencies have commented on the proposal. The proposed structures would not encroach on any public or privately leased oyster planting ground.

Mr. Neikirk stated that staff had discussed this project on several occasions with both the applicant and the agent/contractor, Mr. Jeff Watkins. Staff was also present during a joint on-site meeting organized by the Middlesex County Wetlands Board. In addition to the Wetlands Board and their staff, the July 5, 2005, meeting was attended by Mr. Scott Hardaway, Mr. Tom Barnard and Mr. Todd Herbert of VIMS, Mr. Baruch and Mr. Watkins. During the meeting and in subsequent conversations, Mr. Watkins and Mr. Baruch had explained that the breakwaters were being proposed to contain the beach nourishment, which in addition to serving as an intertidal buffer to wave action, would be vegetated with appropriate wetland species, thereby providing wetland habitat that would not be present if the revetment were constructed alone. The revetment was proposed to protect the base of the bank during storm events since the house and other existing structures limited the ability to grade the bank to a gentle slope landward of the breakwaters. Some slight revisions were made to the alignment and configuration of the breakwaters based on suggestions made by Mr. Hardaway during the meeting.

Mr. Neikirk explained that staff conducted depth soundings along the staked alignment of the breakwaters and confirmed that the breakwaters were sited in areas where the water was one (1) foot deep or less at mean low water. Accordingly staff did not believe the breakwaters and beach nourishment would encroach on the existing navigation channel. The channelward end of the proposed second pier, however, reached a mean low water depth of minus five (-5) feet.

Mr. Neikirk said that Mr. Baruch had stated that he intended to use the pier on the southern side of his property to store his boat on a regular basis. He wished to construct the pier on the northern side of the property for fishing and to temporarily moor boats during calm water conditions.

Mr. Neikirk stated that staff certainly understood the protestants' concerns regarding activities that might adversely impact the Meachim Creek channel and staff agreed that Mr. Baruch could stabilize his shoreline by grading the bank and constructing an appropriately sized riprap revetment. Staff anticipated, however, that any intertidal and shallow subtidal habitat channelward of the revetment would quickly erode given the new long northerly fetch across the Rappahannock River. The breakwaters and nourishment, if properly vegetated, were proposed to create and maintain approximately $\frac{3}{4}$ of an acre of valuable wetland habitat while also serving to protect the applicant's shoreline.

Mr. Neikirk said that the project was designed so that the 3,500 cubic yards of beach nourishment would be held in place by the proposed breakwaters. The protestants had expressed a concern that the sand might migrate into the Meachim Creek channel. Staff acknowledged that there was no guarantee that all of the material would stay, as designed, landward of the breakwater. Staff was of the opinion, however, that the volume of beach

nourishment was relatively small when compared with the volume of sand already migrating within the mouth of the creek. Based upon the apparent erosion rate of five (5) feet per year along the northern face of the property, staff estimated that nearly 3,300 cubic yards of material were being lost to Meachim Creek in a single year.

Mr. Neikirk explained that although the environmental impacts associated with the construction of the proposed second private pier were not significant, staff attempted to limit the encroachment of structures on State-owned submerged land to that which was absolutely necessary. Staff believed the statutorily authorized pier Mr. Baruch intended to construct on the southern side of his property would reasonably provide his water access and staff did not believe there was a compelling reason to construct a second pier on the northern side of the property.

Mr. Neikirk stated that accordingly, staff recommended approval of the construction of the breakwaters and associated beach nourishment with a condition that sediment curtains be utilized to reduce sedimentation into adjacent waters and that the applicant provide a detailed plan for the planting of the intertidal wetlands created landward of the breakwaters. Finally, staff recommended that the applicant be required to provide a revised plan view drawing that correctly depicted the scaled location of breakwater number one. Staff recommended denial of the second private pier.

Associate Member Garrison asked if the applicant was present. Mr. Baruch and Mr. Watkins were both sworn in.

Fernand Baruch, applicant, was present and his comments are a part of the verbatim record. Mr. Baruch explained that he had bought the property the past fall and could see the erosion problem there at the property. He said that he sought advice from various sources. He said he did not actually want the breakwater, that he just wanted to protect his property. He said that the breakwaters were supposed to collect sand and that the biggest problem was the island that continually eroded the same as his property does. He said he felt that the project would also benefit the Meachim Creek area and he did not understand the opposition. He said the pier with the boatlift was desired more than the other pier. He said the outside pier was for fishing and swimming and not mooring but as a temporary tie up place. He said he owned over 5 acres and if he subdivided the land half of that would give enough so that he could have another 250-square foot pier.

Jeff Watkins, Riverworks, Inc., was present and his comments are a part of the verbatim record. Mr. Watkins explained that the breakwater might cause the recovery of the wetlands. Associate Member Garrison asked where the sand would come from and Mr. Watkins said that 97-99% of the sand would be from the back of the property at the bluffs.

Associate Member Garrison asked if anyone was present in opposition. Five individuals indicated they were present and were sworn in.

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Commissioner Pruitt returned to the meeting at approximately 1:21 p.m. Associate Member Garrison continued to chair the meeting.

Harold Diggs, resident of Meachim Creek, was sworn in and his comments are a part of the verbatim record. Mr. Diggs said that the Virginia Institute of Marine Science said the breakwaters should maintain tidal beaches and restore some of the wetlands. He said that there were no tried and true measures on the success of the breakwaters. He asked what research had been done on failing breakwaters, which would transfer the risks to others on the creek. He said he was asking that the Commission limit the project until the breakwater had been shown to be successful.

Chris Moffatt, Roland Pierce, Jim Snider, and Perry Mason all residents of Meachim Creek, identified themselves, but did not make any comments.

Marshall Folkes, was sworn in and his comments in support of the project are a part of the verbatim record. Mr. Folks explained that there was a breakwater a mile upriver, which had water on both sides when Isabel came through and it had added beach in that location. He said the only navigational hazard was the #2 pier. He said he was in favor of the project. He said the only thing not mentioned was the osprey and there needed to be a nest put there.

Jeff Watkins in his rebuttal comments said that the applicant was due to get his Corps' permit. He said as far as Mr. Diggs concerns regarding the channel filling in, he felt that the breakwater would collect sand and stop that problem. He said there was approximately 3,300 cubic yards going into the channel every year and they were losing approximately 5 feet of shoreline every year. He said that this was a good project.

Associate Member Robins stated that this was a reasonable plan to stop erosion, which will continue if nothing was done and the breakwaters were not a navigational hazard; therefore, he moved to accept the staff recommendations. Associate Member McLeskey seconded the motion. The motion carried, 6-0.

Permit fee.....\$100.00

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Associate Member Jones arrived at approximately 1:37 p.m.

Commissioner Pruitt resumed his chair duties.

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8. **WILLIAM NEWTON, #04-2418**, requests authorization to construct a 33-foot long by 17-foot wide (561 square feet) private, non-commercial, open-sided timber boathouse adjacent to his property situated along Lodge Creek in Northumberland County. An adjacent property owner 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 applicant's property was located on Lodge Creek, approximately 1 mile northeast of the town of Callao at the northern end of Northumberland County. Lodge Creek is a tributary to the South Yeocomico River at the boundary between Northumberland and Westmoreland Counties. The proposed boathouse is located atop an existing wet slip and boatlift, which accommodate a 25-foot long powerboat with a 10-foot beam. The area around the project site is residential with similar boathouse structures along the creek.

Mr. Madden stated that the protestant, Mr. Rodney Roberts, had a residence immediately adjacent to and just upstream of the applicant's property. The adjacent property owner on the other side of Mr. Newton supported the project.

Mr. Madden said that on October 21, 2004, Mr. Newton submitted an application for the construction of a 30-foot long by 14-foot wide boathouse and a 14-foot long by 6-foot wide L-head addition to his existing pier. Pursuant to §28.2-1203(A)(5) of the Code, staff wrote each of the adjacent property owners seeking their concurrence on the applicant's request. That January 5, 2005 letter contained the project drawings and a request that each of the property owners contact Commission staff by January 20, 2005, if they objected to the proposed boathouse. Upon hearing no protest from either of the adjacent property owners, staff sent a letter to Mr. Newton on February 2, 2005, advising him that based upon his application and drawings which asserted that he was a riparian owner; that the pier and boathouse were intended for private, non-commercial use; and that the open-sided boathouse measured 700 square feet or less; his project did not require a permit from VMRC.

Four months later, on June 6, 2005, Commission staff received a telephone call from Mr. Roberts. Mr. Roberts claimed that he had sent a certified letter in January 2005 expressing opposition to the proposed boathouse. The protestant stated in his letter that he had entered into a verbal agreement with Mr. Newton, that as long as the boathouse was constructed on the west side of the existing pier, he would not oppose the project. Mr. Roberts also contended that Mr. Newton agreed to revise the plan to reflect their verbal agreement. Mr. Roberts then provided staff with a copy of his letter, along with a copy of the receipt for the certified letter documenting that the letter was in fact received by the agency on January 11, 2005. Unfortunately, Mr. Roberts' letter was not receipted by the Habitat Management Division staff nor was there any record of it being forwarded to the Division. As such, it was not a part of the Commission record.

Mr. Madden further explained that upon learning of the unresolved protest, however, staff sent a Notice-To-Comply, dated June 8, 2005, to Mr. Newton explaining that VMRC had received a copy of a certified letter and receipt dated January 11, 2005 from Mr. Roberts expressing his opposition to the proposed alignment of the boathouse. The Notice-To-Comply effectively nullified the February 2, 2005 letter authorizing the construction of the boathouse.

Mr. Madden also explained that upon receipt of the Notice-To-Comply and, learning of Mr. Roberts concerns, Mr. Newton contacted staff and explained that he agreed with Mr. Roberts to consider relocating the boathouse to the west side of his pier (which would be the opposite side of the pier from that depicted in the drawings). Mr. Newton explained he found there was insufficient depth on the west side of the pier to allow his boat to float off the boatlift cradle. Mr. Newton agreed to suspend any further construction of the boathouse as we requested.

Furthermore, in a conversation with staff at his home on July 6, 2005, the applicant agreed to reduce the size of the boathouse by deleting the six-foot wide portion of the boathouse, which extended over the pier in favor of an 18-inch overhang.

Mr. Madden stated that it was staff's opinion that the boathouse appeared to be reasonably sized to accommodate the applicant's 25-foot long boat with a 10-foot beam, the boatlift cradle and hoist. The boathouse would be sited over an existing boatslip. The revised open-sided structure with attached lift did not exceed the square footage authorized in Section 28.2-1203 (A)(5) of the Code of Virginia. The open-sided, downsized design should also minimize the visual impacts associated with the structure. As such, staff recommended approval of the project as proposed, contingent upon our receipt of revised drawings depicting a 33-foot long by 17-foot wide structure.

William F. Newton, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Newton said this would be the fifth pier and bulkhead in this area and would be the smallest. He provided a picture showing the vegetation and explained that because of the water depth on the left and right sides, there was just enough water to get on the boatlift.

Commissioner Pruitt asked the applicant if he agreed with Mr. Madden's comments and drawings. Mr. Newton responded, yes.

Commissioner Pruitt asked if anyone was present in opposition.

Rodney Roberts, protestant and adjacent property owner on the east side, was sworn in and his comments in opposition to the proposal are a part of the verbatim record. Mr. Roberts said that he was okay with the boathouse, but did not want it in the proposed location as it was on his property line. Commissioner Pruitt asked him if he had a dock, to which he responded yes. Mr. Roberts went on to explain that there was more water

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depth on the other side of the property. He knew this as he had taken some soundings in that area.

Mr. Newton in his rebuttal said that there was not enough water in the other side of his property as he had taken depth soundings taken as well. He said that area was actually shallower.

Associate Member Robins moved to approve the project in accordance with the staff's recommendations. Associate Member Schick seconded the motion. The motion carried, 7-0.

Permit fee.....\$25.00

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- 9. **WAYNE HARBIN, #05-0603**, requests authorization to construct a 360-foot long by 6-foot wide private, non-commercial, open-pile pier with a 16' by 18' L-head and a 16' by 10' floating dock adjacent to property situated along Back Creek in York County.

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

Ms. West explained that Mr. Harbin's property was located along the southern shoreline of Back Creek in York County, near Mills Marina. His proposed pier included a total of 352 square feet of protrusions, which exceeded the 250 square foot exemption provided by §28.2-1203(A)(5) of the Code of Virginia.

Ms. West said that Mr. Harbin had stated that the purpose for the 192 square foot deck was to accommodate the turning of a golf cart used to transport his parents and his father-in-law to the end of the pier. The 160 square foot floating dock was needed to allow for easier access to the vessel by these same elderly family members.

Ms. West stated that two nearby property owners, who both voiced concerns regarding navigation impacts to the creek, originally protested the proposal. In order to address the concerns of these property owners, the maximum encroachment of the project was marked with a PVC stake. Both protestants examined the staked encroachment based on the stakes position and withdrew their protest.

Ms. West said that in order to further alleviate any navigational concerns by the two protestants and by staff, Mr. Harbin submitted a survey noting the location and distance from the shoreline of the PVC stake. Staff noted that the surveyed stake did not appear to be within Mr. Harbin's riparian area and this concern was expressed to Mr. Harbin.

Mr. Harbin stated that the stake was intended to depict a distance and not necessarily the exact alignment of the pier.

Ms. West stated that although staff remained concerned regarding the inaccurate staking of the encroachment and its failure to reflect the proposed pier alignment, staff was satisfied that the pier did not appear to represent a navigational hazard. Staff cautioned Mr. Harbin that, should the Commission elect to authorize his proposed pier, such approval did not in any way grant authorization to encroach into his neighbor's riparian area.

Ms. West said that in regards to Mr. Harbin's pier decking, staff could support the 160 square foot floating dock for stability reasons. In order to maintain stability, a 16-foot by 10-foot dock did not appear unreasonable. However, staff believed these 160 square feet certainly should be considered to be part of the 250 square feet authorized by Code. Staff did question Mr. Harbin's stated need for 192 square feet of pier decking for the purpose of turning a golf cart around. Staff continued to believe that a suitable T-head design would accommodate a 3-point turn which would be suit for Mr. Harbin's stated needs.

Ms. West explained that if Mr. Harbin believed the larger deck area was necessary, staff suggested he use his 250 square feet for that purpose and that he eliminate the floating dock.

Bob Livengood, agent, was sworn in and his comments are a part of the verbatim record. Mr. Livengood explained that staff considered the floating dock size of 10 X 16 as reasonable, but that utilizing only 250 square feet would make the L-head 7 1/2 X 18, which would not be suitable for the needs of the elderly parents.

Wayne Harbin, applicant, was sworn in and his comments are a part of the verbatim record. He explained that his father-in-law was eighty-five years old and they would need a 5-foot diameter whether it was a wheelchair or golf cart. He said there would be no space for getting around on the platform. He said it would be crowded with all the family members. He said he was asking for special needs consideration as there were few activities left to these elderly family members to enjoy.

Associate Member Garrison said that the 250 square feet was only a legislative guideline. Carl Josephson, Senior Assistant Attorney General explained that if the project was 250 square feet or less there would be no need for the entire Commission to review the project, but it did not prevent the Commission from approving more square footage.

Commissioner Pruitt asked if anyone was present in opposition. No one was present.

Associate Member Robins explained that this could be accomplished within the 250 square feet if the floating dock was made 10 feet X 12 feet, which was 120 square feet and the remaining 130 square feet would be utilized for the T-head or L-Head, which could be 18 feet X 10½ feet. Mr. Harbin said in the width suggested it would be impossible to accommodate as many as ten people and a wheelchair or golf cart. Associate Member Garrison explained they were trying to accommodate for the handicapped individuals not for 20 people.

Associate Member Robins moved to approve the project keeping all structures within the 250 square feet. Associate Member Schick seconded the motion. The motion carried, 7-0.

Permit fee.....\$25.00

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- 10. **KEITH A. FARRISH, #04-2026**, requests authorization to construct a 25-foot wide by 28-foot long, open-sided boathouse to cover a boat lift, two jet ski lifts, and an 11-foot wide by 16-foot long L-head platform, adjacent to his property situated along Monroe Bay in Westmoreland County.

Pulled from the agenda per request of applicant’s agent.

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- 11. **MARK WORRALL, #04-2186**, requests authorization to construct a 30-foot by 14-foot open-sided boathouse adjacent to a previously authorized pier located adjacent to his property situated along the Eastern Branch of the Elizabeth River in Norfolk. An adjacent property owner protests the project.

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

Ms. West explained that Mr. Worrall’s property was located along the Eastern Branch of the Elizabeth River in Norfolk. He proposed to construct a 30-foot by 14-foot, open-sided boathouse adjacent to a previously approved private pier.

Ms. West said that Mr. Worrall’s shoreline was unusual, in that there was an apparent man-made canal that ran parallel to the shoreline. In order to reach the Eastern Branch, he was required to cross the canal with his pier. Since the canal was most likely man-made, this agency had no authority to regulate the pier crossing of this canal.

Ms. West explained that Mr. Roger Hurwitz, the adjoining property owner, was protesting the project. His concerns focused on the potential aesthetic impacts associated with the boathouse, particularly those to his viewshed.

Ms. West stated that there were no oyster ground leases affected by the proposal, and no State agencies had commented on the project.

Ms. West said that the boathouse appeared to be reasonably sized. In fact, had the adjacent property owner not objected to the project, it would have qualified for the exemption contained in Section 28.2-1203 (A)(5) of the Code. The proposed open-sided design should also minimize the visual impacts associated with the structure. Accordingly staff recommended approval of the project.

Mark Worrall, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Worrall provided pictures for the Commission. He explained that the objection was not correct, as there was another structure four houses up on his side of the river. He said that there were 18 structures in the area. He said he just wanted to have a boathouse to cover his boat.

Roger Hurwitz, adjoining property owner on the east side, was sworn in and his comments are a part of the verbatim record. He provided a picture for the Commission's review. He said there were no boathouses. He said to the right of his house there were structures, but no boathouse. He said there was a lot of wildlife in the area and taxes had increased 42 percent in the area. He said he had not seen any drawings of the boathouse. He said to approve it would set a precedent. He further stated that there was no aesthetic value or property value to be added by this boathouse.

Mr. Worrall in his rebuttal said that the pictures showed his neighbor's boathouse upriver and there was a gazebo across the water.

Associate Member Holland moved to accept the staff's recommendations. Associate Member Garrison seconded the motion. The motion carried, 7-0.

Permit fee.....\$25.00

- 13. VIRGINIA INSTITUTE OF MARINE SCIENCE**, requests authorization to set-aside 507.90 acres of unassigned state bottom in Hog Island Bay, southeast of High Shoal Marsh in Northampton County for five years. The area will be used for seagrass restoration.

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

Mr. Badger explained that historically, prior to 1933 the coastal bays of the Eastern Shore supported large amounts of submerged aquatic vegetation (SAV), primarily eelgrass. The SAV was found in Magothy, South, Cobb, Hog Island and Chincoteague bays. The significance of these beds was noted in the populations of wintering waterfowl that fed on the eelgrass and in the bay scallop population, which was harvested commercially. In fact, the Commission set-aside Public Scallop Grounds in these bays in the 1920s. In the early 1930s, the combination of disease and the 1933 hurricane wiped out the entire population of eelgrass in the coastal bays. Bay scallops, which use eelgrass as a settlement substrate, were eliminated and have rarely been seen since.

Mr. Badger further explained that since 1998, VIMS has had an active program to restore seagrass to the bays on the Eastern Shore seaside. In August 2003 the Commission set-aside approximately 400 acres in South Bay for seagrass restoration. VIMS has had excellent success in a large-scale restoration effort in South Bay.

Mr. Badger stated that the proposed SAV set-aside area was located approximately three quarters (0.75) of a mile southeast of High Shoal Marsh and one mile (1.0) west of Hog Island. Water depths in the area vary from minus one-foot (-1) near the sandy spit south of High Shoal to minus five (-5) feet at mean low water in the middle of the set-aside area.

Mr. Badger said that most of the proposed set-aside area had been vacant or unassigned since July 1993 when the leaseholders terminated their oyster ground leases. The leaseholders used their leases for clam dredging up until that time. Hog Island Bay has a large amount of clam aquaculture activity and there are clam beds north and southeast of the proposed set-aside area.

Mr. Badger stated that since the adjacent and nearby shellfish leases have clam aquaculture beds on them and since the SAV restoration project, if successful, may migrate onto their leased bottom, staff notified the adjacent leaseholders of the proposed project and informed them of the Commission hearing. Staff also advertised the public hearing in the local paper on July 30, 2005. No public opposition or comments have been received to date.

Mr. Badger said that according to Dr. Orth at VIMS, the set-aside area was supported by the University of Virginia's Long-Term Ecological Research program. The set-aside area would provide research and monitoring opportunities.

Mr. Badger explained that the staff recommended that 507.90 acres of unassigned state bottom in Hog Island Bay be set-aside for seagrass restoration for a period of five (5) years as shown on an attached oyster ground map, with the ability to renew for another five (5) years if the restoration effort proved successful.

Associate Member Garrison asked for any questions. There were none.

Dr. Bob Orth, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Orth said they were building on the request made in 2003 that was granted. Additional work was done in Cobb Island Bay and Spider Island Bay, which had been successful. He said it was amazing to see the success of the South Bay project.

Associate Member Robins asked if the project might cause conflicts or problems with the aquaculture industry in this area? Dr. Orth said they had seen minimal conflicts on the seaside. He said they were always willing to work with the industry. Associate Member Robins then asked if this was an undesirable area for aquaculture. Dr. Orth said yes, at the present time.

Associate Member Garrison asked if anyone in opposition was present. There were none. He then asked for a motion.

After some discussion, Associate Member Jones moved to accept the staff's recommendations. Associate Member Robins seconded the motion. The motion carried, 7-0.

Commissioner Pruitt resumed his duties as chair.

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14. DISCUSSION: Royalty issue.

Bob Grabb, Chief, Habitat Management Division, gave the presentation. His comments are a part of the verbatim record.

Mr. Grabb stated that information had been sent to the Commission regarding the whole royalty issue. He explained that collection of the rents and royalties were suspended in 1988. He said that legislative bills passed in July 2004 prohibited collection of the uncollected rents and royalties that had been assessed up to July 1, 2004 and declared them null and void. He also said they had prohibited the assessment of any new rents and royalties until July 1, 2005. Since that date had passed, the Commission was again free to assess and collect rents and royalties for the use of state-owned subaqueous bottomlands.

Mr. Grabb stated that staff was asking that the Commission first endorse a resumption of the rent's and royalty assessment program. He said staff felt there was a need to make changes in the fees and were recommending that the matter be referred to the Habitat Management Advisory Committee (HMAC) so they could examine the rent and royalty schedule and provide any recommendations they might have on the rates proposed. He said that staff was also recommending that the Commission ask HMAC to look at the bold outline of the encroachment, not just a shadow encroachment where the structures were actually located, since that was the area that was actually encumbered or permitted for essentially private use. He said the area between the piers and slips or inboard of the

outer mooring piles, etc. was not previously considered in the calculation of the area to be assessed.

Mr. Grabb said that staff was requesting that the Commission tentatively schedule a Public Hearing to be held at the October 25, 2005 meeting. He said that depending on the requirements by the State Registrar, any action could become effective as early as November 1, 2005.

Mr. Grabb reminded the Commission that they had never assessed for a private pier and there was no proposal to change that since private piers were exempt from permit requirements to begin with.

Commissioner Pruitt stated that the issue would be referred to the HMAC. He said that any board members who wished to attend this meeting could do so. He asked Mr. Schick, Chairman of the Committee, to get with staff and schedule the meeting and have the other members notified of that meeting.

Associate Member Garrison said that the permit fees also needed to be increased as well. Mr. Grabb explained that the permit fees had been the same for 35 years and it would take legislative action to make such a change. Associate Member Garrison said this should be looked at as well.

No further action was taken.

The Commission took a 5-minute recess.

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15. SPECIAL PRESENTATIONS:

Commissioner Pruitt announced that two of VMRC's long-time employees were retired and retiring. He said that Richard Haynes had already retired and the Daniel Eskridge would be retiring as of September 1, 2005. He said that together they had approximately 60 years of service. He said that the officers now train just like other police forces and their current title is Marine Police Officer. He said that 90% of the individuals that enforcement officers must work with are good, hardworking individuals. He further explained that Mr. Haynes was going to teach at Middlesex High School. He said that Dan Eskridge would be selling real estate. He expressed his pride in both officers and congratulated them both on their retirement. He asked them for any comments they might wish to make.

Richard Haynes explained that he would be teaching a course on the Chesapeake Bay and its tributaries.

Dan Eskridge explained that he had spent half his life with VMRC, met lots of people, made good friends and looked forward to and was excited for, the future.

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- 16. **PUBLIC HEARING:** Emergency Regulation extending the clam harvest season in the Hampton Roads Shellfish Area through September 14, 2005, as a permanent part of 4 VAC 20-566-10 Et Seq.

Joe Cimino, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. Mr. Cimino explained that at the last Commission meeting the Commission approved an emergency regulation to extend the public relay season in the Hampton Roads Shellfish Relay Area through September 14, 2005. He said at that time staff requested approval for holding a public hearing to extend the relay season through September 30, 2005.

Commissioner Pruitt opened the hearing for public comments.

Mr. Cimino said that it was being requested that the extension be made permanent. Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel, stated that an amendment would be necessary to change from the September 30th date.

Roy Insley, Industry Representative, was present and his comments are a part of the verbatim record. Mr. Insley said that industry was asking that the extension be made permanent so that they would no longer have to come back each year to request this extension. He said when the August 15th date was established by the General Assembly, there were 150 to 200 boats working during this season. He said the cutoff of August 15th occurred just when the market was getting good. He suggested that this way the Commission would only have to consider this matter when a closure was necessary.

Mr. Josephson explained that as the proposed season extension was valid only for 2005. After some discussion between counsel and Commissioner Pruitt, it was agreed that Mr. Insley's suggestion to make the season extension permanent could be done next year.

Associate Member Robins moved to approve the extension through September 30, 2005. Associate Member Bowden seconded the motion. The motion carried, 7-0.

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- 17. **PUBLIC HEARING:** Proposed amendments to Regulation 4 VAC 20-252-10 Et Seq. "Pertaining to Striped Bass." a) Modification of the recreational striped bass regulations for the fall 2005 Chesapeake Area fishery. b) Change the commercial striped bass tagging program to require the use of two separate tags, based on striped bass size intervals, for the Chesapeake Area and Coastal Area. c) Add

requirements to improve compliance with the commercial striped bass tagging program. d) Repeal the January 1 through March 25 prohibitions on the use of gill nets with a stretched mesh size between 3¾ inches and 6 inches in the western tributaries, from the James River to the Rappahannock River. e) Establish a 7-inch maximum mesh size for all gill nets used in the Chesapeake Area striped bass fishery and a maximum mesh size for gill nets used in the Coastal Area striped bass fishery.

Rob O'Reilly, Deputy Chief, Fisheries Management Division, gave the presentation on the recreational fishery portion of this item. His comments are a part of the verbatim record. Commissioner Pruitt suggested that a motion for the recreational fishery portion would be made following Rob's presentation and then the Commission would conclude with the commercial fishery portion.

Mr. O'Reilly explained that compared to the 1997 through 2003 recreational striped bass fishery quota of 1,701,748 pounds, the 2004 quota declined to 1,364,154 pounds, but the 2005 quota is 1,504,927 pounds. This 2005 quota represents a 10.3 % increase over the 2004 quota but is 11.6% less than the quotas during the 1997 through 2003 period.

Mr. O'Reilly stated that there have been quota overages the last 4 years, but these are strictly overages of the Virginia quota. The 2003 harvest was 972,150 pounds greater than the 2004 quota, and the 2004 harvest was 845,667 pounds greater than the 2005 quota, despite the fact that the VMRC enacted a modified slot limit, for the 2004 fall fishery, wherein 1 striped bass was allowed to be 18 inches or greater, while the other (2nd fish of the 2-fish possession limit) could only be 18 inches to 28 inches total length. The ASMFC management plan establishes a Chesapeake Bay-wide quota, and that quota, based on Maryland, Virginia and Potomac River Fisheries has never been exceeded. Consequently, there have been no "pay-backs" required of Virginia, but the VMRC regulation establishes an annual quota for commercial and recreational fisheries, and there has been a trend of increasing recreational harvest (in fish and pounds) in the recent years. That's not to say the Bay-wide quota cannot be exceeded. The 2004 Bay-wide harvest was 8.1 million pounds and the 2004 Bay-wide quota was 9.28 million pounds. At such time the Bay-wide quota is exceeded, the jurisdiction responsible for any overage will pay back that overage, according to ASMFC requirements. At this time the Commission, the recreational industry and public have the flexibility to slow down the harvest rate in this fishery, without stark reductions in the fishery.

Mr. O'Reilly said that the recreational striped bass fishery is managed by a set of minimum size limits, seasons and possession limits. Individual harvest data are not tabulated, rather the National Marine Fisheries Service utilizes intercept (interview and measurement of discrete harvests by fishermen) and telephone surveys (to collect effort data), in order to estimate harvests of striped bass and other species. For this reason, adjusting the recreational harvest cannot be done directly, at the fisherman level, as it can

in the case of the commercial ITQ system. Any adjustments of the harvest involve an adjustment to a season, possession limit, size limit or combination of those limits.

Mr. O'Reilly said that staff met with industry representatives representing diverse geographic areas and different modes of fishing (private boat and charter), on an Ad Hoc basis, on two occasions, in order to discuss and select options that would reduce the 2005 fall recreational Chesapeake Bay harvest (the coastal area is managed differently than the Chesapeake Area). Table 1 was provided to the committee on June 6, by staff, to assist the committee with its initial recommendations for reducing the 2005 fall harvest. Figure 2 was provided to the committee and shows the length-frequency distribution of the 2004 recreational harvest in Chesapeake Bay. Figure 3 provides the cumulative distribution (in percentages) of the 2004 harvest. For example, 81% of the harvest, in length, was less than 28 inches (a 28-inch striped bass or 8-year old striped bass have been adopted as ASMFC standards associated with a coastal migrant striped bass). Figure 4 shows that 75% of the 2004 harvest consisted of relatively young fish (< age 8), and roughly 35% were age-3 or age-4 striped bass.

Mr. O'Reilly explained that at the June 6 Ad Hoc meeting, no committee representative favored a closed season, a 1-fish limit or maximum size limit on both fish. The committee reached a consensus that at least a 600,000-pound reduction in the fall 2005 recreational striped bass fishery was needed, so that the annual 2005 harvest would not be as significant as the harvest in 2004 and 2003. By meeting's end, the committee favored harvest-reduction options that raised the minimum size limit, from 18 inches to 21 inches. Further, since the Committee members realized that raising the minimum size, alone, would not reduce the harvest by the full 600,000 pounds, they also opted for some type of a modified slot on one of the allowed 2-fish possession limit (Option A1) or a no-take or protected slot limit on one fish (Options B2, B3, B5, B6 and B9). At this first meeting, the reduction amounts were unknown, but the committee was resolute in wanting to achieve a 600,000-pound potential reduction this fall. It is important to understand that the recreational fishery is dynamic, owing to year-to-year variability in environmental conditions and availability of the fish and angler fishing behavior.

Mr. O'Reilly said that the Ad Hoc committee again met on July 19 and staff provided additional information on the 2004 fishery. Figure 5 shows that roughly 50% of the harvest was associated with fish 28 inches or less, but 81% of the 2004 harvest, in numbers of fish, was less than 28 inches as shown on Figure 4. Figure 5 shows that 25% of the weight of the harvest was attributable to fish greater than 28 inches to 35 inches in length, yet that size grouping only accounted for 12% of the total number harvested. Figure 6 provides a comparison of length frequencies among the last 8 harvest years, as one committee member had asked whether more large fish had been harvested recently. This figure shows that to be the case, as the width of the year-specific bands is greater, for larger size striped bass, in recent years. Conversely, 45.8% of fish harvested during the 2002-2004 period were 22 inches or less, compared to 52.4%, for the 1999-2001 period and 62.8%, for the 1997 and 1998 fisheries' size distributions combined.

Mr. O'Reilly explained that one issue that emerged from a review of the National Marine Fisheries Service (NMFS) Marine Recreational Fisheries Statistics Survey (MRFSS) intercept data (data recorded from interviews by the NMFS contractor with anglers landing in Virginia) was that several intercepts contained large, illegal fish. These were intercepts or surveys wherein all or most fish were greater than 28 inches, but the 2004 regulation allowed only one fish greater than 28 inches per angler. Further these intercept surveys occurred at landings that have fairly easy access to the coastal area, such as Lynnhaven, so it may be that some of these fish recorded as part of the Chesapeake harvest were really harvested in the coastal area. Since the survey does not ask where each fish was caught, but only asks where most of the trip's effort occurred, there is ambiguity concerning the harvest location. The survey was not designed for quota management purposes, and only the Chesapeake jurisdictions, among all coastal states utilize a recreational striped bass quota. Different staff members could not conclusively or objectively determine whether these fish were from coastal harvests or just illegal. Many other large, legal striped bass were caught within the lower Chesapeake coincident with these ambiguous landings.

Mr. O'Reilly stated that most Ad Hoc members supported a 500,000-pound reduction (92,000-pound error was discovered by the National Marine Fisheries Service, so the committee thought that 500,000 pounds, rather than 600,000 pounds should equal the target reduction). Most members also decided against raising the minimum size limit to 21 inches or 20 inches (Options A1 through A4 and Options B1 through B6 shown on Table 2), as they expect, as shown in Figure 2, an abundance of 18-, 19- and 20-inch fish, which would lead to an increase in discard mortality. In addition, some committee members thought that raising the minimum size limit was a bad precedent because if there was another overage, the minimum size limit may be raised even higher. Other committee members recognized that their quota is based on the total exploitable stock biomass associated with striped bass 18 inches and greater, so a size limit of 20 inches or 21 inches could eventually mean less available quota. Additionally, it was noted that impacts to shore and pier anglers would be severe, were a 20- or 21-inch minimum size limit established. Importantly, Option B10 is similar to the 2004 regulation (a possession limit of 2 fish 18-28 inches or 1 fish 18-28 inches and 1 fish 28 inches and greater), so the vast fishing public will not be overly confused by the change.

Mr. O'Reilly said that initially, most committee members decided that Option B9 was their preference. This option would raise the minimum size limit to 19 inches and create a no-possession slot limit for a second fish greater than 28 inches but less than 34 inches. The committee members indicated that this no-possession slot would mean that most anglers would not harvest a 34-inch or greater second fish in the fall fishery but would settle for a 28-inch or less second fish. The result would be some reduction in harvest. By meeting's end the committee created and endorsed Option B-10 as its preference, as this requires no increase in the minimum size limit and is close to a 500,000-pound potential reduction. The Ad Hoc committee requested that options B9 and B10 be taken to the

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Commission for their consideration. Staff also met with FMAC that evening, and the FMAC unanimously supported Option B10.

Option B9 2 fish 19" – 28" or 1 - 19" – 28" and second fish 34 or greater"

Option 10 2 fish 18" – 28" or 1 fish 18" – 28" and second fish than 34 or greater"

Mr. O'Reilly explained that concerning harvest reduction options, please know that they are not likely to achieve the full reduction in pounds. Anglers are very capable of adjusting their fishing frequency, location or other habits in an effort to avoid lost fishing opportunities. This phenomenon is known as recoupment, and the no-possession slot limit will offset recoupment, to some extent. Yet, if it were assumed that each fish, greater than 28 inches but less than 34 inches, harvested in 2004 were replaced by the harvest of a 28-inch fish, the 480,409- pound savings associated with Option B10 would be lessened to 150,687 pounds.

Mr. O'Reilly said that staff recommended approval of the proposed amendments starting on page 8 of the draft amended Regulation 4VAC 20-252-10.

Staff recommendation: 2-fish limit (Oct 4 – Dec 31) - 2 fish may be 18" to 28" or 1 fish may be 18" to 28", and 1 fish must be is 34" or greater.

Commissioner Pruitt opened the hearing for public comments.

Tom Powers, Poquoson Resident and a member of FMAC, was present and his comments are a part of the verbatim record. Mr. Powers stated that the Commission needed to approve the reduction recommendation. He said he has done a lot of work to correct the MRFSS data problem. He said the catch data in the MRFSS report he felt might be overstated as much as 5-10% because of the confusion of whether or not the fish were taken in the bay or ocean. He thought some of the coastal harvest had been assigned to the Bay. He said that he hoped that the MRFSS data would not stop the Commission from taking action in this matter.

Rom Lipcius, VIMS representative, was present and his comments are a part of the verbatim record. Dr. Lipcius said the size to be considered should be the size of the striped bass that eat blue crabs. Usually the 18 to 21 inch size striped bass eat more blue crabs and this needs to be considered when the Commission is making its decisions to conserve blue crabs. Associate Member Jones asked if any models had been done on multi-species interaction. Dr. Lipcius said this work is being done.

Commissioner Pruitt closed the public hearing.

Associate Member Garrison expressed his concern on how the information would get to the public and whether contact should be made with the major newspapers to get the information out before the start of the season. Commissioner Pruitt agreed that it is hard

to understand and does get confusing. Mr. O'Reilly, to clarify, said it means no striped bass between 28" and 34".

Associate Member Garrison moved to approve the staff recommendation for option B-10. Associate Member Robins seconded the motion. The motion carried, 7-0.

Jack Travelstead, Chief, Fisheries Management Division, gave the presentation on the Commercial portion of this item. His comments are a part of the verbatim record.

Mr. Travelstead explained that the special Striped Bass Committee and Finfish Management Advisory Committee have focused their efforts on the design of regulations to improve the equitable allocation of striped bass tags in the commercial fishery.

Mr. Travelstead said that the Chesapeake Bay total harvest quota is based, in part, upon the large biomass of resident striped bass. The minimum size limit (18 inches) in the Bay is small to accommodate the traditional harvest of non-migratory striped bass. The large biomass of small striped bass in the Bay allows for large harvest quotas. States to the north, on the other hand, target the migratory stock of striped bass and must have much smaller quotas. As Virginia fishermen target the larger migratory striped bass, they jeopardize the basis for our fishery. Virginia cannot argue to ASMFC, on the one hand, that it deserves to harvest large quantities of smaller striped bass, and then use that quota to harvest large, migratory striped bass intended for the other states. The ASMFC has accommodated Virginia's position by granting us a small minimum size limit and large quota so that our fishermen may target their traditional fishery on small fish. The continued targeting of larger fish violates the assumptions in the harvest control model and could result in much smaller quotas and larger size limits.

Mr. Travelstead stated that equally important, the harvest of larger fish results in an inequitable distribution of the quota among Virginia's fishermen. Under our current system, the total number of tags available in any year for distribution to the fishermen is equal to the total quota divided by the average weight of striped bass harvested the previous year. As the average weight increases, the total number of tags decreases. Unfortunately, fishermen have received fewer and fewer tags each year as the average size of fish harvested has increased. For fishermen who do not have access to the larger fish, such as pound net fishermen, upriver fishermen, and small boat fishermen, this economic burden is most severe, since they receive fewer tags each year because others are driving the average size higher. Fishermen with access to the larger fish attempt to make up their loss of tags by harvesting still larger fish and thereby continue the trend of increasing average size.

Mr. Travelstead said that the following were solutions that the committees came up with in order to reduce the harvest of large striped bass, reduce the average sizes of striped bass in the Chesapeake area and Coastal area fisheries, and stabilize the number of striped bass tags that make up the quotas in both fisheries.

Mr. Travelstead explained that both the special Striped Bass Committee and FMAC have endorsed a proposed two tag system which requires the use of one type of tag on striped bass 18"-28" in Chesapeake Area (28"-34" in the Coastal Area) and another type of tag on any striped bass greater than 18" (28" in the Coastal area). Tag type would be distinguished by color and written legend. Tags would be distributed in equal quantities in the first year, but the proportion could be adjusted in future years to drive the average harvest weight in a particular direction. Data from the 2004 fishery, attached, show that 54 percent of the striped bass harvested from the Chesapeake area were greater than 28 inches in length, but much of the large fish harvest tends to be concentrated in and not spread equally across all fishermen. Therefore, distribution of the tag types in equal numbers should drive the average weight down.

Mr. Travelstead further explained that while this option has been supported by the advisory committees, several seafood buyers have expressed reservations about the proposal. Specifically, they are concerned about having to examine each fish they purchase to ensure it is tagged properly. If a fish is wrongfully tagged and shipped across state lines, for example, the buyer/shipper could be liable for substantial fines/penalties under the federal Lacey Act.

Mr. Travelstead stated that as a solution, enforcement of the two-tag system should be focused at the fishermen level. In those situations where an illegally tagged fish is discovered at a dealer's place of business, the fish should be confiscated and the fisherman identified through the tag's serial number.

Mr. Travelstead said that the staff proposed several changes to correct abuses of the current tagging program that center on the illegal use of Chesapeake area tags on large fish harvested in the ocean. Specifically, we propose 1) to make unlawful the possession of Chesapeake area tags in ocean waters. 2) To repeal the transit permits that allow fishermen to possess Chesapeake area tags in the ocean, and 3) to issue Coastal area tags to fishermen owning both tag types and not issue Chesapeake area tags until the Coastal area tags are fully utilized.

Mr. Travelstead said that a portion of the large fish harvested and tagged with Chesapeake area tags are actually harvested from the Coastal area. While the degree to which this is occurring is unknown, it is believed to be a significant contributor to the annual increase in average weight of striped bass harvested. Our Law Enforcement Division has noted the problem and requested these changes to improve their ability to minimize the unlawful use of Chesapeake area tags.

Mr. Travelstead said that staff also proposes the imposition of maximum gill net mesh sizes in the striped bass fisheries, 7 inches in the Chesapeake area and 9 inches in the Coastal area. Gill net mesh size affects the size of striped bass harvested although the effort is not knife-edged as large fish can be taken in small mesh. Nevertheless, the

imposition of a maximum mesh size, in addition to the two-tag proposal, will significantly reduce the harvest of the very largest striped bass.

Mr. Travelstead said that the Commission may wish to consider delayed implementation of a mesh size requirement, to allow fishermen to make use of existing nets before replacement is required. Some fishermen routinely replace their gill net hedging and reuse the float and lead lines to reduce costs.

Mr. Travelstead said Regulation 751 makes it unlawful from January 1 – March 25 to use a gill net with a mesh size between 3¾ inches and 6 inches in the western shore tributaries from the James to the Rappahannock River. This prohibition on small mesh gill nets forces river fishermen to use larger meshes, which tend to catch larger striped bass, and thus, contributes to the annual increase in average fish weight. The advisory committees have endorsed a repeal of this prohibition to allow river fishermen to focus their harvests on smaller fish.

Mr. Travelstead stated that unfortunately, the repeal of this gill net mesh size prohibition would also increase by-catch of the American shad. VIMS had noted their concern and has requested that this provision not be adopted. Staff concurs with VIMS that the detriments to the American Shad far outweigh the benefits derived for striped bass. Staff did not recommend the adoption of solution 3. VIMS suggests that if the Commission did approve this solution, then the mesh size should be no smaller 5 1/2” with a twine size, that is no smaller than .7 mm or a #18.

Mr. Travelstead said that staff recommended that the Commission adopt the two-tag system; all three measures to improve compliance with the tagging system; and the maximum gill net sizes, which would be effective January 1, 2006.

Commissioner Pruitt asked how many meetings were held. Mr. Travelstead and Mr. Bowden responded 4 meetings. Commissioner Pruitt said that after the 4th meeting it was referred to FMAC.

Associate Member Bowden asked if they should get back with FMAC in regards to VIMS concerns over the mesh size, because this is new information that FMAC did not have when they discussed mesh size.

Commissioner Pruitt asked could anything be done today. Mr. Travelstead responded no as there was time to work out the problems. He said if what is proposed today was not acceptable then the staff would have to go back to the drawing board.

Commissioner Pruitt opened the hearing for public comment.

Jeff Crockett, President of the Tangier Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Crockett said that he thought there was to be one more meeting of FMAC and additional data was to be provided. He said the two tag and mesh size changes would not work for them. He suggested that the Commission table making a decision so that there could be more meetings to discuss other possible suggestions.

Chris Ludford, member of the Striped Bass Committee, was present and his comments are a part of the verbatim record. Mr. Ludford said that the 2-tag system should be the responsibility of the waterman not the buyer or packer. He said he could see some problems coming as there was a definite misuse of tags. He said he foresaw problems and something needed to be done now, but there should be more meetings. He further said that the honest fisherman was suffering because of others who chose to not follow the rules.

Pete Nixon, President of the Lower Chesapeake Bay Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Nixon said that the decision by some to change the system and go from tags to weight was a problem and the staff recommendation was too burdensome. He said something needed to be done to reduce the size of fish caught. He said he agreed with Mr. Crockett that the matter should be tabled and the issue discussed more on how to do what needs to be done because the 2-tag system is too burdensome. He said that in the Lower Bay he agreed with the change in mesh size, but in the Upper Bay that would not work for them. He said there was still time to come up with better solutions and hold more meetings.

Kelly Place, representative for the Coastal Virginia Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Kelly said he agreed that the Commission needed to wait for several more meetings. He said the ASMFC directives need consideration when looking at these issues. He said the 2-tag system would encourage the discarding of more fish and cause more mortality. He said the Commission needed to look at all incentives when making changes and try to envision where these incentives will go.

John Wyatt, upriver waterman, was present and his comments are a part of the verbatim record. Mr. Wyatt said he agreed with Mr. Crockett that the matter should be tabled and sent back to the committees to come up with better ideas. He said he was concerned with the bycatch of shad and he did not like to see waste in a fishery. He said changing the mesh size would cause more shad to be caught, but you are not going to catch that many more. He requested that it be sent back to committee and not be so concerned with the shad bycatch. Something needs to be done for the upriver fishermen.

John Forrest, waterman, was present and his comments are a part of the verbatim record. Mr. Forrest said that 9" size limit was too large and he recommended the net size be 8 ½ inches. He said the federal government was concerned about the large nets because of the

sea turtles, sturgeons, and bottlenose dolphins. He also said that the 34" maximum size limit was a problem. He said that in New York because they have a 36" limit you have to cull out to the 36" fish. He said the amended regulation was limiting the catching of the larger fish and would cause more mortality of the larger fish.

Doug Jenkins, President of the Twin Rivers Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins said he served on the FMAC and they met for months and months and the proposal was what they voted on. He expressed his concerns for the upriver fishermen and the problems that exist as long as the system is inequitable between the Bay and Ocean Fisheries. He said he was ready to meet again as suggested by others but he asked there be fairness to the upriver watermen.

Lionel Jenkins, Working Waterman's Association, was present and his comments are a part of the verbatim record. He said he did not agree with the comments regarding the 9" net because he had caught better fish in his 9" nets than he had with his smaller nets. He said that staff always presents issues as if the ASMFC were breathing down our necks. He said there was time for more meetings and the matter should be tabled until better solutions can be proposed than what was proposed now.

Commissioner Pruitt closed the public hearing.

Associate Member Garrison left the meeting.

Associate Member Robins asked what was the last meeting was that this issue could be heard to be ready for the 2006 season. Mr. Travelstead said that any decision later than September would be straining the effort because the bids for tags need to be out in early October to have them in time for 2006 season.

Commissioner Pruitt asked if the Commission did not act this year, could they wait until next year. Mr. Travelstead said that it could wait and that he did not think there would be problems with ASMFC.

Associate Member Garrison asked would this have to go back to the Striped Bass Committee as well as the FMAC. Commissioner Pruitt responded, yes.

Associate Member Bowden said that he thought this was a good proposal, but would agree to more meetings if something better could be proposed.

After further discussion, Associate Member Robins moved to remand the commercial striped bass issue back to the FMAC including staff recommendations with the proposed changes in the regulation and the two reports from VIMS. Associate Member Bowden seconded the motion. Mr. Bowden asked if they would be meeting with both committees. After some discussion, Commissioner Pruitt said

this issue would first go back to the Striped Bass Committee and then to FMAC prior to coming back to the September meeting. Associate Members Robins and Bowden agreed. The motion carried, 6-0. Associate Member Garrison was not present at this time.

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- 19. **VIRGINIA SEAFOOD COUNCIL:** Request for additional testing of ariakensis oysters in on-bottom deployments, and
- 21. **REQUEST FOR PUBLIC HEARINGS:** 1) Amendments to Regulation 310 to exempt shellfish seed stock from certain condemned shellfish relay provisions and 2) Amendments to Regulation 720 establishing the 2005/2006 oyster harvest seasons.

Jack Travelstead, Chief, Fisheries Management Division stated that both Items 19 and 21 were requests for public hearings.

Associate Member Holland moved to approve the requests to advertise for public hearings for both Items 19 and 21 at the September meeting. Associate Member Schick seconded the motion. The motion carried, 6-0. Associate Member Garrison returned to the meeting just as the vote was taken voted on these items.

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- 18. **ANNUAL REVIEW:** Haul seine, propeller scarring, of SAV beds and status of Chincoteague Bay SAV sanctuary, Dr. Bob Orth, VIMS.

Dr. Bob Orth of VIMS was present and his comments are a part of the verbatim record. Dr. Orth provided a PowerPoint presentation for the Commission. He explained that because of the damage caused to Submerged Aquatic Vegetation (SAV) by the dredging for clams in the Chincoteague area and at the request of the Virginia Institute of Marine Science, the Commission set aside a sanctuary area in 1998 with a 200-meter buffer. This was modified in 2001 after some meetings because of evidence of further damage because the areas were not marked off. At that time the area was marked with stakes and channel was markers. This proved very effective. Since remarking the area in 2004 no new scars have occurred. There were some old scars that still have not recovered since 1998.

Dr. Orth explained that propeller scars had been seen in the Brown's Bay and Poquoson Flats area. He said that the new photographs taken have shown that the scars have healed and new scarring had been minimal. Dr. Orth said that they want to continue the monitoring of these areas. He said there continued to be haul seine activity in these areas and this was why they wanted to continue with the monitoring.

Associate Member Garrison moved to accept the report and commended Dr. Orth on his efforts. Jack Travelstead said there was the still the issue of funding to be decided. He said last year \$20,000 split between the Marine Improvement Funds and the Saltwater Recreational Fishing Development Fund was approved and utilized for the monitoring project and staff recommended approval of this funding request. **Associate Member Garrison agreed with amending the motion to include the funding. Associate Member Robins seconded the motion. The motion carried, 7-0.**

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20. **ARMY CORPS OF ENGINEERS:** Review of the Army Corps of Engineers Lynnhaven Decision document to establish Lynnhaven River as the next priority site for native oyster restoration.

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

Mr. Travelstead explained that the U. S. Army Corps of Engineers (ACOE) has provided significant contributions to Virginia's Oyster Heritage Program: first for oyster restoration in the Rappahannock River in 1999/2000, then in Tangier and Pocomoke Sounds in 2002, and currently in the Great Wicomico River. Most of the efforts have been shell plantings and the creation of 3-dimensional oyster reefs using shell dredged from the James River. The value of the shell provided by the state, meets the state's 25 percent match requirement. Restoration efforts, particularly those in the Rappahannock and in Tangier and Pocomoke Sounds, have had positive impacts on Virginia's oyster industry.

Mr. Travelstead further explained that in addition to shell plantings, restoration in the Great Wicomico River involves the planting of up to 15 million disease resistant DEBY strain native oysters. Unfortunately, contracting problems this spring have resulted in delays in the planting of these broodstock oysters. Nevertheless, there is potential for the industry to derive significant benefits from the restoration of the Great Wicomico River, as the disease resistant offspring of the planted DEBY oysters settle on private oyster beds in the river.

Mr. Travelstead said that the ACOE now proposed to move its restoration strategy to the Lynnhaven River and has prepared a draft decision document (portions attached) in cooperation with the VMRC, VIMS, NOAA, and the Chesapeake Bay Foundation.

Mr. Travelstead explained that significant investments toward restoration of the Lynnhaven by VMRC, VIMS, ACOE, CBF and others have already been made. However, full restoration at a scale more likely to be successful has not occurred. The resources that ACOE brings to the restoration table are substantial and it is doubtful that success will be achieved with out this commitment. Nevertheless, staff was sensitive to

the concerns of industry that efforts in the Great Wicomico River not be diminished by now focusing on the Lynnhaven River.

Mr. Travelstead stated that with assurances from the ACOE that this would not happen, and pending continued support from VIMS, staff recommended the Commission support the Lynnhaven Decision Document.

Mr. Travelstead said that there were representatives from the Corps and that a representative from the City of Virginia Beach was present.

Clay Bernick, City of Virginia Beach Environmental Manager, was present and his comments are a part of the verbatim record. Mr. Bernick said that the City of Virginia Beach supported the Corps' project. He said that an Oyster Heritage Fund was established and voluntary contributions amounted to \$400,000. He said that members of the Lynnhaven 2007 were strongly supportive to this project. He said that the President felt that this project fits in with their projects.

Lyle Varnell, VIMS representative, was present and his comments are a part of the verbatim record. Mr. Varnell stated that the letter from Dr. Mann was complete and represented VIMS support of the project.

Mark Mansfield, U.S.Army Corps of Engineers' representative, was present and his comments are a part of the verbatim record. He had a PowerPoint presentation for the Commission to review. Mr. Mansfield said that this project would affect everyone ecologically and the surrounding leaseholders. He said this was a unique project to help restore the resource. He said that they were not perfect and they do make mistakes. He said that they learn from these mistakes. He said they would work with everyone to make this a better project. He said Congress had given them this responsibility to restore the ecosystems. He said they are asking for a letter of intent from the Commission saying they support the project. He said then Congress would give them the funding. He said the project would improve the spatset and benefit the surrounding area. The Lynnhaven was a good site for this project and there would be approximately 111 acres utilized for this project, which would become sanctuaries. He said the project would provide ecological benefits and increase harvest in the area.

Tommy Leggett, Oyster Fishery Scientist for CBF, was present and his comments of support are a part of the verbatim record. Mr. Leggett said that the CBF has been stocking the Lynnhaven with seed oysters since 1997. He said CBF supported the project in the Lynnhaven and felt that valuable information could be gained from this project.

Pete Nixon, waterman from the Lynnhaven area, was present and his comments of opposition are a part of the verbatim record. Mr. Nixon said that he was the only one present to speak that was actually from the Lynnhaven area. He said when he attended the Lynnhaven 2007 meeting he then became aware of the project. He said he attended a

meeting on this project, but that he felt he was ignored at the meeting and he did not get invited to the meetings anymore. He said he felt the Corps was ignoring the industry and that the project must be for ecological purposes only and not benefit the industry except incidentally. He said that 111 acres was needed for the sanctuary, which could never be harvested again. He said that in 1997 what was done by the State realized minimal results. He said that oyster growth was faster, but there had been more success in the State efforts in the Elizabeth River. He said he felt this was an ill thought out project. He said the Corps wanted to put shells where there had never been any before and this was a waste of the taxpayers' money. He said no matter what they say, they will never go back to the Tangier-Pocomoke area. He said the contractor that was supposed to be providing seed for the Great Wicomico River project was not doing very well. He said he was wondering how they would get the shell into these areas as a barge cannot get into the river. He said also he felt when they failed at this project they would just move to another area.

Jeff Crockett, Tangier Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Crockett said he hoped the Corps would not take its eye off of the Tangier-Pocomoke Areas. He said he felt he had to walk the fence in this matter. He said he had worked with Jim Wesson closely in the Tangier-Pocomoke area. He further said that Dermo and MSX hurt all areas. He offered to help in getting the project going and expressed his thanks for the efforts made to date in the Tangier-Pocomoke area.

Mr. Travelstead explained that the Commission needed to approve the sending of a letter of intent for support and participation in the Lynnhaven River project by VMRC.

Associate Member Garrison stated that the population had increased since the 1950's. He said this was a good experiment to do because of the large number of people in the area and the resulting sewage runoff.

Associate Member Robins stated that the industry was concerned about the Corps moving to the Lynnhaven River before the Great Wicomico River was completed. He said the Corp says it will continue the work started in that area. He also said the State needed to have a leading role in this project and industry's needs should be respected.

Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel, asked if this included funds. Jane B. McCroskey, Chief, Administration and Finance Division, explained that the letter would state that the Commission was only participating as long as an in-kind match was acceptable.

Associate Member Garrison moved to send the letter of intent to participate, but that the state could provide on in-kind match funds for the project. Associate Member McLeskey seconded the motion. The motion carried, 7-0.

22. FAILURE TO REPORT COMMERCIAL HARVESTS: Consideration of individual cases.

Eric H. Ferguson CRL: #436894 3855

Kelly Lancaster, Fisheries Management Specialist, gave the presentation and her comments are a part of the verbatim record.

Ms. Lancaster stated that Mr. Eric Ferguson was present. She further stated that Mr. Ferguson was now up-to-date on his reporting.

Commissioner Pruitt asked Mr. Ferguson to come forward. He asked him if he understood the importance of his keeping up with the reporting in the future. Mr. Ferguson responded, yes.

Ms. Lancaster explained that Mr. Ferguson was put on a 30-day suspension last month until he came before the Commission. She said that staff was recommending that Mr. Ferguson be placed on 12-month probation.

Associate Member Robins moved to accept the recommendation of staff. Associate Member Bowden seconded the motion. The motion carried, 7-0.

Commissioner Pruitt announced a field trip had been scheduled for the Associate Members for Thursday, October 27 and Friday, October 28.

Associate Member Jones left the meeting for the day at approximately 5:55 p.m.

23. RECOMMENDATIONS: Recommendations of the Commercial Fishing Advisory Board.

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

Mr. Travelstead explained that there was a deficit in state funds for matching the federal Wallop Breaux funding. He said there was \$37,000.00 in the Marine Improvement Fund, and staff was requesting that \$30,000.00 be utilized for matching purposes.

Associate Member Bowden moved to allow Marine Improvement Funds to be used as match funding for Wallop Breaux grant funds. Associate Member Robins seconded the motion. The motion carried, 6-0.

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PUBLIC COMMENT PERIOD:

Tommy Leggett, Senior Oyster Fishery Scientist for CBF, was present and his comments are a part of the verbatim record. Mr. Leggett said that CBF had donated oysters to the reef sanctuaries since 1997, which had been used as a match for grants.

Jane McCroskey, Chief, Administration and Finance Division, said that was fine, but the agency just wants to be assured that it is not committed to payment of funds that it does not have.

Russell Gaskins, Waterman, was present and his comments are a part of the verbatim record. Mr. Gaskins asked the Commission to look into changing the requirement of having to sell the crab boat to transfer the crab license.

Commissioner Pruitt asked staff to look at this matter. Mr. Travelstead said that the Crab Committee could discuss this at their meeting. Associate Member Robins as chair of this committee agreed that this issue could be brought to that meeting for discussion.

Doug Jenkins, President of the Twin River Waterman's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins suggested that the Habitat Committee needed to discuss the destruction of marine wildlife. Commission Pruitt suggested that Mr. Jenkins meet with Tony Watkinson regarding his concerns.

Associate Member Bowden requested that the Commission request a meeting with the U. S. Dept. of Fish and Wildlife Services regarding the Conch Pot Fishery and the effects of the Red Knot being on the endangered species list to this fishery.

Commissioner Pruitt said that no motion was necessary. He said he could just consult with the appropriate person regarding this issue.

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Commission Meeting

**13380
August 23, 2005**

There was no further business, the meeting adjourned at approximately 6:05 p.m. The next meeting will be Tuesday, September 27, 2005.

William A. Pruitt, Commissioner

Katherine Leonard, Recording Secretary