

MINUTES

Commission Meeting**October 27, 2009**

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

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
J. Kyle Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief, Fisheries Mgmt. Div.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin and Finance
Linda Farris	Bs. System Specialist, MIS
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Lewis Gillingham	Head, Saltwater Fishing Tournament
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Jennifer Baylis	Marine Police Officer
Richard Haynie	Marine Police Officer

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Bob Grabb	Chief, Habitat Mgmt. Div.
Tony Watkinson	Deputy Chief, Habitat Mgmt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Ben McGinnis	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Elizabeth Murphy	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Roger Mann

Other present included:

Sam Daniels	Don Midgette	Rarl Gessnoir	Randy Cockroll
Tim Monahan	Robert Brotman	Mary E. Bloxom	Bill Davis
Tim Hayes	Rebecca Francese	Scott Ridge	Carva White
Wayne Webster	Richard Hicks	Margie Brotman	Chris Turner
Bob Simon	Leonard Kamm	Darryl Hurley, II	Ellis W. James
Thomas Clark	Ken Smith	Roger Parks	C. Meade Amory
Mark Swingle	Dirk Sanford	David Wright	David O'Brien
H. L. Doernte	Bryan Peele	Elliott Laine	

and others.

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Commissioner Bowman called the meeting to order at approximately 9:35 a.m. Associate Members Bowden and Holland were arriving late due to traffic problems on the CBBT. He said for the record that there was a quorum present so the meeting could proceed.

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At the request of Commissioner Bowman, Associate Member Robins gave the invocation and Carl Josephson, Senior, Assistant Attorney General, led the pledge of allegiance.

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

Bob Grabb, Chief, Habitat Management explained that for Item 7. Coles Point Tavern, #09-0116 a request had been made for a continuance to be granted until the November 24, 2009 Commission meeting. Commissioner Bowman asked for any other changes to be made to the agenda. There were no other changes.

Commissioner Bowman asked for a motion to approve the agenda, as amended. **Associate Member Tankard moved to approve the agenda, as amended. Associate Member McConaugh seconded the motion. The motion carried, 7-0. The Chair voted yes.**

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MINUTES: Commissioner Bowman requested a motion for approval of the September 22, 2009 Commission meeting minutes, if there were no corrections or changes. **Associate Robins moved to approve the minutes, as circulated. Associate Member McConaugh seconded the motion. The motion carried, 7-0.**

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

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

Bob Grabb, Chief, Habitat Management Division, summarized the eight page two items, 2A through 2H, for the Board. His comments are a part of the verbatim record.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked why no royalties were assessed for Item 2E. Mr. Grabb explained that this was a request to maintenance dredge and only new dredging required the assessment of royalties.

There being no further questions, Commissioner Bowman opened the public hearing. There were no public comments and the public hearing was closed. He asked for action by the Board.

Associate Member Robins moved to accept the staff recommendations for the eight items, 2A through 2H. Associate Member Schick seconded the motion. The motion carried, 7-0. The Chair voted yes.

2A. U.S. ARMY CORPS OF ENGINEERS, #04-1327, requests authorization to reactivate and extend the overboard placement in an unconfined manner of up to 65,000 cubic yards of dredged material, per dredge cycle, from the hydraulic maintenance dredging of two Federal Project Channels near Tangier Island in Accomack County. The material will be deposited along the western shore of the island, south of the existing seawall. All other terms and conditions of the permit will remain in effect.

No applicable fees - Permit Reactivation and Extension

2B. SHORE LAND INVESTMENTS, LLC, #09-0272, requests authorization to construct a 413-foot long wooden jetty situated adjacent to their boat basin along Chincoteague Bay in the Corbin Hall subdivision near Horntown, Accomack County. Staff recommends the assessment of a royalty in the amount of \$813.00 for the encroachment of 1,626 square feet of State-owned subaqueous bottom at a rate of \$0.50 per square feet.

Royalty Fees (encroachment 1,626 sq. ft. @ \$0.50 sq. ft.).....	\$813.00
Permit Fee.....	\$100.00
Total Fees.....	\$913.00

2C. CITY OF HAMPTON, #09-1321, requests authorization to maintenance dredge approximately 6,000 cubic yards of material from the Salt Ponds inlet and inner channel to a maximum depth of minus seven (-7) feet below mean low water in Hampton. All dredged material will be taken to Craney Island for disposal.

Permit Fee.....	\$100.00
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2D. CITY OF NORFOLK, #08-0149, requests authorization to install three (3) 250-foot long, riprap, low-water sills along the west side of Haven Creek (East Haven) between New York and Massachusetts Avenues in the City of Norfolk, as part of a tidal wetland creation/enhancement project.

Permit Fee.....	\$100.00
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2E. MARINE HYDRAULICS INTERNATIONAL, INC., #09-0343, requests authorization to maintenance dredge, on an as-needed basis, up to 108,000 cubic

yards of State-owned subaqueous material, per dredge cycle, to maintain maximum depths of -38 feet at mean lower low water (-38.14 at mean low water), within an approximately 450-foot wide by 1,396-foot long basin, adjacent to their property situated along the Elizabeth River near Lambert's Point in the City of Norfolk. Staff recommends inclusion of the standard dredging conditions.

Permit Fee.....	\$100.00
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2F. ALLEGHANY COUNTY, #09-0709, requests authorization to install a two-inch waterline within an eight-inch casing and a 20-inch diameter sanitary sewer force main, both crossing beneath approximately 200 linear feet of the Jackson River between the proposed Iron Gate Pump Station and the County's Waste Water Treatment Plant; to install a 20-inch diameter sanitary sewer force main attached to the existing U.S. Route 220 Bridge crossing over approximately 200 linear feet of the Jackson River; to install a 10-inch diameter sanitary sewer force main crossing beneath approximately 53 linear feet of Wilson Creek immediately northeast of the existing Clifftondale Park Pump Station; to install a 10-inch diameter sanitary sewer force main crossing beneath approximately 40 linear feet of Sharvers Run immediately downstream of Route 632; and to install two (2) riprap outfall splash aprons for effluent and stormwater discharges, 25 and 20 feet wide respectively, extending into the Jackson River approximately 40 linear feet channelward of ordinary high water, adjacent to the Lower Jackson River Regional Wastewater Treatment Plant in Allegheny County. Staff recommends inclusion of our standard in-stream conditions and a requirement to coordinate with the Department of Game and Inland Fisheries regarding potential impacts to freshwater mussel species.

Permit Fee.....	\$100.00
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2G. DEPARTMENT OF THE NAVY, #09-1153, request authorization to install approximately 3,000 cubic yards of non-magnetic gravel, over a magnetic sensor array and adjacent cable path located within the Entrance Reach Channel of the Norfolk Harbor Channel, approximately nine-tenths of a mile southwest of the Hampton Roads Bridge-Tunnel, and to install approximately 2,180 linear feet of 8-foot wide articulated concrete matting over cables running from the sensor array to an existing data concentrator shed located approximately four-tenths of a mile southeast of the sensor array, situated along Hampton Roads to the north of Naval Station Norfolk in the City of Norfolk.

Permit Fee.....	\$100.00
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2H. EAST COAST TRANSPORT, INC., #01-1282, requests reactivation and a final two-year extension of a previous permit authorizing the excavation of 1,225 cubic yards of State-owned submerged lands to enable them to complete the

construction of the second of two 26 foot-long by 14.5 foot wide, raw water intake vault structures and the replacement of 40 cubic feet of armor stone, at a location approximately 4,500 feet east (downstream) of the Route 15 bridge crossing of the James River in Buckingham County. There will be no additional withdrawal above the permitted 18.1 mgd previously authorized and, the Permittee agrees to abide by all the permit conditions set forth in the original permit document.

No applicable fees – Permit Reactivation and Extension.

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

Associate Member Bowden and Holland arrived at approximately 9:41 a.m.

- 3A. TOWN OF ROCKY MOUNT, #09-1157,** requests after-the-fact authorization to retain 33 cubic yards of riprap placed behind dam, and the installation of put-in and take-out portage ramps extending 4-foot channelward of ordinary high water, two (2) approximately 4-foot by 15-foot riprap jetties and two (2) floating warning markers adjacent to County property situated on the Blackwater River in Franklin County.

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

Mr. Grabb explained that staff had completed a full public interest review regarding the activity, including contacting the adjoining owners and running a newspaper advertisement. No objections to the as-built project were received.

Mr. Grabb stated that prior to conducting this work a representative for the town had called staff and explained the emergency need for this, which had been prompted by two fatalities at the dam. Staff informed them that VMRC would not issue a stop work order, but that they needed to submit the application for authorization for the rip rap, intake and outtake ramps, two 4-foot by 15-foot jetties and two floating warning markers.

Mr. Grabb said that because of the need for this project and since Commission staff was informed of the emergency situation in advance, staff recommended the Commission approve the permit without any civil charge or triple permit fees.

Commissioner Bowman stated that this was different from other cases as this was an after the fact application because of the emergency in this case. Mr. Grabb responded yes, it was different from other cases.

Associate Member Fox asked if a procedure for expediting this type of situation could be developed and then this would not be treated as an after-the-fact case. Mr. Grabb stated he was not sure how a general permit would be developed for it. He said it would be more problematic then the procedure now which includes the public interest review. He said the County staff had done what was needed and called before taking action. Commissioner Bowman stated that in some situations the entity would decide what to do, but the adjoining property would not like it. It would be walking a fineline and it would not be good to do this without the public’s input.

Commissioner Bowman asked for a motion for Item 3A.

Associate Member Robins moved to approve this request. Associate Member Fox seconded the motion. The motion carried, 9-0.

Permit Fee.....	\$100.00
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3B. MR. AND MRS. ROBERT MAIMBOURG, #08-0465, request after-the-fact authorization to retain 89 linear feet of riprap revetment, the toe of which extends a maximum of six (6) feet channelward of mean low water, adjacent to their property situated along Aquia Creek in Stafford County.

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

Mr. Grabb explained that Mr. and Mrs. Robert Maimbourg’s property is located on Aquia Creek in a residential neighborhood, approximately seven miles upriver of the confluence of Aquia Creek and the Potomac River.

Mr. Grabb further explained that on August 12, 2008, the Maimbours submitted a revised Joint Permit Application requesting authorization to install a rip rap revetment. They had originally proposed to install a bulkhead. Based on the revision, a wetland permit was required as well as a permit for the encroachment of the revetment over State-owned submerged land. The Stafford County Wetlands Board approved the application on September 15, 2008. On October 28, 2008, a draft VMRC subaqueous permit was mailed to the Maimbours for signature and payment of the permit fee. On May 4, 2009, a second letter was sent to the Maimbours asking them to return the required permit documents so that staff could finalize the permit. This letter reiterated that the permit was not valid until the required signatures had been affixed, and the permit fee had been paid.

Mr. Grabb stated that on June 18, 2009, staff conducted a site visit and determined that the riprap revetment had been installed without the proper authorization from the Marine Resources Commission since the permit documents had never been executed or the

permit fee paid. A Notice to Comply was sent to Mr. and Mrs. Maimbourg on July 30, 2009. That Notice directed removal of the unauthorized structures within 15 days of their receipt of the Notice.

Mr. Grabb said that on August 7, 2009, the Commission received the signed permit documents along with a \$25.00 check for the permit fee. On August 11, 2009, the Commission staff returned the check since the project was now considered a violation.

Mr. Grabb explained that on September 9, 2009, the Maimbours provided a letter to the Commission stating why they did not remit the permit fee nor return the required documents to finalize the permit. In that letter they explained that they had contracted Brad Martin to complete the permit process as well as construct the rip rap revetment. In fact, the contract invoice they provided with the letter showed a permit allowance and permit fees (Stafford County Wetlands Board #2800219) that were to be paid by Mr. Martin. There was no mention of State permit fees, and no indication that Mr. Martin, as the contractor, had agreed to pay them.

Mr. Grabb stated that on September 29, 2009, Commission staff sent the Maimbours a certified letter stating that the matter would either be scheduled for consideration by the full Commission as a restoration hearing or they could request that the Commission approve a consent agreement and payment of a Civil Charge. In response, the Maimbourg's agreed to the payment of a \$600.00 civil Charge and triple permit fees.

Mr. Grabb noted that in this instance, staff believed that although the Maimbours were given sufficient opportunities to finalize the permit before the riprap was installed they did not do so, which therefore resulted in this violation. In this case the project was completed as proposed with no more apparent environmental impact than would have been expected. As such, staff recommended acceptance by the Commission of the \$600.00 Civil Charge and triple permit fees in-lieu of the need for further enforcement action regarding the Maimbourg's.

Mr. Grabb stated that staff believed, however, that the role of the contractor would need to be dealt with at a subsequent meeting. As the Commission will recall, Mr. Martin had previously been requested to appear before the Commission for his role in other projects that he undertook without the necessary authorization. Staff continued to have a problem condoning this kind of action from a marine contractor.

Commissioner Bowman asked if anyone was present for this case. Mr. Grabb informed him that staff had told the applicant it would not be necessary to come. Commissioner Bowman stated that he would have like to have had something on the record. Mr. Grabb stated that there was a letter in the record stating that Mr. Martin had done the work.

Commissioner Bowman asked for action by the Commission.

Associate Member Robins moved to approve the request with the civil charge and triple fees. Associate Member Tankard seconded the motion. The motion carried, 9-0.

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

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4. **CLOSED MEETING FOR CONSULTATION WITH, OR BRIEFING BY, COUNSEL.** Commissioner Bowman stated that a closed meeting was not necessary.

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5. **SAM DANIELS, #09-0699.** Restoration hearing to consider the existence of 686 square feet of unauthorized fixed deck, floating dock and jet-ski mooring pads at the applicant's property situated along Brewers Creek at 23228 Oyster Court in Carrollton, Isle of Wight County.

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

Mr. Stagg explained that the project is located along Brewers Creek, a tributary to Chuckatuck Creek in Isle of Wight County. On May 21, 2009, the applicant submitted a Joint Permit Application seeking authorization to install both a bulkhead and additional pier decking at his existing private pier along Brewers Creek.

Mr. Stagg said that a review of the drawings and photographs provided with the application depicted a boathouse roof for which staff could not locate any previous request or permit issuance. Additionally, the drawings that were submitted did not provide enough detail of the proposed structures being requested. The applicant was notified on May 28, 2009 of both the drawing deficiencies as well as the existence of the unauthorized boathouse roof. Staff requested clarification of the request, and that the applicant provide additional information concerning construction of the roof structure.

Mr. Stagg stated that on June 10, 2009, revised drawings were submitted by the applicant's agent, Mr. Donald L. Midgette, in an apparent attempt to address the concerns noted in staff's May 28, 2009 letter. Included were signed adjacent property owner forms for the entire project (including the boathouse roof). Staff responded in a letter dated June 25, 2009, confirming that the boathouse roof, being open-sided and less than 700 square feet, and with the approval of the adjacent property owners, was now considered to be in compliance with the permit exemption provided by the Code of Virginia. The letter

further noted that based upon both the submitted revised drawings and a staff site visit, the deck structures that currently existed at the site far exceeded those allowed by the Code of Virginia without a permit. Staff again requested drawings depicting all existing structures, in addition to any proposed additions and/or reconfigurations. The letter further noted that the removal of a portion of the existing deck areas such that no more than 400 square feet of pier protrusions and/or floating platforms remained, would bring the project back into compliance with the Code of Virginia. A request for any new configuration and additional structures could be considered at that time.

Mr. Stagg said that staff received a letter from Mr. Donald L. Midgette, dated July 21, 2009, in which he indicated Mr. Daniels wanted to continue the processing of his current request for additional dock space, an open-sided roof structure over a portion of the pier deck, as well as the deletion of the bulkhead structure. Additionally, Mr. Midgette indicated the applicant planned to submit a new separate application for a rip rap revetment along the shoreline.

Mr. Stagg stated that staff interpreted the July 21, 2009, letter to be an indication that no existing structures would be removed by the applicant. As a result, a Sworn Complaint was filed and a Notice to Comply was issued to the applicant on July 30, 2009. The Notice to Comply stated that no additional action on the pending application would occur until the violation was addressed and resolved by the Commission.

Mr. Stagg said that staff received additional drawings on August 13, 2009, that depicted the currently existing structures, as well as proposed changes. Those drawings were similar to those requested in the previous application submitted in May. It appeared that these drawings may have been completed before the applicant received the VMRC's Notice to Comply since the cover letter accompanying the drawings was dated August 7, 2009. Mr. Daniels acknowledged receipt of the Notice to Comply on August 10, 2009. The drawings indicated the existence of 524 square feet of dock and floating platform area. Staff conducted an extensive site inspection, and measured the same structures. Staff's measurements indicated the existence of a slightly greater 686 square feet of dock and floating platforms. The total area included a fixed dock area, a floating platform and two jet-ski mooring pads.

Mr. Stagg explained that in a letter, dated August 19, 2009, staff advised the applicant and his agent that staff's measurements indicated more dock space than those indicated in the most recently submitted drawings. The letter further indicated that staff had suspended any additional processing of the pending application until the violation was resolved, as stated in our Notice to Comply. Staff noted that since it appeared the applicant was not willing to remove any of the existing structures, the matter would be placed on a future Commission agenda for action. Staff informed the applicant and his agent, by certified mail, in a letter dated September 14, 2009, and signed for on September 15, 2009, that the Commission would consider the matter at a formal

restoration hearing on October 27, 2009, and that their attendance was required at that meeting.

Mr. Stagg said that the applicant initially indicated he would be willing to remove portions of the unauthorized structures to allow for the processing of the application he submitted in May of 2009. However, later correspondence confirmed that no structures were to be removed, while they still sought authorization to reconfigure and add even more structures at the site.

Mr. Stagg stated that in this case, staff recommended the Commission direct removal of the floating platform (8' X 35' equaling 280 square feet) which would result in a total area of 406 square feet of deck and floating platforms. Staff continued to believe the applicant could accommodate any necessary water dependent activities at this location without further exceeding the 400 square feet of square footage of dock allowed by the Code without a permit. However, if the applicant removed the platform, as noted above, while still slightly exceeding the 400 square feet allowed by the Code, staff would recommend continued processing of a reconfiguration of the existing structures to accommodate appropriate water dependent activities at the site.

Commissioner Bowman asked if the drawings were submitted by the agent. Mr. Stagg responded, yes.

Commissioner Bowman asked for questions of staff.

Associate Member Schick asked why the floating jet ski platform was not the same as a lift or a boat in a slip. Mr. Stagg explained that Code addressed the floating platform and encroachment over State-owned bottom, but it did not address the boat in the Code.

Associate Member Fox asked if the lift had not been counted. Mr. Stagg responded yes.

After some further discussion regarding the dimensions by the agent and by staff, Commissioner Bowman asked for comments from the applicant or his agent.

Donald Midgette, applicant's agent, was sworn in and his comments are a part of the verbatim record. He provided photos as a handout. Mr. Midgette explained that when staff visited the site they had indicated that there was an error on the dimensions, which should have been 8 X 34 ½, which staff corrected. He said the floating piers were used by the children. He said with the removal of the jet ski platform they were removing 170 square feet, which left the square footage over by 64. He said they would like to request a waiver for the jet ski platform, as the floating dock was what the staff indicated they were concerned about. He said that it was installed in 2004 and they were told of the 286 square foot overage after there was a change in the law. After a little further discussion about the floating dock and what was applied for, Mr. Midgette stated that the contractor

had given the floating dock to the applicant. Commissioner Bowman asked who had authorized its placement. Mr. Midgette responded, the owner.

Sam Daniel, applicant was sworn in and his comments are a part of the verbatim record. Mr. Daniel stated it had been put in 2006 before the law was changed. Bob Grabb, Chief, Habitat Management, was present and his comments are a part of the verbatim record. Mr. Grabb said he believed the law was changed in 2005. Mr. Stagg explained that in 2005 the law was changed and the floating dock was put there in 2006. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel was present and his comments are a part of the verbatim record. Mr. Josephson stated that in Section 28.2-1203 of the Code it was 400 square foot and he thought that no amendments were made until 2006.

Mr. Midgette stated that he went by that. Mr. Grabb explained that prior to 2005 it was 250 square feet not 400 square feet and stated that the boathouse was not applied for, which meant it was installed without authorization.

Mr. Midgett stated that they were requesting a waiver for the jet ski platform and to leave in the dock as it was only 64 feet over. He stated they could reapply. Associate Member Schick stated if it had been applied for there would be no problem, but there was no history of a floating dock being allowed with a permit. He said there was a request for the covered boat slip. Mr. Stagg stated that if the adjoining property owner approval form was submitted, then no action would be necessary even though it was after-the-fact. Associate Member Schick stated they still needed a permit. Mr. Grabb explained that they were exempt, if there were no objections. Associate Member Schick asked how it was all built without notifying VMRC. Mr. Midgette said that letters were submitted which talked about the roof, but it was never put on the drawing and only the neighbor's had approved it.

Commissioner Bowman stated that the bottom line was to approve the dock or not and the roof was allowed administratively. The structure was 86 square feet in excess of what was allowed and it would have to be approved or removal required.

Associate Member Schick stated he did not have a problem with the whole structure, if it had all been applied for, as required.

Commissioner Bowman stated that there was no opposition. He asked for action by the Commission.

Associate Member Holland moved to grant the applicant a waiver, and not require the removal of the platform for the jet skis and the floating dock. Associate Member Schick seconded the motion, but added a suggestion to include in the motion civil charges. He said because it was a minimal environmental impact and major non-compliance a \$1,800 civil charge plus triple permit fees should be assessed. Associate Member Holland agreed to the amendment.

Mr. Stagg reminded the Commission that any approval was pending the applicant's reconfiguration and if this was a final action no public notice had been done nor had the adjoining property owners been notified. He said this was a restoration hearing today and the owner must give approval to any civil charge. Associate Member Holland stated that the action being taken was for what was being heard today and any more than that the matter must come back before the Commission.

Commissioner Bowman stated that there was a need to comply with the law and he suggested that the Commission hold off taking action now and allow the applicant to reapply.

Mr. Grabb stated that the Commission apparently would only be approving 464 square feet and if there was any reconfiguration, they would still be allowed only 464 square feet. Associate Member Robins suggested that the project be limited now to the square footage and require submission of new drawings for staff's approval.

Associate Member Tankard said he was concerned because this all seemed to be a mess and to be fair to others he suggested going back to square one. He said they should be required to remove the floating dock to get down to the 400 square footage limit and not let it go on as this was costing taxpayers money. He offered a substitute motion to adopt the staff recommendation. Associate Member Laine seconded the motion. That motion carried, 6-3. The Chair voted yes. Associate Members Holland, Schick, and Bowden all voted no.

Commissioner Bowman explained that the Commission was trying to speak to the after-the-fact issue and was taking into consideration the environment, as well as, the people involved. He explained further that it was a difficult situation and sounded confusing, but the Board members were only trying to do what was right and according to the law.

Associate Member Tankard said the Commission was trying to balance the law and get something done for the citizens.

Carl Josephson, Senior, Assistant Attorney and VMRC Counsel, noted that this was to be made a part of the record for Item 5.

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- 6. **RON EDWARDS, #09-0990**, requests after-the-fact authorization to retain a 115-foot replacement pier which was widened from three (3) feet to five (5) feet and an adjacent, new, 30-foot long by 6-foot wide open-pile commercial pier at his restaurant and marina facility at the confluence of Greenvale Creek and the Rappahannock River in Lancaster County.

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

Mr. Woodward explained that staff first met with Mr. Edwards at the site, in the spring of 2006. At that time, the site was known as Conrad's Upper Deck Restaurant and Marina. Mr. Milton Conrad, the prior owner of the facility was also in attendance. At the time Mr. Conrad was renting some upland crab shedding tanks back from Mr. Edwards while awaiting VMRC approval for a new shedding facility at his home just up the creek from the site. Staff explained to Mr. Edwards the role of VMRC and the local Wetlands Board in matters related to activities undertaken along the shoreline or in the creek adjacent to the property. Staff made it clear that any new work along the shoreline or in the creek at the facility would require formal authorization and while repairs might be exempted from permit requirements, staff would have to review any proposed work prior to his initiating any construction along the shoreline or out in the creek over State-owned subaqueous bottom. Staff did not hear back from Mr. Edwards until early April 2009, at which time Mr. Edwards called to inquire about some proposed shoreline repairs and improvements at the property. During a subsequent site visit on April 16, 2009, staff noted that several mooring piles had recently been installed and an existing dock had been widened and extended. By letter dated April 23, 2009, staff directed Mr. Edwards to complete and submit a Joint Permit Application within 15 days if he wanted to retain the unpermitted structures. No application was received within the time allotted.

Mr. Woodward stated that on June 16, 2009, staff again visited the site while conducting a pre-dredge conference with the U.S. Army Corps of Engineers related to their planned dredging of the Greenvale Creek Federal Navigation Channel adjacent to the property. Staff noted then that the unauthorized structures remained and an after-the-fact application had still not been received. Following this visit a Notice to Comply (No. 09-08), dated July 7, 2009, was sent to Mr. Edwards. That Notice directed removal of the unpermitted mooring piles and dock improvements within 30 days of his receipt of the Notice. Staff further directed that Mr. Edwards submit information regarding when the work was done, by whom, and why it was undertaken without proper authorization, in spite of staff's prior explanation of application requirements for such activity. On June 1, 2009, staff received a letter from Mr. Edward's attorney, Matson C. Terry, III, requesting additional time to respond to the Notice to Comply in light of information that might indicate that Mr. Edwards owned the submerged land in question in the creek. Mr. Terry later called staff and indicated he was no longer involved in pursuing Mr. Edwards' purported claim of ownership.

Mr. Woodward said that on July 16, 2009, staff received an after-the-fact application to retain the structures, as well as to replace a timber bulkhead, although the bulkhead portion of the request was not clear in application drawings. Staff responded by letter dated July 23, 2009, noting the deficiencies in the application and recommending immediate removal of the 8 mooring piles which the applicant claimed in the application were temporary. Those piles have now been removed. In a subsequent letter dated

August 26, 2009, Mr. Edwards withdrew his request for any future improvements at the property until the unauthorized work was formally approved.

Mr. Woodward further said that in the cover letter accompanying his after-the-fact application, Mr. Edwards stated that the changes to the pier were made during safety related maintenance and the repairs to the structure were made since it was used for ingress and egress to the restaurant. He indicated it was his initial intention to just replace the deteriorated portions of the pier but he widened the pier by 2 feet, since that additional portion was on the shoreside of the pier and did not encroach further into the channel. He explained he also raised the structure by 18 inches since the existing pier would sometimes become submerged at very high tides. He also noted that the new 30-foot by 6-foot section, did not encroach on the waterway channel. He indicated that the eight freestanding mooring piles were intended to be temporary to secure a recently purchased barge, which he planned to use to straighten and widen an existing dock, once he obtained the necessary approvals.

Mr. Woodward noted that Mr. Edwards also had included an additional hand-written letter in which he stated that he had received bad advice from well-intentioned friends, neighbors and lawyers that caused him to proceed without the necessary permit. He apologized for the delays associated with the after-the-fact application submittal, and for his actions, with an assurance that he would never make these mistakes again.

Mr. Woodward explained that the Virginia Institute of Marine Science had indicated the pier was expected to have minimal adverse marine environmental impacts and recommended providing adequate trash receptacles and posting signage to encourage proper handling of garbage and water stewardship.

Mr. Woodward stated that the Lancaster County Wetlands Board had approved the after-the-fact request for the new section of commercial pier which crossed tidal wetlands at the Board's October meeting, required double permit fees totaling \$600, and agreed to accept a civil charge in the amount of \$500 in lieu of pursuing further enforcement action. Mr. Edwards was reminded that any work or repairs in the future along the shoreline or waters adjacent to his restaurant would require prior review and approval by the Board and VMRC.

Mr. Woodward said that the Department of Environmental Quality (DEQ) had indicated that provided VMRC and the U. S. Army Corps of Engineers issued permits for the work a Virginia Water Protection Permit (VWPP) would not be required.

Mr. Woodward noted that no other agencies commented on the after-the-fact application.

Mr. Woodward explained that while the environmental impacts and amount of encroachment resulting from the unauthorized activity were minimal, staff remained

concerned with Mr. Edwards' apparent lack of understanding of the permitting and review process for this type of waterfront construction. Although staff met with Mr. Edwards shortly after he purchased the property, staff believed they could have clarified any misunderstanding about the need for permits if he had simply contacted VMRC prior to commencing any work on the shoreline, as he was told to do.

Mr. Woodward stated that in this case, the improvements to the pier would likely have met with approval had all the agencies had an opportunity to review the request ahead of time. The site, however, continued to need considerable repair, maintenance and improvement, and staff remained concerned that additional work might be undertaken in the future without prior approval. The fact that Mr. Edwards now had his own heavy equipment on site provided him with a ready means to accomplish additional work. Staff remained hopeful that Mr. Edwards now fully understood the permitting process and would comply in the future.

Mr. Woodward explained that given that there was a minimal degree of environmental impact but a severe degree of noncompliance in this matter, staff would recommend approval of the unauthorized dock widening and new L-head section, conditioned upon receipt of triple permit fees totaling \$75.00 and Mr. Edwards' agreement to pay a civil charge in the amount of \$1,800.00, in lieu of further enforcement action. In the absence of his agreement to an appropriate civil charge, staff would recommend that the Commission direct removal of all unpermitted improvements within 30 days.

The applicant was not present or represented at the hearing.

Commissioner Bowman asked for discussion or action by the Commission.

There was discussion about the applicant's understanding of the importance for permitting the project, the lack of a permit being issued, and the lack of interest shown by Mr. Edwards given his not being present at the hearing. Staff expressed their concerns with the fact that the improvements were needed because of the need for safety.

Commissioner Bowman read §28.2-1205 of the Code, which stipulated a permit was required for construction over State-owned bottomland. He stated that the Constitution in Article 11, Section 1 addressed the weighing of public versus private benefits and the Public Trust Doctrine.

In the discussion that followed there was talk about how much civil charges could be assessed. Associate Member Fox stated that in a letter by Mr. Grabb the civil charge could be up to \$25,000 per day. Mr. Josephson said that the amount of the civil charge had to be agreed to by the individual and it was legally possible for a civil penalty to be pursued. He said if a violation of the Chapter was established by the Court then the amount would be determined by the Judge.

Associate Member Holland said he agreed with Commissioner Bowman’s comments for the last applicant and he apologized and it was still denied. He stated he could not support the staff’s recommendation.

Associate Member Robins asked if the matrix for determining the civil charge was only for guidance. Mr. Josephson stated the Commission was not bound by it and could assess up to \$10,000 per violation, if the Commission wanted and if a justification were provided.

Associate Member Robins said that the applicant had disregarded the permit process after he was notified of the need for a permit. He said his not being present at the meeting showed his disregard for the need of a permit. He said Commissioner Bowman had commented that this was a commercial facility for private benefit and that if it had been applied for it would have been approved by staff, but he did not apply. He said if the matrix for establishing a fine was used it would be insignificant. He moved to approve the after-the-fact request and require a civil charge of \$5,000.00 with the applicant’s agreement. He said if he did not agree, then an order for removal would be issued. Associate Member McConaugha seconded the motion. The motion failed, 4-5. The Chair voted no.

Associate Member Tankard then stated that the permit process was important as it was how the Commission worked. He then made a motion to direct removal of the structures. Commissioner Bowman suggested to the Commission that Mr. Edwards could have intended to be at the hearing, and there may be a good reason why he was not present. Associate Member Tankard agreed to amend the motion and allow Mr. Edwards the opportunity to be heard again, if he could provide justification for his not being at this hearing. Associate Member Holland seconded the motion. The motion carried, 8-1. The Chair voted yes. Associate Member Schick voted no.

No applicable fees - Denied

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- 7. COLES POINT TAVERN, #09-0116, seeks after-the-fact authorization to retain a 110-foot long by 10.5-foot wide deck with a 30-foot long by 10.75-foot wide roof attached to existing building, and a 115-foot long by 6-foot wide pier constructed below the 110-foot deck adjacent to property at Coles Point Tavern situated on the Potomac River appurtenant to the shore of Westmoreland County. Project is protested by several nearby property owners.**

Commissioner Bowman noted for Associate Members Bowden and Holland that this had been approved for continuance when the agenda had been approved.

Continued until the November 24, 2009 Commission meeting.

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8. **TIMOTHY MONAHAN, #08-0052**, requests authorization to add an 18-foot by 32-foot open-sided boathouse over the boatlift at the existing private, non-commercial pier serving 844 St. Martin Drive in the Pembroke Meadows subdivision, situated along the Western Branch of the Lynnhaven River in Virginia Beach. The project is protested by the adjoining property owners and other neighbors.

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

Mr. Worrell explained that the Pembroke Meadows subdivision is an older residential subdivision with several private piers extending from the existing riparian properties. There was an existing boathouse serving a riparian property just to the northwest, and a pierhead with an open-sided gazebo was within sight of this project in the southeast direction.

Mr. Worrell said that in January of 2008 Mr. Monahan submitted an application requesting authorization to construct a private pier with an open-sided boathouse and an open-sided gazebo on the pierhead. Both roof structures were later deleted from the proposal after protests were submitted by the adjoining property owners and other neighbors. Once revised plans were submitted excluding the roof structures, staff determined that the pier proposal met the statutory authorization contained in §28.2-1203.A(5) of the Code of Virginia, and a No Permit Necessary (NPN) letter was issued to the applicant. Staff then notified the protestants of the pier's exempt status.

Mr. Worrell stated that the pier was recently built in accordance with the revised plans, including a single boatlift. Now the applicant had requested to cover that boatlift with an 18-foot by 32-foot (576 total square feet) open-sided boathouse. Staff notified the adjoining property owners, and again they objected to the proposal.

Mr. Worrell said that the protests from the adjoining property owners, and also other nearby neighbors, included adverse view impacts, property devaluation, and concerns that this would be the only boathouse along this particular stretch of the Western Branch of the Lynnhaven River. To ensure that all concerned neighbors were notified of this proposal and hearing, staff notified all parties that sent letters, including ones that had signed a previous petition opposing the proposal.

Mr. Worrell explained that the City of Virginia Beach – Waterfront Operations Division approved the pier and boathouse proposal, as had the U.S. Army Corps of Engineers which issued an RP-17.

Mr. Worrell said that the total square footage of the proposed open-sided boathouse was well below the 700 square-foot exemption criteria stated in §28.2-1203.A(5) of the Code. Had the boathouse proposal not been protested by the adjoining property owners, staff would have considered it statutorily authorized along with the private pier. In this case, staff believed the open-sided design only minimally added to the visual obstruction already presented by the pier and boatlift. While staff was sensitive to the protests of the neighbors, private piers with open-sided boathouses were very common along the waterways in Virginia Beach. Therefore, staff recommended approval of the 18-foot by 32-foot open-sided boathouse as proposed in the most recent submittal.

Robert Simon with Waterfront Consulting and representing the Monahans, was sworn in and his comments are a part of the verbatim record. Mr. Simon stated that Mr. Worrell had done a fantastic job in preparing the evaluation and he had worked with him in the past and he always did a fantastic job. He said that there were other boathouse in the little creek. He said the protestants had raised three issues with the project. He said the first was that it would obstruct their view and that was not true as this was a treed shoreline and would not block anyone's view. He said the second was that it would devalue their property and this was hard to believe in this market and economy. He said they must show or demonstrate that it was doing this. He said the third was they said that there were no boathouses on the creek. He said that there were 5 other boathouses on the creek.

Commissioner Bowman asked for questions. Associate Member Tankard asked why if they initially wanted to build the pier with the boathouse, they now had to come back. Mr. Simon explained they had had problems with getting the construction done and they removed it when the neighbors objected to it. He said the Monahans were going to move into the area and wanted to get the process done prior to that relocation.

Commissioner Bowman asked if the roof was low and still served its purpose. Mr. Simon responded yes.

Commissioner Bowman asked if there were any protestants who wished to speak.

Robert Brotman, next door neighbor and protestant was sworn in and his comments are a part of the verbatim record. Mr. Brotman explained that the construction on the roof started about 6 or 8 months ago, even though it was not approved. He stated he knew what it looked like. He said the pier was 100 feet out into the water and staff had asked for 25% to be removed. He had photos for handout. He said he was mainly protesting the roof .

Margie Brotman, next door neighbor and protestant was sworn in and her comments are a part of the verbatim record. Ms. Brotman explained that the other roofed structures were not in their part of the river and the piers were closer to the shore. She said she was hoping for more modesty.

Betty Bloxom, resident and protestant was sworn in and her comments are a part of the verbatim record. Ms. Bloxom had two photos for handout and a copy of a plat. She stated that allowing this would set a precedent and also impact the beauty. She said the others were not the same in her area and did not have roofs. She also stated that she was concerned that it would impact their property value.

In rebuttal, Mr. Simon stated that they were sensitive to the protestants' concerns. He said that the pier was 100 feet from the channel and dredging was done in this area. He said this was a simple structure and there were five more in this area.

Commissioner Bowman again asked him why they wanted a roof. Mr. Simon explained that the seagulls like this pier structure and had inundated it. He said that the applicant also wanted to protect his boat from the climate.

Associate Member Robins, in a follow-up to Commissioner Bowman's questions, asked about the low-profile and the planview drawing that showed a simple gable pitch. He also asked if they planned on any other structures. Mr. Simon stated that nothing else was planned.

Commissioner Bowman asked for other questions.

Associate Member Holland moved to approve the staff recommendation. Associate Member Robins seconded the motion. Associate Member Fox stated it should be noted that documents given them included one from the City of Virginia Beach showing that they had approved the project. The motion carried, 9-0.

Permit Fee.....	\$100.00
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- 9. **RAMPINI FAMILY REVOCABLE TRUST, #08-0787**, requests authorization to construct a 16-foot by 32-foot open-sided boathouse over an existing boatlift adjacent to their private pier situated along Hills Bay at 136 Old Farm Road in Mathews County. An adjacent property owner 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 the Rampini property was situated along the western shoreline of Gwynns Island and fronts on Hills Bay near the mouth of the Piankatank River in Mathews County. Their existing pier extend approximately 220 feet channelward of mean high water. Development along this shoreline is primarily residential.

Mr. Neikirk stated that the Rampinis' proposed to construct a 4-foot wide finger pier around their existing boatlift and to construct a 16-foot by 32-foot open-sided boathouse over the lift. The peak of the proposed roof was proposed to be 12 feet above the elevation of the existing pier decking. The boathouse was designed to provide shelter for their 29-foot boat.

Mr. Neikirk said that the project was being protested by Ms. Patricia Martin, the adjoining property owner on the South side of the Rampini property. Ms. Martin believed the boathouse would adversely affect the view from her property. She noted that the pier and boatlift were constructed closer to her property due to the deeper water on the south side of the Rampini property.

Mr. Neikirk stated that the existing pier and the proposed boathouse would encroach on public oyster ground. Based upon a prior opinion and guidance received from the Attorney General's office, however, the presence of public oyster ground did not restrict a riparian property owner from exercising his right to construct a pier pursuant to the authorization conferred by the Code of Virginia.

Mr. Neikirk explained staff did not believe the proposed boathouse would adversely affect navigation. No State agencies had commented on the project.

Mr. Neikirk stated that in 1998, the General Assembly amended §28.2-1203(A)(5) of the Code of Virginia to provide statutory authorization for the construction of open-sided boathouses measuring 700 square feet or less and designed to cover a single boat at a private, non-commercial pier, provided the boathouse was not objected to by the adjoining property owners and was allowed by local ordinances. Since Mathews County did not restrict the construction of private boathouses and if the adjacent property owner had not objected to the project, the boathouse would have qualified for the statutory exemption. Staff believed the open-sided design only minimally added to the visual obstruction already presented by the pier and a boat located in the boatlift. Accordingly, after evaluating the merits of the project against the concerns expressed by those in opposition to the project, and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval of the project, as proposed.

Commissioner Bowman asked for questions of staff.

Associate Member Fox asked if there were safety concerns for the boathouse because there was a lot of fetch in the area. Mr. Neikirk explained that the pier could be impacted by wave energy and the roof could be impacted by wind. Associate Member Fox asked if he was particularly concerned about it. Mr. Neikirk responded no.

Richard Hicks with Safe Harbor Marine Contracting, was sworn in and his comments are a part of the verbatim record. In response to Commissioner Bowman's questions about the construction of the roof standing up against the weather, Mr. Hicks stated the pier

could stand up to an approximately 150 mile an hour wind and the roof an approximately 96 miles per hour wind because of the engineering strapping. He said the roof might be impacted but the pier had stood up against Isabel

Commissioner Bowman asked if there were any protestants present who wished to speak. Mr. Neikirk said that he protestant’s attorney had called last week to advise staff that he no longer represented the protestant.

Commissioner Bowman asked for action by the Commission.

Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 9-0.

Permit Fee.....	\$ 25.00
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10. PUBLIC COMMENTS:

VDOT – BLACK NARROWS BRIDGE PROJECT

Thomas Clark and Jim Young were present and their comments are a part of the verbatim record.

Mr. Young explained that this had been a problem for the last two years. He stated he had some video to show the Commission.

Commissioner Bowman asked about the Court issue. Mr. Young stated that it was in limbo.

Carl Josephson, Senior, Assistant Attorney General and VMRC Counsel stated that the Commission should not take any action on this issue if it were still in litigation. That litigation, however, does not involve VMRC. It is between VDOT and the leaseholders.

Commissioner Bowman agreed to watch the video and stated that the Commission would not take any action on their complaint.

Mr. Clark said that this was a replacement bridge project and they were told that no dredging would be done. He explained that temporary trestles had been installed in four feet of water. He said the Corps had said this would not be allowed. He said that they were told by VDOT that there would be no construction for access. He said that when the pilings were driven in they complained to VDOT and they took them all out and provided an explanation. He said that VDOT had said little and had not done anything. He said in September 2008 they started to make the video recordings. He said the initial complaint

to VDOT had been made on November 9, 2008. He said the response from VDOT on November 9, 2007 was that they had no control over the means and methods the contractor used to accomplish the project. Mr. Clark stated that in mid-December, 2007 the trestle was built after the bridge. He said in late March 2008 they complained about the prop wash to VMRC, VDOT, and the Corps. He said the video depicted how the tug moved and showed the disturbances of the bottom by the tug. He reiterated again that all the permits clearly said "no dredging" was authorized.

Mr. Young explained further that all of the violations that had occurred resulting from the movements of the barges were done all at low tide, not at high tide as VDOT had told them it would be. He said these videoed instances were not isolated occurrences. He showed a video of birds walking on the mud flats which were shot while the barge was moving. He said in approximately 150 barge movement reports the subcontractor reported no disturbances to the bottom, a clear misstatement.

Mr. Clark said that of the barge movement reports only 1 out of 150 reported any disturbances. He said they indicated there were no barges on the upland and the slides showed there were.

Mr. Young said he now had some portions of his leases that had drop offs when they were previously just gradual slopes.

Mr. Clark pointed out also that now grasses had grown on some of his leases and those leases would be lost to them because of the existing SAV. He said he was not sure what would have been done if he had not videoed all of this. He said permits had been issued by VMRC, DEQ, and the Corps. He said there were staff here at VMRC and at all agencies who were supposed to be keeping track and monitoring these projects, but once the permits were issued, it seemed nothing else was done.

Mr. Young asked why have rules and permit conditions, if you are not going to enforce them. He said there had been two years of violations, but no action had been taken by VMRC or anyone else.

No action was taken by the Commission.

SUMMER FLOUNDER

Meade Amory of Amory Seafood was present and his comments are a part of the verbatim record. He provided a handout signed by a number of industry people.

Mr. Amory explained that they had two proposals:

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- A. Fall season – request opening date be changed to November 30th, the last Monday in November from the first Monday in December) with a reduction in the trip limit from 10,000 pounds to 7,500 pounds.
- B. Winter season – request opening date be changed to the last Monday in February with a reduction made to the trip limit to 7,500 pounds from 12,500 pounds.

He said they felt that this would maximize the allowable quota.

Commissioner Bowman asked staff to comment. Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead stated that this was a typical for industry to come to make such a request for changes to the trip limit to 7,500 pounds for economic reasons. He said that Commission could consider lowering the trip limit in November but they would need to advertise for a public hearing. He said he had spoken to others who he expected to come and make comments against the lowering as they would feel that the 7,500 pounds was too low. He said that a number of members of the industry had signed the letter. He said the hearing would be held on November 24 and the regulation would go into effect November 30th. He said that notification of industry would also be done now to let them know what the Commission was considering.

Mr. Travelstead said that there was a second summer flounder issue of recent concern to the Finfish Management Advisory Committee (FMAC) that would need to be advertised along with the previous issue. He said there had been complaints for the last year or two about the bycatch tolerance for summer flounder. He explained that after the season closed for the directed fishery, there were reports of fishermen who targeted other species in order to get the 10% tolerance amount of summer flounder. He said the tolerance amount allowed was done this way with good intentions, so as not to have dead fish thrown back. He said there was a need to change this tolerance amount to a minimum poundage amount. He said it was clear that the summer flounder was being targeted. He said it was being suggested that it be changed from 10% to a 500-pound level.

Associate Member Robins asked if other information could be provided for other species landed with the flounder, which were legitimate species. Mr. Travelstead responded yes.

Commissioner Bowman asked for a motion.

Associate Member Bowden moved to advertise for a public hearing for summer flounder. Associate Member Holland seconded the motion. The motion carried, 8-0-1. Associate Member Robins stated that because of his connection to one of the businesses who signed the letter, he would be abstaining.

HAUL SEINE – CRAB POTS CONFLICT

Lester Moore, a crab potter was present and his comments are a part of the verbatim record. He explained that he was concerned with the haul seiners moving his crab pots. He asked if there was any law against it.

Jack Travelstead, Chief Fisheries Management was present and his comments are a part of the verbatim record. Mr. Travelstead stated this was a fuzzy issue. He said that Law Enforcement had said that crab pots could be moved by haul seiners to get them out of their way to work, but that they were supposed to put them back.

Mr. Moore said that he was in the Plum Tree Island-Muddy Creek-Poquoson River area and the haul seiners have been putting bamboo poles in the area while they work.

Lt. Col. Warner Rhodes, Deputy Chief, Law Enforcement, was present and his comments are a part of the verbatim record. Lt. Col. Rhodes explained that there was a “gentleman’s” agreement and the haul seiners put up the poles when they moved the pots for the haul seine nets. He said they were supposed to place the crab pots back in the original area, when they were finished.

Commissioner Bowman asked if he was aware of this area. Lt. Col. Rhodes responded, yes.

Commissioner Bowman suggested that staff contact these individuals in an effort to try to mediate the conflict, as he had done in the past. He said he had hoped that they had gotten away from this and suggested staff look into this and report back to him. He said he would like everyone to get along.

Mr. Moore stated he would like to get along, but they move his pots, which he then had to retrieve.

REQUEST FOR CRAB POT LICENSE REINSTATEMENT

A. W. Williams, crab potter, was present and his comments are a part of the verbatim record. Mr. Williams stated that they were requesting the return of their crab pot license.

Commissioner Bowman stated that this was a matter to be taken up with the Fishery staff.

Mrs. A. W. Williams, wife and crab potter, was present and her comments are a part of the verbatim record. Mrs. Williams stated that the Commission had taken her license.

Associate Member Bowden said that they had called him. He said they had sent in a letter regarding the husband and grandson’s license and the husband’s had been returned but not the grandson’s. He explained that Mrs. Williams had submitted the wrong

information as the grandson was secondary to her. He said he felt it was just a keypunch error. He said he told her to bring the proof and he would make a motion to reinstate the license.

Rob O'Reilly, Deputy Chief, was present and his comments are a part of the verbatim record. Mr. O'Reilly explained that this goes back several weeks ago and this was checked. He explained further that he had spoken with Mrs. Williams and the grandson had not reported directly. He stated that staff needed to look further into this matter. He stated that Mrs. Williams had her peeler pot license but it was the hard crab pot license that was in question for the grandson. He said they needed to leave the information with staff.

Commissioner Bowman stated if it can be proven, then it can be reinstated.

No action was taken.

**GREAT WICOMICO RIVER – REQUEST TO OPEN THE UPPER REACHES
OF THE RIVER TO MARKET HARVEST:**

Ken Smith, Virginia State Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith provided a hand out and had a powerpoint presentation.

Mr. Smith said that the Great Wicomico River had opened on November 1st. He said that the Shellfish Management Advisory Committee had discussed the harvest season. He said last summer he had call Mr. Fox to get a special permit to look at the Great Wicomico River area above Sandy and Cockrell Points. He said they had found oysters. He said they were told by staff that the Corps had stopped harvesting up in that area. He said at the meeting he had asked for documentation. He said he was sent some attachments and told by staff that it must be closed. He said he was told also that there were partners involved.

Mr. Smith said the oyster beds are held in trust for the people by the Constitution, which he read a part of it into the record.

Mr. Smith explained that this was also included in Section 28.2-203 of the Code. He said the Code is the law and regulations are made from what the Code said. He said it required a management plan to provide optimum yield. He said the oyster bar will close itself, if a man cannot make a living. He stated that conservation and management were to be based on science, economics, biological and sociological information that was available.

Mr. Smith stated that the number of watermen was down from approximately 4,400 and most of them were probably part-time. He requested that the Great Wicomico area be

opened. He said that where it was opened now was not safe as there were 50 boats on small areas. He said the small boats and big boats were congested and the small boat could be tipped and sunk.

Mr. Smith said there was a need to minimize the burdens of regulations and not expanding the Great Wicomico was a good example. He requested that emergency action to open the Great Wicomico to start next Monday be adopted by the Commission. He stated the oysters were dying.

Associate Member Fox explained he had spoken with Mr. Smith on Sunday and found out after that he had talked with Mr. Travelstead the previous Friday. He said he did some research on the situation regarding the upper part of the Great Wicomico. He said the area in the mouth of the river was opening on Monday. He went on to say that for years the area had been restored with federal funds and a contract provision with the Corps said that part must remain closed. He said in the past it had been used as a seed area and now there was hope for oysters to become disease resistant. He said there were partners, which included The Nature Conservancy, the Corps, VIMS and others. He said the Great Wicomico had been closed except for seed harvest to be moved to other areas. He explained that he had undertaken to contact all the partners by e-mail and all of them insist on keeping it closed. He said the optimal yield was meant for the Bay as a whole and if the Great Wicomico oysters were disease resistant then the best yield would come from transferring them to other areas to grow out.

Dr. James Wesson, Head, Conservation and Replenishment Department, was present and his comments are a part of the verbatim record. Dr. Wesson explained that these were test areas in both the Great Wicomico and Lynnhaven Rivers. He said the public lease private grounds and moved their seed to other private grounds. He stated they want to find out what happens after leaving it alone. Associate Member Bowden stated that staff had talked with the partners, but how many watermen were involved. Dr. Wesson stated that there were watermen on the Blue Ribbon Oyster Panel. Associate Member Bowden asked about the members of the partnership group. Dr. Wesson said the partners included the sponsors who have provided funds, such as NOAA, the Corps, and others.

Associate Member Bowden stated that experience was being lost by not using the watermen. He said there was the oyster industry to gain information from. He said the partners are not always right. He said the biggest part was being left out for generations of information and not all was scientific. He said there was a need to invite the watermen not just those preferred.

Associate Member Robins stated this was a small area making a contribution to the overall plan.

Mr. Smith stated they had the Constitution and the Law on their side.

Dr. Wesson provided a slide that showed the area of the Great Wicomico River being discussed and stated that this had never been used but as a seed source, not for market. He said it was back in the 1980's, but that was before his tenure. He said the James River seed was moved to other areas, but just died. He said efforts were made to boost up the Piankatank River and Great Wicomico Rivers for a seed source. He stated the private grounds are used. He said that the partners and the Blue Ribbon Oyster Panel approved it, which included watermen.

Dr. Wesson explained that every 5 or 6 years a set occurs and it would be better if it occurred every year.

Associate Member Schick asked if the oyster bars were restored as three dimensional or traditionally. Dr. Wesson said the Conservation and Replenishment Department developed three dimensional, one-acre sanctuary reefs. He said the Corps also developed three dimensional sanctuary reefs, just much larger.

Associate Member McConaugha said he agreed with Associate Member Bowden about the watermen's input being important. He said that an ecological study was ongoing and would take more years. He said there was a need to consider an end to the experiment. He stated the graph showed market oysters, but there was a need to continue. Dr. Wesson said that it was being followed by a size impact study of the larger oyster. He said that in 2007, 2008, and 2009 there was a good disease challenge time.

Associate Member Schick explained that optimum yield was not just what was harvested today and there was a need to look at the bigger perspective, the entire Chesapeake Bay. He said it was past efforts and disease that had put the situation where it was now. He stated that social-economics was more than what was harvested. He said the Environmental Impact Statement had said no to the non-native oyster and he did not like that, but he did not want to see a moratorium. He said you cannot let the oyster ground sit and you cannot let it be worked too hard.

Dr. Roger Mann, VIMS, was present and his comments are a part of the verbatim record. Dr. Mann explained this was an awkward situation. He said that the goals for the Rappahannock River were discussed by all partners and the rotation plan was developed. He said that the Great Wicomico was not as simple, because it was funded by others and they had a stake in it. He said the Corps and NOAA were looking for research and NOAA was coordinating the research and a report was due to the end of 2009. He said he would like to use the Great Wicomico data and apply it to his research and report. He suggested that the Commission wait and let him write his report and come back in the spring. He said he could use this as a biological reference point and look at how to it should be used. He said that oysters were usually hard to age, but now he felt he could do it. He explained that he was very busy at this time with various other responsibilities, including budget, and requested that he be given time until after the first of the year to do

a database study for the Great Wicomico so that he could provide the information needed by the Commission.

Associate Member Robins said that Dr. Mann had given the Commission a constructive way of making a decision, as it was not good to act on this now. He said that ecological information should be included and VIMS had offered to provide that new information by the first of the year.

Associate Member Bowden stated that he somewhat agreed with Associate Member Robins and next year would be timely. He said that the 2005 and 2006 spat set will be lost. He said that they cannot let some areas be grinded or let the larger oysters be lost. He said he supported the watermen, but he agreed with Associate Member Robins to allow one more year and come back with 2009 data.

Associate Member Fox stated that he hoped this provided some comfort. He said that the Commission was taking this very seriously and would not ignore it or pass it off.

Mr. Smith stated he could go along with Dr. Mann's plan.

Commissioner Bowman stated he was happy the information was there to make this decision. He said VIMS and staff have taken steps to address the situation and he looked forward to their report.

No action was taken.

UPDATE ON STATUS OF AMENDMENT 18 BY THE ASMFC - SAFMC:

Associate Member Robins was present and his comments are a part of the verbatim record. Mr. Robins explained that efforts were being made to establish a resource sharing option for the South Atlantic Fisheries Management Council (SAFMC). He said a hearing was scheduled for November 16th, which was to be held at the Virginia Marine Resources Commission main office. He said he wanted to bring the information to everybody's attention regarding this meeting that was being held to discuss a sub-Atlantic coast limit. He suggested that a letter be sent by VMRC in support of this option.

Commissioner Bowman instructed staff to draft a letter of support to be sent on behalf of the Commission.

No further action was taken.

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- 11. **PUBLIC HEARING:** Concerning non-authorization, as agents, of those whose fishing permit is currently revoked or rescinded, as described in Chapter 4VAC20-610-10 et seq., “Pertaining to Commercial Fishing and Mandatory Harvest Reporting.”

Dr. James Wesson, Head, Plan and Statistics, gave the presentation and his comments are a part of the verbatim record. Dr. Wesson explained this was a public hearing to discuss a minor change to be made to the regulation to prevent a waterman who has been convicted of a violation from using another individual’s permit, as an agent. He stated that no public comments had been received.

Commissioner Bowman opened the public hearing. There were no public comments, so the hearing was closed. He asked for a motion by the Commission.

Associate Member Robins moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 12. **PUBLIC HEARING:** Concerning requirements for all pound nets and similar fixed fishing devices that are licensed and fished in Virginia waters east of the Chesapeake Bay Bridge Tunnel to be equipped with a modified leader, as described in Chapter 4VAC20-20-10 et seq. “Pertaining to the Licensing of Fixed Fishing Devices.”

Lewis Gillingham, Director, Virginia’s Saltwater Fishing Tournament, gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Gillingham explained most watermen had never seen a dolphin entangled in a net. He said that in the third week in August, 59 pounds nets were being fished in Virginia waters according to the Law Enforcement Division. The federal Bottlenose Take Reduction Plan had focused most of its attention on gill nets explained Mr. Gillingham and thus far bore the brunt of the impact of the plan, not the pound netters. However, at the last Take Reduction Team (TRT) meeting (and its first in over two years) the waters to the east of the Chesapeake Bay Bridge Tunnel were a major focus of the two-day meeting and the TRT had recommended to the NMFS that pound nets set in Virginia waters located in this area be required to install stringers in the leader portion of the nets.

Mr. Gillingham explained that the plan required human interaction related takes of bottlenose dolphin be reduced to as near zero as possible. He said a new consideration raised during the TRT meeting was the relatively small in number Northern North Carolina Estuarine stock has been shown to move into the lower Chesapeake Bay in July through October, where several takes in pound nets had been recorded. He said the

stringer configuration option for the offshore pound nets set west of the CBBT was done as an alternative to requiring the removal of nets from May 6 through July 15, but only after a two-year cooperative NMFS and industry study. He said the two year study in 2004 and 2005 concluded that pound nets using the experimental design significantly reduced the takes of threatened and endangers sea turtles.

Mr. Gillingham stated that the results of Virginia Aquarium and Marine Science Center Foundation's investigation of the effect of the alternative leaders had revealed catches of marketable finfish in pound nets using the experimental stringer leader were similar or even slightly greater than those pounds nets using the conventional leader system. Additionally, anecdotal information suggested the cost to construct the stringer system was about the same as the conventional leader. Although less material was used, the stiff rope required to create each stringer of the alternative leader was very expensive per foot.

Mr. Gillingham explained further that a fyke net leader could look identical to a pound net leader and was only limited by the same 1200-foot overall length, as a pound net.

Mr. Gillingham said that staff has reviewed the information from the Virginia Aquarium stranding Program's report, the existing requirements for pound nets to use a modified leader, found in 50 CFR Part 223, the results of Virginia Aquarium and Marine Science Center Foundation's investigation of the effect of the alternative leaders, on the catch of fish in pound nets, at the mouth of the Bay, and the concerns of the BDTRT for the conservation of bottlenose dolphins. He said staff requests adding Subsection D to Chapter 4 VAC 20-20-30 in the draft regulation 4 VAC 20-20-10, et seq.

Mr. Gillingham said that the pound net season for 2009 was nearing a close, so staff suggested an effective date sometime after January 2010. He said this would allow fishermen to incorporate the required gear modifications in time for the 2010 fishing season.

Mr. Gillingham said that staff recommended adoption of the draft regulation, which would require any fixed fishing device, including but not limited to pound net and fyke net gear, licensed and fished in Virginia's tidal waters located east of the CBBT to use a modified leader, as described in Chapter 20-20-20. He said in addition it shall be the responsibility of the licensee of any fixed fishing device, to contact the Virginia Marine Police and the NMFS at least 72 hours before any modified leader is to be deployed for an inspection of the leader design.

Commissioner Bowman asked for questions of staff.

Associate Member Robins said that in the two comment letters received, one advised that no action be taken on the west side of the CBBT and the other letter said to move forward with the west side. Mr. Gillingham stated that the Commission was looking at all BDTRT suggestions.

Commissioner Bowman asked for public comments.

Mark Swingle, Virginia Aquarium and Marine Science Center, was present and his comments are a part of the verbatim record. Mr. Swingle said he disagreed with the comment and in March it was addressed to require it be year round east of the CBBT as the bottlenose dolphins were in this area more than the sea turtles. He asked that it be considered to extend the requirement year round in Area One as the bottlenose dolphins were in the area and it was a serious issue during the pound net fishing season. He said this was an important step and existing pound netters had this equipment and know about the regulation. He said it was Kenneth Heath of the Eastern Shore who had conceived of the modified leader and it goes a long way to be able to say that the fishermen were the ones to provide a solution. He said the Commission should not wait around and at the TRT meeting there was support to use the modified leader throughout the season. He said he had seen it work with the sea turtles.

Commissioner Bowman asked for anyone in opposition who wished to speak. There was no one. He said the matter was before the Commission.

Associate Member Bowden stated that he was surprised that this had not been done sooner and as it was making an expense for the fishermen it should be used year around. He moved to accept the staff recommendation. Associate Member Robins seconded the motion. Associate Member Bowden said that the sea turtle was endangered and the dolphin situation was different. He said above the bridge was okay, as most of the strandings occurred on the western shore now that the dolphin population had expanded. Commission Bowman stated that this was a good idea and the Secretary of Natural Resources supported this action. The motion carried, 9-0.

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13. PUBLIC HEARING: Concerning at-sea processing of smooth dogfish and associated landing requirements, as described in Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks."

Lewis Gillingham, Director, Virginia's Saltwater Fishing Tournament, gave the presentation with slides. His comments are a part of the verbatim record.

Commissioner Bowman left the meeting and Associate Member Holland took over as the Chair.

Mr. Gillingham explained that at the August 2009 Atlantic States Marine Fisheries Commission meeting, the Spiny Dogfish and Coastal Shark Management Board adopted Addendum 1 to the Interstate Fishery Management Plan for Atlantic coastal sharks. He said that prior to the Addendum I, the plan required commercial fishermen to leave all

fins naturally attached to all sharks, including the smooth dogfish. He said Addendum I is a compromise between the ease of species identification for enforcement purposes and the need by the commercial fishery to completely process smooth dogfish at-sea due to their rapid spoilage.

Mr. Gillingham said that compliance with Addendum I would require a seasonal change in at-sea processing restrictions for smooth dogfish. He said the draft regulation contained the necessary language to comply with Addendum I and was included with the evaluation. He said the language established a July 1 through the end of February period when the first dorsal fin of any smooth dogfish commercially harvested must remain attached naturally to the carcass until landed. He said for the remainder of the year, commercial fishermen may completely process, at-sea, and land smooth dogfish but must comply with the 5% fin to carcass ratio.

Mr. Gillingham said this proposed amendment had been advertised for a public hearing for the October 17, 2009 meeting and a copy of the notice was with the evaluation.

Mr. Gillingham said that staff recommended the adoption of the draft Regulation 4 VAC 20-490-10 in order to comply with Addendum I to the Interstate Fisher Management Plan for Atlantic Coastal Sharks and this would establish the seasonal at-sea processing requirements for smooth dogfish.

Associate Member Holland asked for questions.

Associate Member Robins said considering the Magnuson Act 307.1.P, Shark Conservation Act, the 5% would be problematic and result in perversion of conservation objectives because it required that the fins be thrown overboard, and if the fishermen wait until they get to dock before removing the fins the fishermen would be in violation. Mr. Gillingham stated that this was not finning, but processing. Jack Travelstead, Chief, Fisheries Management, was present and his comments are a part of the verbatim record. Mr. Travelstead explained that the Commission may not want to adopt the 5% clause as it was still a provision in the Federal law. He suggested that after the ASMFC met and made a decision then this could be brought back to the Board for modification.

Commissioner Bowman returned, but Associate Member Holland continued to chair for this item.

Associate Member Robins suggested tabling the matter until after the ASMFC met. Mr. Travelstead explained that they were looking for other provisions for compliance as they were not acting quickly enough now to solve the 5% issue and it would be next spring before the addendum would be passed.

Associate Member Robins questioned this action being taken when considering the Magnuson Act 307.1.P as it could be an important enforcement issue. Mr. Travelstead

suggested that on page 7, paragraph C that a period could be put in to end the line after the word, landing, and the rest of the language could be struck out. He stated it would make Virginia's regulation silent. He suggested further that the Commission could wait on that for further clarification from the ASMFC. He stated that finning would still not be allowed. Commissioner Bowman suggested that the Commission make the other changes and they could take action later on this issue.

Associate Member Holland opened the public hearing. There being no public comments he closed the public hearing. He asked for action by the Board.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. Associate Member Tankard asked if this included the amendment by staff. Associate Member Holland responded yes. The motion carried, 8-0-1. Associate Member Holland abstained, as he was acting chair.

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14. PUBLIC HEARING: Concerning limited entry in the gill net fishery, as authorized by Section 28.2-204.1 of the Code of Virginia, based on previous licensing history or participation criteria, as documented by VMRC mandatory harvest records.

Joe Grist, Head, Plans and Statistics, gave the presentation with slides. His comments are a part of the verbatim record. Mr. Grist explained the need to prevent excessive harvest of limited resources, such as spot and Atlantic croaker, as well as prevent additional competition for those who depended on the gill net fishery for their livelihood.

Mr. Grist stated that the Gill Net Committee had met over the summer and suggested the amendment to Regulation 1190 which would require Class A and Class B gill net permits. He said that the Class A Resident Gill Net permits shall be given to current Virginia Commercial Fisherman Registration License holders who are Virginia State Residents and have met one of the following provisions.

Class A: Limited Entry Criteria:

- 1) Had a VMRC gill net license prior to December 31, 2005.
- 2) Had gill net harvest for at least 100 days, in any one year, or gill net harvest for at least 60 days, in any two years, from 2006 through 2008.

Mr. Grist explained that the Class A Non-Resident Gill Net Permits shall be given to current Virginia CFRL holders who are non-Virginia residents and have met the same provisions.

Mr. Grist stated that of the total 2,700 harvesters, more than 1/2 would qualify for Class A.

Mr. Grist explained that the Class B Gill Net Permits shall be available to anyone who does not qualify for the Class A permit and has a current Virginia CFRL.

Class B: Limited Entry Criteria:

- 1) No harvest by gill nets, 2006 through 2008.
- 2) Harvested with gill nets, 2006 through 2008, but did not meet Class A requirements.

Mr. Grist explained additional provisions recommended by the sub-committee, which include:

- Transfers of Class A Resident Gill Net Permits shall only be transferable between Virginia residents and not to a non-resident.
- Transfers of the Class A Non-Resident Gill Net Permit shall only be transferable between non-residents and not a Virginia resident.
- No individual may possess both a Class A and Class B gill net permit concurrently.

Mr. Grist said that FMAC had unanimously supported the adoption of the limited entry provisions with the following amendments:

- 1) The cap on license purchase, by the Class A Gill Net Permittee, would be 12,000 feet of gill net, rather than ten 1,200-foot gill net licenses; and,
- 2) The cap on license purchases, by the Class B Gill Net Permittee, would be 6,000 feet of gill net, rather than five 1,200-foot gill net licenses.

Mr. Grist explained that staff had not received any public comments. He said that staff recommended adoption of the limited entry provisions, for the Virginia gill net fishery, as described in the draft Chapter 4 VAC 20-1190-10, et seq. He said the effective date would be December 1, 2009 and included the FMAC recommendations.

After some discussion, Commissioner Bowman opened the public hearing.

Ken Smith, Virginia Watermen's Association representative, was present and his comments are a part of the verbatim record. Mr. Smith said that most were opposed to the proposal originally, but agreed with the alternative. He suggested that legislation should be passed and add wording to the Section 28.2-227 which would say that no commercial license to be sold for out of state watermen when it was not allowed in the other State. Commissioner Bowman stated that the proposal was logical and suggested he write to his legislative representative.

Darryl Hurley, Crabber, was present and his comments are a part of the verbatim record. He questioned whether he could get into the gill net fishery at a later time. Mr. Grist responded that if he had purchased a gill net license prior to 2006 he could get the Class A, but no one was out of the gill net fishery.

Leonard Kamm, waterman, was present and his comments are a part of the verbatim record. Mr. Kamm explained that he had been disabled for the last ten years and would like to get a gill net license as he was getting better. Mr. Grist stated he would have had to hold a gill net license prior to December 31, 2005.

Mr. Hurley asked if a Class A license could be sold. Mr. Grist explained that the regulation allowed for transfers for a resident to another resident.

Commissioner Bowman closed the public hearing. He asked for discussion or action by the Commission.

Associate Member Bowden asked if no stacking on the boat was allowed to include both Class A and Class B permits would this be more restrictive. Mr. Grist stated that it would depend on how it was structured.

Associate Member Bowden suggested limiting one Class A or Class B per vessel. Commissioner Bowman said it would be necessary to advertise for a public hearing for next month because it could not be done today and FMAC would have to study it. Associate Member Bowden agreed to both advertising it and for FMAC to study it.

Associate Member Bowden moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0.

Associate Member Bowden moved to advertise for public hearing to consider limiting the number of Class A or Class B permits to just one. Associate Member Schick seconded the motion. The motion carried, 9-0.

- 15. PUBLIC HEARING:** Concerning establishment of a spiny dogfish limited entry permit, as described in Chapter 4VAC20-490-10 et seq., "Pertaining to Sharks" and based on VMRC mandatory harvest records, as authorized by Section 28.2-204.1 of the Code of Virginia.

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

Mr. Grist said that the proposed amendments to Regulation 4 VAC 20-490-10 had been advertised for a public hearing. He said the amendments were to establish the spiny

dogfish limited entry requirements in response to the industry's concerns about the increased gill net activity by non-Virginia residents.

Mr. Grist said that a subcommittee was formed and met to discuss solutions. Their recommendations were as follows:

To qualify to participate in the spiny dogfish limited entry fishery individuals must be current Virginia Commercial Fisherman Registration License holders, who meet the following criteria:

- 1) shall have averaged 60 days of harvest by gill net, from 2006 through 2008, and shall have documented harvesting a minimum of 1 pound of spiny dogfish on VMRC Mandatory Harvest Reports at any time during that time period.
- 2) or, shall have documented harvesting more than 10,000 pounds of spiny dogfish on VMRC Mandatory Harvest Reports in any one year from 2006 through 2008.

Mr. Grist said that specifically, nine harvesters qualified under criteria 1; thirty-eight under criteria 2; and 54, qualified having met both criterias 1 and 2.

Mr. Grist stated that FMAC recommended establishing the limited entry fishery based on the criteria recommended.

Mr. Grist stated that no public comments had been received. He said staff recommended the adoption of the amended draft Regulation 4 VAC 20-490-10, et seq. which would establish a limited entry commercial fishery for the spiny dogfish. He said the effective date would be November 1, 2009.

Commissioner Bowman opened the public hearing. There were no public comments and the public hearing was closed.

Commissioner Bowman asked for action by the Board.

Associate Member Schick moved to accept the staff recommendation. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

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- 16. PUBLIC HEARING:** Concerning options to incorporate the black sea bass commercial hardship quota as part of the directed fishery quota, as described in Chapter 4VAC20-950-10 et seq., "Pertaining to Black Sea Bass."

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Ms. Nelson provided the board a handout.

Commission Meeting

Ms. Nelson stated that this was the public hearing today. She explained that there were several calls and letters in support of both options. Of the letters received prior to the Commission meeting ten were in support of option 1 and six supported option 2. Several of the commenters favoring option 2 felt that option 1 was unfair, and it was not in keeping with the original intent of Regulation 950.

Ms. Nelson explained that in order to qualify for a directed sea bass permit, a permittee must have landed and sold at least 10,000 pounds of black sea bass in Virginia from July 1, 1997 through December 31, 2001. She said that if a person had landed and sold at least 1 pound but less than 10,000 pounds of black sea bass in Virginia during the same qualifying period, he qualified for a bycatch permit.

Ms. Nelson said that the ITQ's were allocated to directed fishery participants, based on their percentages of the total landings in Virginia during the qualifying period. Those who had landed the most during the qualifying period received the largest quota. She said in 2004, 17,000 pounds (later reduced to 10,000 pounds) of the annual commercial fishery quota was set aside for distribution to all qualified applicants granted an exception by the Commission based upon the his prevailing medical conditions, or other hardship, during the qualifying period. Ms. Nelson said that because the first hardship quota will become eligible for transfer in 2010, the hardship quota needed to be incorporated into the directed fishery quota, in keeping with the original intent of the regulation.

Ms. Nelson said that only 6 requests had been received and there were currently five hardship quota holders. The hardship quota holders were awarded a static, pound based quota that increased and decreased with the changing state by state quotas. Because the Virginia quota had been reduced multiple times in the past several years, the hardship permittees held more quota than 40% of the individuals with the directed fishery quota in 2009. The original intent of the hardship provision was to allow those individuals to enter the fishery at a low level—lower than that of the lowest directed quota holder at the beginning of the year. In order to fairly transfer hardship quota, these shares should be converted into directed shares, and the hardship quota should be added into the directed fishery quota.

Ms. Nelson stated that two options were proposed:

Table 1: Converting the hardship quota poundage to percentages of the directed fishery based on the 2009 quota.

2009 Direct Quota	Hardship Quota	% 2009 Quota	Lbs. in 2009
168,638	2,110	0.251	2,110
	1,444	0.856	1,444

Commission Meeting

Table 2: Converting the hardship quota to percentages based on poundage in the year awarded.

Year	Directed Hardship Quota Awarded	Hardship Quota	% of Yearly Quota	Lbs. in 2009
2005	642323	2,110	0.3285%	555
2007	425,300	1,444	0.3395%	573

Ms. Nelson stated that staff preferred the second option, Table 2, because the original intent of the regulation was to provide an opportunity for applicants who did not otherwise qualify to enter the fishery at a low level, which was with less quota than that held by the lowest quota holder in the directed fishery.

Ms. Nelson explained that staff had received several calls from directed fishery members who felt that the hardship quotas should be reduced by the same amount as the rest of the directed fishery and were in support of option two.

Ms. Nelson said that staff recommended the amendments on page 5 of the draft Regulation 4 VAC 20-950-10, et seq., "Pertaining to the Black Sea Bass, to incorporate the hardship quota, as part of the directed fishery quota.

Commissioner Bowman opened the public hearing.

Bryan Peele, hardship quota holder, was present and his comments are a part of the verbatim record. Mr. Peele said that supported Option 1, because 4 out of 44 boats had caught their quota and they would be taking quota to give to others who were not catching their quota. He said that the directed fishery was given a number and could transfer where a hardship quota holder was restricted in making transfers. He said it would be fair to them to keep the original amount.

David Wright, hardship quota holder, was present and his comments are a part of the verbatim record. Mr. Wright said he supported Option 1. He said that there was history of only 5 being able to land their quota. He said the pounds held by the hardship quota holders was not a significant number. He said that the economy and fuel cost over the past several years had kept him from going out. He said that there were two others who could not come to the hearing to speak, but the economy and history suggest that Option 1 is the better option.

Harry Doernte, Poquoson waterman, was present and his comments are a part of the verbatim record. Mr. Doernte said that the cost of \$30,000 for a permit for the directed fishery meant that they had earned the right to the quota and the others wanted a gift and to go above the ones who have earned the right. He asked how many hardship quota

holders caught their quota.

Commissioner Bowman closed the public hearing. He asked for discussion or action by the Board.

Associate Member Robins stated that what was wanted here was fairness and equity and Option 2 was a good one. He moved to adopt the staff recommendation, Option 2. Associate Member Bowden seconded the motion. The motion carried, 9-0.

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17. REQUEST FOR A NOVEMBER PUBLIC HEARING: Concerning the establishment of the 2009 Bay recreational and commercial striped bass quotas and modification of the penalties associated with overages of individual striped bass commercial harvest quotas, as described in Chapter 4 VAC 20-252-10 et seq., "Pertaining to the Taking of Striped Bass."

Mike Johnson, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. Mr. Johnson stated that his was about a request for a public hearing to discuss the harvest quota.

Commissioner Bowman asked for action by the Board.

Associate Member Schick moved to advertise for the public hearing. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

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There was no further business and the meeting was adjourned at approximately 3:08 p.m. The next regular meeting will be Tuesday, November 24, 2009.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary