

MINUTES

Commission Meeting

March 27, 2007

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)	
John R. McConaugha)	Associate Members
F. Wayne McLeskey)	
Richard B. Robins, Jr.)	
Kyle J. Schick	
J. Edmund Tankard, III)	
Carl Josephson	Sr. Assistant Attorney General
Jack Travelstead	Chief Deputy Commissioner
Wilford Kale	Senior Staff Advisor
Ginny Chappell	Commissioner's Secretary
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin./Finance
William Bowen	Deputy Chief, Admin./Finance
Jeanne Bakkalini	Fiscal Technician, Sr.
Jennifer Shinn	Business Manager A
Andy McNeil	Programmer Analyst, Sr.
Todd Sperling	Programmer Analyst. Sr.
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Lewis Gillingham	Fisheries Mgmt. Specialist
Mike Johnson	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program

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Rick Lauderman	Chief, Law Enforcement
Warner Rhodes	Deputy Chief, Law Enforcement
Chris Miller	Marine Police Officer
Bill Hall	Marine Police Officer
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.
Jeff Madden	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell
David O'Brien

Other present included:

William A. Thrall	Eileen F. Thrall	Robert B. Hart
Susan L. Hart	Brian Buniva	Corey Simpson
Michele S. Lindeman	Larry L. Waits	Henry Lindeman
Dr. Joe Ivers	Gerald Ramsey	Jim Roberts
Tyler Chienelli	Robert Chienelli	Charles Willimson
Uwe Kirste	Tom Dombrowski	Mary Paphides
Ken Golsiki	Carl Blevins	Tom Langley
Page Ayres	R. Meyer	R. Francese
Ron Woods	Rita Woods	Chris Flint
Alison Morrison	Scott Hardaway	Ellis W. James
Hank Jones	Douglas F. Jenkins, Sr.	
Roger Park	Robin Bedenbaugh	Robert Jensen
Charles G. Schult	Harry Justis	Russell Gaskins
Frank A. Kearney	Tommy Eskridge	Joe Shelton
R. Lipcius	Mark Hodges	Tom Powers
Susan Gaston	Chris Moore	Kelly Place
Nelson Ortiz	Jimmy Ruhle	

and others

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Commissioner Bowman called the meeting to order at approximately 9:33 a.m. Associate Member Schick arrived a little later.

Associate Member Holland gave the invocation and Jack Travelstead led the pledge of allegiance to the flag.

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

APPROVAL OF AGENDA: Commissioner Bowman asked if there were any changes to the agenda. Commissioner Bowman requested that after Item 3 time be allowed for Jane McCroskey to give a report on the recent VMRC audit. Bob Grabb, Chief, Habitat Management explained that Item 2C, Higgerson Buchanan, Inc., #06-2845 was pulled from the agenda.

Commissioner Bowman asked for a motion to approve the agenda. Associate Member McLeskey moved to approve the agenda, as amended. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the February 27, 2007 meeting minutes.

Associate Member Fox moved to approve the minutes, as circulated. Associate Member Tankard seconded the motion. The motion carried, 8-0-1. The Chair voted yes. Associate Member Schick who had just arrived for the meeting stated he would be abstaining, as he was absent from the February Meeting.

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

Bob Grabb, Chief, Habitat Management Division, reviewed items 2A, 2B, and 2D for the Commission. He said that staff was recommending approval of these items.

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Associate Member Fox asked why no royalties were proposed for 2D. Mr. Grabb explained that a governing body was exempt from royalty fees.

Commissioner Bowman opened the public hearing.

Commissioner Bowman asked for a motion for Items 2A, 2B, and 2D. **Associate Member Robins moved to approve these items as amended. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

2A. HENRY COUNTY PUBLIC SERVICE AUTHORITY, #07-0344, requests authorization to install a submerged waterline, by directional bore method, beneath Marrowbone Creek and Jordan Creek to provide potable water to area residents in the Chestnut Knob/Ridgeway section of Henry County.

Permit Fee.....\$100.00

2B. CSX TRANSPORTATION, #03-1647, requests a modification to reduce the requirement to mitigate for the previously proposed loss of 1.743 acres of submerged aquatic vegetation (SAV) to reflect the actual, constructed loss of 0.21 acres of SAV resulting from the construction of two (2) temporary stone causeways and the dredging of 18.5 cubic yards of State-owned subaqueous material from a 500 square foot area adjacent to the previously authorized railroad crossing of Quantico Creek in Prince William County. The applicant proposes to donate \$10,000 to the VMRC Habitat Improvement Fund, to be earmarked for use in a SAV restoration project in the Potomac River Watershed, if their SAV restoration efforts do not meet the success criteria outlined in their revised SAV mitigation plan, as determined by their final report due to the VMRC no later than November 1, 2008.

No applicable fees - permit modification.

2C. HIGGERSON-BUCHANAN, INC., #06-2845, requests authorization to dredge 13,700 cubic yards of State-owned subaqueous bottom to create a 550-foot long by 130 foot wide (maximum) barge unloading berth with maximum depths of minus fourteen (-14) feet at mean low water, and install one (1) 7-pile cluster dolphin at the confluence of Mains Creek and the Southern Branch of the Elizabeth River, located adjacent to their commercial property at 5300 Bainbridge Boulevard in Chesapeake. The dredged material will be removed mechanically and disposed of in their adjacent upland property. Recommend approval with a royalty in the amount of \$6,165.00 for the new dredging of State bottom at a rate of \$0.45 per cubic yard and \$200.00 for the encroachment of the dolphin over 100 square feet of State bottom at a rate of \$2.00 per square foot.

No applicable fees - pulled from Agenda

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2D. ALEXANDRIA DEPARTMENT OF TRANSPORTATION, #07-0235, requests authorization to annually mechanically maintenance dredge 50,000 cubic yards of accumulated silt, sand, and gravel from five (5) flood control channels, Cameron Run, Holmes Run, Backlick Run, Hooffs Run, and Four Mile Run, to return them to their original design configuration in the City of Alexandria. Staff recommends a 5-year permit with the requirement for a post-dredge bathymetric survey being submitted for staff review after each dredging cycle.

Permit Fee.....\$100.00

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

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

Harrison versus VMRC

The motion was seconded by Associate Member Holland. The motion carried, 8-0.

Associate Member Robins moved for the following:

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

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

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

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

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Associate Member Holland seconded the motion. Commissioner Bowman held a Roll Call vote:

AYES: Bowden, Bowman, Fox, Holland, McConaugha, McLeskey, Robins, Schick, and Tankard.

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried, 9-0.

Katherine Leonard, Recording Secretary

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Jane B. McCroskey, Chief, Administration and Finance, was present and her comments are a part of the verbatim record. Mrs. McCroskey explained that a recent audit of the Commission’s finances had been conducted and that there were no findings for the agency. She noted that there had not been any agency findings since 1995. She said everybody at the agency as well as the Board members were responsible for this good audit, but especially members of the Administration and Finance Division, Human Resources Department and members of the Business Systems group.

Commissioner Bowman said that he was very pleased with these results and appreciative of everyone’s efforts, especially since this was his first year as Commissioner.

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- 4. **CONSOL VIRGINIA COAL COMPANY, #05-2233**, requests authorization to construct a diffuser outfall to facilitate the discharge of mine water from its Buchanan Mine Number 1 into the Levisa Fork in Buchanan County. The project is protested by the Buchanan County Board of Supervisors, the Town of Grundy, the Sierra Club and nearby residents.

Commissioner Bowman said that the Commission had held a special meeting with five members of the board in attendance. He said the five that had attended this special meeting would be making the final decision, which was recommended by VMRC Counsel. He said there would be a brief synopsis by staff and questions from only the five. He said it was the policy of the Commission that the applicant be allowed to speak first and be

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given 15 minutes, followed by those in opposition who would be allowed 15 minutes, and finally the applicant would be given 5 minutes for rebuttal.

Randy Owen, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. He explained that the information for this item was in a separate white notebook. He also explained about the special teleconference hearing between TNCC in Hampton and SVCC in Richland. He said out of 22 attendees, there were only 13 speakers. He said he would only provide one slide not the entire powerpoint presentation.

Mr. Owen reviewed the summary and recommendation of staff. He said the project as proposed required Commission authorization for the encroachment over State-owned submerged land pursuant to Title 28.2, Chapter 12 of the Code of Virginia. While staff acknowledged and was sympathetic to the protestants concerns about the introduction of chlorides and other potential contaminants into the Levisa Fork, it was imperative to note that the Commission's jurisdiction over this project was limited to the physical encroachment of the outfall over the State-owned submerged lands within the Levisa Fork and that the Commission was not empowered to regulate the effluent proper. DMLR's and DEQ's permit and not the Commission determined the effluent's impact on existing aquatic resources and water quality of the river.

Mr. Owen further said that in its letter to the Commission, DEQ indicated that DMLR's VPDES permit had the necessary controls to insure that the State's water quality standards for chlorides would be met. Consol advised further, during the videoconference hearing, that the VPDES permit required testing of the water from VP3 for contaminants and prior approval from DMLR before any discharge was allowed.

Accordingly, Mr. Owen, said that in light of DMLR's lead jurisdiction and authority to regulate coal mine related discharges in the Commonwealth of Virginia, and with the concurrence of DEQ, EPA, and OSM to issue the VPDES permit, staff recommended approval of the outfall structure, as proposed. Staff did not feel that the outfall structure itself should have any adverse affects on other reasonable and permissible uses of State waters and State-owned bottomlands or adjacent or nearby properties. DMLR's VPDES permit does require that water quality standards were met and fishery resources were not adversely affected. Staff did, however, recommend an instream time-of-year restriction for the construction. He said that DGIF had worked with Consol in regards to the time of year restriction and had agreed to change it from March 15 through July 31 to April 15 through July 31. He said in order for DGIF to agree to the time of year restriction Consol had agreed to perform a study designed by DGIF on species of fish such as the endangered variegate darter.

Mr. Owen further added that the staff was recommending the standard instream conditions be included in the permit.

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Associate Member McConaugha asked about the frequency of the assay. Mr. Owen stated he would defer to Dr. Roberts to answer the question.

Bryan Buniva, Attorney representing Consol Virginia Coal Company, was present and his comments are a part of the verbatim record. Mr. Buniva deferred to Dr. James Roberts to answer the question.

Dr. James M. Roberts, consultant for Consol Virginia Coal Company, was sworn in and his comments are a part of the verbatim record. Dr. Roberts explained that he and Dr. Mudge had both worked with DMLR and it was in the DMLR requirements or conditions and he did not recall the agreement. He stated that DEQ had set the tone and they had agreed to their requirements.

Michael McGlothlin, Attorney for the County of Buchanan, stated that he objected to this new discussion and stated that if Dr. Roberts was allowed to address this question, then Dr. Donald Orth should be allowed to address it and he should be allowed to cross-examine, as well as the applicant.

Dr. Roberts asked if he did not use the entire 15 minutes allotted could it be reserved for the rebuttal time period. Commissioner Bowman stated that there would be no reserving of time allowed. Dr. Roberts said this project had been approved by 8 State and Federal agencies in the last two years. He said the last approval needed was the Commission's and their authority was over the installation of the outfall-diffuser. He said the DEQ permit included a time of year restriction. He said in the permit also there was a requirement for monthly monitoring and a condition that if some problem should occur there is an automatic shutdown. He said there was a three-year study of the variegate darter and when they did take samples with much effort, one of these fish was found in this location. He said those present in opposition would try to get the Commission to look at various issues that are under another agency's authority and already considered and not that of this board. He said that they were asking for approval of the installation of the diffuser, which should take only 6 days to accomplish. He said the VP# 1 mine water would not be flushed out until it had been tested and additional testing was planned prior to discharge, which was a permit condition. He said any problem would be dealt with prior to the discharge. He said the water would be treated prior to discharge, if it is found to be necessary. He said the variegate darter is the only species of concern for which a study was planned.

Michael McGlothlin, County Attorney for Buchanan County, was present and his comments are a part of the verbatim record. Mr. McGlothlin stated that he was representing the County and they were opposed to the issuance of the permit. He said that the waterway was beautiful and there were plenty of fish in the area. He said they had once been totally destroyed by the mining waters, but now seemed to be rebounding. He said there was testimony at the special meeting about the small mouth bass, catfish and others. He said the County was trying to build a tourism trade in conjunction with education. He said the County had always been the heart of coal mining and the residents

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were not opposed to coal mining. He said that the testing done had been done by Dr. Roberts and his people for Consol Virginia Coal Company and there was no independent testing done at all. He said that the Commission should want some independent testing done. He said there was testimony by Jerry Ward about the contaminants in VP #3 mine. He said that the Commission had the authority necessary to protect the fish and wildlife. He said that Consol Coal had estimated that revenues for the next 17 years would be approximately \$7 billion and that was figuring coal at \$60 per ton. He explained that Consol Coal estimated the cost of treatment of the water would be approximately \$105 million during that same period, which calculated as 1.5% of the revenue. He stated that the coal company says it must get rid of this water or be forced to shut down. He said that the coal company could afford to treat the water and preserve the waterway for the residents and that there were other mines where they could put this water. He stated that VMRC had the power to say no and he asked that they vote no for the residents of Buchanan County.

Brian Buniva, Attorney representing the applicant, was present and his rebuttal comments are a part of the verbatim record. Mr. Buniva stated that they were asking the Commission to vote yes. He said that this had been studied to death and he did not know what the relevance of the financial information was to this case. He said the diffuser was being installed in the most protective manner. He said that this company was the largest employer in the county and he was asking for approval on behalf of the County. He said that a study of the impacts of the proposal showed that there would be no impacts based on the regulatory requirements.

Associate Member Holland moved to accept the staff recommendation. Associate Member Bowden seconded the motion for purposes of discussion. He said he was concerned about the impacts on water quality and if it were in the Bay this would be more diluted by the amount of water in the Bay as well as the salinity.

Carl Josephson, Senior Assistant Attorney General's comments are a part of the verbatim record. Mr. Josephson referred the Commission to Sections 28.2-1204 and 28.2-1205 of the Code of Virginia. He explained that 1204 gave the Commission its authority and 1205 sets forth the facts that must be considered by the Commission. He said that the Commission can consider the water quality and the local impacts, but there were other agencies that were authorized to deal with those issues.

Commissioner Bowman explained that he shared these same concerns. He said that Department of Environmental Quality was doing the monitoring and providing input to the Coal Company and DMLR. He said that there was a TMDL study requirement in the discharge permit and the permit conditions could be changed in the case of a violation. He said the discharge permit could be made even more restrictive. He said that based on this promise by DEQ to monitor the project, he would support the motion.

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Associate Member McLeskey asked if VMRC could add a condition to their permit that the diffuser would be shut down in the case of a problem. Mr. Josephson said that approval could include reasonable conditions, but he was not sure it was reasonable to condition the permit with a vague benchmark for another State agency. **He said it could be conditioned that either the permittee or DEQ provide status reports on the monitoring and include that if the report came back unsatisfactory, then the permittee would be required to come back before the Commission and show cause why it should not be shut down or be required to use other methods for correcting the problem. Commissioner Bowman asked if a failure did occur would they go before the Water Control Board first? Mr. Josephson responded, yes. Associate Member McLeskey stated he would agree with this condition.**

Roll Call Vote

Bowden	Aye	McLeskey	Aye	Bowman	Aye
Fox	Abstain	Robins	Abstain		
Holland	Aye	Schick	Abstain		
McConaugha	Aye	Tankard	Abstain		

The motion carried, 5-0-4. Associate Member Fox, Robins, Schick and Tankard all abstained, as they were not present for the special public hearing.

Royalty Fees (encroachment 250 sq. ft. @ \$2.00/sq. ft.)....	\$500.00
Permit Fee.....	\$100.00
Total Fees.....	\$600.00

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- ROBERT B. HART, ET AL, #06-1551.** Commission review of the Prince William County Wetland Board's November 14, 2006 decision to approve the installation of 355 linear feet of vinyl bulkhead, and to grant after-the-fact authorization for the installation of 90 linear feet of gabion basket retaining wall and the placement of fill over approximately 3,550 square feet of tidal wetlands adjacent to two properties situated along Quantico and Swans Creeks in Prince William County.

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

Mr. McGinnis explained that the project is located at the juncture of Quantico and Swans Creeks in Prince William County, and involves unauthorized activities undertaken at the adjoining properties of Mr. Robert Hart and Mr. Daniel Revermann. This is a residential area located along an elevated bluff. The Quantico Marine Corps Base is located on the opposite shoreline across Quantico Creek.

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Mr. McGinnis stated that on March 27, 2006, Prince William County Wetlands Board staff observed that the unauthorized filling of tidal wetlands had occurred at the two properties. The unauthorized filling included the placement and backfilling of approximately 355 linear feet of temporary hay bale/silt fence bulkhead over tidal wetlands and state-owned subaqueous land along Quantico and Swans Creeks, and the installation of 90 linear feet of a stone-filled, gabion-basket retaining wall along Swans Creek.

Mr. McGinnis said that after discussing the violation at their meeting on April 12, 2006, the Prince William County Wetlands Board sent separate letters to Messrs. Hart and Revermann directing them to restore the site to its original condition within thirty days. As an alternative, they were also given the opportunity to submit an after-the-fact application for the unauthorized work and any additional work required to complete the project. Wetlands Board staff worked with the applicants and their authorized agent, Virginia Waters and Wetlands, Inc., while an application was being prepared. They accepted receipt of the jointly submitted after-the-fact application on June 21, 2006, which requested authorization for the unauthorized fill and retaining wall, as well as a request to install 355 linear feet of vinyl bulkhead to replace the temporary hay bale/silt fence bulkhead. On July 26, 2006, Board staff sent a letter requesting additional information that was required before they could consider the application complete. After having received the additional information, the Wetlands Board scheduled a public hearing to consider the after-the-fact request to retain the unauthorized gabion wall and fill material, and to replace the temporary hay bale/silt fence bulkhead with a vinyl sheet bulkhead. Commission review of this case is being undertaken in accordance with the provisions of §28.2-1310 and §28.2-1311 (A)(2) of the Code of Virginia.

Mr. McGinnis explained that the Prince William County Wetlands Board held a public hearing on the after-the-fact application on November 14, 2006. Both Mr. Hart and Mr. Revermann were in attendance at the meeting, and were also represented by their agents, Messrs. Joe Ivers and Ira Poplar-Jeffers of Virginia Waters & Wetlands, Inc. The Board listened to a staff report, which included a history of the project, the results of a geographical information system (GIS) impact analysis conducted by County staff, and a brief summary of the environmental impact assessment provided by the Virginia Institute of Marine Science (VIMS). The VIMS Shoreline Permit Application Report, dated November 13, 2006, stated that the unauthorized gabion basket wall resulted in the loss of 270 square feet of non-vegetated tidal wetlands, and that the unauthorized fill resulted in the loss of 3,550 square feet of non-vegetated tidal wetlands and 6,401 square feet of subaqueous bottom. Their report also indicated that the unauthorized gabion basket retaining wall had impacted an additional 540 square feet of non-vegetated wetlands, but that its environmental impact would be considered relatively minor. VIMS, in an e-mail dated November 14, 2006, later revised down their subaqueous bottom impact figures for the unauthorized fill to 4,798 square feet. The reported impacts to tidal wetlands, however, remained unchanged. The VIMS report concluded with a recommendation that the unauthorized fill be removed and the site be restored to its previous conditions. The environmental impact assessment provided in the VIMS report essentially corroborated the

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GIS analysis conducted by Prince William County staff, which calculated the total impact of the unauthorized fill to both tidal wetlands and subaqueous bottom to be 8,348 square feet.

Mr. McGinnis said that during the public hearing, Mr. Hart testified that he was aware of the need for a permit for the planned installation of the bulkhead, but did not believe he needed a permit for the placement and backfilling of the temporary hay bale/silt fence bulkhead, and the installation of the gabion-basket retaining wall. Mr. Hart testified that they estimated the total impact to be 2,235 square feet, which included impacts from the unauthorized fill and gabion basket retaining wall. According to their application, the 2,235 square feet of impact was calculated from the difference of an approximate mean low water shoreline depicted in a 2003 survey and the current alignment of the hay bale/silt fence bulkhead and fill, as shown in a 2006 survey. Mr. Hart's testimony also indicated that there were no impacts to State-owned subaqueous bottom, since they believed that their project was located landward of mean low water. The applicants and their agent also questioned the accuracy and validity of the impact figures in the VIMS report and the results of the County's GIS analysis.

Mr. McGinnis stated that during the nearly four-hour long hearing, the Wetlands Board spent a significant amount of time discussing and trying to determine the amount of impact to tidal wetlands they would need to use to calculate the assessment of in-lieu mitigation fees. The Board's Chairman, Mr. Anthony Thrall, indicated he would abstain from voting because he lived nearby, but argued that the impact was far less than what was reported by VIMS and the GIS analysis, based upon his familiarity with the area as a neighboring property owner. The applicants, their agent, and several members of the Board attempted to discredit the impact assessments provided by VIMS and the County based upon what they had perceived to be assumptions and estimations.

Mr. McGinnis said that at the conclusion of their public hearing, the Board moved to approve the installation of the 355 linear feet of vinyl bulkhead, and to grant after-the-fact authorization for the installation of the 90 linear feet of gabion basket retaining wall and the placement of the entire amount of fill over tidal wetlands. The motion passed 6-0-1 with Chairman Thrall abstaining. The Board's decision was contingent upon several conditions, most notably that the applicants agreed to pay a civil charge in the amount of \$1,200.00 in lieu of further enforcement action, an after-the-fact application fee in the amount of \$500.00, and an in lieu mitigation fee of \$20,115 to mitigate the loss of 2,235 square feet of non-vegetated tidal wetlands at a rate of \$9.00 per square foot.

Mr. McGinnis reminded the Commission that they had previously initiated their review of this case during its meeting on January 23, 2007. However, the Commission determined that the transcript of the Board's November 14, 2006, hearing was insufficient to allow them to continue their review. Both Mr. Hart and staff testified that the transcript contained numerous errors and that it incorrectly attributed comments to the wrong speakers. The Commission then voted unanimously to table further review of the Board's

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decision, and the Commissioner directed that the Wetland Board, the applicant, and Commission staff take the necessary steps to ensure the accuracy of the record prior to a continuance of the Commission's review. The Commission's review of this matter was scheduled to resume at their next regularly scheduled meeting of February 27, 2007. By letter, dated February 14, 2007, Wetlands Board staff requested a continuance of the Commission's review until their March 27, 2007, meeting, to allow their office additional time to ensure the accuracy of the Board's record. The Commission voted to grant the continuance at its meeting on February 27, 2007.

Mr. McGinnis said that the Wetlands Board staff transmitted a revised and corrected transcript on March 14, 2007. In staff's opinion, the transcript still includes many errors and omissions, and incorrectly attributes comments to the wrong speakers. However, it is a significant improvement over the original transcript previously transmitted by the Board.

Mr. McGinnis stated that in the opinion of VMRC staff, the Prince William County Wetlands Board, in this case, failed to fulfill their responsibilities under the Wetlands Zoning Ordinance by authorizing the after-the-fact despoliation and destruction of tidal wetlands within their jurisdiction. The Board failed to discuss the necessity for the unauthorized fill and whether they would have authorized this permanent loss of tidal wetlands had the applicants requested a permit prior to the start of the project. Furthermore, the Board failed to explore the option of requiring restoration of the lost wetland resource, and chose to disregard the impact assessment provided in the VIMS report when calculating the in lieu mitigation fees, instead choosing to base the assessment of those fees on the 2,235 square feet of wetland impacts identified by the applicants, rather than the 3,550 square feet cited by VIMS, without sufficient evidence or justification for the applicants' figure.

Mr. McGinnis explained that it was important to note that under the Commission's Wetlands Mitigation – Compensation Policy (4 VAC 20-390-10 et seq.), the Wetlands Board was required to first determine the necessity of a project and then avoid/reduce all unnecessary impacts to tidal wetlands before considering any type of compensation or mitigation for the loss of tidal wetlands resulting from a project. Staff was present at the Board's hearing, and in staff's opinion it appeared that the Board focused their efforts on calculating the monetary assessment of an in lieu mitigation fee and civil charge, rather than on the necessity of the unauthorized fill, its resultant impacts on tidal wetlands, and the option to require restoration of the lost wetland resource.

Mr. McGinnis said that in light of the foregoing, and in accordance with §28.2-1313 (1) of the Code of Virginia, staff recommended that the Commission reverse the decision of the Prince William County Wetlands Board to grant after-the-fact authorization for the unauthorized fill and the installation of a vinyl bulkhead to replace an unauthorized hay bale/silt fence bulkhead. Staff recommended that the applicants be required to remove the temporary bulkhead and fill material, and to restore the site to previous elevations and conditions within 60 days. It was recommended that the applicants submit a restoration

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plan, which should be approved by County Wetland Board staff in consultation with VIMS, prior to the start of restoration activities.

Mr. McGinnis said that staff would, however, recommend that the Commission uphold the Board's decision to grant after-the-fact authorization for the installation of the gabion basket retaining wall situated along Swans Creek, with the Board's previous conditions and civil charge assessment. Staff made this recommendation based upon the comments provided in the VIMS report, which stated that the gabion basket wall appeared to have addressed the erosion problem on the adjacent bank and had a relatively minor environmental impact.

Mr. McGinnis stated that while it was common practice for staff to recommend to the Commission that Wetland Board case reviews be remanded back to the Board, with direction, for further review, staff believed that a reversal of the Board's decision, with regard to the unauthorized fill, was warranted based upon the degree to which the Board had failed to fulfill its responsibilities under the Wetlands Zoning Ordinance. If, however, the Commission was not inclined to accept staff's recommendations, and would prefer to remand the case back to the Prince William Wetland Board, staff would then recommend that the Commission direct the Board to consider the necessity of the fill over tidal wetlands, all restorative or mitigative options required under the Commission's Wetland Mitigation-Compensation Policy, and fully consider the evidence and recommendations of the VIMS report and the County GIS analysis.

Larry Waite, Vice Chairman for the Wetlands Board, was sworn in and his comments are a part of the verbatim record. Mr. Waite said that he would be representing the Wetlands Board as the Chairman had abstained from participating in the hearing for personal reasons. He stated that they take exception to the comments made by staff in their evaluation. He explained that the Wetlands Board had remained consistent in their making a decision. He said that last year there was one mitigation case, their first one, which had failed and then this one was their second. He said that their staff had said that the most accurate method to determine the area was by survey and that was done. He said there was conflicting information on the area by all. He said he had seen VIMS make mistakes in prior cases. He said the applicant provided a signed survey plat, which was considered the most accurate by them. He said the other drawings did not depict the mean low water line and it was shown on the applicant's. He said that the gabion baskets would have been acceptable if they had been applied for prior to construction, so they left them and required mitigation compensation. He said they did address the possibility of restoration, but there was no background on the area. He said that now they would have a control established for use in the future. He stated this was the highest assessed civil charge they had ever done.

Tony Thrall, Chairman of the Wetlands Board, was sworn in and his comments are a part of the verbatim record. Mr. Thrall stated that he had excused himself because of his friendship with Mr. Hart. He said he had served on the board since 1977-78 and this was

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the first time they had been questioned about what they had done. He said that there had been no contact between VMRC and the Board. He noted that there were frequent changes in the VMRC staff members. He said that there needed to be a meeting of the VMRC staff and the Wetlands board, as the VMRC staff was not familiar with the area and that needed correcting. He said they used a survey, there was no subaqueous infringement, and the VIMS report was not correct.

Associate Member Schick asked about extreme low tide. Mr. Thrall stated that the normal low tide was actually less area.

Dr. Joe Ivers, President of Virginia Waters and Wetlands and agent, was sworn in and his comments are a part of the verbatim record. Dr. Ivers stated that he had a powerpoint presentation. Commissioner Bowman recommended that a motion be made to open the record for new information. **Associate Member Schick moved to open the record. Associate Member McLeskey seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Dr. Ivers explained all his credentials. He read the summary from the powerpoint presentation into the record. He said the County Board based the area on what the applicant's survey showed. He said that they had issues with the VIMS methodology, as there was no meta data.

David O'Brien, representing the Virginia Institute of Marine Science, was present and his comments are a part of the verbatim record. He said that Dr. Ivers was right they had based this on a single site visit. He said estimates were made based on field indicators. He said the County and VIMS do their best to assess impacts when changes have been made.

Robert Hart, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Hart said the Commission could find the Board in error in accordance with Section 28.2-1313 of the Code. He said the plat was prepared by using the example on the VMRC website. He said the depth was 4 feet out in the creek. He explained he bought the property in 2003 and a survey was done and confirmed by a surveyor. He said that a prominent surveyor had done another survey of the topography. He said the siltation continued to occur, which changed the topography of the area. He said the green area including the gabions was 2,000 square feet. He said the MLW was outside of the fill area and there were no subaqueous bottomlands because the project was landward of the MLW.

Commissioner Bowman said with testimony heard today, he was concerned and doubtful of the location of the tide-line and property line. He said it was obvious there was unlawful filling, but the concern was how to determine the impact and there was a problem with the Commission substituting its authority for the Wetlands Board.

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Associate Member Schick explained that was the problem with after-the-fact cases when trying to determine what was there in the project location. He said it was difficult to turn it back to what it was before the filling.

Associate Member Robins stated he had a problem with not requiring restoration based on the fact that other projects were considered failures and it did not change the obligation to take action on this project. He said VIMS had based their recommendation on the best information they had available to them. He stated that the Board skipped to mitigation and he suggested that the Commission remand the matter back to the Wetlands Board to reconsider.

Associate Member Schick stated the Wetlands Board did consider it but realized they could not make a decision when it was not known what was there before the fill. He said the Wetlands Board decided to use the survey data and mitigate. He said mitigation was not productive when you consider the sediment problem. He stated he disagreed. He said VMRC needed to have more contact with the Wetlands Board in the future.

Commissioner Bowman stated that on advice by VMRC Counsel, he suggested withdrawing from review of the matter, if the Board agreed

Associate Member Schick moved to withdraw from the review of this Wetland Board's decision. Associate Member McLeskey seconded the motion. The motion carried, 8-1. Associate Member Robins voted no. The Chair voted yes.

No applicable fees, Wetlands Review

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The Commissioner adjourned the meeting for lunch at approximately 12:36 p.m. and Associate Member Holland reconvened the meeting at approximately 1:22 p.m.

* * * * *

SPECIAL PRESENTATION:

Commissioner Bowman made a presentation of a Certificate of Service to Wilford Kale who would be retiring April 1, 2007. He spoke to the fact that Wilford Kale had been here almost as long as he had and during that time how he had helped him and been a confidante in matters he spoke with him about, as well as his concerns. He read from the Certificate, which indicated that Mr. Kale had been here for 13 years.

Wilford Kale, Senior Policy Analyst explained that he was looking forward to retirement but not in leaving the Commission. He said that overall he tried to do what the military do and that's at whatever level you are you do the task as well as you could do it. He said

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hopefully leaving it better than you found it for the one to follow. He said he had fun times with Commissioner Pruitt and now Commissioner Bowman and it has been great, but they were totally different. He said he had seen the agency be the best it could because of the employees and he had enjoyed working with everybody. He said he felt he was a better person for it. He expressed his thanks.

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Presentations combined for Items 6 and 7.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Badger explained that he would do Items 6 and 7 together as they were both appeals of the Northampton County Wetlands Board decisions.

- 6. RONALD C. WOODS, #07-0196.** Request by 26 freeholders of property in Northampton County for Commission review of the February 21, 2007 decision of the Northampton County Wetlands and Dunes Board to approve the installation of 120 linear feet of stone riprap extending onto the beach at his property situated along the Chesapeake Bay in the Latimers Bluff area of Northampton County.

Mr. Badger explained that the applicant proposed to install 120 linear feet of stone riprap on his lot situated along the Chesapeake Bay in the Latimers Bluff area of Northampton County. The project was approximately 1.2 miles north of the Chesapeake Bay Bridge and Tunnel's toll plaza. Mr. Woods' home is currently situated approximately 130 feet from the eroding bluff, which is about 20 feet high at the site. The beach at the site was approximately 10 feet wide, extending from the base of the bluff to the high tide line. A shallow sand flat extends well offshore. The Virginia Institute of Marine Science (VIMS) characterized the current shoreline as a jurisdictional beach with moderate to high-energy conditions.

Mr. Badger further explained that there was approximately 800 linear feet of stone riprap north of the proposed project along the base of the bluff within the Latimers Bluff subdivision area. The entire reach was experiencing moderate to high erosion. There was not another shoreline hardening structure beyond the existing 800 feet of riprap for 1.5 miles north or south of Latimers Bluff.

Mr. Badger said that staff had received a letter and petition for review from Mr. and Mrs. Henry Lindeman, on behalf of 26 freeholders of property in Northampton County, on March 5, 2007. As such, the appeal was being considered timely under the provisions of Section 28.2-1411(B) of the Code of Virginia. In their letter, the Lindemans' indicated that they believed the Board did not consider the direct effects of accelerated erosion on their lot due to shoreline hardening on the adjacent properties. As such, they stated their rights had been prejudiced by the Board's decision.

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Mr. Badger stated that the Northampton County Wetlands Board held a public hearing on Mr. Woods' application on February 21, 2007. Mr. Steven Bunch, agent and contractor, represented Mr. Woods. During the public hearing, the Board considered the Virginia Institute of Marine Science (VIMS) report, Northampton County staff report and recommendation, and the testimony provided by Mr. Bunce. Mr. Richard Ayers and Mrs. Michele Lindeman spoke in opposition to the project and provided additional testimony.

Mr. Badger said that the Virginia Institute of Marine Science stated that the proposed riprap revetment would result in impacts to approximately 480 square feet of jurisdictional beach. They stated that the preferred approach to shoreline protection along this shoreline was to enhance the natural capacity of the sand flat to provide the desired erosion protection. Two elements were required for this approach, a sand flat and a sloped rock structure. The flat provided wave shoaling and the rock structures were necessary to provide wave diffraction and dissipation to sustain the sand flat. The rock structure could be a near-shore sill or offshore breakwaters.

Mr. Badger explained that the Wetland Board's staff agreed that the VIMS report might be the better approach, however, the design submitted by the applicant must also be considered a viable solution. Staff recommended the Board approve the applicant's design and that a water quality impact assessment be submitted and approved before issuance of a wetlands permit. Staff also stated in their "*Shoreline Erosion Report*" that the area was eroding at a rate of 3.2 to 5.3 feet per year. This rate was based on a 1987 survey.

Mr. Badger said that Michele Lindeman, owner of Lot C2 to the south, stated that she was under the assumption that the shoreline was to remain unaltered when they purchased their property. She stressed that erosion was still occurring even though many of these riprap revetments had been installed. Mr. Richard Ayers with Virginia Eastern Shore Keepers noted that revetments eliminate beach area and that the stairs do not appear to be of substantial construction and should be moved back to the toe of the revetment for safety reasons.

Mr. Badger said that Dot Field, Board Member, stated that most of the erosion appeared to be coming from the upland at the top of the bank and not at the toe. The soil type might be an issue with drainage undercutting the top of the bank. Ms. Field also stated that one area that was eroding was where the riprap was located on the adjacent property. It appeared that proper grading and sloping of the bank was needed plus some sort of vegetation for stabilization.

Mr. Badger explained that Robert Meyers, Board Member, agreed noting that the soil was sandy which was easily disturbed and hard to stop once erosion started. The best recommendation was an offshore breakwater system with minimum hardening of the toe. Ms. Field agreed that an offshore breakwater system would be the best possible solution for this area. Ms. Meyers added that such a project would address the needs of the property owners for the long term. Mr. Meyers added that some sort of plan should be

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implemented to direct storm-water to flow towards the upland area. This would also help prevent the stairway from being jeopardized at its base. It was his opinion that the stairs should be moved toward the toe of the slope as well.

Mr. Badger said that, Ms. Kellam, Wetlands Board Staff member stated that concerns of the Board could be addressed through the required Water Quality Impact Assessment (WQIA) with a mitigation plan included. The WQIA addresses impacts to the 100-foot resource protection buffer area due to any type of manipulation of this area during installation of wetlands projects, etc.

Mr. Badger stated that a motion was made by Board member, Bowdoin Lusk that the application be approved, with the condition that the County approved a WQIA. Ms. Drury asked if the motion would provide for grading and sloping of the bank. Mr. Lusk stated that the area was not within the Board's jurisdiction. The motion was seconded by Ms. Tamsi Ellis but failed by a 2 to 4 vote. It should be noted that only a 120-foot long by 4-foot wide area, falls within the Wetlands Board's jurisdiction. The majority of the project was landward of the Board's jurisdiction.

Mr. Badger said that Mr. Meyers made a motion that the Board change the project to a breakwater and allow the stairs to remain six feet above the surface. Mr. Lusk stated that it was not within the jurisdiction of the Board to either limit or change the applicant's application. He noted that the Board had approved other such projects in this area in the past and that the Board could not legally demand offshore breakwaters because such a project would need an engineer's input. With no second the motion failed.

Mr. Badger said that then a motion was made by Mr. Meyers and seconded by Ms. Ellis to approve the application as presented with two modifications that: (1) the height of the stairs be limited to 10 feet from mean low water level; and (2) a Water Quality Impact Assessment be approved by the County. The motion carried 4 to 1 with 1 abstention. It was noted that new revised drawings would be required prior to the release of the permit. The motion for the revetment was the same as recommended by County staff as a viable solution in their report to the Board. Although the Board had concerns the project might cause some additional erosion to the adjacent property, the Board felt that the erosion rate along the reach was severe and that the revetment was necessary to protect the applicant's property from further erosion. The Board noted that they had already approved riprap revetments adjacent to the project and did not feel they could require the applicant to install offshore breakwaters. They also questioned the reliability and cost of a small-scale breakwater system to protect one or two lots.

Mr. Badger continued with Item 7:

7. **ALISON E. MORRISON, #07-0197.** Request by 26 freeholders of property in Northampton County for Commission review of the February 21, 2007 decision of the Northampton County Wetlands and Dunes Board to approve the installation of

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120 linear feet of stone riprap extending onto the beach at her property situated along the Chesapeake Bay in the Latimers Bluff area of Northampton County.

Hank Badger, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Badger continued with Item 7.

Mr. Badger explained that the applicant proposed to install 120 linear feet of stone riprap on her lot situated along the Chesapeake Bay in the Latimers Bluff area of Northampton County. The project was approximately 1.2 miles north of the Chesapeake Bay Bridge and Tunnel's toll plaza. Ms. Morrison's home was currently situated approximately 130 feet from the eroding bluff, which is about 20 feet high at the site. The beach at the site was approximately 10 feet wide, extending from the base of the bluff to the high tide line. A shallow sand flat extended well offshore. The Virginia Institute of Marine Science (VIMS) the current shoreline as a jurisdictional beach with moderate to high-energy conditions.

Mr. Badger further explained that there was approximately 800 linear feet of stone riprap north of the proposed project along the base of the bluff within the Latimers Bluff subdivision area. The entire reach was experiencing moderate to high erosion. There was not another shoreline hardening structures beyond the existing 800 feet of riprap for 1.5 miles north or south of Latimers Bluff.

Mr. Badger said that staff received a letter and petition for review from Mr. and Mrs. Henry Lindeman, on behalf of 26 freeholders of property in Northampton County, on March 5, 2007. As such, the appeal was being considered timely under the provisions of Section 28.2-1411(B) of the Code of Virginia. In their letter, the Lindemans' indicated they believed that the Board did not consider the direct effects of accelerated erosion on their lot due to shoreline hardening on the adjacent properties. As such, they stated their rights had been prejudiced by the Board's decision.

Mr. Badger stated that the Northampton County Wetlands Board held a public hearing on Mrs. Morrison's application on February 21, 2007. Mr. Steven Bunce, agent and contractor, represented Mrs. Morrison. During the public hearing, the Board considered the Virginia Institute of Marine Science (VIMS) report, Northampton County staff report and recommendation, and the testimony provided by Mr. Bunce and Mrs. Morrison. Mr. Henry Lindeman and Mrs. Michele Lindeman spoke in opposition to the project and provided additional testimony.

Mr. Badger said that the Virginia Institute of Marine Science stated that the proposed riprap revetment would result in impacts to approximately 480 square feet of jurisdictional beach. They stated that the preferred approach to shoreline protection along this shoreline was to enhance the natural capacity of the sand flat to provide the desired erosion protection. Two elements were required for this approach, a sand flat and a sloped rock structure. The flat provided wave shoaling and the rock structures were necessary to

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provide wave diffraction and dissipation to sustain the sand flat. The rock structure can be a near-shore sill or offshore breakwaters.

Mr. Badger said that the Wetland Board's staff agreed that the VIMS report might be the better approach, however, the design submitted by the applicant must also be considered a viable solution. Staff recommended the Board approve the applicant's design and that a water quality impact assessment be submitted and approved before issuance of a wetlands permit. Staff also stated in their "*Shoreline Erosion Report*" that the area was eroding at a rate of 3.2 to 5.3 feet per year. This rate was based on a 1987 survey.

Mr. Badger said that Mrs. Lindeman, owner of Lot C2 to the south, had concerns that the existing riprap on the adjoining property was adversely affecting her property and that the riprap covered the beach area. She asked the Board not to approve projects, which were ineffective. Mr. Lindeman stated that the washout damage occurring to their property, which was located to the South, was very apparent.

Mr. Badger said that the Board felt that had the first riprap structure not been constructed along this reach the Board may have asked the property owners for a comprehensive erosion control plan for the entire reach. The first 600 linear feet of riprap, however, were installed landward of the Board's jurisdiction approximately six (6) years ago.

Mr. Badger said that Ms. Morrison stated that she did extensive research to save the bluff on her property. They had re-vegetated the upland, but this past year degradation had occurred by storm events. Their goal was to preserve and save the beach and the existing steps. They wanted to protect the environment and their property. She also stated that the groin had been eliminated from the project.

Mr. Badger explained that Robert Meyers, Wetlands Board member asked Ms. Morrison if she would consider an offshore breakwater. He also stated that offshore breakwaters work beautifully deflecting wave energy from the shoreline. Ms. Morrison replied that she was open to talking to other property owners in the subdivision to see if they would be willing to be part of such a project.

Mr. Badger further explained that Mr. Bunce stated that in his opinion the riprap in the area was holding the bank rather well although erosion had not been completely stopped at the top of the bank. The riprap revetment would help shore-up the bank if installed correctly. He noted that the property owners had lost 3 feet of land over the past month.

Mr. Badger said that Mrs. Lindeman then asked the Board to deny both the Woods and Morrison applications and they would join those two applicants in implementing an offshore breakwater.

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Mr. Badger stated that Nancy Drury, Wetlands Board member, stated that even if the proposed revetment was approved that did not preclude future breakwater projects from being implemented.

Mr. Badger said that Bowdoin Lusk, Wetlands Board member, stated that this application was basically the same as the Woods application, which was just approved.

Mr. Badger said that a motion was made by Ms. Ellis, seconded by Mr. Lusk to approve the application as presented with two modifications that: (1) the groin be eliminated as stated by the applicant; and (2) an approved county Water Quality Impact Assessment must be obtained. The motion carried 4 to 2. The motion for the revetment was the same as recommended by County staff, as a viable solution in their report to the Board.

Mr. Badger said that although the Board had concerns the project might cause some additional erosion to the adjacent property, the Board felt that the erosion rate along the reach was severe and that the revetment was necessary to protect the applicant's property from further erosion. The Board noted that they had already approved riprap revetments adjacent to the project and did not feel they could require the applicant to install offshore breakwaters. They also questioned the reliability and cost of a small-scale breakwater system to protect one or two lots.

Summary and Recommendation for Items 6 & 7

Mr. Badger stated that Section 28.2-1401(B) of the Code of Virginia, "Powers and Duties of the Commission" states that, "The Commission shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. Whenever practical, the Commission shall accommodate necessary economic development in a manner consistent with the protection of these features."

Mr. Badger said that based on staff's review of the record transmitted by the Board and staff's attendance at the hearing, staff believed that the decision to approve the riprap revetment for the subject application was supported by the evidence on the record considered as a whole.

Mr. Badger explained that in reaching its decision to approve the revetments, the Board weighed the potential for public and private detriments against the potential for private benefits, as required by 28.2-1403(10)(B)(1) of the Code of Virginia. Finding the onsite erosion warranted protection of the applicant's property.

Mr. Badger said staff agreed with VIMS that the preferred approach to shoreline protection along this shoreline is to enhance the natural capacity of the sand flat with an offshore rock breakwater system. Staff was reluctant, however, to recommend against the proposed stone riprap revetment given the on-site erosion and the fact that there was over 800 linear feet of stone riprap already in place, and that the subdivision as a whole was without a community

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association to address any offshore protection system options. At this time, an offshore rock breakwater system appeared impractical on an individual, lot-by-lot basis.

Accordingly, Mr. Badger said that staff recommended that the February 21, 2007, decisions of the Northampton County Wetlands Board be upheld. Staff would further encourage the applicant to work with the remaining property owners to develop a comprehensive erosion control plan, which would address the entire reach of shoreline. Hopefully, this would include a properly designed breakwater system for the area.

Commissioner Bowman asked if anyone was present to comment.

Michele Lindeman, protestant and adjoining property, was sworn in and her testimony was a part of the verbatim record. Mrs. Lindeman said that her husband Henry Lindeman was also present. She said they had some additional pictures and a statement to be read.

Commissioner Bowman explained that a motion would be necessary to open the record and that the pictures must be held for 33 days. **Associate Member Tankard moved to open the record. Associate Member Fox seconded the motion. The motion carried, 9-0. The Chair voted yes.**

Mrs. Lindeman said that the Wetlands Board had failed in its duties and in protecting the bluff. She said the bluff was meant to protect the bay, not to protect people. She referred to and read parts of Chapter 21-10.1. She further said that this project was an attempt to hide the real purpose of the project, under the guise of erosion protection.

Commissioner Bowman asked if the applicant was present to comment.

Rita Woods, applicant, was sworn in and her comments are a part of the verbatim record. Ms. Woods asked that the Commission support the staff recommendation and the decision of the Wetlands Board. She said the Wetlands Board was thorough and she had discussed all this with their staff on the site visit. She stated the stone was available and the contractor was ready to start. She further stated that all of the issues and concerns had been addressed and she wanted what the property to the North already had. She stated she also had some pictures she could show the existing riprap to the North and South of her property.

Commissioner Bowman asked if the other applicant wanted to comment.

Alison E. Morrison, application, was sworn in and her comments are a part of the verbatim record. Ms. Morrison explained that 6 feet of land had been lost since the Fall '06 and the runoff continues. She said the southern coastline was not protected and it was eroding. She said that she had attended the wetlands board hearing and heard the objections and that other options had been considered. She stated that other options were too expensive, not as effective, and not permanent with a potential for failure. She said she had approached

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others about a breakwater system and the Corps had agreed to make an analysis, which she was waiting to hear back on. She said she was willing to participate in a co-op to investigate this method. She said she had tried to make contact with the Linemans, but they did not respond. She said she was ready to start, as the shoreline was continuing to be impacted by runoff, and she was asking for a quick decision.

There were no questions of the Wetlands Board representative.

Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion.

Associate Member Fox asked VMRC Counsel if the Chesapeake Bay Act applied in this case. Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, responded that he was not aware of any decision or opinion on the Chesapeake Bay Act versus the Wetlands Statute. He said the General Assembly gives the Commission its guidelines in the statutes to decide if the Wetlands Boards met its responsibilities when there was an appeal of their decision. He said the Commission decides on whether the actions of the Wetlands Board were correct.

Associate Member Tankard referred to Section 28.2-1403 (10-B-1) of the Code of Virginia where the Wetlands Board derived their criteria for making decisions. He said from the Lindeman's pictures you could see the adverse impacts on their property, but the Wetlands Board did a good job and he agreed with the motion. He said he felt sad in having to make this choice.

The motion carried, 9-0. The Chair voted yes.

No applicable fees, Wetlands Appeal

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8. **MARINE HYDRAULICS INCORPORATED, #04-1984**, requests modification of their previously issued permit to include dredging, using either clamshell or hydraulic methods, 5,400 cubic yards of State-owned submerged lands within a 130-foot by 140-foot basin to create maximum depths of minus ten (-10) feet below mean low water adjacent to their property situated along the Elizabeth River in Norfolk. The project is protested by nearby property owners.

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

Ms. Gallup explained that the project was located on the eastern shoreline of the Elizabeth River immediately adjacent to the Lambert's Point Marine Terminal facility. This section of shoreline was best characterized as industrial. The Midtown Tunnel was located

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approximately 1,000 feet southeast of the project site. This modification request was for the additional dredging of 5,400 cubic yards of State-owned submerged lands within a 130-foot by 140-foot basin to create maximum depths of -10 feet below mean low water to moor Navy barges for temporary crew housing while a ship was undergoing repair.

Ms. Gallup further explained that on February 28, 2006, the Commission approved MHI's request to install a trestle to support a mobile crane, three mooring dolphins, dredge 491,000 cubic yards of State-owned submerged lands for the installation of a drydock and associated access channel to connect with the Federal Navigation Channel, construct a 193-foot bulkhead with 1,202 square feet of fill, and install a 26-foot long by 24-foot wide bridge to access the drydock at their property. Since the approval of that request, MHI decided to use a smaller drydock and modified their original request to reduce the dredge footprint to 113,600 cubic yards of State-owned submerged lands, install two dolphins, and construct the 193-foot bulkhead with associated fill as well as dredge this additional area of 5,400 cubic yards of State-owned submerged lands.

Ms. Gallup said that the City of Norfolk Wetlands Board approved the dredging of 700 square feet of non-vegetated wetlands in front of the bulkhead on November 8, 2006.

Ms. Gallup stated that via emails to VMRC staff, dated February 26, 2007, and March 16, 2007, several residents of the West Ghent neighborhood stated their objections to the project. They noted that they had objected to the previous dredging project and they were opposed to any increase in the dredging. It appeared that their main concern was the potential for the amount of truck and pedestrian traffic to increase in the area, as a result of the additional dredging. Given the industrial nature of the shoreline and since the objections to the project seem to focus primarily on upland issues outside the jurisdiction of the Commission, staff recommended approval of the project, as proposed with the following conditions. Staff recommended that a pre-dredging conference be required and that the applicant be required to submit a post-dredging bathymetric survey of the dredged area within 30 days of completion of the dredging so staff could assess permit compliance.

Ms. Gallup said that staff also recommended the assessment of a royalty in the amount of \$2,430 for the dredging of 5,400 cubic yards of additional material at a rate of \$0.45 per cubic yard.

Tom Langley, Langley and McDonald Engineering, was sworn in and his comments are a part of the verbatim record. Mr. Langley said there was 700 sq. feet of wetlands involved and that wetlands mitigation had been done, but was not successful. He said it was moved to another location on the Eastern Branch and was successful. He stated that staff had presented the issues well. He said the applicant was present.

Commissioner Bowman asked if there were any questions and there were none. No one in opposition was present.

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Associate Member Holland moved to accept the staff recommendations. Associate Member McLeskey seconded the motion. Associate Member Robins noted that all the concerns expressed in the protest letters were highland issues and not within the VMRC’s jurisdiction. He stated he supported the motion. The motion carried, 9-0. The Chair voted yes.

Royalty Fees (5,400 cu. yds. @ \$0.45/cu. yd.).....	\$2,430.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,530.00

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- 9. **VALIANT VENTURES, #06-1022**, requests authorization to construct a 150-foot long by 6-foot wide community pier with a 6-foot by 128-foot T-head platform with five 32-foot long by 4-foot wide finger piers with 10 boat slips with lifts for a future condominium association adjacent to property situated along the Eastern Branch of the Elizabeth River in Norfolk.

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

Ms. Gallup explained that the proposed community pier was designed to serve a new nine lot residential subdivision to be known as Elizabeth River Pointe at the end of Shorewood Lane Norfolk. This property was located on the Eastern Branch of the Elizabeth River in Norfolk to the west of the Military Highway (U.S. Highway 13) Bridge. This section of the Elizabeth River was primarily residential.

Ms. Gallup said that according to the application drawings, only lot numbers 5, 6, and 7 of the nine lots were riparian properties. If the community pier was approved as proposed, the applicant had agreed to sever the riparian rights of the three riparian waterfront properties. The community pier would be the only structure providing water access to property owners within the new subdivision.

Ms. Gallup stated that the Virginia Department of Health Division of Wastewater Engineering approved an alternate pump-out agreement between Elizabeth River Pointe and Tidewater Yacht on February 21, 2007. The Department of Environmental Quality commented that the water quality impacts of the proposed project should be minimal and therefore a Virginia Water Protection permit was not required. The Coast Guard commented that it did not have objections to the proposed project.

Ms. Gallup said that the applicant was advised that the number of slips that staff could support for the community was seven based on the number of riparian waterfront

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properties (two per waterfront lot and one community slip). The applicant insisted that he needed at least nine slips and would prefer ten since there were nine lots in the subdivision.

Ms. Gallup stated that staff generally supported a community pier approach to provide a central point of water access for communities with riparian properties. One community pier was typically recommended over numerous individual private piers given the cumulative environmental and aesthetic impacts involved. In this instance, staff recommended approval of the community pier; however, staff could only support a maximum number of seven boat slips given that there are only three riparian waterfront properties in the subdivision. That would also be conditioned on deed restrictions, which prohibited the construction of individual private piers.

Ms. Gallup said that should the Commission decide to approve the community pier in some form, staff recommended assessing a royalty based on the total square footage of the bold outline footprint encompassing the pier, slips, and any other approved appurtenances, at a rate of \$1.50 per square foot.

There were no questions of staff. Commissioner Bowman asked if the applicant wanted to comment.

Robert Chianelli, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Chianelli provided some large size photos and powerpoint presentation depicting the location and lots. He said he was requesting the Commission consider approval of 9 slips like the community pier next door. He said the lots sell when there was access to the water and he would actually like a 10th for a guest slip, if that was possible.

Ms. Gallup said that in the case of the next-door community pier, in 2006 an application for permit was heard by the Commission and because there were only 4 riparian properties the Commission required the removal of 2 of the 11 slips, allowing only 9 slips to remain.

Commissioner Bowman explained that only a riparian lot owner was allowed to wharf out and inland lot owners did not have that right.

Commissioner Bowman asked if anyone in opposition was present who wished to address the Commission.

Ellis W. James, Norfolk resident and Sierra Club Member, was sworn in and his comments are a part of the verbatim record. Mr. James stated that this was a classic case where waterfront is being lost and impacting the water quality. He said he hoped that VMRC would at the least accept the staff recommendation.

Associate Member Robins stated that the staff recommendation and policy was reasonable and consistent with other projects and it was good to restrict deeds and allow a community pier. He said he moved to accept the staff recommendation.

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Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, stated that in the staff recommendation the deed restriction only applied if the project was approved, as requested. Bob Grabb, Chief, Habitat Management stated that staff did not support the community pier if 5, 6, and 7 were allowed.

Associate Member Schick made a substitute motion and moved to deny the proposal as the applicant would not agree to the 7 slips and a deed restriction. Mr. Josephson asked if the applicant agreed to the 7 slips and the severing of riparian rights. Mr. Chianelli said it would be a hardship since there were 9 homes and he did not know how it would be decided on who gets one and who doesn't.

Associate Member Robins stated that what was done next door was consistent with policy and he read the staff recommendation into the record. He said it should only be approved with restrictions. Associate Member Schick stated that the applicant did not agree so that was why he had offered the substitute motion to deny. Mr. Chianelli said he thought it would be more desirable to have the community pier and still wanted 9 slips, as was allowed next door. He said he did not see how 2 more slips were a problem or any more of an impact on the waterway.

Associate Member Holland seconded the substitute motion. Associate Member Robins stated he was against the substitute motion because the community pier was a good approach and the interior lot owners do not have riparian rights. Associate Member Tankard stated he was against the substitute motion. The substitute motion failed, 2-7. The Chair voted no. Associate Members Holland and Schick both voted yes.

Commissioner Bowman asked for a second for the first motion. Associate Member Robins repeated the original motion was for approval of 7 slips and a condition that there be a deed restriction severing any riparian rights. Associate Member Tankard seconded the motion. The motion carried, 7-2. Associate Members Holland and Schick both voted no.

Royalty Fees (to be determined upon receipt of revised drawings)
Permit Fee.....\$100.00

- 10. **MARGARET BLEVINS, #07-0139**, requests authorization to install 205 linear feet of timber bulkhead flanked with riprap protection at the property lines, and to install three (3) low-profile, timber groins extending 48 feet channelward of mean high water, adjacent to her property situated along Portobago Bay in Caroline County. Both Wetlands and Subaqueous permits are required.

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

Mr. McGinnis explained that the project is located along Portobago Bay, just off the Rappahannock River in Caroline County, near its border with Essex County.

Mr. McGinnis stated that there was a gently sloping sand beach as much as 30 feet in width and a steep bank of up to 25 feet in height characterize the applicant's property. Several nearby property owners had previously chosen to install timber bulkheads similar to the one requested by the applicant. Based on staff's assessment, however, these existing bulkheads were aligned landward of the mean high water line and did not encroach upon the Commission's tidal wetland jurisdiction. In addition, there were several groins in the area.

Mr. McGinnis stated that the applicant was proposing to install 205 linear feet of timber bulkhead and three (3) low-profile, timber groins extending a maximum of 48 feet channelward of mean high water. In addition to the subaqueous impacts of the proposed groins, the groins and a small portion of the proposed bulkhead would impact non-vegetated tidal wetlands under the Commission's jurisdiction. The applicant had also requested authorization for a 6-foot wide, private, non-commercial pier extending 74 feet channelward of mean low water, with a boatlift and two (2) freestanding mooring piles. Commission staff had determined that the pier portion of the proposed project qualifies for statutory authorization, as provided in Section 28.2-1203 (A)(5) of the Code of Virginia.

Mr. McGinnis noted that since Caroline County had not yet adopted the model Wetlands Zoning Ordinance, the Marine Resources Commission was responsible for administering the provisions of Chapter 13 (Wetlands) of Title 28.2 of the Code of Virginia. As a result, the Commission would be acting as the Wetlands Board for those portions of the project involving tidal wetlands, as well as the encroachments over State-owned submerged land.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Permit Application Report, dated March 20, 2007, stated that if an erosion control structure was permitted that the use of a riprap revetment would be preferable because it provided habitat and dissipated wave energy. VIMS noted that a groin on an adjacent, upstream property had successfully captured sand but was concerned over the potential impact to the downstream property as a result of the installation of the proposed groin. They therefore recommend that if the groins were permitted that they be artificially nourished with appropriate sand to lessen adverse impacts to adjacent shorelines. Their report estimated that the proposed bulkhead would result in the loss of 75 square feet of non-vegetated, sand/mud mixed flat tidal wetlands, and that the proposed groins would result in the loss of 18 square feet of non-vegetated, sand/mud mixed flat tidal wetlands and 126 square feet of subaqueous bottom.

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Mr. McGinnis stated that the Department of Game and Inland Fisheries (DGIF), in an e-mail dated March 6, 2007, stated that this project was within a reach of the Rappahannock River, which had been designated as a Bald Eagle Concentration Area. It was also and is in an area designated as a Confirmed Anadromous Fish Use Area. Therefore, they recommended time-of-year restrictions, which would preclude any construction activities, between May 1 through September 30 and November 1 through February 28 to minimize adverse impacts upon eagles, and February 15 through June 30 to minimize potential adverse impacts upon anadromous fish. However, based upon the scope of the project staff did not feel that it was necessary to include these time-of-year restrictions, as a condition of the permit. DGIF further recommended that an alternative be considered to the bulkhead and groin design, such as a "living shoreline" treatment, as well as the implementation of erosion and sediment control measures, including the use of turbidity curtains.

Mr. McGinnis said that the Department of Conservation and Recreation (DCR), in a memorandum dated March 20, 2007, stated that a bald eagle nest had been documented in the area, but that the proposed project would not affect any documented state-listed plants or insects, and that there were no State Natural Area Preserves in the project vicinity. No other state agencies provided comments, and no individuals had voiced opposition to the proposal.

Mr. McGinnis explained that although Mrs. Blevins project drawings indicated that her proposed bulkhead would be aligned landward of mean high water, the bulkhead's alignment, as staked in the field, indicated that approximately 30 linear feet of the proposed 205-foot bulkhead would extend as much as 5 feet channelward of mean high water. Unfortunately during a recent site visit by staff and a representative of the Virginia Institute of Marine Science it was determined that the project drawings prepared by Mrs. Blevins' agent did not accurately reflect the current on-site shoreline conditions, since the staked alignment indicated that the bulkhead was proposed to be installed around a recent slump in the bank, while the drawings indicated that the proposed bulkhead would be aligned in a fairly linear fashion parallel to the shoreline.

In this case, Mr. McGinnis stated that staff would prefer the use of a riprap revetment rather than a vertical bulkhead, as was recommended by VIMS. However, if the applicant was to pull the alignment of the bulkhead landward approximately 5 feet in the immediate area of the previously mentioned bank slump, staff believed that the bulkhead would then be aligned landward of the Commission's jurisdiction and would therefore not require a permit.

Mr. McGinnis said that staff noted during its site visits that groins on neighboring properties appeared to be working well and had increased the width of the beach in those areas. It appeared that Mrs. Blevins' proposed groins had been properly designed and may enhance her shoreline protection project. Staff was also aware that Mrs. Blevins' agent, Ms. Mary Paphides, was in the process of preparing an application for a similarly designed

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project for the downstream property, which should lessen any adverse impacts resulting from Mrs. Blevins' proposed groins.

Accordingly, Mr. McGinnis stated that since the impacts resulting from the use of tidal wetlands and State-owned submerged land could now be avoided or should be minimal, and after considering all of the factors contained in Sections 28.2-1205 (A) and 28.2-1302 of the Code of Virginia, staff recommended that the three (3) timber groins be approved as proposed, but that the proposed bulkhead be denied. However, staff would recommend the Commission consider allowing the applicant to install an appropriately designed riprap revetment constructed against the bank. In the alternative, the applicant might simply wish to realign the proposed bulkhead landward of mean high water and outside of the Commission's jurisdiction.

Mr. McGinnis said that staff further recommended that the Commission require the applicant to submit revised project drawings, which accurately depicted the current on-site conditions and the project as it was authorized. Staff would typically recommend a royalty for the encroachment of timber groins over State-owned subaqueous land at a rate of \$0.50 per square foot. However, since the proposed groins had been designed to meet the requirements of the Commission's General Permit VGP #2 for groins, and since royalties were not assessed for groins permitted under this general permit, staff did not recommend the assessment of royalties for the encroachment of the three proposed groins.

Commissioner Bowman asked if there were any questions for staff.

Associate Member Schick asked if the staff recommended artificially nourishing these groins. Mr. McGinnis responded no, it was not necessary this time since this qualified for a General Permit. He said if there was a Wetlands Board, they would have heard this issue and only a General Permit would have been required.

Mary Paphides, agent for the applicant, was sworn in and her comments are a part of the verbatim record. Ms. Paphides said that she did not have any comments to add.

Commissioner Bowman asked if they agreed with the staff recommendation. Ms. Paphides responded yes. She said they had notified the property owners and they did not object. Associate Member Schick asked if rock would be used. Ms. Paphides responded, no, as they want all the bulkheads to be the same.

Commissioner Bowman asked if anyone in opposition was present. There were none.

Associate Member Robins moved to approve the project with the bulkhead to be moved landward of the MHW and revised drawings to be submitted and approved by staff.

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Associate Member Fox asked if the motion included the groins. Associate Member Robins said yes, it was approving the groins. Mr. Grabb said that the bulkhead being moved landward of MHW meant the Commission did not need to take any action and only needed to take action on the wetlands portion, which involved the approval of the groins with or without nourishment.

Associate Member Robins moved to approved the groins and require revised drawings to be approved by the staff. Associate Member Tankard seconded. Associate Member Schick asked if nourishment could be required, as suggested by VIMS. Associate Member Robins agreed to the amendment. The motion carried, 9-0. The Chair voted yes.

Wetlands Permit Fee.....	\$10.00
Subaqueous Permit Fee.....	\$50.00
Total Fees.....	\$60.00

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11. SHAH HEMANG AND APURVA PATEL, #06-0263, request after-the-fact approval of a previously constructed, and unauthorized expansion of a T-head pier deck from 10-foot by 20-foot to 20-foot by 21.5-foot at the applicants properties situated along the Nansemond River at 409 and 411 Blue Heron Point in the City of Suffolk.

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 was located along the Nansemond River in the Sleepy Hole area of the City of Suffolk. The pier emanated from a shared property line of the Hemang and Patel properties, and, as proposed, would be used jointly by the two property owners.

Mr. Stagg stated that on February 6, 2006, staff received two Joint Permit Applications, one from Mr. Hemang and one from Mr. Patel seeking authorization to construct a private pier extending from their joint property line. Mr. Patel’s application also requested authorization to install a bulkhead landward of VMRC jurisdiction. Staff informed the agent (Flint Construction) and applicants that since the pier was proposed to extend along the joint property line and was being requested as a joint use pier, a revised application was required with both parties, as co-applicants. Staff received a revised application on March 9, 2006, with both parties listed as co-applicants. The application was subjected to VMRC’s normal public interest review and a permit was issued on June 1, 2006.

Mr. Stagg said that during a routine compliance assessment on August 30, 2006, by our Program Support Technician, it was discovered that the T-head portion of the project

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exceeded that authorized by the permit. Habitat Management staff confirmed the unauthorized structure during a site visit on November 11, 2006. Mr. Stagg stated that as currently constructed, the T-head dimensions were 20 feet by 21.5 feet. The applicants were authorized to construct a 10-foot by 20-foot T-head. The applicant and agent were notified of the unauthorized structure, by certified mail, through a Notice to Comply dated November 27, 2006. The agent/contractor, Mr. Flint of Flint Construction, submitted a letter dated December 11, 2006, along with a revised Joint Permit Application, requesting after-the-fact authorization for the pier, as constructed. The agent/contractor indicated that the T-head was expanded after it became apparent that “the platform was not big enough for the property owners to enjoy or even use their boatlifts.” This letter provided no explanation that indicated why the contractor did not seek a modification of the permit before completing the additional work, however, in a letter dated December 28, 2006, the contractor indicated that although he was aware of the need to submit a revision, he forgot to submit the necessary paperwork for the permit modification.

Mr. Stagg said that if the pier and T-head, as currently constructed, had been proposed as a single family private pier, it would have qualified for the permit exemption provided within the Code of Virginia. As such, staff did not believe the current pier T-head to be excessive in size in light of its joint use by two families with boatlifts along each side. Additionally, staff was not certain the property owners fully understood the permit process and were relying on the agent/contractor to obtain the necessary permits. However, as noted in his December 28, 2006, letter, the agent/contractor acknowledged that the modified T-head did require the submittal of additional information to determine if a permit modification was required. Therefore, staff recommended that the Commission approve the after-the-fact request but that the Commission consider acceptance of an appropriate civil charge for the agent/contractor in this case, based on minimal environmental impact, and a moderate to major degree of non-compliance, in-lieu of the need for further enforcement action.

Chris Flint, Flint Construction, was sworn in and his comments are a part of the verbatim record. Mr. Flint stated that this was an oversight on his part, that a request for the permit modification was not obtained. Commissioner Bowman asked how long had he been in the business. Mr. Flint stated ten years, but that he had never been before the Commission, as he always followed the rules.

Commissioner Bowman asked for any questions or a motion.

Associate Member Schick moved to accept the staff recommendation with a civil charge being assessed against the agent/contractor for \$1,200.00. Associate Member Robins seconded the motion. The motion carried, 8-0-1. Associate Member McConaugha abstained, as he was absent during the presentation.

Civil Charge (agent/contractor).....\$1,200.00

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12. PUBLIC COMMENTS:

Tommy Eskridge, Tangier-Conch Fisherman, was present and his comments are a part of the verbatim record. Mr. Eskridge explained that they were requesting that they be allowed to have 2 Inshore Conch Licenses with 2 Commercial Fishermen Licenses on board a vessel, thereby, doubling their catch limit. He said they were making this request because fuel cost has increased so much and this year they had only worked 50 days in a 4-month time period.

Rob O'Reilly, Deputy Chief, Fisheries Management, said that a similar situation had occurred in the past. It would be in keeping with what has been done in the past, it would be an efficiency action and it might be a hardship for some of these watermen, but it would be better to hold a public hearing in April to give staff time to put together a good evaluation.

Associate Member Bowden stated it would be good to streamline the fishery, which would help with the expenses. He asked if this would mean an increase in potential effort. Mr. O'Reilly responded that there were 81 licensees, but he was not sure how many were active.

Associate Member Bowden said that only instate fishermen would be affected and emergency action would not be necessary as it would be beneficial to take actions that could be permanent. He moved to approve a public hearing being held on this issue and any other issue determined by staff to be necessary at the April meeting. Associate Member Holland seconded the motion. The motion carried, 7-0-2. Both Associate Members Robins and Schick were not present.

Hank Jones, Clam Aquaculture Operator-Eastern Shore, was present and his comments are a part of the verbatim record. Mr. Jones explained that there were problems arising from the new aquaculture license requirement and reporting. He said a permit was required for each vessel if harvesting and when working on separate leases. He said this had also caused confusion, as to who is required to report. He said they do not mind the license, but wanted to make sure the reporting was getting done and not duplicated.

Commissioner Bowman stated that from a law enforcement standpoint, if each has a license then each licensee could be held accountable for his actions. Ms. Iverson was asked to address this further.

Stephanie Iverson stated that where there was one license per person, then either the license holder or one agent could utilize that license and if there were multiple agents then it was necessary to have multiple licenses, as it was based on each vessel.

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Jim Wesson said that there was a need to use commonsense and the owner of the clams should report. He said for a roving harvester working for someone else or a number of others the shellfish owner should report. But he said if this roving harvester catches his own shellfish, then he would report his own.

Associate Member Holland asked if a clam operator has a number of agents could they call him to report their harvest, then he would be responsible for reporting.

Dr. Wesson said that multiple agents each have to have a license and with them while they harvest, as you cannot use copies of one license. He explained that if a licensee or harvester utilizing this one license should be involved in a harvesting violation, then the individual/company with the license would lose this license and everyone would not be able to work.

After much discussion and at the suggestion of Commissioner Bowman, the Commission decided to have the Aquaculture Industry members meet with staff to clarify the new Aquaculture License and Reporting Requirements.

No further action was taken.

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- 13. PUBLIC HEARING:** Amendments to Regulations 4 VAC 20-670-10 et seq. and 4 VAC 20-430-10 et seq., concerning the use of anchored gill nets, licensed for recreational purposes and set in areas above the saltwater-freshwater recreational license boundary lines on the James, York and Rappahannock Rivers.

Jack Travelstead, Chief Deputy Commissioner, gave the presentation. Mr. Travelstead provided modified copies of the two regulations.

Mr. Travelstead explained that last Fall the Commission directed staff to advertise the proposed amendments to the regulations but to delay the public hearing until the 2007 Session of the General Assembly was completed. The delay was requested because of the possibility that the Assembly may review jurisdictional issues pertaining to the harvest of freshwater fish by commercial gear (gill nets). No action was taken on these issues during the 2007 General Assembly Session.

Mr. Travelstead said that in 2006, the Department of Game and Inland Fisheries (DGIF) received several complaints about the misuse and abandonment of recreational gill nets in uncertain upriver areas. The recreational fishermen typically use these nets to take gizzard shad, which were use as bait in their rod-and-reel catfish fishery. The catfish fishery in the upper portions of the major tidal rivers was a popular and growing fishery.

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Mr. Travelstead said that, in the course of its review of this situation, DGIF noted that its then current regulation (4 VAC 15-360-10) prohibited the recreational harvest of gizzard shad and white perch by gill net. Recognizing the importance of the recreational catfish fishery and its need for gizzard shad for bait, the DGIF had since amended its regulations, to allow for the harvest of gizzard shad by recreational gill net. The DGIF, however, continued to express concerns for the improper use of recreational gill nets and noted that only VMRC can regulate their use, as the licensing authority is tied to this agency, not DGIF. DGIF's concern, and VMRC's, mostly centered on the fact that the upriver areas offer limited fishing space and are known for concentrated spawning runs of important fish like striped bass, shad, and river herring.

Mr. Travelstead said that Tom Powers of the VMRC Finfish Management Advisory Committee also participated in the discussions and was instrumental in the group's achieving a consensus on:

As a result of the consensus, the following measures were advertised as proposed regulatory actions.

- 1) Reduce recreational anchored gill nets to a maximum length of 110 feet.
- 2) Limit the soak time of these nets to one hour per setting.
- 3) Require attendance of the net, within 100 yards.
- 4) Require confiscation by MPOs of any unattended net.
- 5) Allow an exemption to the current marking requirements by requiring the nets to be marked with blaze orange 3 ½ inch diameter floats at each end.
- 6) Apply all of these measures to any recreational anchored gill net set in the tidal rivers above the saltwater – freshwater license lines.

Mr. Travelstead explained that staff was recommending approval of the amended regulations.

After some discussion and questions, Commissioner Bowman asked if anyone wished to address these issues.

Tom Powers, representing himself was present and his comments are a part of the verbatim record. Mr. Powers explained that in order to address their concerns the DGIF made their changes in order to agree with the VMRC regulations.

After further discussion, Associate Member Robins moved to approve the Regulations 4 VAC 20-430-10, Et seq. and 4 VAC 20-670-10, Et seq., as amended.

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Associate Member Tankard seconded the motion. The motion carried 9-0. The Chair voted yes.

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- 14. PUBLIC HEARING:** Planned construction of a new artificial recreational fishing reef (Bluefish Rock), to be centered 3.2 nautical miles E.S.E. of the Grand View section of Hampton.

Mike Meier, Head, Artificial Reef Program, gave the presentation and his comments are a part of the verbatim record.

Mr. Meier explained that at the February 27, 2006 Commission meeting, the Artificial Reef Program requested time on your March agenda to consider approval of development of the referenced reef site. The request was granted with the understanding that both commercial and recreational interests would be contacted in order to gain their input on establishment of the site. Invitations to a meeting to be held on March 14th were mailed out. The meeting was held as scheduled at VMRC. In attendance were C. D. Hancock, Susan Gaston and Kelly Place, representing the commercial interests and W.E. Bradley, K.E. Neill, Frank Kearney, Bob Allen, James Cross, David Agee and Tom Powers representing the recreational sector. Commercial input was also received from Pete Freeman, who did not attend the meeting. Basically, the recreational fishermen were pleased with the site as currently proposed; however, the commercial fishermen strongly prefer that the site be moved either east or southeast. Mr. Freeman suggested the site be moved to either the north or south, where there is "rocky" bottom. The commercial people in attendance were not strongly supportive of moving to either location. The recreational representatives had no problem with moving the reef approximately 500 yards to the east or southeast, which may incur additional problems with tugboat traffic. An agreement was reached whereby the Artificial Reef Program would be responsible for seeing that the suggested areas, which are considerable in size, were surveyed and, further that a second meeting with commercial and recreational interests be in attendance would be held in May, with the findings of the second meeting presented at the May Commission meeting.

Mr. Meier said that as of today's meeting over 150 recommendations to proceed with the reef as proposed had been received from recreational fishermen.

Mr. Meier explained that staff recommended the investigation of the alternate locations with a second meeting of the two groups involved to be held in May. The results of this meeting will be presented at the May Commission meeting.

No one from the public was present for this hearing.

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Associate Member Robins moved to approve staff's request for a continuance until the May meeting. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 15. PUBLIC HEARING:** Amend Regulation 4 VAC 20-450-10 et seq. to establish the 2007 commercial bluefish quota, as 1,018,660 pounds.

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

Mr. Grist explained that the VMRC Regulation 4 VAC 20-450-10 et seq., "Pertaining to the Taking of Bluefish," established the 2006 commercial quota as 1,124,334 pounds.

Mr. Grist said that the National Marine Fisheries Service announced, in a January 30, 2007 letter, the coast-wide quota for bluefish for the ASMFC Bluefish Management Board. The coast-wide commercial quota equals 8,574,939 pounds and the recreational harvest limit equals 18,823,384 pounds.

Mr. Grist said that the staff recommended the adoption of the amendment to Regulation 4 VAC 20-450-10 et seq. that established the 2007 Virginia commercial bluefish quota of 1,018,660 pounds.

There were no public comments.

Associate Member Robins moved to approve the staff recommendation changing the quota to 1,018,660 pounds. Associate Member Holland seconded the motion. The motion carried, 9-0.

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- 16. PUBLIC HEARING:** Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass." Consideration of alternate methods for allocation of the 2007 commercial harvest quota between directed and by-catch fisheries.

Joe Cimino, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Cimino explained that last month the Commission adopted amendments that established the 2007 commercial black sea bass harvest quotas for the Directed and Bycatch fisheries. The Commission also advertised for a public hearing, to entertain proposals for redistribution of the 2007 quotas, in a way other than what has been established by the most recent amendment.

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Mr. Cimino said that staff met with representatives of the sea bass industry on February 21, 2007 to discuss an alternate quota allocation scheme that is intended to address the hardship to directed fishery quota holders, and the utilization of Virginia's entire quota. As a result, staff recommended re-advertising for a March public hearing to address possible alternate quota allocations.

Mr. Cimino stated that the proposal would allocate 40,000 pounds as the Bycatch fishery quota, currently set at 45,830 and allocate 10,000 pounds to the Hardship set-aside, currently at 17,000. The plan would distribute 84% of the total quota to the Directed fishery based on individual's shares. This is exactly how the system has operated since its inception. The remainder of the quota would then be added to the Directed fishery quota, based on a three year average of an individual shareholder's landings, divided by the three year average landings for the entire Directed fishery.

Mr. Cimino said that staff had received eight calls endorsing the plan. An additional 3 directed fishery permit holders were in support of the proposed quota, but wanted it to be done in a more proportionate manner.

Mr. Cimino explained that staff recommended the adoption of the amendments to Regulation 4VAC 20-950-10, Et. seq., Pertaining to Black Sea Bass", to include the 2007 quotas for the directed and by-catch fisheries, as well as the hardship quota.

The specific amendments to the Regulation 4VAC 20-950-10 were:

- 1) The 2007 Commercial Black Sea Bass Directed Fishery quota to be changed from 412,470 to 425,300 pounds.
- 2) The 2007 Commercial Black Sea Bass By-catch Fishery quota to be changed from 45,830 to 40,000 pounds.
- 3) The 2007 Set-Aside (Hardship Exceptions) to be changed from 17,000 to 10,000 pounds.
- 4) The 2007 individual's directed fishery quota shall be equal to an individual's current share of quota multiplied by 385,889 pounds. Further, an additional portion of 39,411 pounds shall be distributed to each directed fishery permit holder based on each permit holder's average percentage of the 2004-2006 harvests of black sea bass.

Commissioner Bowman opened the public hearing.

Mark Hodges, Sea Bass Fisherman, was present and his comments are a part of the verbatim record. Mr. Hodges stated he was in favor of the staff's recommendation. He said he had met with staff and had no comments to add to staff's.

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Jimmy Ruhle, Fisherman and NC Representative to the MAFMC, was present and his comments are a part of the verbatim record. Mr. Ruhle said he felt this proposal was in response to actions taken by the Mid-Atlantic Council and National Marine Fisheries Service to reduce the black sea bass quota for 2007. Mr. Ruhle stated as a member of the Mid-Atlantic Council he supported reducing the TAL to 6.5 million pounds, because he believes the stock does have some problems. He noted that the NMFS went with a 5 million pound TAL and this was a 3 million pound reduction from 2006. Mr. Ruhle explained that the black sea bass bycatch quota in VA has not been harvested in recent years because the abundance of flounder and dogfish have somewhat changed how the trawlers need to tow. He also expressed concern with the data that is used for sea bass stock evaluation, and that it may be worse in upcoming years due to the changing of research vessels. This may result in even lower quotas in future years. Although he can support the proposal by the directed permit holders he does not want this to set precedence, which would continually take quota from the bycatch fishery and supplement the directed quota.

Commissioner Bowman closed the public hearing.

After a little more discussion, Associate Member Robins moved to accept the staff recommendations. Associate Member Holland seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 17. PUBLIC HEARING:** Proposed adoption of February 27, 2007 emergency amendments to Regulations 4 VAC 20-270-10 et seq. and 4 VAC 20-300-10 et seq., as permanent parts of these regulations. Amendments to Regulation 4 VAC 20-270-10 extend the lawful crab pot and peeler pot season from March 17 through November 30, establish a daily time limit of 6 a.m. to 2 p.m. for the March 17 through March 31 period, and prohibit the placing, setting or fishing of any fish pot in tidal waters from March 12 through March 16, except in defined upriver areas. The amendment to Regulation 4 VAC 20-300-10 et seq. extends the 51-bushel (17-barrel) possession limit from March 17 through May 31 for vessels taking or catching crabs by crab pot.

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record. Mr. O'Reilly provided the Commission with a handout, a 1994 – 2002 Crab Management Summary, to provide a history of management measures adopted by the Commission, as some on the board would not know what had transpired over the years. He continued by reviewing the portions of the draft regulations, where the changes were reflected.

Mr. O'Reilly noted that on page 3 of Regulation 4VAC 20-270-10, the periods for which any pots cannot be placed or set in the waters was changed because the crab pot season

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was allowed to open on March 17th, by the emergency action. He said these restrictions were necessary, as there were individuals who would take advantage of having a fish pot in the waters to catch crabs the first day of the crab pot season, and this way the pots had to be removed so there was no advantage. He said on page two of the same draft regulation it showed a change in the time-of-day restriction was made to be in agreement with the changed season starting date, and it was changed to March 17 through April 30 and September 1 through November 30. He went on to explain that in 4 VAC 20-300-10, et. seq., "Pertaining to Crab Catch Limits," the date had been changed from April 1 to March 17, to reflect the new season starting date and allowing the catch limit of 51 bushels during that time period from March 17 to April 1. He said in the past (1987), when this regulation was first enacted, the starting date was March 15th through May 31st.

Mr. O'Reilly said there were a lot of comments made at the Crab Management Advisory Committee meeting, but in the end they all agreed with the March 17th date. He said he wanted to pass along a couple of concerns that had been expressed to him. He said that the crab dredgers were concerned with the pots being in the dredge location, especially in the Ocean View area, there may be a user conflict. He said the MD-DNR staff had expressed some concerns that regulations were being changed, but staff replied and here and now cannot be related to what was done in 1995, and the Bay-wide agreement to keep similar management measures was made in 2000. He said Maryland-DNR staff were also concerned that the crab dredge fishery below Coles Pt. would catch the female crabs because Maryland's analysis indicated to them that the dredge fishery was exploiting the female crabs.

Mr. O'Reilly explained that staff was asking for approval of the emergency action taken at last month's meeting, to make it permanent.

Associate Member Robins said that there had been discussion about reviewing the 51-bushel limit, once the data resulting from this change in season was available and staff has indicated that these regulatory actions would be made permanent. Mr. O'Reilly explained that what staff meant was that this would only be permanent until the next time it was changed. He said this only means the draft regulation would become a final version when the Commission approved the emergency action.

There were no public comments.

Associate Member Bowden moved to accept the staff recommendations. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.

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- 18. PUBLIC HEARING:** Proposed amendment to Regulation 4 VAC 20-370-10 et seq., to repeal the prohibition on harvest and possession of dark (any shade of brown through black coloration) sponge crabs and establish an additional blue crab

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sanctuary in an area that extends out to the 3-Mile Limit Line, from off the mouth of the Chesapeake Bay, thence southward along the Virginia Beach coast to the Virginia-North Carolina Line (Regulation 4 VAC 20-752-10 et seq.).

Rob O'Reilly, Deputy Chief, Fisheries Management, gave the presentation and his comments are a part of the verbatim record.

Mr. O'Reilly explained that Dr. Lipcius of VIMS, who was conducting a study on the sponge crabs, was present at the hearing. He said that Dr. Lipcius was requesting that the Commission hold off on making a decision until the April meeting. He said that staff agreed with that request but suggested continuing with this public hearing to hear any comments.

Mr. O'Reilly reviewed his powerpoint presentation for the Commission. He said that the study was indicating the current regulation prohibiting the harvesting of the sponge crab was not working. He explained that the catching and throwing back of these crabs was impacting the survival of the sponge crab and in some cases the survival of the mother crab. He said this suggests that the regulation is not giving the results as intended by the direct conservation of the spawning female crabs and their offspring.

Mr. O'Reilly explained that the next issue was the expansion of the sanctuary area. He said this would include the Oceanside area offshore from Virginia Beach to the North Carolina line. He said this proposed area was approximately 94.2 square miles in size. He referred to the map made by staff to show the area of the entire sanctuary that exists and to explain the history of its growth. He said in the summary it showed that in 1994 the original 1942 sanctuary was expanded from 75 square miles to 146 square miles, in 2000 there was an additional area of 435 square miles added and in 2002 it was expanded another 272 square miles to where it is now, 927 square miles. He said that in this Virginia Beach area there had been only a couple of watermen working, but because of the lifting of the prohibition on taking sponge crabs, staff felt it was necessary to make this a sanctuary area, as there was an abundance of sponge crabs in this area.

Mr. O'Reilly stated that there were more factors to consider than just the harvest, such as the status of the female stocks, and the status of the spawning, as there was little improvement on the spawning grounds.

Associate Member McLeskey left the meeting early.

After further discussion, Associate Member Fox asked if the staff's recommendation would be different if the Commission waited and did not make a decision today. Rom Lipcius, VIMS, responded that having this information would strengthen the support for the staff recommendation. Associate Member Fox asked if it would be the same recommendation, if the decision were made today.

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Commissioner Bowman stated that staff was requesting the Commission consider deferring the matter. He said the Commission needed the best science available when making its decision.

Mr. O'Reilly said that staff still wanted to wait until next month, as they had only provided a little information at this hearing and it would be a benefit to have the full work and model. He said the Commission would only gain by waiting, as it would be wise to have the information. He said the Commission had until June 1, as the time period July 10 – August 10 was the “hot” time for the sponge crabs.

Dr. Lipcius said there was an additional study of the male crabs, as well.

Associate Member Robins moved to table the matter as requested until April. Associate Member Fox seconded the motion. The motion carried, 8-0.

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- 19. FAILURE TO REPORT COMMERCIAL HARVEST**, in accordance with mandatory reporting requirements of Regulation 4 VAC 20-610-10 et seq.

Patrick J. Johnson

Stephanie Iverson, Fisheries Management, Sr., gave the presentation and her comments are a part of the verbatim record. Ms. Iverson explained that Mr. Patrick Johnson had called that morning to advise staff that he would not be able to attend the meeting because of transportation problems and he would be able to attend at the next meeting.

Commissioner Bowman asked if the license was revoked at the present time. Ms. Iverson responded, yes. Mr. Johnson was told his license was suspended until such time as he came before the board.

Richard J. Johnson

Ms. Iverson stated that Richard Johnson was the minor son of Patrick Johnson, therefore, his situation was the same.

No further action was taken.

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- 20. REQUEST FOR APRIL PUBLIC HEARING:** Establish conservation measures for Sheepshead, to include a 4-fish recreational possession limit and a commercial hook-and-line possession limit of 500 pounds.

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Joe Grist, Head, Plans and Statistics, gave the presentation and his comments are a part of the verbatim record. Mr. Grist said that this is a request for an April public hearing.

Mr. Grist explained that at the February 27, 2007 FMAC meeting, a proposal for conservation measures for Sheepshead was presented by Tom Powers. This is a species of interest, with ODU's Center for Quantitative Fisheries Ecology currently finishing up their first year of a planned three-year study of sheepshead population dynamics in the Chesapeake Bay.

Mr. Grist stated that staff recommended advertising for an April public hearing conservation measures, for Sheepshead, to include a 4-fish recreational possession limit and a commercial hook-and-line possession limit of 500 pounds.

Associate Member Robins asked if measures could be approved that were more conservative, but not more restrictive. Commissioner Bowman stated that the Commission could take more conservative actions, but not more restrictive than what was advertised. Mr. Grist said it could be advertised as the maximum restriction and then actions less restrictive could be adopted.

Associate Member Robins moved to advertise for the public hearing in April. Associate Member Schick seconded the motion. The motion carried, 8-0.

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- 21. REQUEST FOR APRIL PUBLIC HEARING:** To amend Regulation 4 VAC 20-900-10 et seq., "Pertaining to Horseshoe Crab", to establish a definition for male horseshoe crabs, a permitting and reporting system (call-in) for buyers of horseshoe crabs.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Gillingham explained that the ASMFC Interstate Fishery Management Plan for Horseshoe Crab implemented strict state-by-state quotas in 2000. For the first time since the quota was in place, the annual quota was reached and the horseshoe crab fishery was closed on June 19, 2006. He stated that when all horseshoe crabs were accounted for, the 2006 quota was slightly exceeded. This has triggered concern by staff that the existing horseshoe crab quota tracking method is not adequate.

Mr. Gillingham stated that staff requested approval for the advertisement of an April public hearing to consider establishment of a definition for the male horseshoe crab and establishment of a permitting and reporting system for buyers of horseshoe crabs.

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Associate Member Holland moved to advertise for a public hearing. Associate Member Schick seconded the motion. The motion carried, 7-0-1. Associate Member Robins abstained because of financial conflicts.

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- 22. REQUEST FOR APRIL PUBLIC HEARING:** To amend Regulation 4 VAC 20-890-10 et seq., "Pertaining to Channeled Whelk", to modify the definition of a bait bag and establish a permitting and reporting system for buyers of channeled whelk.

Lewis Gillingham, Fisheries Management Specialist, gave the presentation and his comments are a part of the verbatim record.

Mr. Gillingham explained that it was necessary to redefine a bait bag to make it acceptable and enforceable. He said he was present at a court hearing where the judge decided the definition was too vague. He said the conch fishermen's reporting of catch has been chronically poor. He said that the harvesters have been doing the reporting but as with other species staff had found it necessary to require the buyers to participate in the reporting and this would establish a Seafood Buyer permit and the buyer would also be required to report (call-in).

Associate Member Bowden stated that his original motion was made in a way to include all these issues in one public hearing.

Rob O'Reilly explained that Mr. Bowden's motion was made during the public comment period when there was a request by industry to consider allowing 2 inshore conch licenses on a vessel when there were 2 Commercial Fisherman cards on board as well. He said that was a change to Regulation 4VAC 20-890-10 and this would also be a change to the same regulation.

Commissioner Bowman suggested that it be the consensus of the board to hold a joint hearing on these issues. Associate Member Robins reminded the chairman that he would continue to abstain in these issues.

Associate Member Fox asked staff if a bait limit was necessary for baiting conch pots. Mr. Gillingham responded that alternative baits were needed as well as the conservation measures provided by the bait bag. He said the industry had worked with Bob Fisher, from VIMS, and determined their catch of conch, when using half as much bait placed inside a bait bag, produced the same amount of conch as using their standard amount of bait but without a bait bag.

No further action was taken.

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- 23. REQUEST FOR APRIL PUBLIC HEARING:** To establish recreational and commercial possession limits for blueline tilefish and grouper species landed in Virginia.

Joe Grist, Head, Plans and Statistics, gave the presentation and his comments are a part of the verbatim record. Mr. Grist explained that this was a request for an April public hearing.

Mr. Grist stated that since the fall of last year, FMAC had met several times to discuss a growing directed fishery for tilefish and grouper, which had been developing off the Virginia coast in recent years. This was a complex of fish that currently were unregulated in our region, but were of concern just to our south, from North Carolina to Florida. Various measures of management for this complex, off of Virginia, had been recommended.

Mr. Grist explained that staff recommended advertising this issue for an April 2007 public hearing, to include:

- 1) An FMAC proposal that would establish a maximum recreational possession limit of twelve fish per person per day for tilefish, and three fish per person per day for grouper, and a maximum commercial possession limit of 300 pounds per person per day for tilefish and 175 pounds per person per day for grouper, with no more than two licensed fishermen harvesting per vessel commercially.
- 2) An original staff proposal that would establish a maximum recreational possess limit of ten fish per person per day for tilefish, and one fish per person per day for grouper, and a maximum commercial possession limit of 300 pounds per vessel per day for tilefish and 175 pounds per vessel per day for grouper.
- 3) And the relevant SAFMC regulations pertaining to this complex, which are much stricter, to include a 5-fish aggregate recreational limit.

Associate Member Robins moved to accept the staff recommendations. Associate Member Bowden seconded the motion. The motion carried, 8-0. The Chair voted yes.

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- 24. REQUEST FOR APRIL PUBLIC HEARING:** Request a revision of the May 1 through October 30 possession-limit on spiny dogfish to 3,000 pounds, from 600 pounds.

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Joe Grist, Head, Plans and Statistics, gave the presentation and his comments are a part of the verbatim record. Mr. Grist explained that this is a request for an April public hearing.

Mr. Grist said that during the February 2007 ASMFC Winter Meeting, the Spiny Dogfish and Coastal Shark Management Board voted to allow states to adopt their own trip limits, not to exceed 3,000 pounds per trip, to promote bycatch landings and a small-scale directed fishery for 2007/2008.

Mr. Grist explained that currently, Regulation 4 VAC 20-490-10 provided for a 600-pound trip limit from May 1 through October 30, and a 4,000-pound trip limit from November 1 through April 30.

Mr. Grist said that staff recommended advertising to establish a new commercial catch limit of 3,000 pounds for spiny dogfish for an April 2007 public hearing.

Associate Member Tankard moved to accept the staff recommendations and to hold a public hearing in April. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

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ITEM 20:

Mr. Travelstead stated there was some confusion over the motion made for this item. He explained staff felt that the 4-fish (recreational) and 500-pound limits (commercial) would lock the Commission into these limits, as a maximum. He suggested that the advertisement include that as a specific recommendation of FMAC but state that the Commission would also consider alternatives, more or less restrictive.

Associate Member Robins as the motion maker agreed to the clarification.

Kelly Place, Fisherman, stated that there was an ongoing study being done on the sheepshead and it would be good for the Commission to have this data available to them before a decision was made. He requested consideration for holding the public hearing in May.

Mr. Travelstead said that ODU staff had attended the FMAC meeting and the results have been provided to the Commission in staff's evaluation. He stated that ODU could be asked to be here to provide this information. He said staff was not opposed to a month's delay, but they were trying to get these regulations into effect before the season started.

Tom Powers said that he would not be able to attend a public hearing in May as he would be out of the country for the entire month and he had been the one behind enacting some type of regulation for the sheepshead for the last two years, and he would like to be here to

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continue follow-up. He said that he had talked with ODU staff and they were willing to attend the meeting.

After further discussion, Associate Member Robins stated that staff was taking these steps as interim actions, and as such, he agreed that the hearing still be held in April.

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There was no further business and the meeting was adjourned at approximately 4:35 p.m. The next meeting will be Tuesday, April 24, 2007.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary