

MINUTES

Commission Meeting

October 31, 2006

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
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	Secretary to the Commissioner
Katherine Leonard	Recording Secretary
Jane McCroskey	Chief, Admin./Finance Div.
Andy McNeil	Programmer Analyst, Sr.
Jennifer Shinn	Grants Administrator
Rob O'Reilly	Deputy Chief, Fisheries Mgmt. Div.
Jim Wesson	Head, Conservation/Replenishment
Joe Grist	Head, Plans and Statistics
Joe Cimino	Fisheries Mgmt. Specialist
Stephanie Iverson	Fisheries Mgmt. Specialist, Sr.
Mike Johnson	Fisheries Mgmt. Specialist
Linnette Curtis-King	Office Specialist
Richard Lauderman	Chief, Law Enforcement Div.
Warner Rhodes	Deputy Chief, Law Enforcement Div.

Commission Meeting**October 31, 2006**

Steve Pope
 Kenny Oliver
 Randy Widgeon
 Ray Jewell
 David Lumgair
 Gerald Pitt

Area Supervisor, MA
 Area Supervisor, SA
 Area Supervisor, ES
 Area Supervisor, NA
 Marine Police Officer
 Marine Police Officer

Bob Grabb
 Tony Watkinson
 Chip Neikirk
 Jeff Madden
 Traycie West
 Randy Owen
 Hank Badger
 Ben Stagg
 Jay Woodward
 Benjamin McGinnis
 Justin Worrell
 Elizabeth Gallup
 Royce Bridger

Chief, Habitat Management Div.
 Deputy Chief, Habitat Mgt. Div.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Environmental Engineer, Sr.
 Eng/Survey Technician

Virginia Institute of Marine Science (VIMS)
 Lyle Varnell

Other present included:

Sara Ford
 Robert Croonenbergh
 Sue Jones
 Barry W. Miller
 Richard Neeley
 Demaria Braswell
 Tommy Leggett
 Paula Jasinski
 Tony Kelm
 Curtis Edwards
 Mary Hill

Ralph Deal
 Anne South
 Don Marx
 James Ward
 Patrick Lynch
 Ellis W. James
 Neal Insley
 Russell Gaskins
 Ronnie Owens
 Kelly Place
 William A. Pruitt

Jonathan Johnson
 Robert Jones
 Kendall Cochran
 Judy Ney
 Chet Bigelow
 Scott Harper
 Douglas F. Jenkins, Sr.
 Roger Parks
 Tommy Kellum
 Marie Hill

and others

Commission Meeting

October 31, 2006

Commissioner Bowman called the meeting to order at approximately 9:31 a.m. Associate Member McLeskey was absent due to illness.

Associate Member Holland gave the invocation and Carl Josephson, Senior Assistant Attorney General and VMRC Counsel 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. Tony Watkinson, Deputy Chief, Habitat Management, explained that Item 11, Commission Consideration of Draft Deed and Draft Resolution for Conveyance authorized by Chapter 201, Acts of Assembly 2006 and Page Two Item 2N Chincoteague Landmark, LLC, were both being withdrawn. The first one at the request of counsel, and the latter at the request of the applicants. Jack Travelstead, Chief Deputy Commissioner, asked that an item be added at the end of the meeting to discuss establishing an exemption for pound netters allowing them to keep their priority rights to established locations because of adverse impacts to these fishermen from Hurricane Ernesto.

Commissioner Bowman asked for a motion to approve the agenda. Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard 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 September 26, 2006 meeting minutes.

Associate Member Holland moved to approve the minutes, as circulated. Associate Member Fox seconded the motion. The motion carried, 8-0. The Chair voted yes.

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

Commission Meeting

October 31, 2006

Tony Watkinson, Deputy Chief, Habitat Management Division, gave the presentation for the page two items, A through P. He reviewed all other items for the board. He reminded the Commission Item 2N Chincoteague Landmark, LLC, was withdrawn at the request of the applicant. His comments are a part of the verbatim record.

Commissioner Bowman asked for any questions of staff.

Associate Member Robins asked if Wards Oyster was a relocation of sites to meet the water depth requirements of the permit. Chip Neikirk, Environmental Engineer, Sr., responded yes and explained that sites 4 & 5 located near Jarvis Point were not the controversial sites. He further explained that staff had notified all parties involved in the original hearing and it had also been advertised in the newspaper, as a public notice.

Commissioner Bowman opened the public hearing and asked if anyone was present pro or con on these items to address the Commission. There were none.

Associate Member Holland asked that two motions be made, one for Item O, Baymark Construction Corporation, #05-2610, as he would be abstaining for personal reasons, and a second motion be made for the remaining Page Two Items.

Commissioner Bowman asked for a motion for Page Two Items A-M and P. Associate Member Schick moved to approve these items. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

Associate Member Robins moved to approve the Page Two Item O. Associate Member Schick seconded the motion. The motion carried, 7-0-1. Associate Member Holland abstained. The Chair voted yes.

2A. SPOTSYLVANIA COUNTY DEPARTMENT OF PUBLIC UTILITIES, #06-0427, requests authorization to install a total of approximately 309 linear feet of sewer line, crossing a minimum of three feet under Massaponax Creek at 13 separate locations, and to stabilize the stream crossings with a total of approximately 6,580 square feet of riprap, associated with the Massaponax Sewer Interceptor Replacement - Stage II project in Spotsylvania County. Recommend approval with standard in-stream conditions.

Permit Fee.....\$100.00

2B. MARINE CORPS BASE QUANTICO, #06-0753, requests authorization to replace an existing bridge, suspended utility lines, a failing concrete retaining wall/bulkhead, and mortar bag bank stabilization by constructing a new 35-foot wide steel plate girder bridge with concrete deck, crossing over approximately 140

Commission Meeting

October 31, 2006

linear feet of Chopawamsic Creek; reinstalling water, sanitary, electrical, and communication utility lines and conduits suspended from the bridge; installing and backfilling an approximately 35 linear foot sheet pile retaining wall/bulkhead around the upstream corner of the north bridge abutment; and installing approximately 48 linear feet of riprap bank stabilization along the south bridge abutment's embankment, adjacent to Quantico Marine Corps Base in Stafford County.

Permit Fee.....\$100.00

2C. FAIRVIEW BEACH LLC, #06-1440, requests authorization to install four (4) low-profile, stone groins extending a maximum of 61 feet channelward of mean low water, to extend an existing stone groin by 25 feet in length to approximately 52 feet channelward of mean low water, to lengthen an existing, 65-foot long, stone breakwater on both ends to a new total length of 160 linear feet, and to artificially nourish the proposed groins and breakwater, within 14 days of their completion, with 1,350 cubic yards of clean, beach-quality sand, adjacent to Fairview Beach (Riverside Park) situated along the north side of Fairview Drive between Second and Sixth Streets on the Potomac River in King George County.

Permit Fee.....\$100.00

2D. PRINCE WILLIAM COUNTY DEPARTMENT OF PUBLIC WORKS, #06-1478, requests authorization to replace an existing two-lane bridge with a new, 95-foot wide, four-lane bridge crossing over 69 linear feet of Broad Run on Linton Hall Road (Route 619) in Prince William County.

Permit Fee.....\$100.00

2E. ATLANTIC ENERGY, #06-1905, requests authorization to maintenance dredge up to 23,000 cubic yards of subaqueous material per cycle to restore depths of minus 37 (-37) feet at mean low water at their propane gas unloading facility at the confluence of St. Julian Creek and the Southern Branch of the Elizabeth River in Chesapeake. All dredged material will be transported to and disposed of within the Craney Island Rehandling Basin in Portsmouth. Recommend a 5-year permit with the requirement for a post-dredge bathymetric survey being submitted for staff review after each dredging cycle, in accordance with previous permit conditions for this location.

Permit Fee.....\$100.00

Commission Meeting

October 31, 2006

2F. GLENN P. BEANE, #06-1956, requests authorization to construct three (3) 150-foot long by 20-foot wide (base width) quarry stone breakwaters, spaced 112 feet apart and located a maximum of 120 feet channelward of mean water, and nourish behind the structures with 5,240 cubic yards of sandy bank material, adjacent to four (4) lots along the Rappahannock River at the end of Belmont Creek Road in Lancaster County. Recommend approval with the requirement for a turbidity curtain around the work area during bank grading and breakwater construction, and the submittal of a detailed beach vegetation-planting schedule and monitoring plan in the nourished area. We also recommend a royalty in the amount of \$1,768.50 for the placement of beach-quality sand over 35,370 square feet of State-owned subaqueous bottom at a rate of \$0.05 per square foot.

Royalty Fees (nourishment 35,370 sq. ft. @\$0.05/sq. ft.).....	\$1,768.50
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,868.50

2G. NORTH AMERICAN PROPERTIES, #06-1987, requests authorization to construct a 20’ long by 54’ wide temporary work bridge across Sandy Creek to facilitate construction of the Coleman Street Marketplace in the City of Danville. Recommend approval contingent on the removal of the temporary work bridge upon completion of construction activities and an encroachment royalty of \$700.00 for the encroachment of the bridge over 700 square feet of State-owned subaqueous land at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 700 l. ft. @ \$1.00/l. ft.).....	\$700.00
Permit Fee.....	\$100.00
Totals Fees.....	\$800.00

2H. TAZEWELL COUNTY PUBLIC SERVICE AUTHORITY, #04-2798, requests a modification to their previously issued permit to install a submerged sewer line beneath approximately 150 linear feet of the Bluestone River at one additional location, beneath U.S. Route 19/460, to provide sewer service to area residents in Tazewell County. Recommend approval with our standard instream permit conditions and an instream work time-of –year restriction of December 1 - June 15 and August 15 - September 30 to minimize impacts upon trout species and the Tennessee heelsplitters. Additionally, the results of an updated mussel survey and relocation must be submitted to DGIF for review and approval 30 days prior to construction.

No applicable fees—Permit modification

2I. WARD OYSTER CO., #05-2241, requests authorization to modify the location and dimensions of two of their previously approved locations in which to deploy 4-foot by 4-foot by 2-foot high buoyed aquaculture cages on a portion of their

Commission Meeting

October 31, 2006

leased oyster ground located in the Ware River in Gloucester County. The sites proposed to be modified were previously identified as Sites 4 and 5 and are located downstream (east) of Jarvis Point. The proposed modifications reduce the size of Site 5 by eliminating an area measuring approximately 50 feet wide by 800 feet long (40,000 square feet) on the east side of site 5. The proposal will increase Site 4 in size by approximately 40,000 square feet and be relocated between 150 feet and 500 feet to the west (closer to the submerged Jarvis Point). There was no increase proposed in the combined net size of the two areas and additional cages were not being requested for deployment within the sites. The modification was being sought so that more of the authorized area included water depths within the required depth of between minus four (-4) feet and minus six (-6) feet at mean low water (mlw).

No applicable fees—Permit Modification

2J. NAVAL FACILITIES ENGINEERING COMMAND, #06-0508, requests authorization to install and backfill 812 linear feet of bulkhead a maximum of 12 feet channelward of an existing deteriorated bulkhead adjacent to property situated along the Elizabeth River in Portsmouth.

Permit Fee.....\$100.00

2K. YORK COUNTY, #05-2531, requests authorization to install a 40-foot by 6-foot aluminum ramp and a 65-foot by 13-foot floating dock for canoe and kayak launching at the public ramp situated along Wormley Creek in York County.

Permit Fee.....\$100.00

2L. NORFOLK DEPARTMENT OF UTILITIES, #06-1560, requests authorization to install two (2), elevated, parallel, 36-inch welded-steel, raw water pipelines, extending up to 100 feet channelward of mean low water in the Western Branch, Nansemond River, along an existing right-of-way in the Reids Ferry area of the City of Suffolk.

Permit Fee.....\$100.00

2M. VINCE BOWHERS, ET AL, #05-2652, requests authorization to dredge approximately 2,878 cubic yards of State-owned submerged bottom to achieve maximum depths of minus three and a half (-3.5) feet mean low water to improve navigation for riparian properties located at 1000 and 1001 Briarwood Point along Hebden Cove in Virginia Beach. All dredged material will be offloaded on-site, loaded into sealed dump trucks, and transported to an approved upland disposal

Commission Meeting**October 31, 2006**

site. Recommend a royalty of \$1295.10 for the dredging of 2,878 cubic yards at a rate of \$0.45 per cubic yard.

(Note: Revised project initially approved by the Commission June 2006, but never permitted.)

- 2N. CHINCOTEAGUE LANDMARK, L.L.C., #05-2660**, requests authorization to construct and backfill 30 linear feet of new bulkhead; 568 linear feet of replacement bulkhead, aligned a maximum of two (2) feet channelward of a deteriorating bulkhead; dredge 1,786 cubic yards of subaqueous bottom; install one (1) 110-foot by 6-foot pier and fourteen (14) finger piers with mooring pilings creating 26 wet slips along Chincoteague Channel adjacent to the Landmark Crab House Restaurant in the Town of Chincoteague. The proposed project will replace the existing Landmark Crab House Restaurant and the Shucking House Restaurant. The boat slips will be for the exclusive use of the owners or tenants of the 26 condominium units. All dredge material will be transported to an approved upland disposal site. Recommend a royalty of \$803.70 for the dredging of 1,786 cubic yards at a rate of \$0.45 per cubic yard; a royalty of \$1,700.00 for the filling of 570 square feet at a rate of \$3.00 per square foot and a royalty of \$25,470.00 for the encroachment over 16,980 square feet of State-owned subaqueous bottom at a rate of \$1.50 per square foot.

Withdrawn at the request of the applicant.

- 2O. BAYMARK CONSTRUCTION CORPORATION, #05-2610**, requests authorization to modify their pending authorized permit to construct a 1,375-foot long by 10-foot wide open-pile fishing pier with a 116-foot long by 30-foot wide modified T-head and two (2) floating docks for water taxis and boat rentals at their property situated along the Chesapeake Bay in the Town of Cape Charles. The modification is to change the material for the fishing pier from concrete to timber and to place the wooden support piles on 15-foot centers. The pier will be rated for 15 tons with the wooden piles driven to a minimum of 15 feet below grade and all hardware will be upgraded to stainless steel in an effort to overcome hurricane storm surges. All other conditions shall remain consistent with the terms and conditions authorized by the Commission at their June 27, 2006, meeting.

(Note: Revised project approved at the June 2006 Commission meeting, the royalties are the same)

- 2P. COLUMBIA GAS TRANSMISSION CORPORATION, #06-1664**, requests authorization to replace or repair existing gas pipeline segments along a 15-mile section of Line VB and a 69-mile section of Line VB Loop, possibly requiring the

Commission Meeting

October 31, 2006

excavation, exposure, and replacement of the pipeline along numerous stream crossings in Shenandoah and Warren Counties.

Permit Fee.....\$100.00

* * * * *

3. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. No closed meeting was held.

* * * * *

4. TOM FORD, #06-1535, requests authorization to construct a 33-foot long by 14-foot wide open-sided roof structure over a single boat slip and continue the roof over a 12-foot by 12-foot portion of the existing private pier situated adjacent to his property along the South Branch of Onancock Creek in the Nancock Gardens area of Accomack County. An adjacent property owner and nearby neighbors protested the project.

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

Mr. Badger explained that the project was situated in Nancock Gardens, a small waterfront subdivision located across the South Branch of Onancock Creek from the Town of Onancock. The creek is approximately 250 feet wide at the project site and the existing pier extends approximately 55 feet channelward of mean low water. The development along the South Branch is primarily residential.

Mr. Badger further explained that Mr. Ford proposed to install a 462 square foot roof structure over a single boatlift and continue the roof structure over a 144 square foot section of his existing private pier. The applicant’s waterfront property is approximately 217 feet wide and the existing pier is centered on the lot. The boathouse is designed to cover his 22-foot boat.

Mr. Badger stated that Mr. and Mrs. Richard Neely, adjacent property owners, protested the project, as well as, nearby neighbors, Mr. and Mrs. Robert Jones and Mr. and Mrs. Paul Smith. All have concerns that the proposed roof structure would impact their view of the creek, and believe the structure would be excessive for the small creek.

Mr. Badger noted that the proposed roof structure would not encroach over any public or privately leased oyster planting ground. No state agencies had commented on the roof structure, and the roof structure is to be situated in the same location as the existing boatlift and pier. Accordingly, staff does not believe the structure would adversely impact navigation. The existing pier and boatlift were applied for in 2004, and staff determined

Commission Meeting**October 31, 2006**

at that time that they met the exemption for private piers contained in §28.2-1203(A)(5) of the Code of Virginia.

Mr. Badger explained that during the 2006 legislative session, §28.2-1203(A)(5) of the Code of Virginia was amended to state, if it was not prohibited by local ordinance, an open-sided shelter roof or gazebo-type structure may be placed on any L or T-head platform provided it did not exceed 400 square feet, in addition to an open-sided roof designed to shelter a single boat slip or boat lift provided it did not exceed 700 square feet. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift exceeded 700 square feet in coverage, or the open-sided shelter roofs or gazebo structures exceeded 400 square feet, and in cases in which an adjoining property owner objected to a proposed roof structure, permits were required, as provided in § 28.2-1204. The proposed roof structure is not prohibited by any local ordinance. It is also centered on the applicant's property, and the proposed open-pile design should minimize the visual impacts associated with the structure. In addition, the navigational and environmental impacts should not exceed those associated with the current mooring of the boat at the existing pier.

As a result, Mr. Badger stated that staff recommended approval of the open-sided roof structure, as proposed.

Associate Member Fox stated that in accordance with the Code of Virginia the Commission could only allow an open-sided boathouse on an L or T-head and from the drawings it was not shown on an L or T-structure. Mr. Badger explained that it was a modified L-Head.

Sara Ford, the applicant's daughter representing her father, was present and her comments are a part of the verbatim record. Ms. Ford stated that she had no other comments to add to the staff's presentation and would answer any questions.

Associate Member Schick asked if there had been a local hearing or zoning board hearing. Mr. Badger explained that it was only a portion of a larger application and the pier was exempt.

Commissioner Bowman asked if there was anyone present to comment, pro or con.

Richard Neeley, adjacent property owner and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Neeley stated that he was representing himself as well as his wife. He provided a handout for the Commission to assist in his presentation. He stated they were concerned that a precedent had been previously set by a prior construction on the creek. He said that the size of this structure was comparable to the County boat ramp. He said this was a residential area. He also said that he had spoken with the applicant numerous times and never was told about a roofed structure. He said he had spoken with the applicant again since he found out. He said the original plan goes

Commission Meeting

October 31, 2006

back to 2004 and he first heard of it July 1st from a Commission notice. He said this construction would impact the neighborhood and the creek. He said the applicant told him the plan would be revisited and reconsidered. He said he had concerns with the piling size. Twelve inch pilings were used for commercial structures and this structure was not for commercial use. He said this would be out of character with the creek area and he did not believe the applicant intended it to be so oversized. He said that there was another commercial operation on the north branch. He said that another boathouse in the Creek did not impact others, other than the property owner and this would impact many in the area. He gave the Commissioner a petition with 23 or 25 signatures for individuals wanting to preserve the character of the south branch.

Robert Jones, resident on the creek and protestant, was sworn in and his comments are a part of the verbatim record. Mr. Jones said this structure would be in the center of the property shoreline, but even from the street it would be seen. He said there are two other lots for sale and he was concerned that a precedent would be set if this project was approved as proposed. He said there were a number of full-time residents in the area.

Ms. Ford in her rebuttal comments stated that her parents love the creek and her parents created the view, when the lot was cleared. She said her father had looked at how to make changes by minimizing the pitch of the roof and trying to make it attractive and not obstructive to anyone's view.

Associate Member Robins stated that there were several issues. He said that the legislature considered these structures to be a reasonable use and in his opinion it was reasonable. He said he also felt it did not increase the impact on navigation in the creek. He said the scale was reasonable and the size was not unlike other requests considered by the Commission. He also said that he felt the applicant had addressed the impacts on his neighbors.

Associate Member Tankard stated that the concerns expressed by the protestants were zoning related issues and the Commission could only consider any impact on navigation.

Associate Member Schick stated that the commercial grade construction actually made the structure stronger so as to hold up better in excessive bad weather, such as hurricanes. He said he agreed that the concerns expressed by the protestants were zoning related issues and they needed to get with the County. He moved to approve the proposal, as stated by staff. Associate Member Robins seconded the motion. The motion carried, 8-0. The Chair voted yes.

Permit Fee.....\$25.00

* * * * *

Commission Meeting**October 31, 2006**

5. **PERRY ROBERTS, #05-2053.** Consideration of Mr. Roberts' failure to satisfy the conditions of the Commission's March 28, 2006, decision to grant after-the-fact approval to retain a 6-foot wide by 60-foot long, private, non-commercial pier, 1,116.5 square feet of decking platforms and finger piers, two (2) boat slips, and two (2) jet-ski slips with lifts adjacent to his property situated along Aquia Creek in Stafford 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 Commission, at its meeting on March 28, 2006, considered Mr. Robert's after-the-fact request to retain a private, non-commercial pier, extending approximately 100 feet channelward of mean low water, adjacent to his property situated along Aquia Creek in Stafford County. The unauthorized construction of his pier included 1,116.5 square feet of decking platforms and finger piers, two (2) boat slips, and two (2) jet-ski slips with lifts.

Mr. McGinnis said that after reviewing a staff presentation describing the history of the case, all documents in the official record, and after considering the testimony provided by staff and Mr. Perry Roberts, the Commission voted to approve portions of the after-the-fact request, but ordered removal of the unpermitted, L-shaped catwalk along the northwestern side of the pier, along with all associated pilings.

Mr. McGinnis further said that the Commission's approval also included the assessment of triple permit fees and was contingent on the receipt of a civil charge in the amount of \$1,800.00. In addition, staff informed Mr. Roberts in a letter of finding, dated March 30, 2006, that revised project drawings that accurately depicted the pier as permitted by the Commission was required.

Mr. McGinnis stated that to date, the Marine Resources Commission had not received payment of the \$1,800.00 civil charge assessed to Mr. Roberts or the revised project drawings. In addition, since Mr. Roberts had yet to satisfy the conditions of the Commission's March 28, 2006 decision, a permit had not been issued to Mr. Roberts. In regards to the L-shaped catwalk alongside the northwestern side of Mr. Roberts' pier, staff did observe and document its removal during a site visit to Mr. Roberts' property on April 17, 2006. Although Mr. Roberts has partially complied with the Commission's directives, his pier remained in violation of Chapter 12 of Title 28.2 of the Code of Virginia.

Mr. McGinnis noted that as further background information, staff would like to point out that the Commission considered the involvement of Mr. Roberts' agent/contractor,

Commission Meeting**October 31, 2006**

Mr. William L. Sullivan, at its meeting on April 25, 2006. At that time, the Commission voted to accept a civil charge from Mr. Sullivan in the amount of \$1,800.00, in lieu of further enforcement and criminal penalties, as permitted by Code. Staff did receive Mr. Sullivan's payment of his \$1,800.00 civil charge on October 13, 2006.

Mr. McGinnis said that in summary, the steps Mr. Roberts should have taken to satisfy the conditions of the Commission's decision, were to submit payment of the \$1,800.00 civil charge and revised project drawings reflecting the Commission's decision. In addition, Mr. Roberts would have had to finalize the issuance of a permit, which included triple permit fees in the amount of \$300.00.

Mr. McGinnis stated that Mr. Roberts had been afforded seven months to comply with the Commission's conditions. Mr. Roberts did call staff in response to a September 29, 2006 notification that this matter would be considered by the full Commission and explained that he had other financial obligations that had prevented him from paying his civil charge. Prior to sending Mr. Roberts an e-mail on October 24, 2006, reminding him of this hearing, staff had not received a plan for payment of his civil charge. Mr. Roberts responded to staff's e-mail on the same day and informed us that he planned to mail a check in the amount of \$1,800.00 on November 1, 2006, to cover his civil charge. However, Mr. Roberts had yet to provide staff with any indication as to intentions regarding the submittal of revised drawings and the finalization of his after-the-fact permit.

Mr. McGinnis said that unless Mr. Roberts was willing and able to satisfy all of the conditions of the Commission's March 28, 2006 decision within 60 days, staff recommended that the Commission order Mr. Roberts, to completely remove all portions of his pier in excess of that allowed by statutory exemption, as provided in Section 28.2-1203 of the Code of Virginia.

Mr. McGinnis explained that Mr. Roberts had indicated that he did not feel it was necessary for him to be present at the hearing.

After some discussion, Associate Member Robins explained that the e-mails indicated that Mr. Roberts was submitting a check, but the staff's recommendation was appropriate and Mr. Roberts had seven months to comply with the conditions of the Commission's decision on March 28, 2006. He moved to accept the staff recommendation. Associate Member Holland seconded the motion. Carl Josephson, Senior Assistant Attorney and VMRC Counsel, stated that if this were to go to court, the motion as made by the Commission was too vague if you just said staff recommendation. Associate Member Robins amended the motion to say the pier head shall be made to comply with the Code and be limited to 400 square feet. Associate Member Holland said he would accept the amended motion and seconded it. The motion carried, 8-0. The Chair voted yes.

Commission Meeting**October 31, 2006**

Compliance Hearing (Section 28.2-1203 of the Code of Virginia).

* * * * *

6. **DISCUSSION:** Commission briefing regarding recent complaints concerning the “mooring” of house barges over State-owned submerged land.

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

Mr. Neikirk explained that staff recently received inquiries from the owners of two waterfront parcels located along Broad Creek in the Deltaville area of Middlesex County. They were expressing concerns with the proliferation of structures called “Aqualodges” that were secured to the piers at the Bay Marine marina located along Broad Creek. Aqualodges are manufactured by Catamaran Cruisers and essentially, they are a floating dwelling supported by a fiberglass catamaran hull. Mr. Barry Miller, the principal owner of Bay Marine Ltd., who recently began selling the Aqualodges, also began renting the buyers boat slips at his marina to “moor” the structure. Since the structures were not typically motorized, they appear to serve primarily as recreational living quarters.

Mr. Neikirk said he began searching the internet and according to the website, the Aqualodge measure 40 feet long by 12 feet wide and include a living area with 11-foot ceilings, a bathroom with full size shower, kitchenette with a microwave, stove, and a refrigerator. An upper loft area sleeps up to six people and boat motors are optional. They are described as “a second home, vacation retreat, and ideal place to entertain or live-a-board.” Other companies and manufacturers make similar products ranging from trailerable motorized houseboats to barge supported custom homes and even hotels. These types of structures are relatively new to Virginia, but houseboats, house barges and multi-story floating homes have been deployed in areas along the West Coast for many years.

Mr. Neikirk stated that the Health Department is currently investigating the health regulations to determine what sewage treatment requirements or restrictions are appropriate for these structures. The Aqualodge website explained that they come standard with a 150 gallon holding tank for sewage and that normal gray water is pumped overboard, as a direct discharge. Although many boats have similar facilities, staff assumes there is a greater potential for water quality impacts when these structures are being used on a permanent or semi-permanent basis, especially when they are sited away from marinas without convenient sewage pump-out facilities.

Mr. Neikirk said that although permits are required for moorings, there are minimal restrictions on where a boat can be anchored or tied up. If these floating structures are considered boats, staff is concerned there is a potential that the structures could be anchored or moored in locations for an extended period of time, essentially establishing a

Commission Meeting**October 31, 2006**

residence over State-owned submerged land. With minimal restrictions on siting, there is also a potential for these structures to be congregated in pristine areas, thereby, adversely impacting water quality, submerged aquatic vegetation, and other aquatic habitat. Staff would also anticipate serious concerns being expressed by neighboring legitimate waterfront property owners.

Mr. Neikirk noted that the Commission has had a long history of minimizing encroachments of structures over State-owned waters, so as to limit their impact on other uses of the public waters. Additionally, the Commission's water dependency policy discourages the permitting of structures over State-owned submerged lands that are not considered water dependent. The Commission has denied numerous requests for even small structures such as sheds and gazebos when it was determined that those structures or associated activities did not need to be located over State-owned submerged land. Structures such as houseboats, house barges and floating homes all encroach over State-owned submerged lands and have the potential to impact other uses of the waterway. While boats could have a similar potential to impact other public uses, they are obviously water dependant. Additionally, the mooring of a boat at a private pier or a permitted marina slip is a reasonable and expected activity. The relevant question appears to be; how can staff differentiate between a boat and some other type of floating structure?

Mr. Neikirk further explained that although the difference between a small runabout and a large floating home may seem obvious, defining the differences between certain vessels and other floating structures could be difficult. Accordingly, staff has investigated how some other agencies or states, more familiar with floating structures, have addressed the issue. At this point staff was not prepared to endorse or recommend any particular definition. The following definitions were provided as general information and background on the issue.

Mr. Neikirk said that according to a publication produced by the Seattle Department of Planning and Development (Client Assistance Memo 229), the City of Seattle had three classifications for floating marine structures. They were floating homes, house barges and vessels. They were defined as follows:

Floating homes are defined as single-family dwellings constructed on a float that are moored, anchored or otherwise secured in waters. Floating homes are required to be located in approved areas with sewer and water connections. Seattle's construction codes apply to floating homes and there are floating subdivisions in Seattle.

A house barge was defined as a vessel that was both designed and used for navigation but lacked a means of self-propulsion and steering and was designed or used as a place of residence. Only house barges that date back to 1990 were allowed and they must be moored in recreational marinas. They must also be able to demonstrate that all overboard discharges had been sealed and that there was a

Commission Meeting**October 31, 2006**

satisfactory method to convey wastewater to an approved disposal facility. Seattle's construction and utility requirements were not applicable to house barges. New house barges were not permitted in Seattle. According to the 2004 document, there were only 34 approved house barges in Seattle.

Finally, Seattle defined vessels as boats, ships, barges and other floating craft that were both designed and used for navigation. They were not regulated by the City's construction code. They must be moored at approved facilities. Vessels must be designed for navigation, including having a seaworthy hull that met Coast Guard requirements. They must be capable of water transportation, and if used for residential purposes they must be able to travel under their own power to open water, including a method for steering and propulsion, deck fittings, navigational and nautical equipment, and the required marine hardware. They must also be registered by federal, state, and local agencies. The document noted, however, that being registered alone did not mean that it would be considered as a vessel.

Mr. Neikirk explained that the Tennessee Valley Authority provided definitions for navigable and non-navigable houseboats. Additionally, they prohibited new non-navigable houseboats in any of their reservoirs. A navigable houseboat was defined as a self propelled houseboat which was built on a boat hull or two or more pontoons, and which was equipped with motor and rudder controls located at a point on the houseboat from which there was forward visibility over a 180 degree range.

Mr. Neikirk said that the Coast Guard allows the states to impose more stringent rules regarding marine sanitation devices for houseboats. The Coast Guard defines a houseboat as a vessel that, for a period of time determined by the State in which the vessel is located, is used primarily, as a residence and not primarily, as a means of transportation.

Mr. Neikirk stated that staff was not prepared, at this time, to make a recommendation regarding house barges or other types of floating structures. The purpose of this discussion item was to alert the Commission to what staff considered to be a significant potential problem and to perhaps initiate further discussion or study of the need for a regulatory approach to this issue.

Associate Member Tankard stated that "gray" water was all water disposed of into the water except sewage.

James Ward, attorney for Mr. Barry Miller, was present and his comments are a part of the verbatim record. Mr. Ward stated that this had the potential to impact someone's livelihood and was not amusing. He said it was a difficult question to answer and an important issue as well. He said they spoke to someone in the County who informed them that when they spoke with VMRC staff they indicated it was classified as a boat. He said some ground rules were needed. He said that even in Broad Creek property

Commission Meeting**October 31, 2006**

owners keep their boat at a marina and there are always a lot of boats there at the marina. He said that there needed to be a means of looking at this issue and making generic regulations, but not attached to any one brand name. He said this would affect an individual's livelihood and any decisions would not only affect this area but others as well.

Commissioner Bowman said this issue was new and had potential to impact the local area, zoning, the environment and safety on the waterways. He said this was a briefing matter only and it was not intended to hurt any one individual.

Barry Miller owner of Bay Marine Ltd. a retail distributor of Aqualodges, was present and his comments are a part of the verbatim record. Mr. Miller stated that what he was selling had been treated in all ways as a boat, not a structure. He said the manufacturer had been in business for 25 years. He said this was nothing new, it just looked different, but it was the same as a boat. Commissioner Bowman asked if the vessels were U. S. Coast Guard certified. Mr. Miller explained that the Coast Guard inspected them at the manufacturer level.

Dr. Robert Croonenbergh, Virginia Department of Health-Div. of Shellfish Sanitation, was present and his comments are a part of the verbatim record. Dr. Croonenbergh explained that their main concern was fecal contamination. He said when assessing a marina's use in the model they add fecal pollution. He said they just wanted to protect the public's health. He said that they look at the worst case in determining whether an area should be closed to shellfish harvest.

Dr Croonenbergh explained that a marina was closed during winter months as there was less boating going on and only open during the boating season, April 1 to December 1. He explained that there was a heightened degree of concern when the structure was being lived in, as there were different expectations. He said they differ from boats as boats have smaller bathrooms and houseboats have larger facilities. He said the fecal input from such a structure like this would be much greater and they were not concerned with the size of the structure only on how the sewage would be treated. He said even when treated it did not mean all bacteria or viruses were eliminated. He said they are concerned with "cruise ship" viruses that result in diarrhea and nausea. He further said that shellfish pump this bacteria or virus with water into their system and it was harmful for humans when they consume the shellfish. He said they were still working on this and nothing had been decided.

Associate Member McConaugha asked if they considered the percentage of time lived on the structure, in their model. Dr. Croonenbergh explained that the model considers the percentage of occupancy on a peak weekend and percentage of failure rate. He said they were most concerned with highly developed areas. He said they use generic parameters in the model.

Commission Meeting**October 31, 2006**

Commissioner Bowman asked if VIMS personnel had any comments. Lyle Varnell, VIMS representative, stated that they had nothing to add to Dr. Croonenbergh's comments. Commissioner Bowman asked about the impact of "gray" water. Mr. Varnell stated that "gray" water was anything other than sewage. He said there was more concern because of the larger concentration of "gray" water in the smaller waterways over a longer period of time.

Associate Member Schick stated that he agreed with staff's comments and from a marina owner standpoint he did not accept boats on barges, as it was difficult for hooking up to small pump outs. He said further that the Bay was endangered already and there did not need to be more impacts on it to push it over the top of the scale.

Associate Member Bowden said that he did not want to hurt anyone, the boat seller or the harvester. He said the potential impact on shellfish harvest areas needed to be looked at as well as whether the area had aquaculture ongoing in the area.

Associate Member Robins said a study was needed to develop policies for water quality, a definition developed, and the Commission's jurisdiction in regards to water dependency. He said the Commission should coordinate with the Health Department and VIMS to establish a Commission policy.

Associate Member Holland stated that the Department of Game and Inland Fisheries should be included also.

Commissioner Bowman suggested that the Habitat Management staff establish a workgroup and proceed with this matter. Bob Grabb, Chief, Habitat Management Division, suggested that the matter be given to the Habitat Management Advisory Committee (HMAC) but include others in the meeting. He said Messrs. Ward and Miller both made a good point that it should not be identified by a brand name. He said that staff tried to get away from brand names by being generic and using "house barge" to identify the structure. If this structure were allowed it could cause user conflict issues and impact submerged, state-owned bottom. He said that staff was just seeking a consensus on what to do from the board.

Commissioner Bowman said that there was not a legal definition for this type of structure. Mr. Grabb said he felt that the State of Oregon was on the right track, but they had not talked with the Department of Game and Inland Fisheries Commission (DGIF), as yet. Mr. Grabb stated that staff would move forward with it. Commissioner Bowman said it needed a 360° review.

Associate Member Fox asked if there was a target date? Commissioner Bowman suggested that staff bring it back in 60 days and brief the Commission on the status. Associate Member Fox said there needed to be a deadline. Mr. Grabb suggested they

Commission Meeting

October 31, 2006

come back with the briefing at the January 2007 Commission meeting. Commissioner Bowman agreed.

No further action was taken.

* * * * *

The Commission broke for lunch at approximately 11:23 a.m. The meeting reconvened at approximately 12:30 p.m.

* * * * *

SPECIAL PRESENTATION:

Associate Member Holland assumed chair duties while Commissioner Bowman made a special presentation.

Commissioner Bowman presented Commissioner Pruitt, who had retired, with a Certificate of Service for 23 plus years of service as Commissioner of the Virginia Marine Resources Commission. He read the Certificate into the record.

“Be it known: Through your twenty-three and a half years of dedicated and loyal service as Commissioner of Marine Resources, you worked conscientiously on behalf of the Commonwealth's marine resources, as exemplified through the Commission's declaration to balance recreational and commercial fishing and the protection of the habitat of the Chesapeake Bay and its tributaries. Your heartfelt devotion, professionalism, and knowledge of the seafood industry enabled your colleagues on the Commission and your employees at the agency to work more effectively and with a greater sense of assurance in the arduous task of protecting Virginia's marine resources for present and future generations. You brought wisdom and an important sense of duty, responsibility and commitment to your work. You are a true Virginia gentleman, whose love for and faith in the Commonwealth and its people motivated your actions.”

“On behalf of the members, employees and friends of the Commission, I am please to recognize you for, ...”

Commissioner Pruitt commented on his experiences at VMRC, the great staff, and dedicated work of the board members. He thanked everyone.

Commissioner Bowman returned to his duties as chairman.

* * * * *

Commission Meeting**October 31, 2006****7. PUBLIC COMMENTS**

Ellis W. James, representing the Sierra Club and a Norfolk resident, was present and his comments are a part of the verbatim record. Mr. James congratulated the Board in its handling of the issue of house barges. He said he would hope that all groups would study this and take it very seriously. He said that staff in their comments raised concerns related to gray water and this was something that would not just impact Broad Creek, but the entire Chesapeake Bay. He said there was a need to be concerned about the adverse impacts on the Bay, the various users groups, and the shellfish resources.

Douglas F. Jenkins, Sr., representing the Twin River Watermen Association, was present and his comments are a part of the verbatim record. Mr. Jenkins explained that they had two requests to make of the Board. He said that the area in the Nomini River opened to hand scrape needs to be closed, as the larger oysters had been harvested and only a small amount of small oysters were left on the bottom. He suggested that if the area were closed, then a fall seed planting would be appropriate for this area as the oysters could establish themselves and grows quicker; and, there would be less impact from cownosed rays. He said they were requesting also that the Yeocomico and Coan Rivers be opened to allow harvesting in areas that have been closed for years. He said the areas could be opened for 2 or 3 weeks in December then closed. He said it was wrong to keep areas closed because of the concerns of the private planters that their leases would be encroached upon. He said the Baylor Grounds were set-aside for the public and watermen work in other areas where both public and private grounds existed close in together.

Commissioner Bowman asked the staff for comments.

Dr. Jim Wesson stated that the shellfish in the area have been harvested, and it could be closed as there were only 1 or 2 boats working still, as these were small areas. Associate Member Robins asked if staff was protecting what oysters were left there. Dr. Wesson said that the rays had worked on this area hard. He said this area did not get a natural spatset, but was a growout area only.

Associate Member Bowden explained that there had been a good spatset on the Eastern Shore and it should have been closed but it was not and the watermen continued to work it.

Dr. Wesson said that this area did not get a natural spatset and there was more concern for other areas. Associate Member Bowden asked what other areas. Dr. Wesson stated that more areas were to be brought up in the Public Comments.

Lionel Jenkins, waterman representing himself, was present, and his comments are a part of the verbatim record. Mr. Jenkins stated that the James River was a "graveyard". He

Commission Meeting**October 31, 2006**

said the hand tongs were working in the James River, the oysters were in poor condition and the buyers were only buying them because that was all there was to buy.

Mr. Jenkins stated that he was told that others were expected to come to the hearing to ask that the Lower Rappahannock River be opened. He said the Commission needed to at least consider opening some of the Lower Rappahannock River, as the watermen needed to work. He said he felt sure that the staff was opposed to this request, as this has been talked about at meetings before. He said it was time to consider the will of the people because it seemed every time there was a meeting they lost even more. He said he was asking the Commission to open the Lower Rappahannock River or at least part of it for a period of time.

Commissioner Bowman stated that he said at the start that he wanted the best science to make decisions, but the dynamics of things changed. He said that Mr. Lionel Jenkins was right that the Commission needed to address the will of the public, as well as examine what was requested and ask VIMS and other stakeholders for more information. He said they do not want to “shut the door”.

Jack Travelstead, Chief Deputy Commissioner, said that this was the fourth time this had been heard by the Board and public hearings had been held to consider this same request, and, thus far, the Commission had decided to keep it closed. He said the Blue Ribbon Oyster Panel was currently looking at all the oyster issues. He said they were discussing the issues of sanctuaries and their value and whether to maintain, modify, or do away with them. He said watermen were in the same situation as they had been in the past. He said there was no problem with having a public hearing and to continue the debate, but the Commission should not get ahead of the Blue Ribbon Oyster Panel. He said they would be meeting on November 8th at the Virginia Institute of Marine Science (VIMS) and he did not know how fast they could come to any conclusions.

Commissioner Bowman said that instead of taking emergency action, a public hearing could be advertised and held at the November meeting to discuss the possibility of opening that area December 1st.

Mr. Travelstead explained that staff was preparing a “Strawman” proposal on how to restore oysters environmentally and ecologically, as well as the industry. He said staff would present that proposal to the Blue Ribbon Oyster Panel. He said the panel was in agreement that the State had an obligation to maintain the industry, and they were also considering a “put and take” fishery.

Commissioner Bowman said that all areas needed to be covered. He said that this was a serious plight for the watermen, as well as the environment.

Mr. Travelstead said the Blue Ribbon Oyster Panel should finish up their talks in January or February. He stated that the Commission could address this issue again in the spring.

Commission Meeting**October 31, 2006**

After some further discussion, the public comments were continued.

Tommy Kellum, W. E. Kellum Seafood in Weems, Virginia, was present, and his comments are a part of the verbatim record. Mr. Kellum provided the Commission with a handout of a proposal for opening the Lower Rappahannock River. He explained that there had been a Virginia Oyster Heritage Program, with partnerships involving State, Federal and private partners investing in this area with the building of oyster reefs and oyster harvest areas. He explained that he was proposing that the line be drawn down the middle of the river, starting at the Rt. 3 Bridge middle span, and the area south of the line be opened to harvest, excluding the reefs and Spike Rock. He said they would like it open November 1 through November 30 and the Commission could come back and decide if it could be continued through December 2006. He said that Louisiana had kept their shellfish areas closed from September 15 to November 15. He said that the Maryland imports were not meeting their needs. He said 40% of their sales volume was in the month of November and 25 to 30% in the month of December, and they needed a product to sell. He said opening the area would not take care of the shortage of oysters, but it would help. He said he felt a 15 to 18-day season would not hurt the stocks in this area. He stated there was a danger of depleting the Rappahannock market size oysters above the bridge; therefore, he suggested that above the bridge be closed to harvest. He said it was not good to continue to allow the pressure of harvest on the upper Rappahannock River. He said the watermen needed more area to work.

Mr. Travelstead stated that staff was not prepared to comment and could not give a recommendation.

Associate Member Bowden asked about the density differences. Dr. Wesson stated there was a biological difference. Associate Member Bowden asked about the standing stocks. Dr. Wesson stated that there was twice as much in the non-harvested area than in the harvested area. He said that they were dealing with a very potent disease. He said that ninety percent of the standing stocks were in the area proposed by Mr. Kellum. He said that when working an area it changed the age structure. He said there had been a good spatset there, and the Commission must be doing something right. He said the disease was not that bad in these oysters, as the disease intensity had gone down. He said the VIMS report showed that there needed to be 15 oysters per meter. He further said that in small areas there were big, heavy, old oysters, which were contributing to the spawn.

Dr. Wesson explained that the water flow was upriver and carried the spat to Ferry Rock on the north side of the river. He said historically there had been a high spatset on the northern shore. He said the south side flow was the same as the lower river. He said that a short-term harvest would affect the 2009 harvestable oysters. He said they were monitoring all good oyster bottom.

Associate Member Robins asked about impact of a 15 to 18-day harvest season on the lower Rappahannock River. Dr. Wesson explained that with 50 boats working (equals

Commission Meeting**October 31, 2006**

750 boat-days), all of the standing stocks would be taken. He said using a dredge makes for a quick day's work. He said the best densities were with males and females close together, for a good spawn to happen. He said if the area was all harvested and the standing stocks were zero, there would be nothing left to contribute to the spawning. He said again that oyster density with a good female and male ratio was very important to restocking.

Associate Member McConaugha asked how it was known that spawn was coming from the lower river and if there were any flow studies of the Rappahannock River. Dr. Wesson stated it was just a best guess, as there were no studies.

Mr. Kellum said he did not agree with the statement that all the standing stocks would be caught in 15 days. He said that in his records the catch in the James River was the same the last day as it was the first. He said that 75 percent of the watermen were now working the Temples Bay area. He said the oysters were the prettiest from the Upper Rappahannock because the area had been worked, cleaned, and managed, and it had helped the oysters.

Commissioner Bowman explained there were three issues being discussed, the Blue Ribbon Oyster Panel meetings, a request by the Twin River Watermen's Association, and the Rappahannock River proposal. He said the question was if an emergency action was needed. He read Section 28.2-210 of the Code of Virginia.

"If, in an emergency, the adoption of a regulation is necessary for the immediate preservation of the public peace, health, safety and welfare, or the protection of the industry, natural resources or marine organisms, the Commission may promulgate the necessary regulation."

Commissioner Bowman said he could not see evidence to justify an emergency regulation.

Associate Member Bowden said that there was a gray area in regards to the Code, as in hard times, you may need to consider that it was an emergency. He said the Commission could hold a public hearing next month. He said that if in 18 years there was only a two-fold increase, a compromise was needed, as you could not open and close all of the grounds. He suggested considering a 10-12 bushel limit with a small dredge, which would mean 10 percent would be left in the high density area. He said the Commission should consider opening this area and recommended a public hearing in November. He said with the Finfish Management Advisory Committee not all recommendations were accepted by the Commission and he felt that all recommendations from the Blue Ribbon Oyster Panel the Commission might not be accepted as well.

Associate Member Bowden moved to hold a public hearing in November. Associate Member Holland seconded the motion. Associate Member Schick asked if the

Commission Meeting**October 31, 2006**

motion could be amended to include discussion for opening areas of the Potomac Tributaries. Associate Member Bowden agreed to the amendment. The motion carried, 8-0. The Chair voted yes.

Ms. Marie Hill and Ms. Mary Hill were both present at the meeting and asked to address the Commission again regarding their attempts to lease several tracts of oyster ground. Ms. Marie Hill also briefly addressed the Commission regarding her family's history in the oyster industry. At the conclusion of Ms. Hill's remarks, Commissioner Bowman directed Ms. Marie Hill and Ms. Mary Hill to work directly with staff to address their concerns.

* * * * *

8. PUBLIC HEARING: ASMFC requirement to revise the Winter II commercial possession limit for scup.

Joe Cimino, Fisheries Management Specialist, gave the presentation. His comments are a part of the verbatim record. On July 26, 2006 the National Marine Fisheries Service announced a change to the possession limits for the scup Winter II commercial period. The possession limit, for 2006, will be adjusted from 3,000 pounds per trip to 6,500 pounds per trip. Page three; paragraph C, of the draft regulation in the Commission packet contains this amendment.

Mr. Cimino stated that staff recommended adopting the proposed amendment to Regulation 4 VAC 20-910-10 et seq. to increase the Winter II period possession limit.

Commissioner Bowman opened the public hearing. There was no one present, pro or con, to address the Commission on this matter. Commissioner Bowman asked for a motion.

Associate Member Robins moved to accept the staff recommendation. Associate Member Bowden seconded the motion. The motion carried, 6-0. Associate Members Tankard and Holland were not present during this time. Chair voted yes.

* * * * *

9. REPORT ON FINDINGS OF THE CRAB MANAGEMENT ADVISORY COMMITTEE.

Jack Travelstead, Chief Deputy Commissioner, gave the presentation. His comments are a part of the verbatim record. Mr. Travelstead explained that this issue was not ready to be brought to public hearing.

Commission Meeting**October 31, 2006**

Mr. Travelstead explained that the Crab Management Advisory Committee (CMAC) has met several times this year to review the status of the blue crab stocks and other recent information. He further explained that there were two issues that still need to be discussed. He said the first was the effectiveness of the regulation to protect dark-colored sponge crabs. He said that before the Commission considers repealing this regulation, it had been suggested that the Virginia Beach area be added to the sanctuary. He explained that Rom Lipcius of VIMS, from his studies, could provide more information. He said there was a need for more field study this summer. He said it was not definite but it was possible that CMAC and staff could get to a point that they could bring a recommendation to the Commission. He said the industry was interested.

Commissioner Bowman stated that with enforcement, the problem was distinguishing the various shades of color, and it would be good to come up with something workable.

Mr. Travelstead said the second issue was the request by the Potomac River Fisheries Commission (PRFC) to raise hard crab and peeler crab size limits in Virginia and Maryland tributaries. He said PRFC wants to make the limits consistent with the ones established for the mainstem of the Potomac River. He said the PRFC size limits, in place, resulted in an increased harvest and large, high dollar crabs.

Associate Member Bowden stated that opening the season earlier had been brought up at an earlier time. He said this would be very important to the Eastern Shore as this summer there had not been any market.

Mr. Travelstead stated that CMAC has discussed this and was clearly interested, as it was included on their agenda for future discussions. He informed the Commission that there was a public hearing scheduled for November 6th in Colonial Beach and all Virginia crabbers who crab in the Potomac River tributaries would receive an invitation. He said staff would be recording and reporting back to CMAC at their next meeting. He added that a survey form would also be provided to the attendees to answer, if they did not wish to speak at the hearing.

Associate Member Robins stated that a public hearing was the best forum to give watermen the opportunity to comment on the proposal.

No further action was taken.

* * * * *

10. REPORT ON FINDINGS OF THE STRIPED BASS SPECIAL COMMITTEE.

Jack Travelstead, Chief Deputy Commissioner, gave the presentation. His comments are a part of the verbatim record.

Commission Meeting**October 31, 2006**

Mr. Travelstead explained that the commercial striped bass fishery had been managed under an Individual Transferable Quota (ITQ) program, resulting in eligible fishermen being assigned a share of Virginia's quota. He said this had resulted in larger fish being caught and a biological problem. He stated that this gives watermen with access to larger fish an advantage. He said this system also encouraged the fishermen to harvest the largest fish possible with each tag and resulted in an increase in the average weight of the striped bass harvested in Virginia.

Mr. Travelstead stated that eventually the ASMFC would say that Virginia should not be catching these large fish. He further stated that the current model used to establish Virginia's quota could not be used, as it would lower the quota.

Mr. Travelstead stated that the Commission could put something together to change this and get away from the tag system, such as a poundage system. He said a poundage quota would mean endless tags until the poundage is caught. He said this might solve all problems now, but it creates a new problem, specifically with enforcement of 500 individual quotas. He explained that the staff currently monitors numerous species.

Mr. Travelstead said that buyers and harvesters reports were audited, so that wrongdoers can be brought before the Commission. He said self-marketers do not report; therefore, they were not audited. He said harvesters with overages would be the ones opposed to the poundage limit.

Commissioner Bowman asked if this was managed on a timely basis. Mr. Travelstead said yes, the statewide quota was, as the buyers were required to call in daily starting December 1st.

Mr. Travelstead explained that some of the recommendations were as follows:

1. Self-marketers – issue receipt, use for auditing
2. Under reporters – track all tags distributed, none issued until original tags are accounted for and any unused tags are returned.
3. Penalties – most fishermen can do an estimate because of experience, so the penalties are mean for those who don't follow the rules.

Commissioner Bowman stated that all the best evidence was needed to prosecute. Mr. Travelstead said that staff would be able to provide it. He said the last recommendation is for stricter penalties for future offenses. He said that staff was requesting a public hearing in November.

Associate Member Robins said that he commended the Committee and staff, as they had put a lot of thought into this matter. Commissioner Bowman stated that the Committee was trying to make a change in order to be more flexible and, at the same time, make it

Commission Meeting**October 31, 2006**

better. Associate Member Bowden stated that the Committee members had worked well together.

Kelly Place, waterman, was present, and his comments are a part of the verbatim record. Mr. Place suggested that the ASMFC should offer incentives to States to reduce waste and allow for the conversion of wasted discards into the harvest quota. He said the State needed to ask for an incentive to decrease discards and turn it into a benefit. He said such a program could be converted to a savings that would benefit fishermen and provide a conservation dividend.

Associate Member Bowden moved to take the matter to a public hearing. Associate Member Schick seconded the motion. The motion carried, 8-0. The chair voted yes.

* * * * *

11. COMMISSION CONSIDERATION of Draft Deed and Draft Resolution for Conveyance authorized by Chapter 201, Acts of Assembly 2006.

Withdrawn at the request of counsel.

* * * * *

11A. DISCUSSION: Request for a public hearing to be held at the November 28, 2006 Commission meeting to discuss amending Regulation 4VAC 20-20-10, Pertaining to the Licensing of Fixed Fishing Devices, to allow an exemption for pound netters from the regulatory requirement to set their nets to establish priority rights to the location for renewing their license, because of adverse impacts resulting from Hurricane Ernesto.

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

Mr. O'Reilly explained that the Northern Neck area experienced damage to the pound netters' nets, as a result of Hurricane Ernesto. He also explained this a different problem from previous ones because nets set earlier in 2006 were damaged, resulting in the netters having to use materials reserved for nets to be set later for the destroyed nets. He stated; therefore, the later nets could not be set in 2006. He explained that this put an economic burden on the pound netters because they did not have the finances to buy more materials.

Associate Member Fox stated that it was not just Hurricane Ernesto, which impacted them. A smaller storm (he called it, Little Ernesto) which occurred a week or two later also caused further damage. He moved to approve the request for a November public hearing. Associate Member Holland seconded the motion. The motion carried, 8-0. The Chair voted yes.

Commission Meeting**October 31, 2006**

* * * * *

Commissioner Bowman explained that the board needed to decide if changes in the November and December meeting should be made at this time. He said the November meeting would be on the 28th, the Tuesday after the Thanksgiving holiday and could stay the same. He said the Governor had made December 26th a State holiday, which was the fourth Tuesday of the month when the meeting would normally be held, so it was necessary to make a change. He suggested that it be changed to Tuesday, December 19th. The VMRC staff agreed to this change, as well.

It was the general consensus of the board that the November meeting, stay as it is (Tuesday, November 28, 2006), and that the December meeting (Tuesday, December 26th) be changed to Tuesday, December 19th.

* * * * *

There was no further business and the meeting was adjourned at approximately 2:45 p.m. The next meeting will be Tuesday, November 28, 2006.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary